
(2001) 02 DEL CK 0099
In the Delhi High Court
Case No : C.W. No. 7571 of 2000

Shri Satbir Singh

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 16-02-2001

Acts Referred:

Border Security Force Rules, 1969 — Rule 26

Citation : (2001) 02 DEL CK 0099

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Mr. V.P. Sharma, for the Appellant; Ms. Anamika Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Mukudakam Sharma, J.—In the present writ petition filed by the petitioner challenge is made to the order dated 25.2.1999 passed by the Commandant, Border Security Force, by which the petitioner has been retired from service under rule 26 of the BSF Rules. The said order is challenged on the ground that the same is illegal and contrary to the provisions of the said BSF Rules and also in violation of the principles of natural justice.

2. Petitioner was enrolled in BSF on 7.6.1965. A Board of Officers was constituted by the respondents to assess the suitability of personnel like the petitioner who had bad record of service for further retention in the post. The Board considered the record of the said personnel including that of the petitioner and recommended retirement of the petitioner on the ground of un-suitability under the provisions of rule 26 of the BSF Rules. After completion of the aforesaid proceedings, as the petitioner was considered unsuitable for retention in the post, a show cause notice was issued to the petitioner on 14.11.1999 giving him an opportunity to file his reply to the aforesaid show cause notice. Pursuant thereto the petitioner submitted his reply. Thereafter on consideration of the records and the reply filed by the petitioner the Commandant issued the

impugned order by which he was retired from service.

3. The provisions of rule 26 which are relevant for the purpose of deciding this case are extracted below:-

"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 considers it to be impracticable to give such opportunity), retire from the Force the said enrolled person."

4. Learned counsel appearing for the petitioner submitted that the said order passed by the Commandant retiring the petitioner from service is punitive and is passed by way of punishment and Therefore, the same is vocative of the principles of natural justice as no opportunity was given to the petitioner to defend himself as against the aforesaid punishment. It was also submitted by the learned counsel appearing for the petitioner that the petitioner was retired from service on the ground of unsuitability which amounts to an action for misconduct for which necessarily an enquiry should have been held in accordance with the provisions of the BSF Act and the Rules framed there under, and having not done so the order is illegal and is liable to be set aside and quashed.

5. Learned counsel appearing for the respondents on the other hand refuted the submission of the counsel appearing for the petitioner and submitted that the petitioner stood retired from the service in accordance with the provisions of rule 26 of the BSF Rules which is an independent provision and since the action has been taken in full compliance of the aforesaid provision he order challenged in this writ petition is legal and valid. In support of his contention the counsel also placed before me the original records pertaining to the case of the petitioner which I have perused. It is reflected there from that during his tenure of less than 4 years in service with the respondent the petitioner has earned six punishments the details of which are set out in his service record. The petitioner belongs to a disciplined force. The action was taken against the petitioner after making an assessment about the suitability of the petitioner who had bad record of service, by Constituting a Board of Officers who recommended retirement of the petitioner on ground of unsuitability under the provisions of BSF Rule 26.

6. In terms of the aforesaid provision show cause notice was also issued to the petitioner asking him to show cause why the proposed action should not be taken against him. Therefore, the rules and the principles of natural justice to the aforesaid extent were followed by the respondent. When the petitioner had earned six punishment in a disciplined force during his 4 years of service with the Border Security Force which were imposed on him in accordance with the provisions of the BSF Act and the rules framed there under no further enquiry was required to be conducted as power could be exercised by the respondent in terms of independent and separate power vested under rule 26 of the BSF Rules. The order was passed not because the petitioner was guilty of any misconduct

but because his further retention in service was found to be uncalled for. The aforesaid order retiring the petitioner from service was not passed by way of penalty but in exercise of an independent and a separate power conferred under Rule 26 of BSF Rules. While passing the aforesaid order the respondent has also ordered that the petitioner shall get the financial benefits as admissible under BSF Rule 26.

7. In the light of the aforesaid facts and circumstances of the case I am of the considered opinion that the impugned order cannot be said to be illegal or contrary to the provisions of the BSF Rules nor can it be said that the said order was passed in violation of the principles of natural justice.

8. In the result I find no merit in the writ petition and the same is dismissed. There will however, be no order as to costs.