

(2020) 09 DEL CK 0204

In the Delhi High Court

Case No : Civil Writ Petition No. 7192 Of 2020

Ashok Vishwakarma

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 29-09-2020

Acts Referred:

Constitution Of India, 1950 — Article 226
Border Security Force Rules, 1969 — Rule 26, 28A, 177
Central Civil Services (Conduct) Rules, 1964 — Rule 21, 21(1)(2)
Protection of Women from Domestic Violence Act, 2005 — Section 23(2)
Border Security Force Act, 1968 — Section 11(2), 48, 52, 53, 54, 55

Citation : (2020) 09 DEL CK 0204

Hon'ble Judges : Rajiv Sahai Endlaw, J; Asha Menon, J

Bench : Division Bench

Advocate : Kushal Choudhary, Neela Gokhale, Harshal Gupta, Shruti Dixit, Anju Gupta

Final Decision : Dismissed

Judgement

Asha Menon, J

C.M. Appln. No.24314/2020 (Exemption from filing certified copy of documents & orders, documents and annexures)

1. Allowed, subject to just exceptions and as per extant rules.
2. The application is disposed of.

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3. The petitioner has filed the instant petition against the order dated 6th March, 2019 passed by the office of the Commandant, 38 Bn BSF, Roopnagar, Coochbehar, West Bengal, by virtue of which, the petitioner was retired from service w.e.f. the date of the order on the grounds of unsuitability under the provision of Rule 26 of the Border Security Force Rules, 1969 (BSF Rules, 1969) without pensionary benefits for having allegedly entered into plural marriages.

4. The facts as set out in the petition are that the petitioner had enrolled in the Border Security Force (BSF) on 29th June, 2010. His marriage was solemnized with one Ms. Rachana Vishwakarma on 25th April, 2012 as per Hindu rituals. A daughter was born to them in 2013.

5. The trouble started for the petitioner when a letter dated 24th August, 2018 was received from the Additional Family Judge/ADJ Fast Track Court No.2, Azamgarh directing the Director General (DG), BSF to recover Rs.7500/- per month w.e.f. 12th April, 2013 from the petitioner towards maintenance payable to Ms.Rachna Vishwakarma. When the office perused the service record of the petitioner, it was found that one Mrs. Bulbul was named as his wife in the nomination form. Later on 15th January, 2016, one Smt. Neha Vishwakarma addressed a letter to the Prabandhak Adhikari, Seema Suraksha Bal, 140 Bn BSF, HQ, South Bengal in which she claimed to have entered into a marriage with the petitioner on 10th June, 2013 and that a child had been born to them and alleging that the petitioner has not been taking care of them for over one year. She requested for a direction to be issued to the petitioner for grant of maintenance of Rs.15,000/- per month for her survival and survival of the child. Since the petitioner was at that time serving under the 82 Bn of the BSF, this letter was transferred to the Commandant, 82 Bn BSF for necessary action and the office of the Commandant issued a letter dated 6th February, 2016 to the petitioner seeking his comments on this complaint. Subsequently, Smt. Neha Rajak filed a petition under Section 23(2) of the Protection of Women from Domestic Violence Act, 2005 on which the court of the Judicial Magistrate, 6th Court, Alipore directed the payment of maintenance to her to the tune of Rs.13,000/- per month to be deducted from the salary of the petitioner.

6. When these letters were received, a summary of the case was forwarded to Ftr HQ BSF, Guwahati on 23rd September, 2018. On the basis of the claims of the two ladies and the court orders and due to the discrepancy in the service record, a Court of Inquiry (COI) was conducted by the 38 Bn BSF vide O/No.Estt/COI/ Payment-allowances/ 38Bn/18/15881-85 dated 7th October, 2018 against the petitioner on the charge of having contracted plural marriages. The COI concluded that the petitioner had contracted plural marriages and recommended administrative action to be taken. On the basis of the findings of the COI, the Office of Commandant, 38 Bn BSF, Roopnagar, Coochbehar (WB) issued a Show Cause Notice to the petitioner which he replied and finding the reply unsatisfactory it was directed by the impugned order dated 6th March, 2019 that the petitioner's name be struck off from the Force and he be retired from service without any pensionary benefits.

7. The learned counsel for the petitioner Mr.Kushal Choudhary vehemently argued that the action taken against the petitioner was against all provisions of law and principles of natural justice. It was submitted that only the Security Force Court (SFC) could impose a punishment of dismissal from service as provided under Section 48 of the Border Security Force Act, 1968 (BSF Act) as it

was a major punishment. Only other punishments could be imposed without SFC under Section 52 of the BSF Act i.e. minor punishments provided under Section 53 and read with Section 54 of the BSF Act. Under Section 55 of the BSF Act, the DIG could also impose punishments but they were of a minor kind. It was further argued that plural marriage was not provided for anywhere in the Act or the Rules and therefore, the action taken against the petitioner was erroneous. It was also submitted that since there was nothing on record to show that the petitioner was not discharging his duties effectively, no order retiring him from service without pensionary benefits could be justified. Learned counsel also argued that even in the Court of Inquiry, no proof of plural marriages had been produced as neither lady produced evidence of their marriage. Thus on the basis of very perfunctory proceedings, the petitioner had been wrongly removed from service.

8. Though the learned counsel for the respondents, Ms. Anju Gupta, who appeared on advance notice, sought some time to file a response, Deputy Commandant Vinod Kumar, Law Officer, BSF on our query regarding the procedure, pointed out that this was a case of "retirement" and not "dismissal from service" and therefore the Commandant was fully empowered to issue an order of retirement on grounds of unsuitability. When queried about the power of the Commandant to do so, Sh. Vinod Kumar pointed to Rule 177 of the BSF Rules read with Section 11 (2) of the BSF Act and further to Rule 21 of the Central Civil Services (Conduct) Rules, 1964, to submit that contracting plural marriages was to be treated as a "misconduct" for which the officer could be removed from service.

9. The argument of the learned counsel for the petitioner that the dismissal from service could only be after a trial by a SFC, may have been valid if the order was one of "dismissal" by a Commandant. It is completely misplaced in the present case as the order is one of "retirement" on the grounds of unsuitability in terms of Rule 26 of the BSF Rules. The said Rule reads as under:-

"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. All that is required under this Rule is (a) the satisfaction of the Commandant that the person is unsuitable to be retained in the Force and (b) that a Show Cause Notice is issued to the enrolled person to give him an opportunity to explain. In the present instance, there are two court orders directing payment of maintenance to two different ladies in their capacity as "wife" of the petitioner. The petitioner before the Court of Inquiry has himself admitted to contracting these two marriages. It is a specious plea taken by the learned counsel to explain the admission made by the petitioner, that it was under duress that he

had made the admission, as in a Court of Inquiry he had no opportunity to state the correct facts. In fact, the record of the statement shows that the petitioner had gone to the extent of giving his assessment of the character of both the ladies, which we refrain from reproducing out of deference to the dignity of those ladies. The Court of Inquiry also recorded their testimonies. It is on the basis of all this material that the Commandant had recorded his satisfaction that during the subsistence of the first marriage, the petitioner had entered into a second marriage in violation of Rule 21(1)(2) of the CCS (Conduct) Rules, and recorded the unsuitability of the continuation of the petitioner in the service of the BSF. That the Commandant was empowered to do so is clear from the provisions of Section 11(2) of the BSF Act read with Rule 177 of the BSF Rules.

11. We do not find any force in the contention of the learned counsel for the petitioner that proper procedure has not been followed in removing the petitioner from service or that the principles of natural justice have been violated. Furthermore, had there been any shortfall in the strict adherence to the procedure, this is certainly not a case in which this Court would exercise its jurisdiction under Article 226 of the Constitution of India in favour of such a petitioner.

12. At this stage, the learned counsel for the petitioner seeks an opportunity to file a statutory petition under Rule 28A of the BSF Rules.

13. Deputy Commandant Vinod Kumar on our query states that the period of limitation prescribed for filing a statutory petition is three months from the date of termination and if the petitioner was to file an application explaining the delay, the statutory petition would be considered on merits.

14. Granting this liberty to the petitioner, the petition is dismissed.