



2024:DHC:8277-DB



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

Date of decision: 22.10.2024

+ W.P.(C) 14045/2021 & CM APPL. 44353/2021

SANDEEP KUMAR SINGH

.....Petitioner

Through: Mr. Anoj Kr. Singh, Ms.
Smridhi Babbar, Ms. Arpita
Awasthi and Mr. Ashok Kumar,
Advs.

versus

**UNION OF INDIA THROUGH MINISTRY OF HOME
AFFAIRS & ANR.**

.....Respondents

Through: Mr Satya Ranjan Swain, SPC
with Mr Kautilya Birat and Mr.
Ankush Kapoor, Advs. for UOI
(through VC)

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed by the petitioner challenging the Order dated 04.07.2020 passed by the respondents, whereby, the petitioner was compulsorily retired from the service with effect from 04.07.2020 on the ground of unsuitability under Rule 26 of Border Security Force Rules, 1969 ("BSF Rules"). The petitioner has, however, been held entitled to all admissible pensionary/financial benefits as per the existing instructions under the provisions of Rule



40 (1) of Central Civil Services (Pension) Rules, 1972 (in short, ‘CCS Rules’).

Case of the petitioner

2. It is the case of the petitioner that he joined the Border Security Force (“BSF”) on 30.09.2004 at the post of Constable (General Duty) and was posted at 88 Battalion. He was promoted to the post of Head Constable Radio Operator in 2013-14. Subsequently, he was diagnosed with Schizophrenia in his medical examination held on 22.07.2014 and, thereafter, has been under constant treatment.

3. It is asserted that even in the Annual Performance Assessment Report (in short, ‘APAR’) for the period 01.04.2016 to 31.03.2017, the Reporting/Initiating Officer of the petitioner acknowledged that the petitioner was suffering from Schizophrenia because of which he was unable to perform his duties.

4. The learned counsel for the petitioner submits that inspite of the above medical condition, the respondents went ahead and issued various penalty orders/ disciplinary orders against the petitioner from 2015 onwards, and based thereon, by the Impugned Order dated 04.07.2020, opined that the petitioner was unsuitable for being retained in service in terms of Rule 26 of the BSF Rules.

5. The learned counsel for the petitioner submits that the respondents have failed to take into account the medical condition of the petitioner while passing the Impugned Order and therefore, the Impugned Order is liable to be set aside. He places reliance on the Judgment of the Supreme Court in *Anil Kumar Mahajan v. Union of*



India & Ors., (2013) 7 SCC 243.

6. The learned counsel for the petitioner further draws our attention to Medical Certificate dated 04.10.2021, issued by the Davis Institute of Neuropsychiatry Hospital, Ranchi, which records that the petitioner was suffering from '*Bipolar Affective Disorder*', however, pursuant to the treatment given to him from 10.05.2016 till 2020, he is now fit for duty.

Submissions of the learned counsel for the respondents

7. On the other hand, the learned counsel for the respondents submits that starting from 2015, regular penalty proceedings were initiated against the petitioner due to his misconduct, and these proceedings were taken into account while issuing the show cause notice dated 15.02.2020 to the petitioner, thereby, asking him to show cause as to why he should not be retired from service under Rule 26 of the BSF Rules.

8. The learned counsel for the respondents submits that in reply to the said show cause notice, the petitioner accepted his misconduct and assured that he would not repeat the same in future. The reply to the said show cause notice and the past service record of the petitioner were considered by the competent authority, and based thereon, the petitioner was found unsuitable for being retained in service, leading to the Impugned Order being passed. He submits that the petitioner cannot be reinstated in service keeping in view his service record.

9. The learned counsel for the respondents further submits that



since 2015, the petitioner has suffered nine punishments and has also been found guilty of overstaying his leave on more than six occasions. Further, the petitioner had been given adequate opportunities to mend his ways, however, no improvement was shown by the petitioner.

10. He submits that the petitioner was also given adverse reporting in his APARs, which were communicated to the petitioner, however, he did not challenge any such reporting.

11. He further contends that in his reply to the show cause notice and even in his statutory petition, the petitioner has not taken the ground of his mental illness for recalling the Impugned Order.

Analysis and findings

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

13. There is no denial of the fact that in the Annual Medical Examination held on 22.07.2014, the petitioner was diagnosed with Schizophrenia. In the APAR for the period 01.04.2016 to 31.03.2017, the Reporting Officer also records as under:

“He is a psycho patient. Being a phycho patient, he is unable to perform the duty independently as prescribed by the Commandant.”

14. From the record, it is evident that while passing the Impugned Order, the respondents have not considered the medical/mental condition of the petitioner. The medical examination reports of the petitioner have not been considered. We, therefore, are of the opinion



that the respondents have passed the Impugned Order without considering the relevant material, thus, making the Impugned Order unsustainable in law.

15. The mere fact that the petitioner accepted his misdemeanour in his reply to the show cause notice, in light of his medical condition, cannot be a bar or be treated as an acceptance of the petitioner to his misdemeanour or misconduct. The reply of the petitioner has to be considered in light of his medical condition and not *de hors* that.

16. The fact that the petitioner suffered as many as nine punishments, all starting from 2015, also show that the petitioner, due to his medical condition, was acting abnormally. However, instead of appreciating his medical condition, punishments were awarded to him. Even his APAR was downgraded. The said punishments or the APARs of the petitioner, therefore, could not have formed the basis of the impugned order.

17. In view of the above, the Impugned Order dated 04.07.2020 is set aside. The respondent, however, shall be at liberty to consider the entire medical record and the service record of the petitioner in taking an informed decision *qua* the petitioner, remaining uninfluenced by the Impugned Order. In passing the fresh order, the respondents shall also keep in view the law settled by the Supreme Court in **Anil Kumar Mahajan** (supra).

18. As the Impugned Order dated 04.07.2020 has been set aside, the petitioner shall be entitled to reinstatement in service along with all consequential benefits.



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19. The petition is allowed in the above terms. Pending application, if any, stands disposed of.

NAVIN CHAWLA, J

SHALINDER KAUR, J

OCTOBER 22, 2024/ab/sk/VS

Click here to check corrigendum, if any