

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-22395-2015

Date of decision: 15.03.2018

Binder Singh

... Petitioner

versus

Union of India & ors.

... Respondents

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

Present: Mr. Puneet Kumar Bansal, Advocate
for the petitioner.

Ms. Anita Balyan, Advocate
for the respondent -Union of India.

P.B.Bajanthri, J(Oral)

Pursuant to order dated 15.12.2017, Mr.Aman Tirky, Deputy Commandant is present in Court with the original record for the purpose of assisting in the present matter.

2. In the instant petition, the petitioner has challenged the validity of dismissal order dated 21.09.2014 (Annexure P-23) and the Appellate Authority's order dated 20.07.2015 (Annexure P-25).

3. The respondents have issued a show cause notice on 08.09.2014 while observing the conduct of the petitioner in para 4 and 5 for which he has submitted his explanation. After due consideration of his objections read with para 4 and 5 of the show cause notice dated 08.09.2014, respondents proceeded to pass the order of dismissal from service.

4. Feeling aggrieved, petitioner is stated to have filed a statutory petition under the provisions of Border Security Force Rules, 1969 (hereinafter referred as BSF Rules, 1969) and it was rejected on 20.07.2015.

Hence, the present petition.

5. Learned counsel for the petitioner has submitted that order of dismissal is not a speaking order, it is not passed by the competent authority with reference to Rule 48 of the BSF Rules, 1969 and further contended that in identical circumstances, the Supreme Court in **2007(15) SCC 217 State of Punjab and others vs. Harbhajan Singh** has held that recording of reasons is required where a decision is taken by the competent authority in respect of impracticable to hold an inquiry and proceeds to impose certain penalty.

6. Per contra learned counsel for the respondents has submitted that having regard to the contents of para 4 in the show cause notice dated 08.09.2014 (Annexure P-22) Commandant is empowered to exercise his powers under Rule 22(2) of the BSF Rules, 1969. After due examination of the petitioner's reply to the show cause notice, competent authority proceeded to pass the order of dismissal. It is also submitted that where order of dismissal is based on impracticable to hold an inquiry a decision has been taken by the competent authority and communicated to the petitioner by means of show cause notice that suffice that reasons have been made known to the petitioner. Therefore, the contention of the petitioner that dismissal order is not a speaking order is not tenable. Further it is submitted that Rule 48 of the BSF Rules, 1969 cited by the petitioner to the extent that Commandant is not a competent authority to dismiss him from service is in relation to the Security Force Court and not relating to impracticable to hold an inquiry with reference to Rule 22(2) of the BSF Rules, 1969. The cited decision is distinguishable with the present case since in the present case reasons have been assigned to the petitioner as to

why there is proposal to dismiss him from service in para 4 and 5 of the show cause notice.

7. Heard the learned counsel for the parties.

8. Question for consideration in the present case is whether order of dismissal is a speaking order or not? Further whether the Commandant is competent authority to dismiss the petitioner from service or not?

9. If the competent authority is invoking Rule 22(2) of the BSF Rules, 1969, which is with reference to impracticable to hold an inquiry in such circumstances, it is confidential in the interest of national/state security. Therefore, they need not to pass a detailed speaking order. In fact, petitioner has been made available the reasons by issuing show cause notice dated 08.09.2014 for which he has submitted his explanation and the same is taken note of by the competent authority. Therefore, the contention of the learned counsel for the petitioner that the order of dismissal is not a speaking order is not tenable.

10. Commandant is a competent authority to dismiss the petitioner with reference to Rule 22 of the BSF Rules, 1969 and contention of the learned counsel for the petitioner is that under Section 48, the competent authority is not Commandant. Perusal of Section 48 of the BSF Act, 1968 read with Security Force Court procedure it is evident that proceedings under the Act and Rules are entirely different. Under the provisions of Border Security Force Act, 1968 there is no provision to dismiss an employee where there is impracticability to hold an inquiry. Therefore, the petitioner's contention that the Commandant is not competent authority cannot be accepted having regard to the BSF Rules, 1969 particularly Rule 22.

11. The Supreme Court's decision, which has been quoted by the learned counsel for the petitioner reads as under:

*“3. Learned counsel then contended that no departmental inquiry could be held against the respondent in view of his involvement with terrorists. In the suit, the State did not place any material to establish that any case was made out for dispensation of a regular departmental inquiry as required under clause (2) to Article 311 of the Constitution of India. The question is now covered by a recent decision of this Court in **Tarsem Singh vs. State of Punjab, 2006(13) SCC 581: 2008(2) SCC (L&S) 140** wherein this Court has opined that if no material is brought to the notice of the Court on the date of passing of the impugned order in support of the allegations contained therein as to why it was impractical to hold a regular disciplinary proceeding, the order of termination would not be sustainable.”*

Having regard to the show cause notice dated 8.09.2014, read with explanation of the petitioner, it is evident that the petitioner has been made available with the reasons for impracticable to hold an inquiry and imposed penalty of dismissal from service. Therefore, aforesaid decision is distinguishable having regard to the material made available to the petitioner by way of issuing show cause notice. In view of these facts and circumstances, the contentions of the learned counsel for the petitioner are not good.

12. Accordingly, the present petition is dismissed.

15.03.2018
sonia

(P.B.BAJANTHRI)
JUDGE

Whether reportable?	Yes/No
Whether speaking/non-speaking?	Yes/No