
(2025) 04 RAJ CK 0621

In the Rajasthan High Court, Jaipur Bench

Case No : Civil Writ Petition No. 2348 Of 2007, Connected with Civil Writ Petition No. 9246 Of 2015

SATPAL SINGH

APPELLANT

Vs

UNION OF INDIA AND ORS

RESPONDENT

Date of Decision : 29-04-2025

Acts Referred:

High Court of Judicature for Rajasthan, 1952 — Section 375(4)

Citation : (2025) 04 RAJ CK 0621

Hon'ble Judges : Sameer Jain, J

Bench : Single Bench

Advocate : Rajendra Soni, Manju Joshi, Ashish Kumar

Final Decision : Disposed of

Judgement

Arun Monga, J

1. Having rendered 25 years of service in the Border Security Force, which safeguards the nation's frontiers, the petitioner, an ex-constable, is before this Court seeking enforcement of his legal rights. He, inter alia, seeks issuance of a writ of certiorari to quash his dismissal order dated 27.11.2014, which was passed on the ground of his alleged misconduct i.e. remaining absent from duty for 238 days without sanctioned leave.

2. Petitioner has preferred both the above titled writ petitions. In SBCWP No.2348/2007, he impugns the show cause notice dated 20.12.2006, which proposed his reversion to the post of Class-IV Employee. Subsequently, by an order dated 27.11.2014, he was dismissed from service which is the subject matter of SBCWP No.3246/2015. The petitioner seeks quashing of both the impugned orders, along with all consequential reliefs, including reinstatement to the post of Constable with full pecuniary benefits and continuity of service.

Case set up by petitioner.

3. It is deemed appropriate that the prayer clauses of both the petitions be seen first. For ready reference, the same are reproduced as under:-

"SBCWP No.2348/2007

It is, therefore, humbly and respectfully prayed that this writ petition of the petitioner may kindly be allowed:-

(A) By an appropriate writ order or direction the respondents may kindly be restrained from reverting the petitioner from present rank of constable (General duty) to previous rank Class IV (Enrolled follower/ Cook).

(B) By an appropriate writ order or direction, the notices issued for reversion and any other consequential orders for reverting the petitioner may kindly be quashed and set aside.

(C) By an appropriate writ order or direction the respondents may kindly be directed to condone the training for the petitioner to continue on the post of Constable as he has been deputed since 1992.

SBCWP No.9246/2015

It is, therefore, humbly and respectfully prayed that this writ petition of the petitioner may kindly be allowed and by appropriate writ order or direction:

(1) The impugned order dated 27-11-2014 (Annx.39) and the appellate order dated 15-01-2015 (Annexure-43), 22-01-2015 (Annexure-44), 07.02.2015 (Annexure-45) and 11-02-2015 (Annexure-46) may kindly be quashed and set aside and petitioner may be allowed to continue at his present place of posting and the impugned orders may be given effect as if it was never passed against the petitioner.

(2) That the respondent may kindly be directed to allow the petitioner to join as constable in the 102 Battalion BSF Baikhuntpur Salugara District Jalpaiguri West Bengal with all consequential benefits.

(3) That the respondent may kindly be directed to consider the medical leave of the petitioner and continue the petitioner on the post of constable w.e.f. 01-08-2014.

(4) That respondent may kindly be directed to initiate the disciplinary proceedings along with the civil and criminal proceeding against the private respondent.

(5) That the respondent may kindly be directed to release the salary of the petitioner from the month of April 2014 onwards with all consequential benefit.

(6) That the respondent may kindly be directed to obtain the petitioner's things (Two Suitcase, two box, two attachi, one laptop, one mobile, uniform and civil dress etc) from the private respondent and delivered to the petitioner or in alternative directed to the private respondent to give the Rs.1 lakh to the

petitioner.

(7) That in the alternate prayer the respondent may kindly be directed to retire the petitioner as per their application w.e.f. 30-04-2014 with all consequential benefits."

4. For sake of brevity, facts are being taken from the later of the petitions, filed in the year 2015, since the events prior thereto are covered in the former one filed in the year 2007.

4.1. The petitioner was appointed as a Cook on 15.06.1989. He was re-mustered as a Constable in August 1992. After completing three months of basic training in 1990, he was confirmed as a Constable in 1998. Pertinently, he served continuously as such until his dismissal on 27.11.2014.

4.2. In 1995, while posted in Chara-e-Sharif for anti-militancy operations, the petitioner sustained injuries. He was placed in a low medical category. Deemed unfit for hard duty, he was later assigned to a peace area for general duties. He was also exempted from PT parades and other physical activities. In year 2006, after 14 years of service, the respondents directed the petitioner to complete one year of constable training with fresh recruits or face reversion to the post of Cook. However, due to his medical condition, he was unable to complete the training and filed W.P. No.2348/2007 for mitigation of his grievance. This Court granted an interim stay, restraining his reversion, which was later confirmed on 11.01.2010.

4.3. In 2011, the petitioner was posted to the 48th Battalion, Baikunthapur Salugara, West Bengal. In May, 2013, he applied for 30 days of leave for his son's medical treatment (suffering from psychological problem) in Bikaner, which was sanctioned w.e.f. 13.07.2013 by the Company Commander. However, upon reporting to the 48th Battalion HQ on 10.07.2013, he was informed of his transfer to the 102nd Battalion, Tripura. He was thus asked to seek leave approval from the new Commandant of 102 Battalion, Tripura, who refused the same telephonically on 12.07.2013.

4.4. Despite multiple subsequent requests, the Commandant of the 102nd Battalion denied the leave sought by the petitioner. He then approached higher authorities and submitted a representation on 15.07.2013 regarding harassment. After intervention from the Director General, BSF leave was finally granted to the petitioner.

4.5. Upon returning from leave, the petitioner felt harassed from senior officers, including unwarranted duty assignments. In February 2014, he submitted a complaint to the Director General seeking his indulgence or in the alternative, voluntary retirement. 4.6. On 20.02.2014, vide a representation, the petitioner formally applied for voluntary retirement, effective 30.04.2014. After submitting his voluntary retirement representation, he sought leave again which was initially denied, but later granted after an inquiry by Inspector Bheem Singh. He then

proceeded on leave for his son's treatment on 21.02.2014..

4.7. Upon returning on 24.03.2014, he was served / given a letter dated 21.02.2014, rejecting his claims of harassment and citing a civilian complaint dated 26.02.2014 regarding alleged sexual misconduct against wife of one Rajkumar Tigga. The petitioner denied the allegations, asserting that the complaint was fabricated. He later also submitted a written statement from the complainant, admitting that the complaint was made under pressure from the Commandant.

4.8. Petitioner claims that due to continued harassment and illness, he applied for medical leave with supporting documents. The petitioner left Siliguri on 27.03.2014. During the journey on 28.03.2014 in the train, he allegedly received phone call from Commandant S.F. Tirky who asked him as to how he left the office without permission and how the petitioner obtained a letter from Rajkumar Tigga and his wife, which the commandant received through post. Petitioner was threatened by the Commandant that he is visiting his family for the last time and whenever he returns, his dead body will be sent home.

4.9. Subsequently, the respondents issued a letter on 07.04.2014, declaring him absent without cause with effect from 04.04.2014, in violation of Section 19(b) of the BSF Act. Since petitioner was unwell, his wife submitted a reply citing his medical condition and requested a leave extension. His voluntary retirement application was also rejected on 26.04.2014 due to a pending inquiry.

4.10. The petitioner also applied for salary release which was being denied and additional medical leave, supported by a medical board report.

4.11. On 09.06.2014, a show-cause notice was issued, stating that in the inquiry, initiated on 08.05.2014, his medical certificates were found to be false. He was declared a deserter, and disciplinary proceedings were initiated under Sections 60 and 61 of the BSF Act. He was denied reinstatement and his dismissal order was passed on 27.11.2014 on the ground of 238 days of unauthorized absence. Hence, this petition.

Stand taken by respondents.

5. Both the petitions are being opposed by the respondents. The stand taken inter alia by them is that the writ petitions are not maintainable before this Court due to lack of territorial writ jurisdiction. No cause of action or any part thereof arose within the territorial jurisdiction of this Court as the petitioner proceeded on leave from 102 Battalion, BSF, which is deployed at Tripura. Further, the order of dismissal from service was also passed by the respondent No.6, having its office at Baikunthpur, Salugara (West Bengal).

5.1. On merits, it is stated that after petitioner was re-mustered as Constable (GD) on 17.08.1992, he did not complete basic recruit training prescribed for the rank of Constable (GD). Thus, he was assigned administrative tasks rather than operational duties.

5.2. That the petitioner was habitual of loose talking and spreading rumors about the organization. During his service, his conduct was never sober and up to the mark. He levelled various allegations by filing various petitions/complaints against his Superior Officers, which upon inquiry, were found to be false and without any basis.

5.3. That a civilian, viz. Mr. Rajkumar Tigga, lodged a complaint on 26.02.2014 that petitioner teased and sexually harassed his wife while performing guard duty with the school bus of the Unit. Upon which a Court of Inquiry was directed vide order dated 03.03.2014. The petitioner intentionally did not participate in the Court of Inquiry by taking leave repeatedly for the one reason or the other.

5.4. Since the petitioner failed to resume his duties, i.e. he was over-staying his leave since 04.04.2014, another Court of Inquiry was directed vide order dated 08.05.2014. Subsequent thereto, an Apprehension Roll was sent to the District Magistrate, Sikar against the petitioner under intimation to the Superintendent of Police, Sikar vide letter dated 19.05.2014. However, no reply to the apprehension roll was received from those authorities. A show cause notice vide letter dated 09.06.2014 was then issued proposing petitioner's dismissal from service due to his unauthorized overstay from leave was service. The said notice was responded by the wife of the petitioner vide a reply dated 20.06.2014 stating that the petitioner was suffering from mental ailment.

5.5. The petitioner's wife was requested vide registered letter No. 11941 dated 21.07.2014 to send the petitioner for duty alongwith all medical documents, if required, for his further treatment in BSF Hospital. However, the petitioner did not join duty. Once again, he was directed vide letter dated 25.08.2014 to report at any of the nearest Battalion/HQr or nearest BSF Hospital within 10 days of receipt the letter for treatment failing which action would be taken as per show cause notice dated 09.06.214. But instead of resuming duty, the petitioner sent a letter dated 09.08.2014 to the Director General BSF leveling false allegations against officers of BSF. In response to the petitioner's letter dated 09.08.214, reply letter dated 11.09.2014 was sent by 102 Bn BSF with direction to rejoin duty alongwith original medical documents within 7 days failing which action will be taken according to the show cause notice dated 09.06.2014. Despite all this, the petitioner did not report for duty.

5.6. Meanwhile, in response to the letter sent by 102 Bn BSF to verify authenticity of medical certificate, the Registrar, Rajasthan Medical Council vide his letter dated 17.11.2014 forwarded a letter No. Medical Board/14/358 dated 10.10.2014 clarifying that the petitioner was suffering from 'severe depression with vascular headache' for which he availed the treatment clarifying that he was not admitted in the hospital because for this disease, admission was not required.

5.7. Eventually, when the petitioner did not rejoin the duties and remained absent for 238 days, he was dismissed from service on 27.11.2014 under BSF Act & Rules.

5.8. The respondents thus assert that the petitioner deliberately avoided duty to evade disciplinary action and that all actions taken against him were lawful, and thus, the writ petition is baseless and untenable.

6. In the aforesaid backdrop, I have heard the rival contentions of learned counsels which are more or less on the same lines as the grounds taken in the pleadings and perused the case file. I shall now proceed to deal with the merits and demerits thereof and render my opinion based on the discussion and reasoning contained herein after.

Discussion & Analysis

7. First and foremost, admittedly, the order dated 27.11.2014 for dismissal from service and related subsequent communications (Annexures A-39, A-43 to A-46) were addressed and communicated to the petitioner at his address in Sikar (Rajasthan). This gives rise to cause of action within the territorial jurisdiction of this Court. In this situation, I am unable to accept the respondents' objection that this Court has no jurisdiction to entertain the writ petition.

8. The competent higher administrative authorities have already inquired into the petitioner's allegations of harassment at the hands of his superiors (respondents No. 5 to 8) by following the due procedure and found them false and without any basis.

8.1. Petitioner has not filed any rejoinder or additional affidavit nor placed any other material on record to refute the respondents' version that upon inquiry, the various allegations levelled by him in various petitions/complaints against his Superior Officers, were found to be false and without any basis.

8.2. In any case upon perusal of case file, I find no reason or justification to differ with their conclusion. Further, such allegations cannot be gone into and adjudicated upon summarily in the writ jurisdiction of this Court on the basis of affidavits alone. I, therefore, reject the petitioner's contention that the impugned orders are actuated by malice or motive of his superiors (respondents No. 5 to 8) against him.

9. Reference now may be had to Show cause notice dated 09.06.2014 (Annexure-22 also Annexure R-17) issued to the petitioner which reads as under:

"REGISTERED WITH AD

No.Estt/A WI-SCN/CT AL/102/2014/10743

HQ 102 BN BSF, Baikunthpur,

Jalpaiguri, West Bengal-734008.

Ph. No.0353-2590053

Dated, the 09 June 2014

To

No.891088385 Constable

Satpal Singh

S/O Sh Mohan Singh Rathore

Near byDharmanaBagichi

Back side of Ramlila Maidan, Sikar

Distt-Sikar

Rajasthan-332001

Sub : SHOW CAUSE NOTICE

Based on the reports available, it is noted that you have been without sufficient cause overstaying from leave since 03.04.2014 (AN). The proceedings of the court of Inquiry held in accordance with Sec 62 of the BSF Act to investigate into the said illegal absence has also found and declared that you have been overstaying from leave since 03.04.2014 (AN) without sufficient cause.

2. Having considered the matter of your said continued illegal absence from duty, I am satisfied that your trial by a Security Force Court is not only inexpedient but also impracticable and that your further retention in the Service is undesirable. Accordingly, in the exercise of the powers vested in me by Sub Sec (2) of Sec 11 of the BSF Act read with Rule 177 of the BSF Rules and in conformity with Sub Rule (2) of Rule 22 of the BSF Rules you are hereby called upon to show cause why you should not be dismissed from the Service for your aforesaid act.

3. If you have anything to urge in your defence against the proposed dismissal from the Service, you may do so within 30 days on receipt of this notice failing which it will be assumed that you have nothing to urge in your defence against the proposed action and further decision in the matter will be taken.

4. A copy of the Court of Inquiry (and other report) referred to in para-I above is enclosed herewith for your reference.

5. Please acknowledge receipt of this show cause notice.

Sd/-

(SF Tirkey)

Encl : i) Xerox copy of two notices Commandant

ii) Xerox copy of COI proceedings 102 BN BSF

iii) Xerox copy of Apprehension Roll __June 2014."

(Emphasis Supplied)

9.1. Reply to the above show cause notice was sent vide letter dated 21.06.2014 (Annexure 24), wherein the petitioner did not deny the fact of his overstaying the leave since 03.04.2014 (AN), but stated that he had previously suffered from jaundice and on recovery from jaundice, he was suffering from and under treatment for mental illness and, therefore, had submitted various letters for extension of leave.

9.2. In the written reply to the writ petition, respondents have specifically stated, inter alia, that in response to the letter dated 09.06.2014 and application dated 20.06.2014 received from the petitioner's wife, she was requested vide registered letter No. 11941 dated 21.07.2014 to send the petitioner to resume duty alongwith all medical documents, if required, for his further treatment in BSF Hospital. However, the petitioner yet did not rejoin duty. Once again, he was directed vide letter dated 25.08.2014 to report at any of the nearest Battalion/HQr or nearest BSF Hospital within 10 days of receipt the letter for treatment failing which action would be taken as per show cause notice dated 09.06.214. But instead of resuming duty, the petitioner sent a letter dated 09.08.2014 to the Director General BSF leveling false allegations against officers of BSF. In response to the petitioner's letter dated 09.08.214, reply letter dated 11.09.2014 was sent by 102 Bn BSF with direction to rejoin duty alongwith original medical documents within 7 days failing which action will be taken according to the show cause notice dated 09.06.2014. Despite all this, the petitioner did not report for duty. Thus, despite ample opportunities and time given, the petitioner failed to resume duty. The petitioner has chosen not file any rejoinder or additional affidavit to deny these factual averments. These are, therefore, taken as admitted by the petitioner.

9.3. Vide the impugned order dated 15.01.2015 (Annexure 43), the appellate authority, by recording reasons, concluded that there was no merit in the petitioner's appeal and dismissed the same upholding his dismissal order dated 27.06.2014. Vide a letter dated 22.01.2015 (Annexure 44), in reply to the petitioner's review appeal dated 10.01.2015, he was informed that his application dated 09.12.2014 and review appeal dated 29.12.2014 (both on the same subject) had already been appropriately replied and that his review appeal dated 10.01.2015 on the same subject did not again warrant a reply. Vide letter dated 07.02.2015 (Annexure 45) in reply to review appeal dated 10.01.2015, the petitioner was informed that his application dated 09.12.2014 and appeal dated 29.12.2014 had been fully reconsidered, were found without merit and rejected. Intimation to this effect had already been sent to him vide letter dated 15.01.2015. Vide impugned letter dated 11.02.2015 (Annexure 46), the petitioner was informed that the allegations in his complaints against the Commandant 102 Battalion BSF and other officers had been inquired into and found to be baseless, imaginary and unfounded and did not warrant any action.

9.4. In the light of facts and totality of circumstances, no fault can be found with the conclusions recorded by even the subsequent competent authorities for their

satisfaction recorded to the effect that the petitioner had been without sufficient cause overstaying leave since 04.04.2014 and ; that his continued illegal absence is contrary to the expected norms of and is detrimental to the Force discipline, which makes his further retention in the Force as undesirable.

9.5. In the impugned order dated 27.11.2014 (Annexure 39), the competent authority recorded his satisfaction that the petitioner had been without sufficient cause overstaying his leave since 04.04.2014 and ; that his continued illegal absence is contrary to the expected norms of and is detrimental to the Force discipline, which makes his further retention in the Force as undesirable. Thereby, he directed that the petitioner be dismissed from service w.e.f. 27.11.2014.

9.6. In my opinion the decision of the competent authority did/does not infringe any fundamental right of the petitioner or entitle him to any relief against the same in the instant writ petition.

10. A perusal of the scheme as envisaged under the Border Security Force Act, 1968 read with Border Security Force Rules, 1969 framed thereunder reveals that Section 11 confers the power on the competent authority to pass orders of dismissal and removal from service whereas Section 12 deals with the issuance of certificate on termination of service. Sections 11 and 12 of the Border Security Force Act, 1968 are reproduced herein below :-

"11. Dismissal, removal or reduction by the Director-General and by other officers.-

(1) The Director-General or any Inspector-General may dismiss or remove from the service or reduce to a lower grade or rank or the ranks any person subject to this Act other than an officer.

(2) An officer not below the rank of Deputy Inspector-General or any prescribed officer may dismiss or remove from the service any person under his command other than an officer or a subordinate officer of such rank or ranks as may be prescribed.

(3) Any such officer as is mentioned in sub-section (2) may reduce to a lower grade or rank or the ranks any person under his command except an officer or a subordinate officer.

(4) The exercise of any power under this section shall be subject to the provisions of this Act and the rules.

12. Certificate of termination of service.-A subordinate officer, or an under-officer or other enrolled person who is retired, discharged, released, removed or dismissed from the service shall be furnished by the officer, to whose command he is subject, with a certificate in the language which is the mother tongue of such person and also in Hindi or English language setting forth-

(a) the authority terminating his service;

- (b) the cause for such termination; and
- (c) the full period of his service in the Force."

It is thus borne out that Section 12 envisages termination of service caused either by retirement or discharge or release or removal or dismissal from service. In all such cases, the certificate of termination is to be issued. Meaning thereby, every dismissal and removal from service is termination but not every termination is dismissal or removal as the same may result owing to other administrative reasons viz., retirement/discharge or release from service for the reasons stated in the administrative orders to be passed in that respect.

10.1. Furthermore, in case of termination of service under Section 11, the procedure to be followed is as per Rule 177 of the Rules, *ibid*. Whereas the procedure envisaged under Rule 177 is contained under Chapter IV of the Rules under the heading of 'termination of service'.

10.2. Rule 17 deals with termination on the grounds of furnishing false or incorrect information ; Rule 17A deals with discharge from service on the ground of unsatisfactory progress in basic training ; Rule 18 deals with termination on account of retirement on the ground of physical unfitness ; Rule 19 deals with termination of service on the ground of resignation and likewise Rule 20 is to be invoked when termination of service is on account of misconduct resulting in passing of punishment order of either dismissal or removal or retirement or forced resignation. Rule 21 envisages termination of service on the grounds of other than misconduct whereas Rule 22 is the one when it is proposed to terminate the service of a person on account of misconduct which may result in dismissal or removal but not necessarily as the same is subject to issuance of show cause notice under Sub-Rule 1 of Rule 22 and thereafter, if not satisfied, invoke Sub-Rule 3. Let us analyse it in greater details herein after.

11. Adverting first to the Show cause notice dated 09.06.2014 (Annexure 22) which was issued by respondent No. 5 in exercise of powers under Sub sec. (2) of Section 11 of the BSF Act read with Rule 17 and sub-rule (2) of Rule 22 of BSF Rules, thereby calling upon the petitioner to show cause why he should not be dismissed from the service.

12. It would be useful to notice the relevant provisions of Rule 22 invoked in the case as also Rule 17 of BSF Rules, 1969 which are as under:

"17. Termination of service on grounds of furnishing false or incorrect information at the time of appointment or enrolment. –

(1) Any person, who has become subject to the Act by furnishing false or incorrect information or by adopting any fraudulent means, may be dismissed or removed from service by the Central Government or any other officer not below the rank of the appointing authority, as the case may be.

(2) When the competent authority proposes to take action under sub-rule (1),

such person shall be given an opportunity to show cause against the proposed action.

(3) The competent authority, while taking action under this rule, may allow pensionary benefits in appropriate cases, if such benefits are otherwise admissible under the relevant rules.

22. Dismissal or removal of persons other than officer on account of misconduct.-

(1) When it is proposed to terminate the service of a person subject to the Act other than an officer, he shall be given an opportunity by the authority competent to dismiss or remove him, to show cause in the manner specified in sub-rule (2) against such action:

Provided that this sub-rule shall not apply-

(a) where the service is terminated on the ground of conduct which has led to his conviction by a criminal court or a Security Force Court;

or

(b) where the competent authority is satisfied that, for reasons to be recorded in writing, it is not expedient or reasonably practicable to give the person concerned an opportunity of showing cause.

(2) When after considering the reports on the misconduct of the person concerned, the competent authority is satisfied that the trial of such a person is inexpedient or impracticable, but, is of the opinion that his further retention in the service is undesirable, it shall so inform him together with all reports adverse to him and he shall be called upon to submit, in writing, his explanation and defence:

Provided that the competent authority may withhold from disclosure is not in the public interest.

(3) The competent authority after considering his explanation and defence if any may dismiss or remove him from service with or without pension:

Provided that a Deputy Inspector-General shall not dismiss or remove from service, a Subordinate Officer of and above the rank of a Subedar.

(4) All cases of dismissal or removal under this rule, shall be reported to be Director-General."

13. In the service jurisprudence, 'termination of service' and 'dismissal from service' have different connotations and consequences. The penalty of termination of service is lower in degree and has lesser detrimental consequences for the employee than the higher penalty of 'dismissal from service'.

13.1. Supreme Court has also enunciated the distinction between Termination vs.

Dismissal. In *Dattatraya Mahadev Nadkarni v. Municipal Corporation of Greater Bombay* (1992) (1992) 2 SCC 547, the Supreme Court clarified that both dismissal and removal result in termination of service, but not every termination amounts to dismissal or removal. Dismissal is punitive and bars future employment, while termination may not.

14. With this distinction in mind, let us now analyze the provisions of Rule 17 and Rule 22 of the BSF Rules, 1969, particularly in the context of their application to termination, dismissal, or removal from service, and the procedural safeguards they provide, their scope, differences, and the interpretation thereof.

14.1. Rule 17, wherever applicable, envisages dismissal or removal from service at the discretion of the competent authority to grant pensionary benefits in appropriate cases. Whereas, Rule 22 addresses termination, dismissal, or removal on grounds of misconduct. After considering the explanation, the authority may dismiss or remove the individual, with or without pension. Key similarity Between Rule 17 and Rule 22 is that just like Rule 17 explicitly allows pensionary benefits in appropriate cases, so does Rule 22 permit dismissal or removal with or without pension. Rule 22 also thus offers discretion but with ambiguity.

14.2. Since termination and dismissal have distinct connotations, this distinction is critical because it directly effects the interpretation of Rule 22(1). The caption of Rule 22 ("Dismissal or removal... on account of misconduct") in itself is not and cannot be treated as a substantive provision and; it cannot override the plain language of sub-rule (1) where the use of "terminate" suggests a narrower scope. However, there is a caveat here, words in sub-rule 22(3) (which allows dismissal or removal) adds to the multiplicity of options along with the caption. Sub-rule (3) allows the authority to dismiss or remove after considering the explanation, which seems broader than the termination contemplated in sub-rule (1). Thus this discrepancy between Rule 22(1) (termination) and Rule 22(3) (dismissal or removal) results in ambiguity. The homogenous and harmonious way to interpret it would be that it is implied in Rule 22 that a process may start with a proposal to terminate but eventually culminating in harsher penalties (dismissal/removal) based on the explanation provided. However, sub-rule (1) cannot be stretched to include dismissal because it lacks explicit language. This may be a conservative interpretation from the punishing authority point of view, but prioritizing the interest of employee the inferred intent appears to be a fair approach. It is settled position of principle of interpretation that when a punitive provision (like Rule 22 herein) is ambiguous and capable of two interpretations i.e. one favoring the employee (limiting Rule 22(1)- termination) and one detrimental (Rule 22(2)-allowing dismissal), the court should adopt the interpretation that is less detrimental to the employee. Rule of lenity and textual fidelity are sound principles in statutory interpretation of penal or punitive contexts warranting that the ambiguities should be resolved in favor of the individual facing punishment.

15. Reverting now the terms termination from service and dismissal from service, as noted above, both have distinct meanings, implications, and legal consequences, particularly in the context of government or public sector employment.

15.1. Termination from service refers to the cessation of an employee's service, which may occur for a variety of reasons, not necessarily linked to misconduct. It is a broader term that encompasses both voluntary and involuntary endings of employment, often without punitive connotations. Termination can be neutral or non-punitive. It may result from administrative decisions or other operational requirements rather than disciplinary action.

15.2. Consequences of termination are that it does not necessarily carry a stigma or disqualify the employee from future employment, including in government service. Employees may be entitled to terminal benefits like pension and/or gratuity and other terminal benefits as per applicable service Rules.

15.3. Whereas, dismissal from Service without fail is a punitive action involving the termination of an employee's service as a consequence of proven serious misconduct or grave offenses. It is a severe disciplinary measure with significant legal and professional repercussions. Dismissal is thus inherently punitive and reflects adversely on the employee's conduct or integrity. It is imposed as a penalty following a formal disciplinary process. Consequences of dismissal are that it disqualifies the employee from future employment in government service, as it carries a stigma of misconduct. No pension or retirement/terminal benefits are admissible in cases of dismissal from government service. Dismissal tarnishes the employee's professional reputation, making reemployment, especially in the government/public sector, challenging.

15.4. Key Differences between Termination and Dismissal are culled out as below :-

Aspect

Termination from Service

Dismissal from Service

Nature

Neutral or non-punitive; may be

Punitive; always involuntary and
voluntary or involuntary.

linked to misconduct.

Reasons

Administrative, or operational

Serious misconduct.

(e.g., redundancy).

Process

Requires no inquiry for non-

Formal disciplinary inquiry

mandatory (except in specific cases

punitive cases.

like criminal conviction).

Future

Does not disqualify from future

Disqualifies from future government

Employment

employment.

employment.

Benefits

May/may not be Eligible for

No pension or terminal/retirement

terminal benefits.

benefits.

Stigma

Minimal or no stigma.

Carries significant stigma, affecting

reputation.

15.5. To sum up, termination from service is a broad, often non-punitive action that ends employment for administrative, or operational reasons, with minimal stigma and no bar on future employment. On the other hand, dismissal from service, conversely, is a punitive measure reserved for serious misconduct, involving a formal inquiry, disqualification from future government employment, and loss of benefits.

16. In light of the above distinctions, adverting once again to the Rules, *ibid.* Sub Rule (1) of Rule 22 *ibid* shows that when it is proposed to terminate the service of a person, he shall be given an opportunity by the authority competent to

dismiss or remove him, to show cause in the manner specified in sub-rule (2) against such action. In other words, he shall be given an opportunity to show cause against such proposed action to terminate his service. The plain meaning of the language of sub-rule (1) seems to be that it can be invoked only when it is proposed to terminate the service of a person.

16.1. Mere presence of word 'dismissal' in the caption of Rule 22 *ibid* does not, therefore, mean that sub-rule (1) thereof can also be invoked when it is proposed to dismiss a person from the service. In other words, Sub-Rule (1) *ibid* cannot be invoked when it is proposed to dismiss a person from the service.

16.2. Significantly, 17 Sub-rules (1) and (2) also reproduced above read together provide for the issuance of appropriate show cause notice against the proposed action both for dismissal or for removal from service, as the case may be, whether for dismissal or for removal from service. As against this, sub-rule (1) of rule 22 speaks only of show cause notice against the proposed action for termination of service.

16.3. Sub-rule (3) of Rule 22 no doubt provides that the competent authority, after considering the explanation and defence, if any, may dismiss or remove the concerned person from service with or without pension. On that basis, in my opinion, sub rule (1) *ibid* cannot be expanded to read therein the non-existent provision and power to issue a show cause notice for dismissal from service. At the most, it may be said that this variation *inter se* the provisions of Sub-rule (1) and Sub-rule (3) of Rule 22 makes the position capable of two different interpretations of sub-rule (1) *ibid* i.e. one that it can be invoked only when it is proposed to terminate the service of a person and two that it can be also be invoked when it is proposed to dismiss a person from the service. As held, when a punitive provision is capable of two views/interpretations- one favouring or less detrimental the delinquent employee and the other unfavourable or more detrimental to him, the Court would be inclined to adopt the view/interpretation which is favourable or less detrimental the delinquent employee.

17. Aside all above, there is a critical aspect that also warrants consideration i.e. the petitioner's length of service prior to the alleged misconduct. It is an undisputed fact that the petitioner rendered 25 years of service—a substantial period that, by its very nature, reflects sustained competence and commitment. Such long tenure is a clear indicator of his valuable contributions to the organization and should weigh heavily against a single lapse, especially when the lapse arose under mitigating circumstances beyond his control i.e. mental health challenges and a family crisis. Dismissal from service constitutes the most extreme penalty, depriving the petitioner not only of his livelihood but also of all pensionary benefits, thereby tarnishing an otherwise unblemished 25-year career. In these circumstances, the authorities ought to have considered alternative disciplinary measures available under the Service Rules, rather than resorting to the harsh and disproportionate step of outright dismissal.

18. As a result of the above discussion, I am of the opinion that the show cause notice dated 09.06.2014 (Annexure 22 also Annexure R-17) for dismissal issued to the petitioner should be read down and treated as one for termination of service. Once show cause notice dated 09.06.2014 (Annexure 22 also Annexure R-17) is read down and treated as one for termination of service, then the rules of natural justice and fair-play, would require that the penalty founded on such show cause notice and inflicted on the petitioner by the punishing authority and upheld by the appellate authority should not be higher and more stringent than the one contemplated in the show cause notice i.e. termination from service. It is accordingly so held that petitioner shall be treated as terminated from service and the impugned orders are accordingly modified to that extent and dismissal from service shall thus be read as termination from service.

19. In the light of view taken above, SBC Writ Petition No.9246/2015 is partly allowed and it is directed that the show cause notice dated 09.06.2014 (Annexure 22 also Annexure R-17) for proposed dismissal issued to the petitioner be read down and treated as one for proposed termination of service; the penalty of dismissal inflicted on the petitioner by the punishing authority vide order dated 27.11.2014 (Annexure 39) and upheld by the appellate authority vide order dated 15.01.2015 (Annexure 43) be treated as termination from service with the consequences to follow.

20. In SBC Writ Petition No.2348/2007, the petitioner's challenge is to the show cause notice for his proposed reversion from the post of constable to lower post of cook. Admittedly, the petitioner continued to hold the post of constable till the passing of order dated 27.11.2014 (Annexure 39) by the punishing authority, which has been directed to be treated as one for termination of/removal from service. This being the position, SBC Writ Petition No.2348/2007 is rendered infructuous and is disposed of by making the interim order dated 11.01.2010 as absolute.

21. Pending applications, if any, stand disposed of.