

---

**(1998) 05 DEL CK 0044**  
**In the Delhi High Court**  
**Case No : C.W. No. 3299 of 1992**

D.D. Sharma (Ex. Asstt. Comdt.)

APPELLANT

Vs

Union of India

RESPONDENT

---

**Date of Decision :** 27-05-1998

**Acts Referred:**

**Citation :** (1998) 74 DLT 92 : (1998) 46 DRJ 162

**Hon'ble Judges :** Dr. M.K. Sharma, J

**Bench :** Single Bench

**Advocate :** Mr. R.P. Sharma, for the Appellant; Mr. K.S. Jaggi and Mr. A.K. Vali, for the Respondent

---

## Judgement

Dr. M.K. Sharma, J.—Challenge is made in this writ petition filed by the petitioner to the show cause notice as also to the order of dismissal passed by the respondents invoking the power under Rule 20 of the BSF Rules, 1969.

2. The petitioner joined the Border Security Force as Sub-Inspector in the year 1970 and, thereafter, he was promoted to the post of Inspector in the year 1980. In 1986, the petitioner was transferred to EDP, Directorate of the BSF Headquarter, New Delhi, and while working in the aforesaid capacity, he was promoted as Assistant Commandant in the month of February, 1989. The petitioner was subsequently transferred and posted to 40 Battalion, BSF in the month of March, 1989. He, however, was granted earned leave for 25 days initially and thereafter again for another 22 days extension of earned leave was granted with effect from 19.6.1989 to 4.8.1989 with permission to suffix 5th and 6th August, 1989 being Government holidays. The petitioner again applied for extension of leave for 14 days on the ground of his father's illness. Since, however, the petitioner was under order of transfer to 40 Battalion, BSF and his Unit which is located at Punjab Border was insisting for early rejoining of the petitioner, he was, Therefore, advised through Registered letter that he should join his Unit first and then should apply for leave on rejoining the Unit. The aforesaid intimation sent to him through registered post letter could not be

served on him and accordingly such an intimation which was sent to him by post was pasted at the entrance door of his house on 19.8.1989. In spite of the aforesaid intimations, the Officer did not join his duties and was over staying leave. Even thereafter, one Sub-Inspector from EDP of BSF was also sent to hand over a copy of the letter to the Officer, but, the wife of the petitioner refused to accept the same on the ground that the petitioner was not available at his residence. Having no other alternative, the respondents issued an apprehension role to the petitioner for his apprehension through civil police in accordance with the provisions of Rules 60 and 611 of the BSF Act, but the same also could not be executed and the petitioner could not be apprehended.

3. A one man Court of Enquiry to enquire into the circumstances under which the petitioner who was transferred to 40 Battalion BSF from EDP (DTE) did not rejoin his new place of posting in spite of sending intimation through letters as well as by post and pasting, a copy of the same at the entrance door of his house was initiated and was completed u/s 62 of the BSF Act. The said Court of Enquiry opined that the Officer may be declared as a deserter. The Additional Director General, Punjab Frontier of BSF also agreed with the aforesaid opinion and held that the Officer might be declared as a deserter and removed from service by way of dismissal as his trial by General Security Force Court was considered to be inexpedient and impracticable and further retention of the Officer would be undesirable in the public interest.

4. In accordance with the provisions of Rule 20 of the BSF Rules as amended, a show cause notice was issued and served on the petitioner calling upon him to put forth his Explanation and defense in respect of the allegations and adverse facts appearing against him. The petitioner, how ever, did not file his show cause and instead by his letter dated 5.9.1991 asked for supplying him up to date BSF Rules governing service conditions, authenticated copy of complete procedure followed by Court of Enquiry, enquiry report, Recruitment, Promotion, and Seniority and Transfer Rules. In response to the aforesaid letter an extract of BSF Rule 20 was sent to the petitioner and he was called upon to submit his reply to the show cause notice within 15 days failing which ex parte decision would be taken. However, instead of furnishing reply to the said notice, the petitioner submitted a representation dated 10.10.1991 stating the same to be an interim reply to the show cause notice. In the said representation the petitioner contended that he was not allowed to rejoin duties at EDP and that he had not received any Government letter regarding his release on transfer and also requested to allow him to report at New Delhi for handing over charge (although he had handed over his charge while proceeding on leave), regularisation of leave, releasing of pay and to allow him to proceed on transfer to 40 Battalion BSF with proper relieving order and railway warrant.

5. Considering the entire facts and circumstances of the case, the Central Government came to the conclusion that trial by General Security Force Court for the aforesaid offence of desertion as opined by the Court of Enquiry u/s 18 of the

BSF Act is inexpedient and impracticable and accordingly passed an order dismissing him from service without pension Rule 20(5) of the said Rules and hence the present petition.

6. Counsel appearing for the petitioner submitted before me that the impugned order dismissing him from service is bald order and is without any reason. He also submitted that preconditions for exercising powers under Rule 20 of the Rules are not satisfied in the instant case as the petitioner was available in Delhi and also met higher Officers in EDP (DTE) and was also submitting his Explanation and, Therefore, a regular trial could have been conducted in accordance with law. He also submitted that no reason or material exists in the present case on the basis of which the purported action could have been taken by the respondents against the petitioner. Learned counsel for the petitioner in support of his contentions relied upon several decisions of this Court as also of the Supreme Court.

7. Counsel cited the decision of S.N. Mukherjee Vs. Union of India, , to bring home the point that administrative authority exercising quasi-judicial functions must record reasons for its decisions except in cases where the requirement has been dispensed with expressly or any necessary implication. He also relied upon a Division Bench decision of this Court in Ajaib Singh Vs. Union of India and another in C.W.P. 3001/1995 disposed of on 1st November, 1996 and also of this Court in Lt. Col. Jagga Singh Vs. Union of India & anr reported in 1995 4 AD 333 and also a decision of the Supreme Court in Major Radha Krishan Vs. Union of India and Others, .

8. Counsel appearing for the respondents, however, submitted that the records available would clearly prove and establish that there was apparent and clear constructive desertion on the part of the petitioner as he was avoiding active duty and when a active duty is avoided, the same amounts to desertion. According to him deemed desertion would take place as and when it is established that the petitioner did not have any intention to return to duty. It was also submitted that the petitioner never reported for duty at 40 Battalion, BSF in spite of intimations sent to him for reporting to duty and that he did not make himself available in spite of several intimations sent to him and an Apprehension Roll had to be issued against him in spite of which the petitioner could not be apprehended and thus, the said facts clearly establish that initiation and conducting a trial against the petitioner was inexpedient and impracticable and thus the decision taken in accordance with law after service of show cause notice to the petitioner is valid and legal.

9. The records of the Central Government have been placed before me for my perusal by the learned counsel appearing for the respondents which disclose that the Central Government considered the facts and circumstances of the case at length for coming to the conclusion that his trial by General Security Force Court for the offence of desertion u/s 18 of the BSF Act was inexpedient and impracticable. The reasons have been stated in the records and the decision was

taken at the level of Minister of State for Home in pursuance of which the aforesaid order was issued to the petitioner.

10. The expression "impracticable and inexpedient" came to be considered by the Supreme Court in Major Radha Krishan (supra). In the said decision, it was held that "Impracticable" presupposes that the action is "possible" but owing to certain practical difficulties or other reasons it is incapable of being performed and that the same principle would equally apply to satisfy the test of inexpedient as it means not expedient or disadvantageous in the circumstances.

11. The relevant provisions of Section 20 as amended on the basis of which the action was taken against the petitioner is extracted below:-

"20. Termination of service of officers by the Central Government on account of misconduct.

(1) When it is proposed to terminate the service of an officer u/s 10 on account of misconduct, he shall be given an opportunity to show cause in the manner specified in sub-rule (2)

against such action :

Provided that this sub-rule shall not apply :-

(a) where the service is terminated on the ground of conduct which has led to his conviction by a criminal court or a Security Force Court; or

(b) where the Central government is satisfied that for reasons, be to recorded in writing, it is not expedient or reasonably practicable to given to the officer an opportunity of showing cause.

(2) When after considering the reports on an officer's "misconduct", the Central government or the Director-General, as the case may be, is satisfied that the trial of the Officer by a Security Force Court is inexpedient or impracticable, but is of the opinion, that the further retention of the said officer in the service is undesirable, the Director General shall so inform the officer together with particulars of allegation and report of investigation (including the statements of witnesses, if any, recorded and copies of documents, if any, intended to be used against him) in cases where allegations have been investigated and he shall not be called upon to submit, in writing, his Explanation and defense :

Provided that the Director-General may withhold disclosure of such report or portion thereof if, in his opinion, its disclosure is not in the interest of the Security of the State.

(3) In the event of the Explanation of the Officer being considered unsatisfactory by the Director-General, or when so directed by the Central Government, the case shall be submitted to the Central Government with the Officer's defense and the recommendation of the Director-General as to the termination of the Officer's service in the manner specified in sub-rule (4).

(4) When submitting a case to the Central government under the provisions of sub-rule (2) or sub-rule (3), the Director-General shall make his recommendation whether the Officer's service should be terminated, and if so, whether the officer should be :-

(a) dismissed from service ; or

(b) removed from service ; or

(c) retired from service ; or

(d) called upon to resign.

(5) The Central Government, after considering the reports and the Officer's defense, if any, or the judgment of the criminal court, as the case may be, and the recommendation of the Director-General, may remove or dismiss, the officer with or without pension or retire or get his resignation from service, and on his refusing to do so, the Officer may be compulsorily retired or removed from the service with pension or gratuity, if any, admissible to him."

Rule 20(2) opens with the words "when after considering the reports of an officer's "misconduct", the Central Government or the Director-General, as the case may be, is satisfied". Almost the same expression also exists in Rule 14(2) of the Army Rules which came to be considered in the case of Major Radha Krishan (supra). While interpreting the aforesaid provision, the Supreme Court held that it is evident that the satisfaction about the inexpediency or impracticability of the trial has to be obtained on consideration of the reports on the officer's misconduct, which necessarily means that the misconduct and other attending circumstances relating thereto have to be the sole basis for obtaining such a satisfaction.. It is only when there is a satisfaction of the concerned authorities that such a trial is inexpedient or impracticable and on consideration of the report on the officer's misconduct, the concerned authority may legitimately invoke the Rule to dispense with the trial on the grounds that it would be impracticable and/or inexpedient. But to dispense with a trial on a satisfaction dehors the misconduct - would be alien to Rule 14(2).

12. The misconduct of the petitioner is that he was avoiding active duty in spite of several intimations sent by the respondents to rejoin the duties and, Therefore, there is deemed desertion by the petitioner as envisaged u/s 18 of the BSF Act. In that view of the matter, report was submitted to the competent authority bringing to the notice of the said authority the misconduct of the petitioner and on such report, the Central Government was satisfied that the trial of the Officer by Security Force Court is inexpedient and impracticable and that further retention of the petitioner in service is undesirable and a show cause notice was issued to the petitioner. The petitioner as stated hereinabove did not file a detailed reply and filed only an interim reply. The Central Government after considering the reports and the defense stated in the said reply was again satisfied that action is required to be taken against the petitioner and accordingly

the impugned order was passed.

13. The reasons recorded in the records prove and establish that the petitioner was avoiding the active duty, though had knowledge directing him to report for duty through intimation sent by the respondents requesting the petitioner to rejoin his duty. Apprehension Roll issued against the petitioner also could not be executed. It is thus proved that the petitioner was avoiding joining active duty and was over staying leave and, Therefore, would come within the ambit of the provisions of Section 18 of BSF being a case of constructive desertion. Since the petitioner was not available and his presence could not be made possible in spite of best efforts, no trial by the officers of Border Security Force Court was possible and on the basis thereof the competent authority was satisfied that the trial by the officers of the Security Force Court is inexpedient and impracticable.

14. The reasons recorded appear to me to be valid and sufficient for invoking the provisions of Rule 20 of the BSF Rules. If the petitioner did not make himself available in spite of several intimations sent to him and notice thereof and since the petitioner could not be apprehended even after issuance of Apprehension Roll, initiation and conduct of trial against the petitioner was inexpedient and also impracticable and, Therefore, the satisfaction of the concerned authorities on the said facts cannot be said to be in any manner unjustified. Even in his interim reply to the show cause notice he took up some frivolous ground that he was not released from Delhi, although he had handed over charge at Delhi before going on leave and that he should be allowed to join at Delhi and then to hand over the order of transfer and posting and issue a Railway warrant to him. Thus he made it clear that he is not interested to join active duty at 40 Battalion BSF, unless all his aforesaid demands are met, which could not have been met in view of the fact that they were found to be unjustified.

15. The decisions relied upon by the counsel for the petitioner in Major Radha Krishan (supra), and Lt.Col. Jagga Singh (supra) relate to a case where limitation for initiation of the trial by the Security Force Court had expired and, Therefore, on the said facts it was held that initiation and conduct of the trial itself had become impossible and, Therefore, under such circumstances it could not have been said that the trial had become impracticable and/or inexpedient. Since period of limitation of such a trial was over, the authorities could not have taken action and fall back upon extraordinary power to hold that the trial has become impracticable and/or inexpedient.

16. Similar is not the case in the present case. Limitation for holding the trial had not expired in the present case and, Therefore, the ratio of the aforesaid decisions is not applicable. In the case of Ajaib Singh (supra), no satisfaction was recorded by the competent authority that the trial of the petitioner was inexpedient or impracticable. Same is not the case in the present case and, Therefore, distinguishable.

17. The petitioner was a constructive deserter as envisaged u/s 18 of the Act and

the report submitted on the officer's misconduct was placed before the competent authority who was satisfied that the trial of the officers of the Security Force Court was inexpedient and impracticable. Thus invocation of the aforesaid power vested under Rule 20 of the Rules on the facts and circumstances of the present case cannot be said to be either illegal or arbitrary. I, Therefore, do not find any merit in this writ petition and the same accordingly stands dismissed.