



2024:DHC:8929-DB



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

Reserved on: 21.10.2024
Pronounced on: 20.11.2024

+ W.P.(C) 4629/2019
ROHIT SINGH

.....Petitioner
Through: Mr. Ankur Chhibber,
Mr. Anshuman Mehrotra and
Mr. Nikunj Arora, Advs.

versus

UNION OF INDIA & ORS.Respondents
Through: Mr. Jaswinder Singh and
Ms. Shipra Shukla, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

NAVIN CHAWLA, J.

1. This Petition has been filed by the petitioner praying for the following relief:

“i. Issue a Writ of Certiorari for quashing of order dated 21.09.2015 whereby the Petitioner was issued Displeasure awarded by DG, BSF and for quashing the order dated 03.05.2017 whereby the Respondents rejected the representation of Petitioner against the advisory remarks in the APAR for the period from 01.04.2015 to 31.03.2016 and for quashing the order dated 27.12.2018 whereby the Respondents rejected the representation of Petitioner requesting for withdrawal of Displeasure awarded by DG, BSF.



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ii. Issue of Writ of Mandamus directing the Respondents to expunge the adverse remarks for the period 01.04.2015-31.03.2016 and to upgrade the gradings in the said APAR and to promote the Petitioner to the rank of Deputy Commandant from the date his juniors were appointed with all consequential benefits.”

Brief Facts:

2. It is the case of petitioner that the petitioner was inducted in the Indian Navy as a sailor on 27.07.2004. During his term in the Indian Navy, the petitioner applied for the post of Assistant Commandant in the Central Armed Police Forces (in short, ‘CAPF’). On being successful in the assessment for the said post, the petitioner joined the Border Security Force (in short, ‘B.S.F.’) on 20.10.2011, and consequently, underwent Basic Training from 20.11.2011 to 14.10.2012 at the BSF Training Centre in Tekanpur. On successful completion of the Basic Training Course, on 15.11.2012, the petitioner was posted to 63 Bn B.S.F. Melteram under Frontier B.S.F.M&C, where he remained posted till 04.05.2013. During his posting at 63 Bn Mizoram, the petitioner got married to Smt. X (name withheld) and stayed with her at 63Bn, Mizoram, where the petitioner was posted.

3. It is averred that the wife of the petitioner stayed with him for 24 days only and thereafter, left him stating that she had her M.Com exams. It is asserted that the wife of the petitioner got pregnant during her stay at Mizoram, however, in February 2013, when she was at her parent’s house, she aborted the child without the consent of petitioner. The wife of the petitioner returned back to stay with the petitioner on



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30.11.2013, however, again on 04.02.2014, she left the petitioner without assigning any reason.

4. It is asserted that while the petitioner was posted at 158 Bn B.S.F., Tripura in the year 2014, a complaint dated 20.06.2014 was filed by Smt. X, the wife of the petitioner, to the office of the SPL. DG B.S.F. Kolkata inter alia stating that the petitioner, on 21.12.2013, brought a service revolver to the official residence allotted to him at 158 Bn B.S.F., Tripura, and tried to kill her.

5. Based on the complaint dated 20.06.2014, filed by the wife of the petitioner, vide Letter bearing No. Estt./158Bn/2014/68 dated 23.06.2014, a factual report regarding the alleged firing incident was sought from the petitioner by the Commandant of the 158 Bn B.S.F. A detailed inquiry was also ordered against the petitioner by the Commandant of the 158 Bn B.S.F.

6. Subsequently, the Deputy Inspector General SHQ, BSF, Gokulnagar, vide its Order bearing No. PA/DIG GKNR/66/SCOI/RK-158 Bn/B.S.F./9055-59 dated 22.07.2014, directed a Staff Court of Inquiry (hereinafter referred to as 'SCOI') to be conducted against the petitioner qua the allegations levied by the wife of the petitioner.

7. The petitioner asserts that the SCOI in its initial report and the Additional Findings, though found the allegations made against the petitioner by his wife to be false, however, stated that the service pistol kept by him in the government quarters was contrary to the instruction on the subject and as such disciplinary action be taken against the petitioner.



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8. Thereafter, the Deputy Inspector General of BSF served a Show Cause Notice dated 13.02.2015 (hereinafter referred to as the 'Show Cause Notice') to the petitioner calling upon the petitioner to show cause as to why the DG's Displeasure be not conveyed to him for his misconduct.

9. The petitioner, vide letter dated 22.07.2015, submitted his reply to the said show cause notice. In the said reply, the petitioner inter alia stated that being new to the Force, he was unaware about the rules and the SOP regarding not keeping a personal weapon on active duty in the residential quarters.

10. The Deputy Inspector General of BSF, vide its Order bearing No. L/No. C-14011/66/2014/CC/Pers/B.S.F./5155-60 dated 21.09.2015, rejected the reply of the petitioner to the Show Cause Notice, and conveyed the DG's Displeasure to the petitioner.

11. In the impugned APAR for the period 01.04.2015 to 31.03.2016, the Reporting Officer of the petitioner recorded the following remarks:

"A Well built and physically fit officer. His personal bearing and turn out is impressionable. He has Comm skill of required level and communicates clearly and easily. He needs to take Deptt SOPs and instructions seriously. In one of the violations, he has been served with DG's Displeasure."

12. The said advisory remarks in the APAR were duly communicated to the petitioner vide letter bearing No. FTR HQrs B.S.F. Tripura L/NO.IGA/PS/APAR-1658(8)/ ADR-158 Bn/16/932-36 dated 27.09.2016.



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13. The petitioner, vide a letter dated 24.01.2017, addressed to the SPL. Director General (East) B.S.F. Kolkata, West Bengal, submitted his representation against advisory remarks in the APAR of the petitioner for the period from 01.04.2015 to 31.03.2016.

14. The said representation of the petitioner was dismissed by the SPL. Director General (East) B.S.F. Kolkata, West Bengal vide Order bearing No. 1026/PS/SDG (EC)/CF-110/B.S.F./ 2017/635-39 dated 03.05.2017, observing that there was enough evidence on record to affirm that the petitioner has been accurately assessed by the Initiating, Reviewing, and the Accepting Authorities in the APAR and there is no cogent ground in the representation of the petitioner to interfere with remarks and the grading.

15. Thereafter, on 09.10.2017, the petitioner made a representation to the Director General B.S.F., CGO Complex, New Delhi against the above. However, the Director General of the B.S.F., vide its Order dated 27.12.2018, rejected the representation of the petitioner.

16. The petitioner has, therefore, approached this Court seeking setting aside of the Order dated 21.09.2015 of the Deputy Inspector General of BSF; Order dated 03.05.2017 of the SPL. Director General (East) B.S.F., Kolkata, West Bengal; Order dated 27.12.2018 of the Director General of the B.S.F.; and consequently, to expunge the adverse remarks and to upgrade the grading in the APAR for the period 01.04.2015-31.03.2016.

Submissions of the learned counsel for the petitioner:

17. The learned counsel for the petitioner contends that the SCOI



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has travelled beyond its mandates in rendering an opinion that an Advisory should be issued to the petitioner for keeping the service weapon with him at his government residential quarter. He submits that the SCOI had been ordered vide Order dated 22nd/23rd July, 2014, only to look into the allegation made by the estranged wife of the petitioner that the petitioner had tried to kill her with his service pistol while she was staying in the government allotted quarter inside the Campus of 158 Bn BSF, Fatikchera on 21.12.2013. He submits that in terms of Rule 172 of the Border Security Force Rules, 1969 (in short, 'BSF Rules'), the SCOI can only inquire into the matter for which it has been assembled by way of the order passed by the Competent Authority; it cannot go beyond its mandates and render an opinion on events for which it has not been appointed.

18. He submits that the SCOI, at best, could have done a fact-finding exercise, and by recommending disciplinary measures against the petitioner, the SCOI has transgressed its mandate and jurisdiction.

19. The learned counsel for the petitioner further submits that the SCOI in its additional report opines that the petitioner had kept his service pistol at his government allotted quarter contrary to the instruction on the subject, however, there is no reference to any specific instruction which prohibits keeping of a service weapon at the residential quarter which the petitioner is alleged to have violated. No such instructions were referred to even in the Show Cause Notice dated 13.02.2015 or in the Order dated 03.05.2017 by which the representation of the petitioner against the Advisory in the Impugned APAR has been rejected. He submits that in absence of clear



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instruction prohibiting the keeping of a service weapon along with the officer at the government quarter, the petitioner could not have been issued the Impugned Advisory.

20. He further submits that in any case, the petitioner was posted at a Border Out Post (BOP) and keeping in view the exigency of service at such place, it was common for the personnel to keep their service weapon with them at all times for their safety as also for the immediate response in case the situation so warrants.

21. He submits that, therefore, the DG's Displeasure and the Impugned Advisory issued to the petitioner are contrary to law and are liable to be set aside by this Court and so are the advisory remarks in his impugned APAR.

Submissions of the learned counsel for the respondents:

22. On the other hand, the learned counsel for the respondents submits that during the course of inquiring into the complaint of the wife of the petitioner, the SCOI found that the petitioner had breached the instruction which prohibits the keeping of the service weapon with him at his government quarter. He submits that, therefore, no fault can be found in the SCOI reporting this fact to the Competent Authority by way of its report/opinion. He submits that the reliance of the learned counsel for the petitioner on Rule 172 of the BSF Rules, therefore, is ill-founded.

23. He further submits that the petitioner in his reply to the Show Cause Notice or even in his representation against the Advisory in the Impugned APAR, did not contend that there were no instructions



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prohibiting keeping of the service weapon with the personnel at their government quarters. On the other hand, the petitioner stated that he had kept the service weapon with himself at his government quarter by mistake and since he was new in the post and was not aware of the instruction. He submits that it is for the first time in this petition that the petitioner is contending that there was no such instruction which prohibited keeping of the service weapon with the personnel at his government quarters.

24. He produced before this Court the “Instruction Regarding Security/Accounting/Loss of Arms /Accessories /Amn /Equipments” dated 31.10.2007 (hereinafter referred to as the ‘Instruction’), to submit that all personnel are allowed to keep their personal weapon or ammunition depending on the operational/maintenance need only, and for the remaining period, the weapons/ammunitions have to be deposited in Kotes/magazines. The instruction further provides that whenever the weapon is being issued to an individual for duty, the duration of which is likely to be more than 24 hours, then a special entry is to be made in Part-II register and is to be counter signed by the PI Commander. Therefore, there is a special procedure prescribed for a weapon to be kept for longer duration by personnel and generally it has to be deposited at the Kotes/magazine every time that the personnel completes his duty and proceeds for his residence.

25. The learned counsel for the respondents further submits that the detailed instructions in this regard have also been issued and, therefore, it is not open to the petitioner to contend that he was not aware of such instruction which prohibited him from keeping the



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service weapon with himself at his residence.

26. He submits that the reply to the Show Cause Notice and the representation against the Advisory issued in the APAR were duly considered by the Competent Authority before issuing DG's Displeasure and rejecting the petitioner's representation against his APAR. He submits that this Court cannot interfere with the same in exercise of its power under Article 226 of the Constitution of India, as the petitioner has failed to show any violation of statutory rules or instructions by the respondents.

Analysis and findings:

27. We have considered the submissions made by the learned counsels for the parties.

28. The petitioner does not deny that he had kept his service weapon with himself at his residence. Though, it is true that the SCOI that was constituted by way of Order dated 22nd -23rd July, 2014, was only to investigate the allegation levied by the wife of the petitioner against the petitioner, that is, the petitioner had tried to kill her with his service weapon at the allotted government quarter, the fact that the petitioner was indeed keeping the service weapon with himself at his residence also came to light during the SCOI. The SCOI, therefore, could not have ignored this finding only on the ground that it was not to inquire into these facts. It is an ancillary and important fact relevant to the mandate of the inquiry for which the SCOI has been constituted. Therefore, there was no violation of Rule 172 of the BSF Rules when the SCOI rendered its opinion on the petitioner keeping his service



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weapon with himself in contravention of the instruction.

29. As far as the allegation of the petitioner that there are no instruction which prohibit the keeping of the service weapon by a personnel at his/her residence, the learned counsel of the respondents has placed before us such instruction which clearly say that not only the weapon is to be deposited in the Kotes/magazines every time the officer completes his duty, but also if in case the weapon is to be handed over to the officer for long duration of over 24 hours, special entry in this regard is to be made and special permission in this regard is to be obtained. The learned counsel for the petitioner could not, in any seriousness, dispute these instructions when produced by the learned counsel for the respondents.

30. The submission of the learned counsel for the petitioner that the above instructions were neither stated in the SCOI opinion or in the Show Cause Notice, cannot come to the aid of the petitioner. The petitioner was Second-in-Command and in such an important position, he should have been aware of all the instructions especially with regard to his service weapon. In any case, ignorance of law is no excuse.

31. The submission of the learned counsel for the petitioner that the petitioner being posted at BOP was authorized to keep his service weapon with himself all the time due to exigency of service, also cannot be accepted. No such Rules or instruction has been brought to our notice by the learned counsel for the petitioner nor was any such exception found in the Instruction that have been produced before us by the learned counsel for the respondents.



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32. In view of the above, we do not find any merit in the present petition. The petition is accordingly dismissed. There shall no order as to costs.

NAVIN CHAWLA, J

SHALINDER KAUR, J

NOVEMBER 20, 2024/Arya/VS

Click here to check corrigendum, if any