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**(2006) 08 DEL CK 0103**

**In the Delhi High Court**

**Case No :** WP (C) No. 4789 of 2006

Mehar Chand — APPELLANT

Vs

Union of India (UOI) and Others — RESPONDENT

**Date of Decision :** 31-08-2006

**Acts Referred:**
Border Security Force Act, 1968 — Section 19, 26
Border Security Force Rules, 1969 — Rule 26, 28

**Citation :** (2006) 08 DEL CK 0103

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

**Bench :** Division Bench

**Advocate :** Ravi Badyal, for the Appellant; Maninder Acharya, for the Respondent

**Final Decision :** Dismissed

## Judgement

Swatanter Kumar, J.—The petitioner was enrolled in the Border Security Force on 16.5.78 as a Constable bearing Regimental No. 780026984. He underwent rigorous training and thereafter performed his duties with devotion to the satisfaction of all concerned and was promoted as Naik and thereafter Head constable. He was awarded Police Medal as well. In the year 1992 the petitioner was engaged as a Section Commander to flush out the terrorists from a shrine at Srinagar. He performed his duty bravely and suffered a bullet injury. The petitioner was shifted to hospital in a precarious condition and remained admitted in hospital for two months. He suffered the injury in his knee for which he was operated upon. According to the petitioner, he was advised to take one peg of freely supplied wine during winter season by the doctors. During the period from 1995 to 1998, the petitioner was issued adverse communications in regard to indiscipline and intoxication. In the year 1996 the petitioner proceeded on 45 days leave but before the expiry of the leave, the wife of the petitioner had to undergo surgery. He requested for extension of leave which according to him was accepted by the authorities but when the petitioner went to join his duties in the Unit, he was issued a reprimand letter without affording him any opportunity

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to defend himself. On 2.12.98 the petitioner was issued a show cause notice in terms of Rule 26 stating that the authorities were proposing to retire the petitioner from service in terms of the said rule and he may reply to the show cause notice within 15 days. The petitioner replied to the said notice and did not dispute the contents but stated that he used to take liquor for excessive pain and no enquiry was held in relation to his overstaying leave by 15 days. The authorities vide their letter dated 22.12.98 and after taking into consideration the reply to show cause submitted by him compulsorily retired the petitioner from service w.e.f 31.12.98.

2. Against the order dated 31.12.98 the petitioner preferred an appeal in terms of Rule 28 (a) of the Border Security Force Rules 1969 which was ordered to be disposed of by a Division Bench order of Punjab & Haryana High Court dated 20.4.04 passed in CWP No. 6044/04 . Thereafter the authorities by a detailed order dated 26.8.04 rejected the appeal preferred by the appellant resulting in filing of the present writ petition.

3. The respondents had taken up the stand before the Court that the service record of the petitioner was such that it had become necessary for the authorities to compulsorily retire the petitioner, rather than taking any punitive action. It is stated that the performance of the petitioner was not satisfactory and he repeatedly indulged in indisciplined activities including intoxication. A Board of officers was constituted to observe the working of such persons having three or more bad entries in their past service. The board officers submitted their proceedings regarding five personnel including that of petitioner with the recommendation to retire these personnel on the grounds of unsuitability after issuing necessary show cause notice as per the existing instructions on the subject. Thereafter, the show cause notice was served upon the petitioner. In reply thereto, he admitted the guilt and keeping in view the entire facts and circumstances, the petitioner was compulsorily retired from service. The petitioner according to the respondents has been granted pensioner benefits keeping in view his previous service. In the counter affidavit, the respondents have also detailed the bad entries recorded in the service record of the petitioner which are as under:

(a) Charged u/s - 26 of the BSF Act for "INTOXICATION" and awarded punishment ''Reprimand'' on 24.06.95.

(b) Charged under BSF Act Section - 26 for "INTOXICATION" and awarded punishment ''Reprimand'' on 25.08.95.

(c) Charged under BSF Act Section - 26 for "INTOXICATION" and awarded punishment ''Reprimand'' on 15.06.96.

(d) Charged under BSF Act Section - 19(b) for "WITHOUT SUFFICIENT CAUSE OVER STAYING LEAVE GRANTED TO HIM" and awarded Punishment ''Reprimand on 27.11.96.

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(e) Charged under BSF Act Section - 26 for "INTOXICATION" and awarded punishment ''Severely Reprimanded'' on 01.09.98.

(f) Charged under BSF Act Section - 26 for "INTOXICATION" and awarded punishment ''Severely Reprimanded'' on 24.09.98.

4. The learned Counsel appearing for the respondents has relied upon the judgment of the Supreme Court in the case of Dharmarathmakara Raibahadur Aroot Ramaswamy Mudaliar Educational Institution v. The Educational Appellate Tribunal and Anr. JT 1999 Vol.6 60 to contend that where the charges and allegations are clearly admitted, there is no need for the authorities to conduct an enquiry. This, of course, is submitted by the respondents in alternative as according to them Rule 26 does not contemplate the holding of an enquiry by the disciplinary authority and unless the decision of the authorities was arbitrary or patently perverse, the Court normally does not interfere with such decision which is totally based upon the service record of the petitioner.

5. u/s 26 of the Border Security Force Act, 1968 intoxication is an offence for a person subject to the Act and can be punished to suffer imprisonment term which may extend to six months or less. The seriousness of the offence of intoxication is, thus, indicated in these provisions. The excuse put forward by the petitioner that he was medically advised to take drink to overcome his pain particularly in winter, is not supported by any medical record. This excuse has specifically been disputed by the respondents. There is also no medical record on the Court file to show the nature of the injury. Without any plausible basis, we are unable to accept the excuse offered by the petitioner though the same has duly been considered by the authorities concerned.

6. Rule 26 of the Border Security Force Rules empowers the authority to compulsorily retire a person from service subject to satisfaction of the competent authority and after providing him opportunity. Rule 26 reads as under:

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.

7. In face of this provision, the authority of the respondents to compulsorily retire the petitioner cannot be questioned. The Court could only examine whether the requirements of this provision have been satisfied by the authorities or not. In the present case, admittedly a show cause notice was given by the respondents to the petitioner and the said show cause notice was replied to by the petitioner. It is interesting to note the reply submitted by the petitioner to the said show cause notice, which reads as under:

Kindly refer to your letter 2.12.1998.

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It is requested that I was forced to admit my fault to save my service and punishment.

It is submitted that as I was serious injured during anti-terrorist action in Srinagar in the year 1992.

Doctor Had advised to liquor during excessive pain. So to avoid the bullet injured leg I used to take wine after duty hours to get relief from pain. There is no medical proof for drinking wine.

No inquiry was held ever or reply was desired from me. I had stayed over leave for 15 days for which information was sent. Request was never rejected.

Therefore reconsider the your office letter dated 2.12.1998.

Thanking you,

8. In face of the above reply, the decision of the respondents can hardly be faulted. They have applied their mind and considered the grounds. The appeal preferred by the appellant against the order of compulsory retirement was also rejected by the authorities by a detailed order and noticing the various punishments that the petitioner had received during his service career. After recording findings as referred to in the counter affidavit, the board officers had recommended that the petitioner needs to be compulsorily retired from the service on the ground of unsuitability but after compliance with the provisions of the relevant rules, by the competent authority. In the grounds of appeal preferred by the petitioner, the petitioner himself has stated that "the petitioner was in aggressive mental stress and psychiatric problem and went under treatment for the period of four years." During this period, the petitioner suffered financial crisis in view of family responsibilities. In addition to this, he also made allegations of malafide intentions of his superior officers which was never his case prior to that period.

9. The learned Counsel appearing for the petitioner while relying upon the judgments of the Supreme Court in the cases of State of Gujarat v. Umedbhai M.Patel 2001 (2) RSJ 85 and Registrar, High Court of M.P., Jabalpur v. Rajabai Gorkar (Km) and Anr. 1995 (5) SLR 258 and H.C.Gargi v. State of Haryana 1986 (3) SLR 57 contended that any order of compulsory retirement must be preceded by formation of opinion by the competent authority regarding public interest and such opinion should be supported by material.

10. In the case of Umedbhai Patel (supra), the Supreme Court clearly stated the principle that whenever the competent authority is of the opinion that services of a public servant are no longer useful to the department, the authority can dispense with the services of the employee by compulsorily retiring him in public interest. Of course, the Court indicated that order of compulsory retirement should not be passed as a short cut to avoid departmental proceedings. We are of the opinion that none of these judgments are of much help to the petitioner. On the contrary, the respondents have clearly stated in their counter affidavit the

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number of punishments which were inflicted upon the petitioner right from 24.6.95 till 24.9.98. There are nearly six punishments imposed upon the petitioner. Five are for committing the offence of intoxication as contemplated u/s 26 while other is for overstaying leave without any sufficient cause. The present writ petition has been filed in the year 2006 and the punishments were never questioned by the petitioner departmentally and/or in any legal proceedings before the Court. In fact, they have not been challenged even in the present writ petition. The petitioner who at one time was a good member of the force, became indisciplined and repeatedly committed the offences which cannot be ignored by the authorities upon whom lies the duty to maintain the discipline in the force. We do not accept the contention of the petitioner that the order of compulsory retirement is not based upon formation of a proper opinion or was adopted as a recourse to short cut the disciplinary proceedings. In fact, no disciplinary proceedings were pending against the petitioner at any point of time. The punishments had attained finality more than eight years prior to the filing of the writ petition. The orders of the authority are well considered. In fact, in view of the reply submitted by the petitioner to the show cause, there was hardly any scope for recording any reasons. The respondents have still taken a proper view and rather than taking any stringent action against the petitioner, have compulsorily retired him so that he could still get pensioner and other benefits in accordance with rules.

11. In view of the above discussion, we find no merit in this writ petition. The same is dismissed, while leaving the parties to bear their own costs.

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