

(2019) 10 CAL CK 0017

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 7812 (W) Of 2015

Mata Shankar Shukla

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Border Security Force Rules, 1969 — Rule 26

Citation : (2019) 10 CAL CK 0017

Hon'ble Judges : Md. Nizamuddin, J

Bench : Single Bench

Advocate : Debasish Chattopadhyay, Gobinda Chandra Baidya, Aurobinda Sen, Kunaljit Bhattacharjee

Final Decision : Dismissed

Judgement

Md. Nizamuddin. J

Heard both sides.

The petitioner has filed this Writ Petition challenging the impugned order of punishment dated 11th June, 1996 and orders dated 25th September, 1996 and 18th December, 2005 rejecting his representations.

Relevant facts involved in brief in the instant case as appear from the record are hereunder.

The petitioner joined as a Constable in Border Security Force on 25th September, 1988. On 26th March, 1991 he was awarded punishment of rigorous imprisonment for 7 days under Section 21 (2) of the Border Security Force (BSF) Act, 1968. He was again awarded punishment of rigorous imprisonment of 28 days under Section 40 of the BSF Act, 1968 and again on 7th March, 1996 petitioner was awarded punishment of rigorous imprisonment of 28 days under Section 19 (a) of the BSF Act, 1968. On 6th April, 1996 a warning order was issued against the petitioner.

In a proceeding of board of officers of 36 Bn. BSF, Raiganj which was held on 14th May, 1996 for the purpose of scrutinizing the service record of the force personnel who had three or more bad entries in their service record and in the said proceeding it was recommended for retirement of the writ petitioner on the ground of unsuitability in service. A show-cause notice was issued to the petitioner on 15th May, 1996 asking the petitioner to show-cause as to why he should not be retired from service under BSF Rules, 26. The petitioner within 15 days of receipt of the said show-cause notice submitted his reply for giving a chance of improvement, the Commandant of 36 Bn. BSF considering the said reply, passed the impugned order on 11th June, 1996 for retirement of the petitioner from the service.

Against the said impugned order of retirement dated 11th June, 1996 petitioner submitted his appeal before the Deputy Inspector General, BSF, Eastern Region, HQ. Aggrieved of not taking any action on the said appeal of the petitioner, the petitioner filed a Writ Petition before the Hon'ble Allahabad High Court which was disposed of by the Hon'ble Court on 10th September, 1996 by directing the Appellate Authority to decide the appeal of the petitioner by passing a reasoned order. Pursuant to the aforesaid order of the Hon'ble Court the said appeal of the petitioner was considered and rejected on 25th September, 1996.

Challenging the aforesaid rejection of appeal of the petitioner, he filed another Writ Petition which was disposed of on 25th September, 1996 by setting aside the said order of the Appellate Authority by giving liberty to the petitioner to file appeal before the Director General, BSF, New Delhi. Pursuant to the aforesaid order of the Hon'ble Allahabad High Court petitioner submitted his appeal on 4th August, 2005 which was again rejected by the Appellate Authority on 8th December, 2005. Challenging the aforesaid order of the Appellate Authority rejecting the appeal of the petitioner he filed third Writ Petition which was withdrawn by him on 24th February, 2015 with liberty of the Court to file a fresh Writ Petition before the Hon'ble High Court having territorial jurisdiction over the matter. Hence the instant Writ Petition was filed before this Court. Affidavit-in-Opposition has been filed by the respondents in the matter and Affidavit-in-Reply by the petitioner.

One of the most important facts to be considered in this case is that the three punishments as referred above on three different occasions in which punishment of rigorous imprisonment was imposed on the petitioner were accepted by him and he never challenged or appealed against those punishments.

The main grounds of challenge by the petitioner against the impugned order of the Appellate Authority confirming the order of punishment of retirement from service are that the impugned order passed by the respondent BSF authority retiring the petitioner was passed without giving any warning to the petitioner and that while punishing the petitioner, respondents have not followed the principle of natural justice and that the final order of punishment was passed without giving opportunity of hearing to the petitioner.

In support of his contention petitioner has relied on a judgment of the Hon'ble Supreme Court dated 16th October, 2015 in the case of Veerendra Kumar Dubey - vs- Chief of the Army Staff & Ors.

Respondents have opposed the Writ Petitioner by contending as hereunder.

(i) The petitioner was awarded the punishment of seven days Rigorous Imprisonment in force custody on 26th March, 1991 for commission of offence punishable under Section 21 (2) of The Border Security Force Act, 1968 on 14th March, 1991 for disobeying a lawful command given by his superior officer.

(ii) The petitioner was awarded the punishment of twenty eight days Rigorous Imprisonment in force custody on 1st November, 1995 for commission of offence punishable under Section 40 of The Border Security Force Act, 1968 on 23rd October, 1995 for interfering in Government work and quarrelling with Lance Naik Lal Den Sharma and Constable Laxman Singh.

(iii) The petitioner was awarded the punishment of twenty eight days Rigorous Imprisonment in force custody on 8th February, 1996 for commission of offence punishable under Section 19 (a) of The Border Security Force Act, 1968 on 14th March, 1991 for absenting himself without leave on 8th February, 1996.

That after considering the service record of the petitioner, which reflected that he was a habitual offender and remained a highly indisciplined in the Force, a Board of Officers was constituted by the Commandant, 36 Bn. of the BSF on 3rd May, 1996, to scrutinize the record of the personnel of the 36 Bn. who had earned three or more adverse entries for consideration of such personnel for retirement under Rule 26 of The Border Security Force Rules, 1969.

The said Board of Officers, after due scrutiny of the records of such personnel of the unit, recommended the cases of few personnel, including that of the petitioner, for their retirement from service under Rule 26 of the Border Security Force Rules, 1969.

The Commandant of the 36 Bn., on the basis of such recommendation, issued a show-cause notice dated 17th May, 1996 to the petitioner, thereby calling upon the petitioner to give his reply to the proposed action of retirement from service showing good gesture.

The petitioner submitted his reply to the show-cause which was received on 22nd May, 1996.

The Commandant after due consideration of the reply filed by the petitioner found the same to be unsatisfactory and thereafter issued an order dated 11th June, 1996 under Rule 26 of The Border Security Force Rules, 1969 on the ground of unsuitability.

The respondents submitted that they followed due process of law as laid down in The Border Security Force Rules, 1969. The two representations made by the petitioner were duly considered and rejected. Respondents submitted that the

instant Writ Petition being W.P. No. 7812 (W) of 2015, being devoid of any merit may kindly be dismissed with exemplary costs.

I have considered the submission of the parties and the impugned orders passed by the respondent authorities and perused the grounds made out in the Writ Petition and in my considered view the petitioner failed to point out in his ground in the Writ Petition showing violation of any relevant rules and regulations in passing the impugned final order of punishment. It is settled law that the Writ Court cannot act as an Appellate Authority over the decision of an authority, it has got a limited scope of interference in case of violation of decision making process and not the decision itself. In the instant case petitioner could not point out any procedural flaws in decision making process. Apart from the fact as discussed above it appears on perusal of record that petitioner is in the habit of breaching the discipline in the force and the punishment imposed upon him from time to time for breaching the discipline in service has been accepted by him without reforming himself in spite of repeated punishments.

The decision of the Hon'ble Supreme Court in the case of Veerendra Kumar Dubey (supra) relied upon by the petitioner is not applicable to the facts of the present case since in the said case petitioners had explained the alleged misconducts every time with sufficient reasons but in the instant case the petitioners have simply accepted the punishments imposed upon him for the offences committed by him from time to time and suffered punishment without explaining any cogent reason.

I have considered the impugned orders including order dated 8th December, 2005 disposing the representation of the petitioner pursuant to the order of the Hon'ble Allahabad High Court and on perusal of the same I find that while rejecting the representations of the petitioner the respondent authority has considered the case of the petitioner taking into consideration factual and legal aspect of the case of the petitioner and observed all the formalities under the statute.

Considering the submission of the parties and on perusal of relevant records I do not find any reason to interfere with the impugned orders.

Accordingly the Writ Petition W.P. No. 7812 (W) of 2015 is dismissed and there will be no order as to costs.

Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.