

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

LPA No.388 of 2017 (O&M)

Date of Decision :06.07.2017

Kabal Singh

....Appellant

Versus

Union of India and others

....Respondents

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE RAJ SHEKHAR ATTRI**

....

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

....

MAHESH GROVER, J. (Oral)

This Letters Patent Appeal is directed against the judgment of the learned Single Judge dated 10.01.2017 upholding the order of dismissal against the appellant on account the misconduct attributed to him.

The appellant was a member of the Border Security Force and found intoxicated outside the campus. The procedure which led to the order of dismissal is not in question and the only issue raised before us is that on a previous occasion the appellant filed a civil suit questioning the order of dismissal passed qua this very misconduct and even though the trial court and the appellate court had upheld the order of dismissal, this court in Regular Second Appeal directed reconsideration of the matter considering the punishment to be harsh.

Some subtle hint was given by this court to convert the punishment

into one of compulsory retirement. The matter was then reconsidered by the authorities resulting in reiteration of the order of dismissal which was then questioned by the appellant by way of writ petition from where the impugned order has emerged.

Learned counsel for the appellant with reference to the observations of this Court rendered in RSA No.1661 of 2011 has contended that once the matter was remitted back for reconsideration to the competent authority with a suggestion that a lesser punishment should be imposed, the said authority would be bound by such a direction and reiteration of the order of dismissal would run contrary to the finding in the RSA.

Since this forms the core of the argument raised before us, we would briefly refer to the observations of the learned Single Judge while determining the RSA. In para 4 of the judgment the court directed to reconsider the penalty of dismissal to that of compulsory retirement keeping in view the length of service from 1991 to 2002. There was hardly any scope for the competent/punishing authority to even apply its mind independently to the controversy looking at the direct mandate of the court. Even then the said authority did so and took into consideration the entire service record of the appellant which would be a requisite at the time of passing an order of compulsory retirement. It was discovered that the appellant had suffered as many as 6 major punishments resulting in imprisonment for committing various offences punishable under the Border Security Force Act which we may notice hereinafter :-

“a) U/3 19(b) of BSF Act-1996, “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(b) 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.”

Coupled with this the fact of the appellant being in intoxicated state weighed with the authority to decline the relief of compulsory retirement to the appellant and inflict a punishment of

dismissal. The learned Single Judge noticed the repeated misconduct of the appellant and concluded against him. One of the reasons which weighed strongly with the learned Single Judge was the fact of two different officers concluding likewise to order dismissal considering the entire record of the appellant.

We are of the view that even if the judgment of the learned Single Judge in the RSA mandated consideration of a lesser punishment, the punishing authority was well within its right to reiterate its view which we intend to uphold as did the learned Single Judge for the reason that the appellant belonged to a disciplined force and cannot be expected to indulge in luxury indiscipline which he had demonstrated time and again by earning as many as 6 major punishments. Even otherwise before passing the order of compulsory retirement the authority is bound in law to evaluate the entire service record which has been done.

We thus do not find any reason to interfere in the impugned judgment.

However, marginal delay of 13 days in filing the appeal is condoned considering the explanation furnished in the application.

Appeal dismissed.

(MAHESH GROVER)
JUDGE

06.07.2017
dss

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No