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Mukesh Kumar vs Union of India and Ors

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Court : Delhi

Decided On : May-04-2026

Judge : Hon'Ble Mr. Justice Anil Kshetarpal,Hon'Ble Mr. Justice Amit Mahajan

Appeal No. : W.P.(C)/4366/2026

Appellant : Mukesh Kumar

Respondent : Union of India and Ors

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment reserved on: 06.04.2026

Judgment pronounced on: 04.05.2026

+ W.P.(C) 4366/2026 and CM APPL. 21249/2026

MUKESH KUMAR .....Petitioner Through: Mr. Shivanshu Bhardwaj, Adv

versus

UNION OF INDIA AND ORS. .....Respondents Through: Through: Mr. Suhail Malik, SPC with Mr. Aqib Zaman, Adv.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT

AMIT MAHAJAN, J.

1. Through the present writ petition, the Petitioner has sought the

following prayers:

a. To quash and set aside the Impugned Order dated 25.02.2026; and/ or

b. Issue a writ of Mandamus directing the Respondents to reinstate the Petitioner back into service with continuity of service, full consequential benefits and arrears of pay and allowances, treating the entire period of suspension and alleged absence as duty for all purposes; and/ or

c. Direct the Respondents to release subsistence allowance and other admissible dues to the Petitioner for the entire period of his suspension, together with interest at a rate deemed appropriate by this Hon'ble Court; and/ or

d. Quash and set aside the impugned order dated 07.02.2025, as also the order dated 16.01.2025; and/or

e. To pass such other and further order, which this Hon'ble Tribunal deem fit and proper in the existing facts and circumstances of the case.

2. The brief facts of the case are as follows:

2.1. The Petitioner was appointed to BSF as an Assistant Sub Inspector in the year 2001, and he was promoted to the post of Sub Inspector in the year 2013. From July, 2013 till September, 2017, the Petitioner was posted at Adm Dte., FHQ, BSF, New Delhi and was performing the duties of Cashier, SPBY Cell of Welfare Section. When he was relieved in September, 2017, the Petitioner was also granted permission to avail his earned leave of 30 days and directed to join the Ftr HQ BSF, Salbagan, Agartala, Tripura (West). The Petitioner joined his duty in time.

2.2. The Petitioner claims that due to his fathers illness, he was granted some earned leaves, which were extended upto 04.12.2017, and he was to join back on 05.12.2017. Prior to expiry of his leave, the Petitioner claims that he visited Adm-I (SPBY Cell), HQ, DG, BSF, New Delhi, after which, he was temporarily attached with the SPBY Cell for rectifying the discrepancies in the accounts of some welfare funds. The Petitioner was declared as absent without leave with effect from 12.12.2017 after he absented himself from HQ, DG, BSF, New Delhi without informing anybody.

2.3. On 03.01.2018, an FIR was registered against the Petitioner at the instance of DG, BSF in relation to embezzlement of welfare funds. The Petitioner surrendered before the Trial Court on 12.03.2018 to join

investigation, and he was admitted on bail on 01.05.2018.

2.4. The Petitioner was placed under deemed suspension with effect from 12.03.2018 (that is, his date of arrest) and his suspension was extended from time to time.

2.5. The Petitioner submitted an application on 27.07.2018 to the IG, Ftr HQ BSF Tripura inter alia for remittance of subsistence allowance to his wifes account. Further, on 30.04.2019, the Petitioner preferred another representation requesting for exemption from appearing at duty place during suspension and for remittance of his subsistence allowance.

2.6. In 2019, the Petitioner approached the High Court of Patna seeking issuance of direction to the Respondents to pay subsistence allowance and to not subject him to departmental action, which was dismissed on 26.03.2019.

2.7. On 17.11.2020, the Petitioners suspension was revoked, however, as per him, the order revoking suspension was never communicated to him.

2.8. The Petitioner preferred WP (C) No. 7638/2022 before this Court for grant of subsistence allowance and his pay as well as allowances, which was dismissed as withdrawn on 18.05.2022.

2.9. The Petitioner rejoined his duties on 21.05.2022 at Ftr HQ BSF, Tripura. Between 04.12.2024 till 12.12.2024, the Petitioner was tried by the General Security Force Court (GSFC) on two charges of absenting himself without leave, which read as under:

2.10. The Petitioner was awarded punishment of dismissal from service on 12.12.2024. The pre-confirmation petition filed by the Petitioner was rejected on 16.01.2025, and the findings of the GSFC were promulgated to the Petitioner on 07.02.2025 with observation that the period of unauthorised absence shall be treated as Dies- Non for all purposes.

2.11. After the Petitioners representation/ statutory appeal against the same was not considered, the Petitioner preferred W.P.(C) service and treatment of entire period of suspension as duty for all

purposes. The same was disposed of on 28.01.2026 with direction for consideration of the representation by the competent authority within four weeks.

2.12. By the impugned order dated 25.02.2026, the Petitioners statutory petition was dismissed with the observation that the Petitioner failed to rejoin his duty despite receiving multiple letters in this regard.

2.13. Aggrieved by the same, the Petitioner has filed the present petition.

3. The learned counsel for the Petitioner submitted that as long as

the criminal case is pending, the Respondents could not call upon the Petitioner to face action as a deserter or subject him to disciplinary action under BSF Act, 1968 and Rules. He submitted that the Petitioner was attached to the Delhi HQ of the BSF and was never relieved, whereby, he cannot be said to have absented himself from his place of posting at Tripura. He further submitted that the punishment of dismissal from service is shockingly disproportionate.

4. He submitted that the Petitioner was willing to remain present

at the Headquarters, however, it was impossible for him to report to his place of posting as he was bound to remain available to the Investigating Officer in Delhi.

5. He submitted that the Petitioner was also suffering from

depression due to stress arising out of criminal proceedings and prolonged suspension, and his absence was wholly unavoidable.

6. He submitted that the subsistence allowance has been wrongly

denied to the Petitioner on account of him not remaining present at the place of posting, especially since the Petitioner was under suspension and the criminal trial was pending against him in Delhi. He submitted that non-payment of subsistence allowance vitiates the disciplinary proceedings. He placed reliance on the judgments in Ghanshyam Das Shrivastava vs State Of Madhya Pradesh : 1973 (1) SCC 656 and State of Bihar v. Arbind : (2013) 16 SCC 615.

7. On the other hand, the learned counsel for the Respondents

contested the averments made on behalf of the Petitioner. He submitted that the Petitioner was not entitled to any benefits on account of him absenting himself without any leave, for which, he has been correctly found to be guilty.

ANALYSIS

8. At the outset, it is apposite to mention that while exercising

jurisdiction under Article 226 of the Constitution of India, this Court does not sit in appeal over the orders passed by the concerned authorities. The scope of judicial review is limited to examining the decision-making process and not the correctness of the decision on merits. Unless the impugned order suffers from perversity, patent illegality, violation of principles of natural justice, or lack of jurisdiction, interference by the writ court is not warranted. Re- appreciation of the merits or substitution of the Adjudicating Authoritys view with another plausible view is impermissible.

9. The Petitioner is essentially aggrieved by his dismissal from

service on being found guilty of two charges of absenting himself without leave. He has also sought release of his subsistence allowance and other admissible dues for the entire period of suspension along with treatment of such period as well as period of alleged absence as duty for all purposes.

10. The case of the Petitioner is primarily helmed on the argument

that once the DG, BSF had lodged an FIR against the Petitioner, no disciplinary proceedings could be initiated against him under the BSF Act, 1968 and rules during the pendency of such criminal proceedings in terms of Section 80 of the BSF Act, 1968. Undisputedly, the FIR registered by the Respondents pertains to allegations of embezzlement of certain funds. Ex facie, the allegations therein are disjunct from the charges of unauthorised absence of duty, which were adjudicated by the GSFC in the present case. The said fact has also been aptly appreciated in the impugned order dated 25.02.2026. It has been rightly noted that only BSF authorities can try a person for unauthorised absence and the same cannot be tried in criminal courts. The said argument is therefore

devoid of any merit.

11. The Petitioner has also sought to agitate that non-payment of

subsistence allowance effectively vitiates the disciplinary proceedings. Reliance is placed on the judgment of Ghanshyam Das Shrivastava v. State Of Madhya Pradesh (supra), where the order of dismissal was quashed on account of non-payment of subsistence allowance. In that case, the employee therein had specifically pleaded that he could not

face the enquiry due to acute shortage of funds, which led the Honble Apex Court to hold that the employee had been deprived of a reasonable opportunity to defend himself in the enquiry on account of non-payment of subsistence allowance. The relevant portion of the

judgment is as under:

5. With respect, we find it difficult to share the view taken by the High Court. Para 5 of the writ petition expressly alleges that on December 5, 1964, the appellant sent a letter to the Enquiry Officer informing him that unless he was paid subsistence allowance he would not be able to face the enquiry proceedings. The letter was filed along with the petition. It is Annexure H. The letter stated that Until and unless I am paid subsistence allowance... I categorically refuse to face any proceeding ... as I have no capacity to do so because of acute shortage of funds. (emphasis added). This is obviously specific pleading on the point that for non-payment of subsistence allowance he was short of funds and could not attend the enquiry. It is true that his affidavit does not give any particulars about his sources of income and the estimate of expenses to be incurred in the enquiry. But it would prima facie suggest that he had no other sources of income except his pay. If he had no other sources of income, he could

not invent them for the purpose of mentioning them in the affidavit. More significantly, the government affidavit does not allege that he had any other source of income except pay. The fact that he had been drawing a monthly pay of Rs 300 till October, 1964, would not necessarily show that he had sufficient money to enable him to go to Jagdalpur to attend the enquiry in February 1965. He was suspended on October 30, 1964 and thereafter he did not get subsistence allowance until March 20, 1965. Having regard to the prevailing high price, it is not possible to draw any adverse inference against him from the mere circumstance that he had been receiving a monthly pay of Rs 300 till October 1964. The fact that he filed a writ petition immediately on the passing of the order of dismissal and thereafter came in appeal to this Court, would not establish that he had enough resources to enable him to attend the enquiry. It seems to us that on the whole the High Court has gone by conjectures and surmises. There is nothing on the record to show that he has any other source of income except pay. As he did not receive subsistence allowance till March 20, 1965, he could not, in our opinion, attend the enquiry. The first payment of subsistence allowance was made to him on March 20, 1965, after a

part of the evidence had already been recorded on February 9, 10 and 11, 1965. The enquiry proceedings during those days are vitiated accordingly. The report of the Enquiry Officer based on that evidence is infected with the same defect. Accordingly, the

order of the Government dismissing him from service cannot stand.

It was passed in violation of the provisions of Article 311(2) of the Constitution for the appellant did not receive a reasonable opportunity of defending himself in the enquiry proceedings. (emphasis supplied)

12. Reliance is also placed on the judgment in State of Bihar v.

Arbind (supra). Unlike the present matter, in that case the employee had stayed at the allotted headquarters for about 5 months before he left the place due to paucity of money caused by non-payment of subsistence allowance. The employee therein had intimated the authorities about his inability to stay at allotted post due to his impecuniosity. The departmental proceedings continued ex parte

against the employee, where he was ultimately dismissed. The order

of dismissal was set aside and departmental proceedings were directed to be conducted afresh. Emphasising on a suspended employees right to subsistence allowance, the Honble Apex Court upheld the setting aside of the order of dismissal. It was also indicated that the Court was not inclined to dwell on the absolute position of law in relation to association of doctrine of prejudice with non-payment of subsistence allowance.

13. The facts of both the aforesaid cases are distinguishable. In this

case, the Petitioner fully participated in the concerned proceedings. The aforesaid judgments do not imply that non-payment of subsistence allowance ipso facto results in automatic vitiation of disciplinary proceedings. In both these cases, the concerned employee

was able to demonstrate that he was handicapped from participating in the enquiry proceedings due to non-payment of subsistence allowance.

14. Although the Petitioner mentioned financial difficulties in his

representations, he has not contested that his absence was the result of any incapacity stemming from financial difficulty. Rather, it appears from his application dated 30.04.2019 that he did not wish to join his posting in Tripura as the criminal proceedings had affected his morale and he was apprehensive of reporting in Tripura with an unfair character. The other arguments now agitated by the Petitioner for his absence appear to be afterthoughts. The relevant portion of the application is as under:

..It is also submitted that the further investigation/Trial of the case is pending in Hon'ble District Court, Saket, New As such, my absence without leave is not wilful for thwarting the course of Justice. However, this incident has badly affected my morale & character for which I am unable to appear at your headquarter with a unfair character.

2. in view of the fact enumerated above, it is requested that I may

be kept under suspension till finalisation of trial in Hon'ble District Court, Saket, New Delhi as per BSF Act & Rules with exemption to appear at duty place during suspension. Also, it is highly appreciable if subsistence allowance as admissible in accordance with FR-53 may be remitted into accounts as mentioned in our application dated 27th July 2018 to enable us for resuming my duties with fair and clean character.

15. As rightly noted by the Respondent authorities, the Petitioner

was not paid the allowance as he failed to report to his place of duty. Pertinently, the Petitioner had previously instituted a petition in Patna for subsistence allowances as well, but no observations were made in this respect in order dated 26.03.2019, whereby the Petitioners

petition was dismissed. It is also important to note that the record reflects that the deemed suspension of the Petitioner with effect from 12.03.2018 was on account of his arrest and not the pendency of the criminal proceedings arising from the FIR, which was lodged in January, 2018 itself. Although the Petitioner had requested by way of his application dated 27.07.2018 that he be placed under suspension under Rule 40A (1)(iii) of the BSF Rules, 1969 (which provides for suspension if any case against the officer pertaining to a civil offence is under investigation, inquiry or trial), it appears from record that the Petitioners suspension was simply extended without ceding to his request. Even otherwise, it was communicated to the Petitioner that his request for revocation of suspension and remittance of subsistence allowance could not be considered as he was yet to report to the concerned Headquarter. Once the Petitioner had absented himself without leave from service by not reporting to his place of posting, he cannot claim the benefit of any monetary benefits for his period of absence, especially since he has been unable to offer any cogent explanation for his absence.

16. While much emphasis is also laid on the argument that the

absence of the Petitioner was not wilful, there is no proper explanation as to why the Petitioner remained absent prior to his arrest and suspension, and even prior to registration of FIR. There

appears to be merit in the observation made in the impugned order

dated 25.02.2026 that the Petitioner deliberately absented himself when he became aware of the misappropriation allegations.

17. Although the Petitioner has argued that he was attached with

the Adm-I (SPBY Cell), HQ, DG, BSF, New Delhi and there was no question of him absenting himself from Tripura, admittedly, the Petitioners attachment was temporary in nature and multiple letters were issued after grant of bail to the Petitioner asking him to rejoin duties in Tripura. Pertinently, the first charge pertains to the Petitioner absenting himself without leave from HQ, DG, BSF, New Delhi itself. Further, the record does not indicate that the Petitioner challenged his posting in Tripura at any stage. The medical document annexed by the Petitioner pertain to May, 2018 and do not credence his claims of persisting depression. The same is not sufficient to conclude that the Petitioners absence was not wilful.

18. It is also important to note that while the Petitioner has

contested that he was bound to remain in Delhi due to the criminal proceedings, the order of bail does not encapsulate any such condition and it further records that the investigation against the Petitioner was almost complete. The Petitioner only rejoined at his place of posting after his writ petition for remittance of subsistence allowance was dismissed as withdrawn. The Petitioner remained absent without leave for around four years, and such behaviour cannot be countenanced in a disciplinary force.

19. This Court finds no fault in the Petitioner being adjudicated as

guilty of the charges of absence without leave after appraisal of the material on record. After remaining absent for such an extensive period of time, in the absence of any material to show that the

Petitioners absence was unavoidable, the punishment awarded to the Petitioner appears to be appropriate and plausible.

20. In view of the aforesaid discussion, this Court finds no reason

to exercise its extraordinary jurisdiction in favour of the Petitioner.

21. The present petition is dismissed in the aforesaid terms.

Pending application also stands disposed of.

AMIT MAHAJAN, J.

ANIL KSHETARPAL, J.

MAY 04, 2026

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