

51.
4.5.2023
S.D.

W.P.A. 1800 of 2023

Amiyo Mondal @ Mandal
Vs.
Union of India & Ors.

Mr. Mahadeb Ghosh
Mr. Nandadulal Bandopadhyay
Mr. Pritam Ghosh

.....For the petitioner

Mr. Rajendra Banerjee

..For the Union of India

The grievance of the petitioner is that he has been dismissed from services only on the basis of a show-cause notice and a reply thereto, without initiation of disciplinary proceedings. The petitioner worked as a Constable (G.D.) with the Border Security Force (BSF) since April 19, 2013. A criminal case was instituted before the CBI Court. A case was registered against the petitioner on May 15, 2020, under Section 120B of the IPC and Sections 7 and 7(a) of the Prevention of Corruption Act.

A show-cause notice was issued by the authorities concerned/BSF on October 20, 2021. The petitioner replied to the said show-cause notice on November 19, 2021.

Mr. Ghosh, learned counsel appearing on behalf of the petitioner submits that during the pendency of the CBI

proceedings, the petitioner should not have been dismissed from services. In the event, the petitioner is acquitted in the CBI case, then his termination from services would be wrongful.

He further submits that the petitioner has been used as an intermediary by his higher officials. The petitioner voluntarily has not committed any act of “*misconduct*”.

Mr. Banerjee, learned counsel appearing on behalf of the respondents submits that no procedural impropriety has been conducted in termination of petitioner’s service. He draws the attention of this Court to the reply to the show-cause wherein the petitioner has himself admitted that due to tremendous pressure from his seniors, he collected money/bribe for one Dr. Paritosh Verma under whom, he was working as a security aide at the relevant point in time. He also referred to one constable, Ajeet Singh who provided the petitioner money for clearance of medical certificates through Dr. Verma, by declaring candidates who were “**unfit**” for recruitment to be as “**fit**” for recruitment. In the reply to the show cause it was urged that since the petitioner did not use the said amount of his personal gain, his case should have been considered sympathetically by the BSF authorities.

He submits that under Rule 22 of the BSF Rules, the members of the Force other than the officers could be dismissed/removed from service, on account of misconduct upon giving an opportunity by the authority competent to dismiss/remove him, to show-cause in the manner specified under sub-rule (2) of the said Rule.

Rule 22(2) is reproduced hereinafter:-

“(2) When after considering the reports on the misconduct of the person concerned, the competent authority is satisfied that the trial of such a person is inexpedient or impracticable, but, is of the opinion that his further retention in the service is undesirable, it shall so inform him together with all reports adverse to him and he shall be called upon to submit, in writing, his explanation and defence;

Provided that the competent authority may withhold from disclosure any such report or portion thereof, if, in his opinion, its disclosure is not in the public interest.”

In the present case, after considering the reply to the show-cause and all the materials on record, the authorities concerned were of the view that further retention of the petitioner in the service is undesirable. Therefore, the petitioner was dismissed from service.

Considering the rival submissions of the parties and the materials placed on record, this Court finds that there is no arbitrariness or capriciousness or perversity in the order dated March 31, 2022 whereby the petitioner was **dismissed**

from service or the order of the Appellate Authority dated November 30, 2022.

From the show-cause dated October 20, 2021, it appears that a total amount of 3,20,000/- was deposited in the bank account of the petitioner from January 13, 2020 till January 28, 2020. Between January 15, 2020 and between January 25, 2020, the petitioner transferred a sum of Rs.1,00,000/- to the bank account of Dr. Paritosh Verma and Rs.70,000/- to the bank account of his wife. The remaining amount of Rs.1,50,000/- was retained in the petitioner's bank account. This Court is of the view that the petitioner has been correctly dismissed from services being a member of the Force who was required to display exemplary honesty and integrity, which the petitioner failed to do. This Court also does not believe the purported defence that the remaining sum of Rs.1,50,000/- was retained by the petitioner to be handed over to Dr. Verma as and when required by him, because of the long time gap between the time the money was collected by him and the issuance of show-cause. Even if it is assumed that the money was collected at the behest of Dr. Verma for his gain only, still the petitioner cannot be absolved of the liability of aiding and abetting the offence of

corruption. Instead of reporting the '**misconduct**' to his superiors he facilitated the same

Upon perusal of documents produced in Court on behalf of the respondent authorities, it is clear that the petitioner got an opportunity to present his defence and to cross-examine Dr. Verma as well as Constable Ajeet Singh. Therefore, this Court is of the view that no procedural impropriety has been committed in conducting the proceedings against the petitioner as per the Border Security Force Rules, 1969.

The petitioner has sought to rely on purported breach of principles of Natural justice when there is no such breach in the facts of the case.

The Writ petition being **W.P.A. 1800 of 2023** is utterly misconceived and is hereby **dismissed**.

Since no affidavits have been directed to be exchanged in the present writ petition, all the allegations contained in the petition are deemed not to have been admitted by the parties.

All parties shall act on the server copy of this order duly downloaded from the **website** of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all the formalities.

(Lapita Banerji, J.)