

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.24694 of 2014

Date of Decision:18.09.2017

Deepak Dahiya

... Petitioner

Vs.

Union of India and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Sandeep K. Sharma, Advocate for the petitioner.

Mr. Vivek Singla, Advocate for the respondents.

P.B. BAJANTHRI J. (Oral)

In the instant writ petition, petitioner has challenged the order dated 21.10.2013 and 9.7.2014 (Annexure P-7 and Annexure P-4) by which petitioner has been sentenced to be dismissed from service and further appellate authority has affirmed the order of Commandant.

The petitioner while working as a constable in the 47 Bn BSF was charge-sheeted under Sections 19(a) and 20 (a) of the BSF Act 1968 relating to absenting himself for long period and using criminal force to assault his superior. The petitioner admitted the charge under Section 19(a). Insofar as second charge under Section 20(a) is concerned, he pleaded not guilty. Consequently, Summary Security Force Court proceedings were conducted against the petitioner. Three witnesses have been examined in support of the charge. Consequently, he was punished by imposing the penalty of dismissal from service. Feeling aggrieved by the order of dismissal, he preferred an appeal before the Higher Authority-Director General. Director General-Appellate Authority affirmed the decision of the Commandant insofar as imposing the penalty of dismissal from service.

Thus, the present petition.

Learned counsel for the petitioner submitted that instead of imposing the major penalty of dismissal from service a minor penalty should have been imposed. It was further submitted that Assistant Sub Inspector against whom the petitioner used criminal force in assaulting him had a grudge with the petitioner. Therefore, imposition of penalty of dismissal from service may not be warranted. Learned counsel for the petitioner relied on a decision of the Delhi High Court passed in Anil Kumar v. Union of India and another; W.P. (C) No.5535 of 2014; decided on 13.7.2016 wherein also Anil Kumar had assaulted his senior officer. Whereas the Delhi High Court set aside the dismissal order while ordering reinstatement without back wages.

Per contra, learned counsel for the respondents submitted that using of criminal force on a higher officer would attract dismissal from service only. Before dismissing the petitioner, the respondents have taken into consideration the past records relating to the petitioner under Rule 101 of BSF Rules 1969. Therefore, the petitioner has not made out a case so as to interfere with the order of dismissal from service.

Heard learned counsel for the parties.

Perusal of the records, it is crystal clear that three witnesses have been examined in support of the charge. The petitioner has not cross examined the witnesses which shows that the petitioner has admitted the evidence adduced by the witnesses. Insofar as modification of the dismissal from service penalty to any other lower penalty is concerned, no doubt Delhi High Court (DB) has modified the penalty while setting aside the dismissal order. However, it is a case of isolated incident which had happened in that case. Whereas in the present case, while imposing the

penalty of dismissal from service, it was recorded that on 25.11.2006 the petitioner was dismissed from service. Later on Higher Authority have modified the penalty while sentencing him to three months rigorous imprisonment in force custody from dismissal. Further it is evident that from 2005 to 2013, petitioner remained absent for more than seven occasions.

In view of these facts and circumstances, petitioner is not entitled to any sympathy so as to interfere with the penalty of dismissal from service and to modify any other lower penalty.

Accordingly, petition stands dismissed.

18.09.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**