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

Date of Decision: 22.10.2021

+ W.P.(C) 11866/2021

EX CT WC RINKU SINGH

..... Petitioner

Through Mr.Aman Mudgal, Adv.

versus

UNION OF INDIA THROUGH ITS SECRETARY & ORS.

..... Respondents

Through Mr.Anil Soni, Adv.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

The petition has been heard by way of video conferencing.

CM 36709/2021(exemption)

Allowed, subject to all just exceptions.

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1. This petition has been filed by the petitioner challenging the order dated 12.09.2020 passed by the Commandant, 100 BN, BSF directing compulsory retirement of the petitioner from service under Rule 26 of the Border Security Force Rules, 1969 (hereinafter referred to as the 'Rules') with effect from 12.09.2020. The petitioner further

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challenges the order dated 13.01.2021, passed by the respondent no.3, dismissing the petition of the petitioner in challenge to the above order, and communications dated 12.02.2021 and 31.03.2021, informing the petitioner of such dismissal of his petition.

2. It is the case of the petitioner that the petitioner was enrolled as a Water Carrier in the Border Security Force (hereinafter referred to as 'BSF') in the year 2014. For the first two years, he was posted in Jammu & Kashmir (Kupwada & Srinagar) with no complaints. However, for reasons best known to the Commandant 100 BN, BSF, the petitioner's APAR entries were downgraded and ten punishments were awarded to him during the period 2017 to May, 2020. The petitioner further asserts that the same Commandant then went on to pass the impugned order dated 12.09.2020, directing compulsory retirement of the petitioner from service. The petitioner asserts that his appeal/representation/petition against the said order was also rejected without appreciating the contentions raised in such appeal/representation/petition.

3. The learned counsel for the petitioner submits that the punishments awarded to the petitioner as also his downgrading of APAR has been done by the same Commandant and therefore, should not be taken at face value. He further submits that the appeal/representation/petition of the petitioner against the order dated 12.09.2020 has been dismissed without appreciating the contentions raised by the petitioner in such appeal/representation/petition. He submits that the petitioner was facing critical conditions at home with

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his son, wife, father and grandfather all being unwell and therefore, a compassionate view should have been taken in the matter.

4. To a pointed query of this Court as to whether the punishments awarded to and the APAR entries of the petitioner were challenged by the petitioner, the learned counsel for the petitioner fairly admitted that the same remained unchallenged, however, gave an explanation that in the Forces, the Commandant is considered like a father and no one raises a protest against his decision.

5. We have considered the submissions made by the learned counsel for the petitioner, however, find no merit in the same.

6. Rule 26 of the Rules is quoted herein below:

“26. Retirement of enrolled persons on grounds of unsuitability.- Where a Commandant is satisfied that an enrolled person is unsuitable to be retained in the Force, the Commandant may, after giving such enrolled person an opportunity of showing cause (except when he considers it to be impracticable or inexpedient in the interest of security of the State, to give such opportunity), retire such enrolled person from the Force.”

7. In the present case, the order dated 13.01.2021 dismissing the appeal/representation/petition of the petitioner records that in a period of service of 6 years, 4 months and 17 days, the petitioner has earned 10 punishments and has also overstayed leave five times. The order further notes that in the last seven years’ assessment of the petitioner, his APARs have been ‘Good and Average’ with the last two years being ‘Average’. The Order records as under:

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“4. Whereas, on examination of Service Record of the petitioner, it was revealed that following punishments were imposed on the petitioner during his service:-

(i)	07 days RI on 07.12.2016 for Offences committing U/s -26 of BSF Act 1968- Intoxication.
(ii)	14 days RI on 08.06.2017 for Offences committing U/s -19 (a) & 26 of BSF Act 1968 - Absenting himself without Leave and Intoxication
(iii)	14 days RI on 30.08.2017 for Offence committing U/s -26 of BSF Act 1968- Intoxication.
(iv)	07 days RI on 08.12.2017 for Offence committing U/s -19 (b) of BSF Act 1968 - Without sufficient cause overstaying leave granted to him.
(v)	07 days RI on 23.02.2018 and 07 days Pay fine for the M/o Mar' 2018 for Offence committing U/s -19 (b) of BSF Act 1968 - Without sufficient cause overstaying leave granted to him.
(vi)	07 days RI on 08.05.2018 for Offence committing U/s -19 (b) of BSF Act 1968- Without sufficient cause overstaying leave granted to him.
(vii)	07 Days RI on 31.08.2018 for Offence committing U/s 19 (b) of BSF Act 1968- Without sufficient cause overstaying leave granted to him.
(viii)	07 Days RI on 12.07.2019 for Offence committing U/s -19 (b) of BSF Act 1968- Without sufficient cause overstaying leave granted to him.
(ix)	07 Days Pay fine from the M/o Mar' 2020 on 02.03.2020 for Offence committing U/s -19 (b) of BSF Act 1968- Without sufficient cause overstaying lave granted to him.

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(x)	28 Days RI on 07.06.2020 and 14 days fine for the M/o July 2020 for Offence committing U/s-40 of BSF Act 1968- An Act Prejudicial to good order and Discipline of the force.
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5. Whereas, the Gradings endorsed in the Annual Performance Assessment Report of the petitioner for the last 07 years has also been examined and tabulated below:-

S.NO.	APAR YEAR	REMARKS
i)	2014-15	Good
ii)	2015-16	Good
iii)	2016-17	Good
iv)	2017-18	Good
v)	2018-19	Good
vi)	2019-20	Average
vii)	2020 (01.04.20 to 12.09.20)	Average

6. Besides above, on five occasions, period of his overstayed from leave were regularized by the unit by granting leave of kind due, which are as under:

- (a) 13 Days OSL w.e.f 03.12.14 to 15.12.14
- (b) 21 Days OSL w.e.f 15.09.16 to 05.10.16
- (c) 04 Days OSL w.e.f 01.01.17 to 04.01.17
- (d) 05 Days OSL. w.e.f 22.02.17 to 26.02.17
- (e) 19 Days OSL w.e.f 08.07.17 to 26.07.17.”

8. In view of the above observations which have not been challenged by the petitioner, we find no infirmity in the orders passed by the respondents. It is to be emphasized that the decision to order compulsory retirement is upon the subjective satisfaction of the appropriate Authority. The Court does not sit in appeal against such decision. The exercise of power of judicial review is on well-settled principles of law and unless the decision is shown to be actuated by

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mala fide or otherwise being arbitrary or in violation of principles of natural justice, cannot be interfered with.

9. As far as the allegation of the punishments being awarded by one single Commanding Officer who also gave the APAR grading for the years 2019-2020 and 2020 and finally took the decision to compulsorily retire the petitioner vide impugned order dated 12.09.2020 is concerned, the same does not satisfy the test of the sufficient particulars as required to be pleaded in support of an allegation of *mala fide*. In fact, no factual foundation for alleging *mala fide* has been pleaded in the petition. The same are also to be disregarded in absence of the concerned Commandant being arrayed as a respondent in the petition. Reference in this regard is made to the judgment of the Supreme Court in ***Purushottam Kumar Jha vs. State of Jharkhand*** (2006) 9 SCC 458.

10. As far as the family circumstances of the petitioner are concerned, having considered the punishments awarded to the petitioner, his APAR gradings, and his conduct of overstaying from leave, we do not find the respondents to have taken an unreasonable stand in the impugned orders.

11. In view of the above, we find no merit in the present petition. The same is dismissed.

12. There shall be no order as to costs.

NAVIN CHAWLA, J

MANMOHAN, J

**OCTOBER 22, 2021
RN/AB**



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