

(2011) 07 DEL CK 0347
In the Delhi High Court
Case No : Writ Petition (C) 5233 of 1997

Lal Chand	Vs	APPELLANT
Union of India (UOI) and Ors		RESPONDENT

Date of Decision : 08-07-2011

Acts Referred:

Citation : (2011) 07 DEL CK 0347

Hon'ble Judges : Sunil Gaur, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : H.S. Dahiya, for the Appellant; Bhupinder Sharma, Dy. Commandnat, BSF, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Petitioner was enrolled as a Constable (Driver) with BSF on 15.6.1990 and within a short span of less than 7 years earned 4 penalties, all of which were connected with Petitioner being found to be intoxicated and under influence of alcohol; either absenting from duty or doing another act which was an offence. On all 3 occasions the Petitioner was awarded rigorous imprisonment in force custody for periods ranging between 14 days to 28 days.

2. Being vested with a power under Rule 26 of the BSF Rules, which empower the Commandant to compulsorily retire a force personnel who is found to be not suitable or whose continuation in service is opined to be unwarranted; after serving show-cause notice upon the Petitioner requires him to respond as to why power be not exercised under Rule 26 and listing in the show-cause notice dated 6.3.1997, the grounds on which proposed action was contemplated; needless to state being a reference to the 3 past penalties earned by the Petitioner, vide impugned order dated 2.5.1997 the Petitioner was compulsorily retired from service.

3. It may be noted at the outset that in the order dated 2.5.1997 it has been noted that after the show-cause notice dated 6.3.1997 was issued, once again

the Petitioner was found intoxicated and since he was quarreling with the civilians in Barmer town under influence of alcohol he had to be apprehended by the local police.

4. At the hearing, learned Counsel for the Petitioner states that the final action taken under cover of the order dated 2.5.1997 has taken into account an incident dated 30.4.1997, which did not form subject matter of the show-cause notice. Second contention urged is that for the past misdemeanours the Petitioner suffered rigorous imprisonment in force custody and thus said misdeameanour could not be the foundation of the proposed action.

5. Both pleas are meritless.

6. As regards the first it may be noted that the order dated 2.5.1997 rests itself on the show-cause notice. Reference to the continuing wrong committed by the Petitioner is to bring home the point that the Petitioner seems to be an incorrigible person.

7. It is not a case where the final order is premised on a reason other than the proposed.

8. As regards the second plea, suffice would it be to state that penalizing a person for committing a wrong is an issue entirely different than considering whether a person who repeatedly indulges in wrong-doing should or should not be retained in service. We clarify, the first relates to the domain of a criminal law and the second relates to the domain of civil law.

9. We note that the power to compulsorily retire Border Security Force personnel in exercise of the power vested under Rule 26 of the BSF Rules has been upheld by a Division Bench of this Court in the decision dated 27.10.1997 deciding the 3 writ petitions, lead matter being CW No. 4822/1995 "Ex.HC Satbir Singh v. UOI and Ors.".

10. We note that in all the 3 writ petitions decided by the Division Bench, exercising power under Rule 26 was found justified where 2 of the 3 writ Petitioners were found to have been penalized 4 times in the past and the 3rd Petitioner 3 times; the penalties being earned between 5 to 7 years of service rendered.

11. Accordingly, finding no merit in the petition we dismiss the same but refrain from imposing any costs.