IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

211 **RSA No. 2742 of 2012(O&M)**
Date of decision:27.10.2016

Balwinder Singh

.... Appellant

Versus

Union of India and others

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. P.K.Mutneja, Advocate for the appellant.

Mr. P.K.Longia, Sr. Panel counsel for UOI.

P.B. Bajanthri, J. (Oral)

The appellant was initially appointed as Constable on 31.12.1987. The appellant while working in FDL 494, his superior officers directed him to work in FDL 495A. The appellant may not be happy with such arrangement made by the superior officers. Consequently, in a fit of anger he threatened to hit one Sh. Ranjit Singh, Sub-Inspector and further he had abused him. Taking into consideration these allegations, the competent authority proceeded to initiate disciplinary proceedings by framing two charges under Section 20(a) and (b) of the BSF Act, 1968. It was concluded in imposing the penalty of dismissal from service. On 31.05.2007 his appeal was dismissed. Thereafter, he has filed suit before the trial court. The trial court set aside the order of dismissal from service so

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also appellate authority order. The respondents preferred an appeal before the appellate court. The appellate court reversed the order of the trial court. Thus, the appellant is before this court.

2. Learned counsel for the appellant submitted that Summary Security Force Court (SSFC, for brevity) initiated proceedings on 28.11.2006 and completed on the same day on the score that the appellant has pleaded guilty. The appellant has worked from 1987 as a permanent employee. He should have been given ample opportunity. Dismissal from service is a major penalty. Without giving proper opportunity before the SSFC, appellant has been dismissed from service.

3. It was further contended that charge sheet has been filed under Section 20(a) and 20(b) for which the respondents cannot impose the penalty of dismissal from service in view of Section 49 of the BSF Act. That apart, it was contended that rule 63 of the BSF Rules have not been complied while drawing proceedings on 28.11.2006 by the SSFC.

4. Per contra, learned counsel for the respondents submitted that the appellant is habitual offender. From time to time, he was subjected to disciplinary proceedings and it was concluded in imposing one or the other penalty. Having regard to the conduct of the appellant while he was in service, the respondents have imposed the penalty of dismissal from service. Same has been upheld by the appellate authority as well as appellate court. It was further submitted that appellant has admitted the charge therefore, question of giving ample opportunity to him to adduce evidence do not arise. It was also contended that the appellant was working in a disciplinary force. He cannot threatened superior officers while disobeying the orders of the superiors.

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5. Heard learned counsel for the parties.

6. Before considering the contention of the appellant it is necessary to reproduce order of dismissal dated 28.11.2006 which reads as under:-

> *"Whereas, No. 870052422 Constable Balwinder Singh 'B' Coy, 54Bn BSF has been tried by Summary Security Force Court from 1030 hrs to 1200 hrs on 28th Nov'2006 and found 'GUILTY' for committing Offence under Section 20(a) and 20(b) of BSF Act. Whereas on conviction of the charges, the Summary Security Force Court sentenced the said No. 870052422 Constable Balwinder Singh* ***"TO BE DISMISSED FROM SERVICE".*** *The sentence has been promulgated on the same day i.e. 28th Nov'2006.*
>
> *No.Estt/B.S./1351/54/2006/15801-999*
>
> *Dated: the 28 Nov'2006* *(MAHENDRA SINGH DEO)*
> *COMMANDANT*
> *54, BN BSF"*

7. Further the appellate authority passed order on 31.05.2007 only he has extracted the evidence which reads as under:-

> "I agree that I have committed a mistake. I am from a poor background and I have three small children who are totally dependent on me. I may be pardoned this time. I will never commit such mistake in future"
>
> 7. *The petitioner has put 18 years, 11 months and 28 days service with 09 rewards and one CC to his credit but he was punished five time earlier also as per following details and his general character has been assessed as 'Poor' by his Commandant:-*

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(a) On 30.04.94 ***tried by SSFC*** *for an offence u/s 46 of the BSF Act (for committing civil offence) and awarded sentence of 'forfeiture of 2 years service for seniority of rank and forfeiture for the purpose of increase of pay'*

(b) On 13.02.2002, tried summarily under Sections 19(b) and 32(b) of the BSF Act for overstaying leave granted to him and for loss by neglect any Govt property and awarded 28 days RI in Force custody.

(c) On 11.04.2003, tried summarily for an offence u/s 26 of the BSF Act and awarded 02 days RI in Force custody.

(d) On 08.03.2004, tried summarily for tow offences u/s 40 and 20(c) of the BSF Act and awarded 28 days RI in Force custody.

(e) On 16.05.2006, ***tried by SSFC*** *for an offence u/s 20(a) of the BSF Act and sentence awarded 'to suffer 89 days RI in Force custody.'*

8. The order of the disciplinary authority imposing penalty of dismissal from service is appealable order. Therefore, it should have been speaking order even though appellant admitted the charge. Otherwise, the appellant would be denied to submit effective appeal before the appellate authority. In other words, order of dismissal dated 28.11.2006 is a non-speaking order. Therefore, order of dismissal dated 28.11.2006 is liable to be set aside. Further the order passed by the appellate authority also do not disclose other than the past misconduct which is not part of the present

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disciplinary proceedings. The appellate authority is required to examine whether the disciplinary authority complied the provisions for holding Summary Security Force Court for the reasons that appellant raised two legal issues. One is relating to violation of rule 63 whereby the appellant has not been given adequate opportunity. Further it was contended that appellant has been charge-sheeted under Section 20(a) and 20(b) for which dismissal penalty is not attracted in view of Section 49 where alternative penalty is permissible. Therefore, the appellate authority should have examined the provisions on the other hand extraneous materials have been considered without giving opportunity. The appellate court while reversing the order of the trial court has not considered order of dismissal whether it is a speaking or not so also appellate authority's order. Further various provisions like Section 20, 48 and 49 of BSF Act, read with Rule 63 while reversing the order of the trial court has not been examined. Therefore, the appellate court committed error in reversing the order of the trial Court.

9. During pendency of the litigation the appellant/Ex-Constable Balwinder Singh died on 21.11.2014 and his legal heirs come on record. Even though appellant has alleged to have admitted guilt, it was bounden duty of the disciplinary authority to pass speaking order for the reasons that the order of dismissal is an appealable order whereby the appellant has been denied the opportunity of furnishing effective appeal before the appellate authority. Further appellate authority while rejecting the appellant's appeal considered extraneous materials of past misconduct which was not part of charge sheet. Therefore, appellant has not been given opportunity before considering post events. Supreme Court by a constitution bench in the case of ***State of Mysore versus K. Manche Gowda*** reported in AIR 1964 SC 506

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held as follows:-

> *"8. Before we close, it would be necessary to make one point clear. It is suggested that the past record of a Government servant, if it is intended to be relied upon for imposing a punishment, should be made a specific charge in the first stage of the enquiry itself and, if it is not so done, it cannot be relied upon after the enquiry is closed and the report is submitted to the authority entitled to impose the punishment. An enquiry against a Government servant is one continuous process, though for convenience it is done in two stages. The report submitted by the Enquiry Officer is only recommendatory in nature and the final authority which scrutinizes it and imposes punishment is the authority empowered to impose the same. Whether a particular person has a reasonable opportunity or not depends, to some extent, upon the nature of the subject matter of the enquiry. But it is not necessary in this case to decide whether such previous record can be made the subject matter of charge at the first stage of the enquiry. But, nothing in law prevents the punishing authority from taking that fact into consideration during the second stage of the enquiry, for essentially it relates more to the domain of punishment rather than to that of guilt. But what is essential is that the Government servant shall be given a reasonable opportunity to know that fact and meet the same.*
>
> *9. In the present case the second show cause notice does not mention that the Government intended to take his previous punishments into consideration in proposing to dismiss him from service. On the contrary, the said notice put him on the wrong scent, for it told him that it was proposed to dismiss him from service as the charges proved against him were grave. But, a comparison of paragraphs 3 and 4 of the order of*

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> *dismissal shows that but for the previous record of the Government servant, the Government might not have imposed the penalty of dismissal on him and might have accepted the recommendations of the Enquiry Officer and the Public Service Commission. This order, therefore, indicates that the show cause notice did not give the only reason which influenced the Government to dismiss the respondent from service. This notice clearly contravened the provisions of Art. 311(2) of the Constitution as interpreted by Courts."*

10. Supreme Court in its recent judgment reported in (2015) 8SCC 272 titled as ***Nicholas Piramal India Ltd. Versus Hari Singh*** relied on the above judgment vide para 30.

11. Appellate authority must be impartial, hear the appeal objectively and with open mind and pass speaking order. Whereas in the present case appellate authority while referring to past events and in not giving opportunity to the appellant amounts to impartial order. Moreover, having regard to the charge that appellant threatened to beat and imposition of major penalty of dismissal would be too harsh and the matter require reconsideration of penalty by disciplinary authority.

12. Therefore, it is a matter to be remanded. However late Constable-Balwinder Singh is no more therefore, remanding the matter to the disciplinary authority to consider the SSFC proceedings for the purpose of passing a speaking order is impracticable. Order of the appellate court dated 06.03.2012 is set aside. Therefore, the respondents-competent authority is directed to modify the order of dismissal dated 28.11.2006, to any other penalty other than dismissal and removal from service within a period of 4 months from today. Thereafter, the respondents are directed to release monetary benefits to the legal heirs of the deceased Constable

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Balwinder Singh, within a period of 3 months.

13. Appeal stands disposed of.

(P.B.BAJANTHRI)
JUDGE

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Whether speaking/reasons Yes/No

Whether Reportable: Yes/No

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