

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 15.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.35854 of 2004

T.Mani

...Petitioner

V.

- 1.Union of India
rep. by the Secretary,
Ministry of Home Affairs,
North Block,
New Delhi-110 114.
- 2.The Deputy Inspector General (Personnel),
Block No.10, V Floor,
C.G.O. Complex, Lodhi Road,
New Delhi-110 003.
- 3.The Inspector General,
Border Security Force (South Bengal),
2B-Lord Sinha Road,
Kolkatta-700 071.
- 4.The Additional Deputy Inspector General
(Confidential),
Directorate General Border Security Force,
Block No.10, V Floor, CGO Complex,
Lodhi Road, New Delhi-110 003.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records relating to the communication No.C-14011/86/2001/CC/Pers/BSF/2389-91 dated 09.09.2004 sent by the fourth respondent informing the rejection of appeal by the first respondent filed by the petitioner and confirming the order passed by the second respondent dated 21.04.2004 in his order No.C-14011/86/2001/CC/Pers/BSF/16459-525, quash the same and direct the respondents to reinstate the petitioner as Commandant in the Border Security Force with all monetary benefits.

For Petitioner : Mr.M.Mohamed Ibrahim Ali

For Respondents: Mr.D.Simon, CGSC

O R D E R

The petitioner herein, who had been levelled with certain charges of dishonest practices and alleged involvement in smuggling activities, has been imposed to the punishment of termination of his services by an order dated 21.04.2004 pursuant to the enquiry conducted by the Staff Court of Inquiry (SCOI), which order is under challenge in the present Writ Petition.

2. Heard Mr.M.Mohamed Ibrahim, learned counsel for the petitioner and Mr.D.Simon, learned Central Government Standing Counsel appearing on behalf of the respondents.

3. The brief facts of the case is as follows:

a) The petitioner herein, who had originally joined in the Border Security Force (BSF) in the year 1983 was subsequently promoted to various cadres and ultimately was posted as Commandant on Border Duties to Malda in the year 2001. On 03.01.2002, the petitioner was placed under suspension for alleged acts of omission and commission. Subsequently, the charges were enquired by the SCOI, which found the petitioner blameworthy, for connivance with the local smugglers of the area of responsibility of the Battalion and accepting illegal gratification from them in lieu of providing them safe passage to carry out smuggling activities in the area of his responsibility. On 21.04.2002, an additional SCOI was ordered. Based on the inquiry conducted, the petitioner was issued with the show cause notice on 21.08.2002, for tentative proposal of termination of his services under Rule 20 of the Border Security Force Rules, 1969 (BSF Rules). After submitting a reply dated 24.09.2002 to the show cause notice, the petitioner had filed the Writ Petition in W.P.3362 (W) of 2003 before the Kolkata High Court and while passing final orders in the Writ Petition, the Kolkata High Court had directed the department to finalise the matter under BSF Rule 20, within six weeks.

b) The case of the petitioner was thereafter examined by the BSF and a decision was taken to modify the punishment of termination of his services into one of compulsory retirement with pensionary benefits. On 20.02.2004, the decision to modify the petitioner's punishment into one of compulsory retirement was addressed to the Ministry of Home Affairs (MHA) for approval. However, the MHA, by the impugned order dated

21.04.2004, ordered for termination of the petitioner's services, which is under challenge in the present Writ Petition.

4. Though the petitioner herein had raised several grounds touching upon the mode of conduct of procedures adopted by the SCOI, the learned counsel for the petitioner submitted that he is only questioning the punishment of termination of services and that he would be satisfied with the punishment of compulsory retirement. That leaves this Court with the issue as to whether his punishment of termination of services is proportionate to the charges levelled against the petitioner.

5. When a show cause notice was issued to the petitioner on 21.08.2002, proposing to terminate his services under Rule 20 of the BSF Rules, the petitioner herein had challenged the same before the Kolkata High Court in W.P.3362 (W) of 2003, the High Court, while disposing of the Writ Petition, directed the Department and the Government to finalise and take a decision under BSF Rule 20 within 6 weeks. The High Court had observed in its order dated 29.08.2003 that at the stage of the show cause notice, it was the duty of the Director General to make an appropriate recommendation and once such a recommendation is made, the Central Government is obliged to discharge the terms of Sub Rule (5) of Rule 20 of the BSF Rules. It was further observed therein that the Director General was required to discharge his obligations in terms of Sub Rules 3 & 4 of Rule 20, within a reasonable time with a further requirement to the Central Government to discharge his obligation under Sub Rule 5 of Rule 20, within a reasonable time. The reasonable time prescribed was restricted to 6 weeks in the case of Director General, as well as the Central Government.

6. Though the order was passed on 29.08.2003, the decision taken by the Director General to modify the punishment of termination of services into one of compulsory retirement was forwarded to the Central Government on 24.02.2004, after about 6 months. Thereafter, the Central Government had examined the case and decided to terminate the services of the petitioner by way of removal from service without pensionary benefits under Rule 20 (4)(b) of the BSF Rules on 02.04.2004. The consequent impugned order then came to be passed on 21.04.2004. The manner in which the petitioner's case has been dealt with by the Director General, as well as the Central Government clearly reveals that the six weeks time stipulated by the Kolkata High Court has been clearly violated. As a matter of fact, the High Court of Kolkata, while directing the Director General, as well as the Central Government to take a decision of the matter, within a stipulated time went to the extent of clarifying as to what the reasonable time should be and thereby restricted it to six weeks. Thus, the impugned order in the present Writ

Petition deserves to be interfered with, in the light of the aforesaid violation.

7. It is also seen that pursuant to the orders of the Kolkata High Court dated 29.08.2003, the petitioner's case was taken up by the Head Quarters with the request of the Central Government on 14.10.2003 that the process of termination of services of the petitioner under Rule 20 may be cancelled and that the disciplinary action, as provided under the BSF Act and Rules, should reach its logical conclusion. Thereafter, it is seen from the records that the respondents had chosen to obtain a legal opinion on 31.10.2003 and after examination and due consideration of the services of the petitioner, as well as the facts and circumstances of the case in totality, a decision was taken that the petitioner's retirement from service will suffice to meet the ends of justice and accordingly, the Director General, BSF, had recommended the case of petitioner to the Central Government to retire him compulsorily from his service, with pensionary benefits. Such a decision has been overruled by the Central Government through a non speaking order dated 02.04.2004. When the Director General had come up with a recommendation based on the facts and circumstances of the case in totality, as well as on consideration of the past services of the petitioner for modifying the punishment into one of compulsory retirement, there is a duty cast upon the Central Government to justify as to why such a recommendation need not be accepted. It requires to be borne in mind that the case of the petitioner pursuant to the show cause notice has been dealt with by the respondents in view of the directions of the Kolkata High Court, which had called upon these respondents to adhere to the procedures contemplated under the BSF Rules. While that being so, there is absolutely no justification on the part of the Central Government to reject the recommendation of the Director General to have the punishment of termination from services without pensionary benefits, into one of compulsory retirement. While that being so, such a non speaking order requires to be interfered with.

8. In the light of all the aforesaid reasons, this Court is of the view that the petitioner's punishment of termination of services without pensionary benefits is not in conformity with the procedure contemplated under the BSF Rules and therefore, requires interference.

9. In the light of the above observations, the communication No.C-14011/86/2001/CC/Pers/BSF/2389-91 dated 09.09.2004 sent by the fourth respondent informing the rejection of appeal by the first respondent and confirming the order passed by the second respondent dated 21.04.2004 in his order No.C-14011/86/2001/CC/Pers/BSF/16459-525 is hereby set aside.

Consequently, the petitioner's punishment of termination of his services is modified into one of compulsory retirement. In pursuant to such a modification, the petitioner herein shall be entitled to all monetary and other benefits he would otherwise be entitled to, if a punishment was not imposed at all. In view of the same, the first respondent herein is directed to disburse all the monetary benefits, as well as the pensionary benefits to the petitioner, as expeditiously as possible, in any event, within a period of three months from the date of receipt of a copy of this order.

10. With the above observations and directions, the Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

DP

To

- 1.The Secretary,
Union of India
Ministry of Home Affairs,
North Block,
New Delhi-110 114.
- 2.The Deputy Inspector General (Personnel),
Block No.10, V Floor,
C.G.O. Complex, Lodhi Road,
New Delhi-110 003.
- 3.The Inspector General,
Border Security Force (South Bengal),
2B-Lord Sinha Road,
Kolkatta-700 071.

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4.The Additional Deputy Inspector General
(Confidential),
Directorate General Border Security Force,
Block No.10, V Floor, CGO Complex,
Lodhi Road, New Delhi-110 003.

+lcc to M/S.M.Md.Ibrahim Ali, Advocate Sr.37245

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rk[co]
srg 28/06/2019



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