
(2010) 02 DEL CK 0189

In the Delhi High Court

Case No : Writ Petition (C) No. 5523 of 2008

Dinesh Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-02-2010

Acts Referred:

Border Security Force Act, 1968 — Section 19, 40
Border Security Force Rules, 1969 — Rule 26, 28A

Citation : (2010) 02 DEL CK 0189

Hon'ble Judges : Vipin Sanghi, J;Gita Mittal, J

Bench : Division Bench

Advocate : Meenu Mainee, for the Appellant; Ashwani Bhardwaj and Jitender Chaudhary, for the Respondent

Final Decision : Dismissed

Judgement

Vipin Sanghi, J.—The petitioner has preferred this writ petition to challenge the orders dated 27th May, 2007 and 24th December, 2007 passed by the respondents. By the first order dated 27th May, 2007 the respondents i.e. the Border Security Force have terminated the services of the petitioner who was serving with them as a Constable, under Rule 26 of the Border Security Force Rules, 1969. The subsequent order dated 24th December, 2007 has been passed rejecting the representation under Rule 28A of the Border Security Force Rules, 1969, made by the petitioner seeking reinstatement in service.

2. The submission of Ms. Mainee, learned Counsel for the petitioner is that though the petitioner had received various punishments during the tenure of his service, the last of these punishments was awarded in the year 2001, and from that time onwards till the passing of the impugned order on 27th May, 2007 there were no further punishment awarded or adverse remarks communicated to the petitioner which could justify the termination of his services by resort to Rule 26 of the Border Security Force Rules. She submits that there was no immediate cause for the respondents to invoke Rule 26 when it was done. The service of the

petitioner had been blemishless between 2001 and 2007, and the impugned action was, therefore, arbitrary and whimsical.

3. Rule 26 of the Border Security Force Rules, 1969 reads as follows:

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 where he consider 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.

4. Before passing the impugned order dated 27th May, 2007 the respondents issued a show cause notice dated 07th April, 2007 to the petitioner, requiring him to explain and show cause, as to why his services be not terminated by resort to Rule 26 aforesaid. The punishments earlier imposed upon the petitioner were noted in the said show cause notice issued to the petitioner, and the same read as follows:

S/No. BSF Act Punishment Date of Punishment 1. u/s 19(a) 07 days RI 12.10.1993 2. u/s 19(a) 14 days RI 03.01.1996 3. u/s 19(a) 14 days RI 24.11.1997 4. u/s 40 14 days RI 19.05.1998 5. u/s 19(a) 07 days life confinement 05.10.1998 6. u/s 19(b) 07 days life confinement 13.05.1999 7. u/s 19(b) 28 days RI 22.05.2000 8. u/s 19(b) 28 days RI 04.06.2001

Besides these punishments it was also observed that the petitioner had also received 02 warnings and 01 Show Cause Notice. The petitioner submitted his reply to this notice, whereafter the order dated 27th May, 2007 came to be passed.

5. The respondents were called upon to file their counter affidavit. The same has been filed. The respondents have disclosed that, apart from the aforesaid punishments, the record of the petitioner even in the subsequent years has been far from satisfactory. In the counter affidavit, the respondents have detailed the annual assessments of the petitioner as endorsed in his service record, from the year 1999-2000 onwards till 2005-2006 by the different Company Commanders, which are as under:

1999-2000 - A below average Const. He is habitual of overstaying leave.
2000-2001 - An indisciplined Const who is habitual of overstaying leave.
2001-2002 - A totally indisciplined Const. He is habitual of taking liquor and quarreling with superiors. 2002-2003 - He is habitual to taking liquor and below average Const. 2003-2004 - As above 2004-2005 - Habitual drinker and not committed to duty, an average Const. 2005-2006 - Average.

6. Since the petitioner disputed the knowledge of his aforesaid service record, we directed the respondents to produce the original service record of the petitioner. The same has been produced and we have perused the same. A perusal thereof shows that the entries made in the ACRs of the petitioner have been correctly

extracted in the counter affidavit. The petitioner also appears to have acknowledged communication thereof on a separate sheet all these years.

7. We may note that in relation to the entries for the years 2003 and 2004, the petitioner has disputed his signatures in the service book. However, he does not dispute his signatures in relation to the other entries, and in particular the entries for the years 1999 to 2002. Though it appears from the service record that the signatures attributed to the petitioner for the years 2003 and 2004 are different from those appended in respect of the other years, a perusal of the writ petition shows that the signatures of the petitioner in the supporting affidavit is entirely different from any of those to be found in the service record. It, therefore, appears that the petitioner does not consistently sign in the same fashion. In any event, the petitioner did not disclose in the writ petition the adverse entries to be found in his service record for the period from the year 1999 to 2002 which, as per the record, had been communicated to him.

8. The notice to show cause issued to the petitioner and the impugned order shows that the respondents have taken into consideration his continuous service record while passing the impugned order. Rule 26 empowers the Commandant to retire such enrolled persons of the force whose retention is found to be unsuitable in the force. Admittedly, the petitioner has been given due notice to show cause in this case and he had responded to the same. The respondents have considered the petitioners response and on the basis of the petitioner's continuous service record, passed the impugned order.

9. Looking to the above said service record, it cannot be said that there was no germane or relevant material available with the respondent for passing the impugned order dated 27th May, 2007. It is not for us to substitute the discretion exercised by the competent authority in these proceedings, by our own. Neither are we sitting in appeal against the impugned orders. No violation of statutory provisions or principles of natural justice is pointed out. We find no infirmity in the action of the respondents.

10. We also find that the petitioner is receiving his service pension and the impugned order does not impact his right to receive his pension for the service rendered by him. Accordingly, we dismiss the writ petition leaving the parties to bear their respective costs.