

GAHC010083332024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2231/2024

MD. RAFIKUL ISLAM
S/O- ABUAL MAZID, R/O- SIMLABARI, P.O. FUTKIBARI, P.S. BILASIPARA
DIST.- DHUBRI, ASSAM, PIN- 783345

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECRETARY, MINISTRY OF HOME AFFAIRS,
NORTH BLOCK, CENTRAL SECRETARIAT, NEW DELHI- 110001

2:THE DIRECTOR GENERAL OF BORDER SECURITY FORCE
BLOCK 10
5TH FLOOR GO COMPLEX
LODI ROAD
NEW DELHI- 110003

3:THE INSPECTOR GENERAL OF BORDER SECURITY FORCE
FRONTIER
HEAD QUARTERS
NORTH BENGAL
DARJEELING
WEST BENGAL
PIN- 734011

4:THE DEPUTY INSPECTOR GENERAL
BORDER SECURITY FORCE
SECTOR HEAD QUARTER
KISHANGANJ
BIHAR
PIN- 8551074

5:THE COMMANDANT

175 BN BORDER SECURITY FORCE
KHAGRA CAMP
KISHANGANJ
BIHAR
PIN- 855107

6:THE ASSISTANT COMMANDANT (MIN)
KHAGRA CAMP
KISHANGANJ
BIHAR
PIN- 855107

Advocate for the Petitioner : MR. J AHMED, N NATH,MR R A AHMED,MR M AHMED

Advocate for the Respondent : DY.S.G.I., MR. D C BORAH (R-1 to 6)

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

Date : 24.09.2024

Heard Mr. J. Ahmed, learned counsel for the petitioner. Also heard Mr. D. C. Borah, learned counsel for the respondent nos. 1 to 6.

2. By way of this petition under Article 226 of the Constitution of India, the petitioner is assailing the order dated 25.05.2023 and 18.01.2024 passed by the Appellate Authority as well as Lower Authority, whereby the petitioner was awarded the punishment of retirement from service on the ground of unsuitability.

The brief facts of the case are as follows:-

3. The petitioner was appointed as Constable (GD) by order dated 15.12.2011 and after qualifying the basic training course, he was transferred to 124 Bn BSF and was thereafter transferred to 175 Bn BSF, Khagra, Kishanganj, Bihar on 02.03.2016 in "F" Company and

since then he was working in the Officer's Mess.

4. It is the specific case of the petitioner that while he was performing his duties, he received a show-cause notice on 01.03.2023 whereby he was asked to submit his explanation and defense as to why he should not be retired from service on the ground of unsuitability under Rule 26 of the Border Security Force Rules, 1969 (herein referred as BSF Rules, 1969).

5. Thereafter the petitioner came to learn from the said show-cause notice that one Meri Sultana Begum filed a complaint dated 12.02.2020 alleging that she is the first wife of the petitioner and one daughter was also born out of there wed lock and that during the subsistence of the said first marriage, the petitioner had contracted second marriage with one Daisy Ahmed.

6. Thereafter inquiry was conducted and it was established that the petitioner had contracted second marriage with Daisy Ahmed without obtaining divorce from the first wife and also without obtaining permission from the department as required under the rules and accordingly came to the conclusion that the second marriage of the petitioner with Daisy Ahmed is in violation of Rule 7 of BSF Rules, 1969 as well as Rule 21(2) of the (CCS) Conduct Rules, 1964. Accordingly, the Disciplinary Authority issued show-cause notice to the petitioner as to why he should not be awarded the punishment of retirement from service on the ground of unsuitability under Rule 26 of BSF Rules, 1969.

7. Pursuant to the aforesaid show-cause notice, the petitioner

submitted his reply wherein he admitted his marriage with the complainant, i.e. Meri Sultana Begum and also having married to Daisy Ahmed in the year 2018 during the subsistence of his first marriage.

8. Thereafter the commandant 175 Bn BSF after examining the reply of the petitioner, by order dated 25.05.2023 awarded the punishment of retirement of the petitioner from service with immediate effect. Situated thus, the petitioner filed an appeal under Section 117(2) of the BSF Rules, 1969 before the Deputy Inspector General, BSF which was returned as the same lies before the Inspector General, BSF Frontier Head Quarter, North Bengal under Section 117(2) of the BSF Rules, 1969.

9. Accordingly, the petitioner filed the said appeal on 12.09.2023 before the Inspector General, BSF Frontier Head Quarter, North Bengal.

10. Thereafter on 13.04.2024, the Inspector General, BSF Frontier Head Quarter, North Bengal rejected the said appeal of the petitioner on the ground of unsuitability with permissible retirement benefits under the NPS Rules. Situated thus, the present petition has been filed seeking quashing of the aforesaid orders dated 25.05.2023 and 18.01.2024.

11. Mr. J. Ahmed, learned counsel for the petitioner submits that the factum of second marriage during the subsistence of the first marriage is admitted, however, he submits that the quantum of punishment i.e. retirement from service awarded by the respondents is not proportionate to the gravamen of the charge.

12. Per contra Mr. Borah, learned counsel for the respondents submits that the offence of contracting a second marriage during the subsistence of the first marriage being a listed offence the punishment awarded warrants no interference from this Court under Article 226 of the Constitution of India.

13. I have given my prudent consideration to the arguments made by the learned counsel for both the parties and have perused the materials available on record.

14. Pertinent that since the legality and validity of the Inquiry Officer's report is not assailed before this Court and it is only the quantum of the punishment awarded which is disputed by the petitioner, this Court shall confine its finding only as regard the quantum of punishment.

15. Apt to refer to the relevant provision of the BSF Rules, 1969, Rule 7 of the said rules is reproduced hereunder for ready reference:-

“[7. Disqualification.-(1) No person-

(a) who has entered into or contracted a marriage with a person having a spouse living, or

(b) who having a spouse, has entered into or contracted a marriage with any person, shall be eligible for appointment into Force:

Provided that the Central Government may if satisfied that such marriage is permissible under the personal law applicable to such person and the other party to the marriage and that there are other grounds for so doing, exempt any person from the operating of this rule.]”

16. Rule 26 of the said rules is also reproduced hereunder for ready

reference:-

[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 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.

17. Rule 21 of the Central Civil Services (Conduct) Rules, 1964 is also reproduced hereunder for ready reference:-

“21. Restriction regarding Marriage.-(1) No Government servant shall enter into, or contract, a marriage with a person having a spouse living; and

(2) No Government servant having a spouse living, shall enter into, or contract, a marriage with any person;

Provided that the Central Government may permit a Government servant to enter into, or contract, any such marriage as is referred to in clause (1) or clause (2) if it is satisfied that,-

(a) such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage; and

(b) there are other grounds for so doing.

(3) A Government servant who has married a person other than of Indian Nationality shall forthwith intimate the fact to the Government.”

18. A conjoint reading of the aforesaid provisions of law, apparent that the said statutes prohibits a marriage of a member with a person having a spouse living and the same if contracted, the said erring member becomes disqualified to be a member of the force.

19. It further appears that when a member is found to be unsuitable to be retained in the force, the punishment prescribed under Rule 26 of the said BSF Rules is for retirement of such member from the force.

20. In the present case, it is admitted that the petitioner has contracted second marriage during the subsistence of his first marriage and as such he has become disqualified to be a member of the force and as such he has become unsuitable to be retained in the force.

21. It further appears that the enquiry conducted has found him guilty and accordingly the Disciplinary Authority has awarded the punishment of retirement from service. This punishment is as per Rule 26 of the said BSF Rules.

22. That being so, the punishment awarded does not shocks the conscience of this Court.

23. It is a settled principle of law that Writ Court while dealing with penalty imposed on a delinquent normally does not interfere with the quantum of punishment, unless it shocks the conscience of this Court.

24. The decision of this Court in WA/357/2022 relied by the petitioner is not applicable in the context of the present case in as much as in the case before the Appellate Court the punishment awarded was the most extreme form of punishment i.e. “dismissal” upon a charge similar to this case being proved.

25. However, in this case, the punishment of retirement from service awarded against the petitioner is in accordance with the provision of the Rules and therefore warrants no interference from this Court.

26. The writ petition accordingly stands dismissed.

27. No cost.

JUDGE

Comparing Assistant