

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.62 of 2017

Date of Decision: 10.01.2017

No. 88688330 Ex. CT Kabal Singh

... Petitioner

Versus

Union of India and others

... Respondents

**CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA**

Present: Mr. I.D. Singla, Advocate,  
for the petitioner.

**RAJIV NARAIN RAINA, J.**

1. When this Court orders re-consideration of penalties in service law disputes by the authorities it does not mean that the discretion of the punishing authority is taken away to act fairly, impartially and independently. It is no contempt for the competent authority to still pass an order justifying the decision taken that the present was a case of dismissal and relaxation could not be granted or sympathy shown to convert dismissal into punishment of compulsory retirement. I would, therefore, reject the argument of Mr. I.D. Singla, learned counsel for the petitioner. The Inspector General, Rajasthan Frontier, Border Security Force has conveyed through the Deputy Inspector General-cum-Principal Staff Officer of the Inspector General of Police that the penalty of dismissal imposed by the Summary Security Force Court ruling is just and proper and merits no interference and hence the case cannot be converted into compulsory retirement as suggested by the final order of this Court in disposing of the petition. In taking this decision on re-consideration as directed by interim order dated August 02, 2016 in RSA No.1661 of 2011 the authority took

into consideration past record of the petitioner during a short span of service from 1991 to 2002. These have been set down in the impugned order and read:-

*“a) U/3 19(b) of BSF Act-1966, “without sufficient cause overstaying leave granted to him” and awarded punishment 21 days Rigorous Imprisonment in Force custody on 23.10.1992.*

*b) U/S 19(b) of BSF Act-1968, “without sufficient cause overstaying leave granted to him” and awarded punishment 14 days Rigorous Imprisonment in Force custody on 31.12.1993.*

*c) U/S 19(a) of BSF Act-1968. “absenting himself without leave” and awarded punishment 28 days Rigorous Imprisonment in Force custody on 10.11.1994.*

*d) U/S 19(b) of BSF Act- 1968, “without sufficient cause overstaying leave granted to him” and awarded punishment 14 days Rigorous Imprisonment in Force custody on 27.04.1995.*

*e) U/S 40 of BSF Act-1968, “an act prejudicial to good order and discipline of the Force” and awarded punishment 14 days Rigorous Imprisonment in Force custody on 08.07.1996.*

*f) U/S 19(a) of BSF Act-1968, “absenting himself without leave” and awarded punishment 07 days Rigorous Imprisonment in Force custody on 29.01.1998.”*

2. This colourful record of past service was not available to the mind of the learned Single Judge when the order dated August 02, 2016 was passed. There can be no doubt that the petitioner was a habitual offender and an undisciplined soldier who was inflicted six major punishments resulting in imprisonment for committing various offences punishable under the Border Security Force Act, 1968.

3. For a BSF Constable to be found in a state of intoxication at or near about the BSF gate is a serious charge described as crime whether he

was on duty or not. The petitioner is not a policeman in a uniformed force. He is a member of the paramilitary forces that guards the nation and, therefore, the standards applicable to cases under the Punjab Police Rules, 1934 are wholly inapplicable to members of the Border Security Force. The levels of discipline required are different. The nature of patrolling duties is different. The nature of responsibilities of guarding borders of the nation is serious business. Policemen are not exposed to sudden death everyday like the members of the paramilitary forces striving to keep our borders safe and secure and quelling internal strife. Their work is arduous and akin to soldiers in the Indian Army. The petitioner by his own acts and conduct had tired out the authorities escaping narrowly the penalty of dismissal etc. six times. If the petitioner is caught on the wrong foot he has himself to blame. In any case, his period of service is too short being no more than about 11 years to consider converting dismissal into compulsory retirement even when he may not have an accrued right to service pension on the date of dismissal. Besides, he challenged his dismissal in a civil suit which was dismissed. His appeal was rejected. His Regular Second Appeal was disposed of on August 02, 2016 with the following operative directions:-

*“4.) The respondents are directed to re-consider the penalty of dismissal from service to that of compulsory retirement having regard to the fact that appellant has rendered service from 22.3.1991 to 23.8.2002. No doubt, charge against the appellant that he was under intoxication and found near the BSF gate is a serious charge since he was not on duty. Therefore, the matter is remanded to the disciplinary authority to re-consider the penalty of dismissal to that of compulsory retirement within a period of three months. If the disciplinary authority modifies penalty of dismissal to that of compulsory retirement in*

*view of the present order, it is made clear that the appellant is not entitled for any monetary benefits from 2002 to till passing of the compulsory retirement order. The orders passed by the Trial Court and Appellate Court would not come in the way of taking decision by the disciplinary authority.*

5) *Petition stands disposed of.*

*-Sd-  
JUDGE*

*August 2, 2016.”*

4. The learned Single Judge did not order in appeal that a decision be taken in a particular way. It was only a suggestion for re-consideration and not a mandamus commanding the authorities to act in a particular manner or forebear from doing so.

5. It is in response to these directions that the impugned order has been passed steadfastly holding ground in upholding the dismissal on a conscious re-consideration of the matter by disallowing conversion of dismissal into compulsory retirement as not meet and just.

6. On giving my thoughtful consideration to the matter I find no illegality or arbitrariness in the impugned order. It is neither disproportionate to the offence proven. This Court cannot lightly interfere with quantum of punishment while dealing with the paramilitary forces that have to be vigilant, cautious and alert at all times when on duty and when not. Moreover, this Court does not sit in appeal over findings recorded by the Summary Security Force Court or orders of punishment inflicted by the competent authority so long as the decision is not whimsical, arbitrary, irrational, perverse and disproportionate to the proven misconduct or is a

decision based on no evidence. Such is not the case. It is well settled proposition of law that judicial review is not directed against the decision but to the decision-making process. Two different officers at different times have come to the same conclusion on two occasions which dispensation is not to be lightly treated and interfered with. I find nothing palpably wrong in the decision-making process in the repeat performance. Choice of punishment is in executive domain, while Court intervention is very limited. Loss of livelihood is a natural consequence of dismissal. "Interference by the High Court with the order of dismissal only on the ground that it deprived the delinquent of his livelihood is wholly untenable since the transgression of jurisdiction cannot be justified on the ground of consequences."; See, G.M. (Operation) S.B.I. & Anr. vs. R. Periyasamy, 2015 LLR 121 (SC). Interference on the ground that another view is possible in disciplinary matters on the materials on record also stands ruled out of consideration. One is left with no legal principle to bring relief to the petitioner.

7. Accordingly, I would dismiss the petition in *limine* as devoid of merit.

(RAJIV NARAIN RAINA)  
JUDGE

10.01.2017  
manju

*Whether speaking/reasoned* Yes

*Whether reportable* Yes