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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 11192/2017

BHUWAN CHANDRA UPADHYAY Petitioner

Through: Mr. Satya Ranjan Swain, Advocate.

versus

BORDER SECURITY FORCE (BSF) & ORS. Respondents

Through: Ms. Shiva Lakshmi, CGSC with

Mr. Ruchir Ranjan, Advocate.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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10.01.2018

1. The petitioner, who was working on the post of a Lower Division Clerk (LDC) in the respondent No.2/BSF Polytechnic, prays for issuance of a writ of *certiorari*, for quashing the order dated 30.10.2017, issued by the Chairman of the respondent No.2/BSF Polytechnic, terminating his services on expiry of three months, i.e., w.e.f. 31.1.2018, on the ground of misappropriation of the education fee deposited by the students.
2. The facts of the case as gathered from the records are that the petitioner was appointed as a LDC in the BSF Polytechnic on 10.12.2008. From 30.4.2014 to 5.2.2015, the petitioner was assigned additional duties of an Accountant and was responsible for collecting the fees from the students and depositing the same in the Bank Account of BSF Polytechnic. On noticing that there was a big difference in the education fee deposited in the BSF education fund in the first session, vis-a-vis the second half of the academic year 2014 and on noting some discrepancies and scrutinizing the cash book maintained by the petitioner, vide order dated 31.03.2015, the

Chairman of the respondent No.2 appointed a Board of Officers to verify/audit the Fee collected during the second half of the year 2014 i.e. July to December, 2014 and also to verify the receipts and the exact amount taken into the cash book and deposited in the Bank as well as identify the number of students left out whose fee had yet to be deposited for the above period and point out other discrepancies, if any.

3. The Board of Officers found a discrepancy of Rs.4,13,976/- in the cash book maintained by the petitioner and also found that either the fee was not collected from 31 students or their entries were not made in the cash receipts/cash book. Between 01.04.2015 and 04.04.2015, the petitioner voluntarily deposited the aforesaid amount of Rs.4,13,976/- with the respondent No.2/BSF Polytechnic. On receiving the report of the Board of officers, respondent No.1 passed an order dated 20.4.2015 appointing a Staff Court of Inquiry (SCOI) to investigate into the circumstances relating to misappropriation of the education fee deposited by the students of the respondent No.2/BSF Polytechnic.

4. The SCOI conducted an inquiry wherein six witnesses were examined, including, Dr. Nirbhay Kumar, performing the duties of Head Admin. in the respondent No.2/BSF Polytechnic; Mr. Vijay Kumar Yadav, DC, performing the duties of OIC Polytechnic and Adjutant; Mr. Karan Singh, DC having the charge of DDO of the respondent No.2/BSF Polytechnic; Mr. Amit Chand, DC, performing the duties of OC CEW and Mr. Sohan Singh Negi, UDC/Accountant in the respondent No.2/BSF Polytechnic. Lastly, the petitioner was examined.

5. After examining the aforesaid witnesses and the petitioner, the SCOI found that the petitioner was blameworthy and held that he had

misappropriated a sum of Rs.4,13,976/- from the education fee collected from the students. Resultantly, the SCOI recommended that strict disciplinary action be taken against the petitioner in terms of the provisions of the BSF Education Code. Other remedial measures were also suggested by the SCOI in terms of the order dated 20.4.2015.

6. Vide order dated 8.7.2015, an additional SCOI was constituted to investigate and collect evidence on how many students had actually deposited the fee with the respondent No.2/BSF Polytechnic for the period between 1.7.2014 to 31.12.2014 and ascertain as to whether the claim of 31 students that they had deposited the fees was correct and if so, establish the extent of amount deposited by them.

7. The proceedings of the additional SCOI were conducted on 27.8.2015 wherein several witnesses were examined and the petitioner was recalled for his cross-examination. The additional SCOI discovered that out of 270 students studying in the respondent No.2/BSF Polytechnic, the fee of 31 students had not been deposited in the bank account of the Polytechnic between 1.7.2014 to 31.12.2014. The petitioner was found blameworthy for improperly maintaining the accounts of the respondent No.2/BSF Polytechnic and for collecting fee from 22 students without issuing them any fee receipt, thereby misappropriating a sum of Rs.3,74,989/-. The said additional SCOI recommended that a sum of Rs.3,74,989/- be recovered from the petitioner and strict disciplinary action be taken against him for misappropriating the fees of the students.

8. On receiving the report of both the SCOI's, a notice was issued to the petitioner on 18.09.2017, calling upon him to show cause as to why his services ought not be terminated. Vide letter dated 3.10.2017, the petitioner

submitted a detailed reply to the said notice to show cause. After examining the records, including the statements of the witnesses and the proceedings held before both the SCOI's and on considering the petitioner's representation, the Chairman of the respondent No.2/BSF Polytechnic passed the impugned order dated 30.10.2017, terminating his services.

9. The relevant observations made in the impugned order dated 30.10.2017 relating to the misappropriation of funds on the part of the petitioner are extracted herein below for ready reference:-

"4. Whereas, a Staff Court of Inquiry (SCOI) was ordered by FHQ BSF (AdmDte) to investigate into the circumstances under which misappropriation of the fee deposited by the students of BSF Polytechnic, Tigri and its further accounting / depositing in account / bank took place. The above said SCOI found Sh. Bhuwan Chandra Upadhyay, LDC blameworthy for failure to perform the duty of Accountant diligently, honestly and as per laid down procedure and misappropriation of a sum of Rs.4,13,976/- from the amount deposited by the students on account of education fees and further recommended to take strict disciplinary/legal action against Sh. Bhuwan Chandra Upadhyay, LDC; and

5. Whereas, it was further observed that most of the students, out of 31 students whose names were pointed out by the BOO, already deposited their fees with Sh. Bhuwan Chandra Upadhyay, LDC but he did not issue any cash receipt to them. Accordingly, an additional SCOI was conducted to investigate into the matter and to find out the factual position about depositing of fees by the students and the above said additional SCOI found that out of 270 students studying in BSF Polytechnic, Tigri, New Delhi, during the period from 01st Jul'2014 to 31st Dec'2014, fee of 31 students was not deposited in the bank account of BSF Polytechnic, Tigri, New Delhi. The said Court also found Sh. Bhuwan Chandra Upadhyay, LDC blameworthy for not maintaining fee account of the Polytechnic

properly and collection of fee from 22 students without issuing them fee receipt and thus misappropriated an amount of Rs.3,74,989/- i.e. the amount collected from said 22 students on account of fee. The above said Addl SCOI further recommended to recover the said amount of Rs.3,74,989/- from Sh. Bhuwan Chandra Upadhyay, LDC and to take strict disciplinary action against Sh. Bhuwan Chandra Upadhyay, LDC for misappropriating fee fund of BSF Polytechnic, Tigri."

10. The main thrust of the arguments addressed by Mr. Swain, learned counsel for the petitioner to assail the impugned order dated 30.10.2017 is that great prejudice has been caused to the petitioner as the respondents did not conduct any disciplinary inquiry against him and the competent authority has simply relied on the proceedings of the SCOI while passing the impugned order. He submits that the aforesaid act of the respondents is in gross violation of the fundamental rights of the petitioner who has been deprived of an opportunity to put forth his case before an Inquiry Officer and produce witnesses in his defence.

11. On the last date of hearing, Ms. Shiva Lakshmi, learned counsel for the respondents had sought time to obtain instructions. Today, she hands over a set of documents, including the opinion of the First Court of Inquiry, the Second Court of Inquiry, the notice to show cause issued to the petitioner, his reply thereto, etc. Most of the said documents have already been filed with the petition. Learned counsel for the respondents particularly draws our attention to the relevant extract of Chapter VII of the BSF Education Code that deals with disciplinary action. Rule 7.11 (3) (iii) and (iv) that are relevant for this case, are reproduced herein below :

"7.11. Disciplinary action: (3) (iii) In case the employee does not improve and repeats the same or any other misconduct the

supervising authority may issue a show cause notice proposing minor penalty of censure or stopping of increment/EB as to why action should not be taken against him for the misconduct/undesirable behaviour. On receipt of reply the Supervising Authority may drop the case or recommend the case for suitable orders to the Chairman in the case of school employees and DD (Adm.) in case of FHQ employees. They may examine the case & issue the orders.

(iv) If an employee does not improve his behaviour and conduct even after the award of minor penalty, the Supervising Authority may issue a show cause notice to the employee for terminating his services, clearing indicating the allegations/charges levelled against him. On receipt of reply within a reasonable period he may if satisfied drop further proceedings, otherwise recommend the case indicating the gravity of offence to the Chairman in the case of school employees & DD (Adm.) in case of FHQ employees. In the case of school employees the Chairman may call a meeting of the local Management Committee and place the whole issue before it for deliberations and decisions. In case of FHQs employees a meeting of the Sub-Committee shall be called which will consider the recommendation & take decision on the case. The decisions in both the cases shall be communicated in writing to the individual concerned. In case it is decided to terminate his services, the normal rules of termination of services and laid down procedure shall be followed, i.e. one month's notice or one month's salary in lieu thereof in case of unconfirmed employees and 3 months notice or 3 months salary in lieu thereof in case of confirmed employees."

12. Relying on the aforesaid provisions, learned counsel for the respondents submits that as per the procedure prescribed under the Rules, in the case of school employees like the petitioner herein, whose reply to the notice to show cause was not found satisfactory, the Chairman of the respondent No.2/BSF Polytechnic is required to call a meeting of the Local

Management Committee and place the whole issue before it for deliberation and a decision. In the present case, the said procedure was scrupulously followed inasmuch as a meeting of the Local Management Committee of the respondent No.2/BSF Polytechnic was convened on 25.10.2017 to discuss the petitioner's case. The minutes of the said meeting placed at page No.12 of the compilation handed over by learned counsel for the respondents clearly records that a detailed deliberation and discussion was undertaken by the Committee comprising of seven members, who took a unanimous view that it is a fit case where the services of the petitioner ought to be terminated and a suitable replacement provided to the respondent No.2/BSF Polytechnic.

13. At this, learned counsel for the petitioner argues that Dr. Nirbhay Kumar, Senior Lecturer/Coordinator of the respondent No.2/BSF Polytechnic was biased against the petitioner for the reason that he had made a complaint against him and therefore his inclusion in the Local Management Committee vitiates the entire proceedings. On enquiring from the counsel for the petitioner as to the date of the complaint and the nature of the allegations/bias levelled against the aforesaid officer, he submits that the incident in question relates back to the year 2008, when the petitioner had barely joined the respondent No.2/BSF Polytechnic.

14. We are not impressed with the aforesaid submission. For the petitioner to allege a bias against the aforesaid officer and that too in respect of some incident dating back to the year 2008, can hardly be of any consideration when the inquiry in this case relates to the year 2015. Further, the BSF Education Code governs the petitioner who is an employee of the Polytechnic and the said Code prescribes the procedure for taking

disciplinary action against a delinquent employee, which we find has been meticulously followed in this case. We do not find any procedural irregularity committed by the respondents before passing the impugned order, that would warrant any interference.

15. As for the contention of the learned counsel for the petitioner that the petitioner was not afforded an opportunity to produce any witness in his defence and the witnesses who had appeared in the first SCOI and the additional SCOI were all interested parties, we have carefully gone through the proceedings conducted by both the SCOIs and find that the same are fairly lengthy and comprehensive. Several witnesses were examined in both the SCOIs and their statements were recorded at length. While some of the witnesses summoned were officers/employees of the respondent No.2/BSF Polytechnic, others, who were summoned, were students of the Polytechnic, who had not been issued receipts by the petitioner. We see no reason to disbelieve the deposition of the said witnesses as recorded in the first SCOI and the additional SCOI. Moreover, we find from the records that the petitioner was afforded an opportunity to cross-examine the witnesses who had deposed against him as also make a statement. The petitioner was specifically asked if he wanted to call any witnesses in his defence in the first SCOI and the additional SCOI and on both the occasions, he not only declined to cross-examine the witnesses, he stated that he did not wish to call any witness in his defence. In such circumstances, it has to be held that the allegations levelled by the petitioner that the witnesses were biased against him or that he was not afforded an opportunity to cross-examine them and produce his witnesses, falls flat.

16. Fact of the matter is that the Board of Officers, which was detailed to

verify the receipts and ascertain the exact amount entered in the cash book and deposited in the bank account of the respondent No.2/BSF Polytechnic and to identify the number of students left out whose fee had not been deposited, had submitted a finding to the effect that a total sum of Rs.17,12,369/- (Rs.12,98,391/- + Rs.4,13,978/-) had been recovered from two suitcases in the almirah placed in the petitioner's office that were code locked and opened by him and he had no valid explanation to offer for such a large amount lying there, except for making a bald statement that he had kept the cash in his office almirah since he was busy preparing for his competitive examination. It is also a matter of record that later on, during the course of the enquiry, the petitioner had voluntarily deposited a sum of Rs.4,13,978/- in the account of the respondent No.2/BSF Polytechnic, being the amount found deficient. Pursuant to the report of the additional SCOI, a sum of Rs.3,74,989/- was recovered from the petitioner, which was the sum total of the fees that he had collected from 22 students without issuing them a receipt and had proceeded to pocket the said amount.

17. In view of the aforesaid facts and circumstances, we do not find any infirmity in the impugned termination order dated 30.10.2017 passed by the respondents. The view expressed in the impugned order dated 30.10.2017 is backed by adequate evidence and detailed disclosures that do not deserve any interference. The present petition is therefore dismissed as meritless. Parties are left to bear their own expenses.

HIMA KOHLI, J

REKHA PALLI, J

JANUARY 10, 2018/sk/rkb/na