
(2006) 08 DEL CK 0023
In the Delhi High Court
Case No : WP (C) . No. 2553 of 2005

Ajmer Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-08-2006

Acts Referred:

Border Security Force Rules, 1969 — Rule 26
Constitution of India, 1950 — Article 226, 227

Citation : (2006) 92 DRJ 371

Hon'ble Judges : Swatanter Kumar, J;G.S. Sistani, J

Bench : Division Bench

Advocate : Girish Aggarwal, for the Appellant; Alok Sangwan, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Sistani, J.—In this petition under Articles 226/227 of the Constitution of India, the petitioner has prayed that a writ in the nature of certiorari be issued quashing the impugned order dated 10.10.2002, whereby petitioner has been retired as Head-constable of Border Security Force and impugned order dated 30.12.2002 passed by the Deputy Inspector General-respondent No. 4 rejecting his Revision/Appeal and orders dated 14.8.2003 and 29.4.2004 passed by respondent No. 2 upholding the penalty order passed by respondent No. 5. The petitioner has further prayed for issuance of a writ in the nature of mandamus directing the respondents to reinstate the petitioner into service w.e.f. 10.10.2002 Along with all consequential benefits including arrears of pay, continuity of service, seniority and further promotion, if any.

2. The facts, as set out in the petition are that : petitioner was initially enrolled as a Constable in the Border Security Force (hereinafter referred to as "the BSF") on 2.4.1987. On the basis of his excellent work and conduct, he was given out of turn promotion as Lance Naik w.e.f. 3.7.1991. Still later, he was promoted as Naik w.e.f. 20.2.1996 and as Head constable due to merger of rank w.e.f. 10.10.1997. It is stated that the service record of the petitioner had been

excellent and to the complete satisfaction of his superiors.

3. The petitioner was served with a show-cause notice dated 6.8.2002, alleging that since on 7 occasions he had been awarded punishment of either reprimand or severe reprimand, as to why he should not be retired from service under Rule 26 of the B.S.F. Rules. The petitioner submitted a detailed reply inter-alia pleading that even last punishment of reprimand was awarded to him in the year 1998 and thereafter for the last 4 years nothing adverse has been found or communicated to him, hence, it would not be a fit case to invoke the provisions of Rule 26 of the BSF Rules. Despite the reply to the show cause the respondent No. 5 vide impugned order dated 10.10.2002 retired the petitioner from service. Copy of original order dated 10.10.2002 was not supplied to the petitioner but only a Savingram was supplied to him, informing him that he was retired on the ground of unsuitability under Rule 26 of the BSF Rules.

4. Aggrieved by the Order dated 10.10.2002 retiring the petitioner on the ground of unsuitability, the petitioner preferred an appeal dated 2.11.2002 to the Deputy Inspector General. The said appeal was rejected vide Order dated 30.12.2002. Against the aforesaid Order dated 30.12.2002 the petitioner preferred a further appeal to the Inspector General, BSF vide representation dated 25.1.2003, which was also dismissed vide Order dated 26.3.2003.

5. It has been stated that a previous commander, under whom the petitioner worked and had earned appreciation, recommended to the Director General, BSF for reinstating the petitioner into service vide his representation dated 7.8.2003, which was also rejected vide Order dated 14.8.2003. The petitioner persisted with an attempt to set aside the Order of retirement and submitted another representation which was also rejected by the respondent No. 2 vide Order dated 29.4.2004.

6. Learned Counsel for the petitioner submitted that the petitioner has had an excellent service record and was awarded many bravery awards, although the petitioner did not deny that while he was in service, during the period 1994 to 1998 he had been awarded 7 punishments. It was further submitted that the last punishment of reprimand was given to the petitioner in the year 1998 and thereafter for the last four years nothing has been found against the petitioner. The counsel for the petitioner has urged that in comparison to the good entries there are very few punishments which have been awarded to the petitioner. Mr.Girish Aggarwal, learned Counsel for the petitioner has strongly argued that besides the show cause notice, the petitioner was not advised or warned about his performance nor the respondents followed the due process of law before awarding the punishments which are now sought to be the basis of invoking Rule 26 of the BSF Rules. It was also submitted that the punishment so awarded were never communicated to the petitioner.

7. Learned Counsel for the petitioner further submitted that under similar circumstances two other persons, namely, Constable Sisti Pal, Barber and

Constable Deepak Kumar, Cobbler of the battalion of the petitioner, were also retired by respondent No. 5 w.e.f. 10.10.2002. On further appeals to the learned Director General, BSF-respondent No. 2, they have been ordered to be reinstated into service w.e.f. 5.4.2003 and 30.5.2003 respectively. He further submitted that number of orders of penalty in respect of both these Constables were more than the number of penalties imposed upon the petitioner. Thus the order dated 10.10.2002 suffers from arbitrariness and is bad in law.

8. Learned Counsel for the respondents submitted that the present petition is without any merit and the same is liable to be dismissed, as the petitioner was an indisciplined soldier and had committed 8 offences between the period 1994 to 2002, which were punishable under the BSF Act and Rules. The details of the offences are reproduced below:

S. No. u/s Punishment Year 1. BSF Act, Section 40 Reprimand 1994 2. BSF Act, Section 19(a) Severe Reprimand 1996 3. BSF Act, Section 19(b) Severe Reprimand 1996 4. BSF Act, Section 19(b) Severe Reprimand 1997 5. BSF Act, Section 40 Reprimand 1998 6. BSF Act, Section 19(b) Severe Reprimand 1998 7. BSF Act, Section 40 Reprimand 1998 8. BSF Act, Section 19(b) Severe Reprimand 2002

9. It has further been submitted by learned Counsel for the respondents that it is factually incorrect that the last punishment awarded to the petitioner was in the year 1998, in fact the petitioner was awarded a punishment of severe reprimand on 29.8.2002 as well. The petitioner was warned orally as well as in writing including in terms of a warning letter dated 17.5.2001. Copy of which has been filed along with counter affidavit filed by the respondents. The counsel for the respondents has also justified that two persons whose order of retirement was set aside in appeal had both been awarded only 5 punishments. In addition to that it has been submitted that both the said persons were enrolled as followers being barber and cobbler, whereas the petitioner being an under officer is expected to show more responsible behavior. The counsel for the respondents has also submitted that it is incorrect and an afterthought that the punishments awarded to the petitioner were not communicated to him from time to time. The petitioner has failed to take this ground in the reply to the show cause notice dated 7.9.2002 wherein he has categorically stated that he is responsible for his own mistakes and assured the respondents that he would not commit such mistakes in future. No grievance was made even in the appeal dated 2.11.2002 wherein it was only stressed that the offences were minor acts and for which warning was given. The counsel for the respondents has further submitted that the punishments were granted to the petitioner in accordance with the provisions of the BSF Act and Rules. He submits that based on the entire service profile of the petitioner an order dated 10th October, 2002 was passed under Rule 26 of the BSF Rules. Learned Counsel supported the impugned orders stating that the power to compulsorily retire the petitioner was rightly exercised on examination of the entire service records. The petitioner had out lived his utility to the Force. At

this stage, it would be relevant to reproduce Rule 26 of the BSF Rules.

26. Retirement of enrolled persons on grounds of unsuitability. - Where a Commandant is satisfied that an enrolled person is unsuitable to be retained in the Force, the Commandant may, after giving such enrolled person an opportunity of showing cause (except when he considers it to be impracticable or inexpedient in the interest of security of the State to give such opportunity), retire such enrolled person from the Force.

10. We have heard learned Counsel for the parties and given our thoughtful consideration to the matter. From perusal of the pleading and documents filed along with the writ petition it is abundantly clear that the petitioner has been punished 8 times between the period 1994 to 2002. It is also borne out from the record that the petitioner was issued a letter of warning dated 17.5.2001, wherein besides extracting the offences it has been categorically stated "You are hereby warned to be more careful in future and improve yourself, otherwise necessary action to retire you on unsuitability grounds as per BSF Act and Rules would be taken."

11. At this stage, we may refer to a judgment of Division Bench of this Court in the case of Ex. H/C. Satbir Singh Malik v. Union of India and Ors. C.W. Nos. 4822/95, 477/96 and 2496/96 decided on 27.10.1997, where the Court while dealing with Rule 26 of the BSF Rules held as under:

The purpose of enacting the aforementioned Rule is to empower the Competent Authority to compulsorily retire a member of the Force. It is a provision, which is necessary to ensure maintenance of utmost discipline in the Force, in the absence of which, the Force cannot be expected to function efficiently. Members of the Force are expected to act in a disciplined manner. With undisciplined and unsuitable Members the Force cannot be expected to maintain high degree of efficiency, which is expected to ensure security on the Borders.

In each case, on examination of the service record, considering the punishments imposed and the poor performance, an opinion was formed by the Competent Authority that the petitioners were not suitable and had outlived their utility in the Force. There was no denial on the part of the petitioners that they had not been so punished. Opinion under the provisions of the Rule has to be formed by the Competent Authority, which was duly formed on the basis of the material on record and before passing the impugned orders, opportunity was afforded to the petitioners to file their respective replies. Replies were filed, which were duly considered by the Competent Authority and consequently, the impugned orders were passed. Since orders were passed in exercise of valid powers, there is no ground to interfere.... In similar circumstances, the exercise of power under Rule 26 of the Rules was upheld by Division Bench of this Court in Shri Mohan Dass K.T. v. The Director General, B.S.F. and Anr. C.W. 3016/95 decided on 26.9.1996.

12. In the present case, even after the letter of warning dated 17.5.2001 the petitioner did not show any improvement and he was awarded the punishment of

severe reprimand in the year 2002. Thus it would be wrong to say that after 1998 there is nothing adverse found against the petitioner. We are also inclined to agree with the submissions of the learned Counsel for the respondents that the two persons whose order of retirement was set aside were differently placed to that of the petitioner. Even otherwise the argument that action has not been taken against the said persons cannot be a ground for interference in such like matter. The Court cannot lose track of the fact that the petitioner is a member of the Border Security Force, which is engaged in active operational duties and is supposed to maintain high standards of discipline in the force. Any act of indiscipline especially the act of habitual offender is highly detrimental to the discipline of the force and has an adverse effect on the other members, and a person having been punished 8 times between 1994 to 2002 definitely shows that the petitioner is a habitual offender. The petitioner has neither challenged the punishments awarded in the present proceedings nor any submission was made before us that any challenge was made in the past. To say that the petitioner was not informed about the punishment is without any basis, as we find that this ground was neither taken in response to the show cause notice nor in the grounds of appeal.

13. The acts of indiscipline of the petitioner are totally unbecoming of a member of the force. The respondents have followed the procedure by issuing a warning letter dated 17.5.2001 and thereafter the show cause notice. In the warning letter the petitioner was informed about the implications of his persisting in the acts of indiscipline. It is a clear case where the petitioner himself has been responsible for his acts of misconduct and has been awarded punishments 8 times. He has been found unsuitable to be retained in the force and thus an order of retirement has been passed.

14. We find no infirmity in the aforesaid order. Respondents have considered the entire service record of the petitioner and on that basis the aforesaid order has been passed. The respondents have bona fiddly exercised the power vested with them in the interest of the force. We find no ground to interfere, in exercise of power of judicial review under Article 226 of the Constitution.

15. For the reasons aforestated the petition is dismissed, however, leaving the parties to bear their own costs.