



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

206

Date of decision: 11.08.2025

(1)

CWP-23129-2016 (O&M)

SHRIKANT GOWDA PATIL

.....Petitioner

VERSUS

UNION OF INDIA AND OTHERS

.....Respondents

(2)

CWP-22945-2016 (O&M)

CHOUDHARY DASHRATH BHAI

.....Petitioner

VERSUS

UNION OF INDIA AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Rajeev Anand, Advocate with
Mr. Aryan Singh, Advocate
for the petitioner.

Mr. Maneesh Bali, Senior Panel Counsel
for the respondents.

VINOD S. BHARDWAJ, J. (Oral)

Raising identical questions of law and founded on similar factual matrices, both these writ petitions have been filed and are therefore being adjudicated by this common order.

2. The brief factual background in CWP-23129 of 2016, titled “Shrikant Gowda Patil versus Union of India and Others”, is that the

petitioner, Shri Shrikant Gowda Patil, a resident of District Dharwad in the State of Karnataka, was inducted in the service of the respondent-Border Security Force (BSF) on 11th September, 1999, as Constable (General Duty). Upon the successful completion of the prescribed training at the Special Training Centre, Bangalore, he was, with effect from 16th September, 2000, posted to the 90th Battalion of the BSF. Subsequently, in the year 2010, the petitioner was transferred to the 125th Battalion, where he continued to serve until 2nd August, 2013. Thereafter, he was repatriated to the 90th Battalion, where he remained in service until his compulsory retirement was ordered. Said retirement was ordered by the competent authority vide order dated 20th November, 2014, invoking Rule 26 of the Border Security Force Rules, 1969 (hereinafter referred to as “the BSF Rules, 1969”), on the ground of unsuitability. The statutory petition preferred by the petitioner assailing and seeking to set aside the aforesaid order of compulsory retirement came to be dismissed by the competent authority. Insofar as the submissions relating to the responses furnished to the legal notice issued on behalf of the petitioner are concerned, this Court finds that such responses, being in the nature of administrative correspondences and not amenable to judicial review, are non-justiciable and hence do not warrant any detailed consideration in these proceedings.

3. Learned counsel for the petitioner has submitted that Rule 26 of the Border Security Force Rules, 1969 (hereinafter referred to as “the BSF Rules, 1969”) contemplates the retirement of an enrolled person from service on the ground of unsuitability. It is further urged that, in order to ensure that the exercise of such power is guided by objective criteria and is not left to arbitrary discretion, the respondent-State had issued an

administrative circular bearing No. C.14011/1/88/CC-PERS/BSF/2100-2324 dated 26th May, 1992. The said circular laid down the objective as well as detailed guidelines governing the retirement of BSF personnel on the grounds of unsuitability and with a view to ensuring greater care and caution and to obviate arbitrary action at any level within the Force, as well as to maintain a uniform procedure across the organisation by constituting screening boards in the manner and composition prescribed therein. Such screening boards were mandated to assess the performance of officers/enrolled persons by taking into consideration their Confidential Report (CR) dossiers/Annual Confidential Report (ACR) files, wherever applicable, along with their service records, personal files, and an appraisal of their overall performance and reputation within the Force.

4. Learned counsel points out that, as per the general guidelines in the said circular, the evaluation of cases was to be undertaken in respect of such personnel, who were perceived to have outlived their utility in the posts held and whose service records were consistently unsatisfactory and showing no prospect of improvement in the future. The performance assessment was, in the ordinary course, to encompass a period of at least three to four years, and not be confined solely to the record of the last one or two years. The criteria for assessment included the individual's capacity to endure hardship, stress, and strain; the ability to serve for extended durations in border areas; integrity; amenability to discipline; devotion to duty; professional competence; operational and administrative efficiency; courage in the execution of duties under adverse and challenging circumstances and absence of reluctance in undertaking such duties. As a matter of caution, the said guidelines further provided that only those personnel who had

consistently exhibited poor performance and demonstrated no amenability to warnings or advice were to be considered for compulsory retirement on grounds of unsuitability. It is submitted that the aforesaid circular dated 26th May, 1992 was subsequently reiterated by the Government of India, Ministry of Home Affairs, through communication bearing Folio No. C-14011/08/2010/CC/PERS/BSF dated 7th December, 2011, wherein meticulous compliance with the earlier instructions/circular dated 26th May, 1992 was expressly mandated.

5. Learned counsel for the petitioner further submits that, notwithstanding the mandate of the Circular dated 26th May, 1992 being that the service record of at least three to four years preceding the exercise of powers under Rule 26 of the BSF Rules, 1969 be taken into account for examining the present case, the petitioner's performance may, without prejudice, be assessed on the basis of his service record for the last five years. It is argued that the petitioner, who has been in continuous service since September 1999, maintained an unblemished record for a period of approximately eight years, up to the year 2007, prior to the imposition of a minor punishment. Learned counsel points out that, as reflected in the petitioner's Annual Confidential Reports (ACRs) for the preceding five-year period, one report has been graded as "Good" and the remaining four are graded as "Very Good." In addition, it is submitted that the petitioner has, during his tenure, been conferred with as many as ten cash rewards by his superior officers in recognition of his exemplary service performance. A table of the ACRs for the last years is extracted as under:-

<i>Year</i>	<i>Remarks</i>
<i>2009-10</i>	<i>VERY GOOD</i>
<i>2010-11</i>	<i>GOOD</i>

<i>2011-12</i>	<i>VERY GOOD</i>
<i>2012-13</i>	<i>VERY GOOD</i>
<i>2013-14</i>	<i>VERY GOOD</i>

6. It is submitted that the total number of punishments awarded to the petitioner between 2007 to 2014 are tabulated as under:-

<i>S.No</i>	<i>Punishments</i>
<i>i)</i>	<i>Awarded 14 days RI in force custody u/s 19(f) and 26 on 24.07.2007</i>
<i>ii)</i>	<i>Awarded 14 days RI and 14 days pay fine u/s 26 on 19.05.2008</i>
<i>iii)</i>	<i>Awarded 14 days RI in force custody u/s 26 on 11.04.2009</i>
<i>iv)</i>	<i>Awarded 14 days pay fine u/s 19(a) on 26.08.2009</i>
<i>v)</i>	<i>Awarded 14 days RI and 07 days pay fine u/s 19(a) and 22 (C) on 20.12.2011</i>
<i>vi)</i>	<i>Awarded 07 days pay fine u/s 19(a) on 14.09.2012</i>
<i>vii)</i>	<i>Awarded 28 days RI and 14 days pay fine u/s 19(d), and 40 on 14.07.2014.</i>

7. It is contended that, of the total seven punishments recorded in the service book of the petitioner, not more than two can be categorised as major punishments, whereas the remaining five are of a minor nature, arising either from absence without leave or matters relating to his personal stay after duty hours. It is urged that, notwithstanding the aforesaid entries, the petitioner's performance appraisals have, throughout, been of an exceptional standard. It is submitted that, while invoking jurisdiction under Rule 26 of

the Border Security Force Rules, 1969, the respondent-authorities have failed to record any finding that the petitioner falls within the category of personnel who have been consistently exhibiting poor performance and showing no signs of improvement in the future. Learned counsel further points out that the punishment relevant to the present case was imposed on 20th November, 2014 without taking into consideration his actual performance record and without recording any satisfaction, either that his performance has been poor or that he is incorrigible so as to justify compulsory retirement on grounds of unsuitability.

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8. It is contended that the petitioner, a resident of the State of Gujarat, who was also subjected to compulsory retirement vide order dated 20th November, 2014. He had during the last five years of his service preceding the said order, earned two Annual Confidential Reports (ACRs) graded as “Very Good” and three ACRs graded as “Good.” The same are tabulated as under:-

<i>Year</i>	<i>Remarks</i>
<i>2009-10</i>	<i>VERY GOOD</i>
<i>2010-11</i>	<i>GOOD</i>
<i>2011-12</i>	<i>GOOD</i>
<i>2012-13</i>	<i>VERY GOOD</i>
<i>2013-14</i>	<i>GOOD</i>

9. The table of punishment awarded to him is extracted as under:-

<i>S.No</i>	<i>Punishments</i>
<i>i)</i>	<i>Awarded 14 days pay fine U/S 19 (b) on 18.01.2007</i>
<i>ii)</i>	<i>Awarded 14 days fine U/S 19 (b) on 26.10.07</i>

iii)	<i>Awarded 14 days RI in force custody u/s 19(b) on 16.03.09</i>
iv)	<i>Awarded 07 days pay fine U/S 19(b) on 09.09.2011</i>
v)	<i>Awarded 07 days RI in force custody u/s 19(a) on 11.11.11</i>

10. It is submitted that the petitioner had entered the service of the respondent–Border Security Force in the year 2000 and maintained an unblemished record of service until the year 2007. It is pointed out that the punishments recorded against him pertain to the period between 2007 and 2011, and that, as on the date of the passing of the impugned order in November 2014, there had been no complaint of any nature against him for the preceding three years. In these circumstances, it is argued that it cannot be reasonably concluded that the petitioner was exhibiting no signs of improvement in his conduct or performance. Furthermore, it is contended that the charges on the basis of which minor penalties were imposed against the petitioner related exclusively to instances of overstaying sanctioned leave or absence without leave, all of which constitute infractions of a minor nature.

11. Learned counsel for the respondents, in response, submits that while the factual aspects extracted and referred to by the petitioner are not in dispute, the service records of the petitioners, including that of Shri Shrikant Gowda Patil, have been duly perused, assessed, and examined by the competent authority in exercise of its powers under Rule 26 of the Border Security Force Rules, 1969. This exercise was conducted in strict compliance with the administrative circulars and instructions issued on 26th May, 1992, and reiterated in the year 2011. It is contended that the

petitioner(s) exhibited a recurring pattern of misconduct characterized by consumption of liquor, for which a total of seven punishments were imposed between 2007 and 2014, spanning a period of seven years to Shrikant Gowda Patil. Despite these punitive measures, the petitioner failed to demonstrate any visible signs of improvement in the performance of his duties. Learned counsel emphasizes that, in accordance with the instructions, personnel with more than three adverse entries are liable to be compulsorily retired on grounds of unsuitability under Rule 26. Accordingly, the petitioner was issued a show cause notice and, in response, he tendered an apology admitting the misconduct and assured non-repetition of the same. However, this response was found unsatisfactory and was consequently rejected for valid and substantive reasons. Counsel further submits that an earlier show cause notice was served upon the petitioner on 15th December, 2012, highlighting the punishments awarded to him. Notwithstanding this, the petitioner committed yet another offence, demonstrating a persistent refusal to reform. Moreover, another notice was served on the petitioner on 10th June, 2014, followed by the imposition of a punishment in July 2014. These circumstances underscore that the petitioner manifested no improvement in conduct or discipline, thereby justifying the competent authority's decision to retire him from service under Rule 26 of the BSF Rules, 1969.

12. It is observed that, in CWP-22945 of 2016 as well, learned counsel for the respondents has advanced almost identical submissions, and, accordingly, the same are not being reiterated herein for the sake of brevity.

13. I have heard learned Counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith

the present petition, with their able assistance.

14. Before proceeding further, it would be relevant to make a reference to the relevant statutory provisions as a necessary for adjudication of the present lis. The same are extracted as under:-

The Border Security Force, Act, 1968

“19. Any person subject to this Act who commits any of the following offences, that is to say,-

- (a) absents himself without leave; or*
- (b) without sufficient cause overstays leave granted to him; or*
- (c) being on leave of absence and having received information from the appropriate authority that any battalion or part thereof or any other unit of the Force, to which he belongs, has been ordered on active duty, fails, without sufficient cause, to rejoin without delay; or*
- (d) without sufficient cause fails to appear at the time fixed at the parade or place appointed for exercise or duty; or*
- (e) when on parade, or on the line of march, without sufficient cause or without leave from his superior officer, quits the parade or line of march; or*
- (f) when in camp or elsewhere, is found beyond any limits fixed, or in any place prohibited, by any general, local or other order, without a pass or written leave from his superior officer; or*
- (g) without leave from his superior officer or without due cause, absents himself from any school when duly ordered to attend there, shall, on conviction by a Security Force Court, be*

liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

22. INSUBORDINATION AND OBSTRUCTION

Xxx xxxx

(e) neglects to obey any genera, local or other order

XX.

Section 26. INTOXICATION

Any person subject to this Act who is found in a state of intoxication whether on duty or not, shall on conviction by a security force court, be liable to suffer imprisonment for a term which may extend to six months or such less punishment as in this Act mentioned.

Section 40. VIOLATION OF GOOD ORDER OR DISCIPLINE

Any person subject to this Act who is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and discipline of the Force shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less as in this Act mentioned.”

Rule 26 of BSF Rules 1969

26. RETIREMENT OF ENROLLED PERSONS ON GROUNDS OF UNSUITABILITY

"Where a commandant is satisfied that 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 consider it to be impracticable or inexpedient in the interest of security of the state to

give such opportunity), retire such enrolled person from force.”

(Emphasis Supplied)

15. The relevant extract of the circular dated 25.05.1992 laying down guidelines is reproduced as under:

"In order to ensure greater care and caution to avoid arbitrary action at all levels in the Force and for having uniform procedure, the Director General is pleased to direct that Screening Boards, composition of which shall be as under, should be constituted from time to time to screen the performance of Officers, Subordinate Officers and Enrolled persons, taking into account their Cr dossiers/ACR files (wherever applicable), Service Records, Personal Files, as well as, their overall performance and reputation in the Force"

Xxx xxx xxx xx xxx xxx xxx

10. GENERAL POINTS ABOUT RETIREMENT ON GROUNDS OF UNSUITABILITY

(i) Assessment of Cases

The need for terminating the services of an individual arises only when it is felt that the individual concerned has not only outlived his utility for the Force but also his record of service has been uniformly bad and he has no scope for showing any improvement in the future. In deciding the fate of an individual, the first and foremost factor should be the utility of the individual to the Force.

In that context the performance of the individual should normally be judged over a period of atleast 3-4 years rather than on the basis of the last 01 or 02 years only, The ability of the individual to put

up with hardships, stress and strain and to live for long spells in the border areas should be another consideration. The integrity, amenability to discipline, devotion to duty, professional competency, operational and administrative efficiency of the individual, boldness and administrative resoluteness in the execution of duties in the face of odds and difficulties should also be taken into consideration. Acts of cowardice should be seriously viewed. Similarly, physical fitness of the individual should be given due importance while deciding his suitability for retention of otherwise. Personnel with low medical category, who are physically unfit, may not be able to perform all duties, but in deciding such cases, due consideration should be given to his past service and an alternative job suitable for him may, if possible, be found in the Force itself. Another important factor that should be considered is the length of service of the individual. An individual who is likely to complete the qualifying service to enable him to draw pension in the near future, should be treated on a slightly different footing than those who have either already completed the qualifying service or who have many years to go to complete that period.

(ii) In short, while assessing cases for retirement on grounds of unsuitability, it should be borne in mind that only those personnel who have been consistently showing poor performance and are not amenable to warnings and advice, are retired. Where no warning or extracts of adverse remarks have been communicated to the concerned person earlier, it would be unfair to surprise him with a declaration of his unsuitability through a show

cause notice. The communication of adverse remarks, for the first time, alongwith the show cause notice, is equally unfair. Unless a man has been told about his short comings, he could not reasonably be expected to improve upon the same. Similarly, declaring a man unsuitable merely on the basis of a single adverse report, would also not be justified. In the interest of justice and fair play, it should be ensured that while judging a man's suitability for further retention in the Force, due regard is given to his overall performance over past few years.

(iii) Where a person is allowed to cross the efficiency bar or is confirmed, there will be no justification for declaring him as unsuitable shortly after he is adjudged as suitable for crossing the EB or for confirmation."

(Emphasis Supplied)

16. The conjoint reading of Rule 26 of the Border Security Force Rules, 1969, alongside the administrative instructions and circulars issued by the respondent-authority, reveals that the following factors are pivotal and must be meticulously considered while assessing the unsuitability of a personnel for compulsory retirement:

- a) The utility of the individual in the post held.
- b) The potential scope for improvement in the individual's performance and conduct in the future.
- c) The ability of the individual to endure hardships, stress, and strain, including the capacity to serve for prolonged periods in border areas.
- d) The individual's integrity, discipline, devotion to duty, and professional competence.

- e) The contents of the Confidential Report (CR) dossiers or Annual Confidential Report (ACR) files, wherever applicable.
- f) The service records of the individual for a minimum period of three to four years immediately preceding the exercise of the power under Rule 26.
- g) The personal files maintained in respect of the individual.
- h) The overall performance record and reputation of the individual within the force.
- i) The length of service rendered by the individual.
- j) Whether the individual has demonstrated resistance or is not amenable to warnings.
- k) The procedural requirement that warnings be issued before the issuance of a show cause notice, affording the individual an opportunity to mend conduct prior to initiation of compulsory retirement proceedings.

17. It is also evident from a conjoint and careful reading of the Rules and the administrative instructions and circulars that power is vested in the competent authority to compulsorily retire an enrolled person from service, once such authority forms a considered opinion that the individual is unsuitable for continuation in service. However, this power is not to be exercised arbitrarily or on unfounded or isolated considerations. In order to ensure that the process is objective, fair and transparent, the respondents themselves have, through the aforesaid instructions, prescribed certain parameters and factors which are mandatorily required to be assessed prior to the invocation of the said powers. These parameters are designed to safeguard against capricious or disproportionate exercise of power and to guide the authority towards a conclusion founded on cogent material. The

assessment must, therefore, be such as to lead to a reasoned and inevitable inference that the personnel concerned has not merely exhibited occasional lapses in discipline or efficiency, but that his record of service, assessed cumulatively over the prescribed period, has been consistently unsatisfactory.

18. Further, it must also be demonstrable from the record that the individual concerned does not hold any realistic prospect of improvement in the foreseeable future, despite having been afforded adequate opportunities, guidance, and warnings to reform. The competence to invoke Rule 26 is, therefore, circumscribed by the dual requirement that:

- a) The service record must reveal a sustained and uniform pattern of sub-par performance or misconduct over the relevant period, and
- b) The conduct, discipline, and efficiency of the individual are such that no scope for reform or improvement can reasonably be discerned.

19. Clarity on the precise meaning and ambit of the expression “poor performance” and its evaluation was asked to be explained by the Counsel for the respondents and as to whether such performance evaluation must necessarily entail an assessment of an individual in relation to the discharge of his official duties. In this context, attention was invited to the administrative circulars and instructions, which categorically stipulate that performance evaluation is to be grounded in a holistic assessment based upon the service record of the personnel concerned, coupled with an appraisal of certain key attributes, namely integrity, amenability to discipline, devotion to duty, professionalism, and overall efficacy. It is evident from a plain as well as purposive reading of the said instructions that the concept of “performance” for such purposes is intrinsically linked to the discharge of

the duties and functions expected of a member of the Force. The evaluation is not to be based on extraneous considerations, but on parameters that objectively reflect the individual's professional output, adherence to discipline, and contribution to the efficiency and operational readiness of the organisation. Viewed thus, the touchstone for such evaluation is, and has consistently been treated as, the Annual Confidential Report (ACR), which constitutes an official and periodic appraisal of the work, conduct, discipline, and professional abilities of the personnel while on duty. The ACR, being prepared by superior officers familiar with the individual's day-to-day performance in the line of duty, serve as the most reliable, contemporaneous, and authoritative record for gauging whether a personnel's performance meets the standards demanded by the Force. Accordingly, "poor performance" in the contemplation of Rule 26 of the BSF Rules, 1969, read with the aforementioned administrative guidelines, must be understood to mean performance that, as evidenced by the ACRs and corroborated by the service record, reflects sustained deficiency in professional competence, discipline, integrity, or devotion to duty over a substantial period. It is only on such objective material, and not on isolated incidents or subjective impressions, that a competent authority may lawfully reach the conclusion that a personnel is unsuitable for continued service.

20. Undisputedly, upon an evaluation of the petitioner's performance, as evidenced from his Annual Appraisal Reports, it emerges that his work and conduct have consistently been assessed as good or above the prescribed standard. Such recorded assessments, being the considered appraisal of his superior officers over the relevant period, reflect favourably on his professional competence and discipline, and do not, on their face,

indicate any sustained deficiency or unsuitability for service.

21. The only remaining aspect for consideration pertains to the punishments imposed upon the petitioner during the relevant period. It is apparent from the record that these punishments were awarded under Section 19 (A), Section 19(f), and Section 26. While Section 19 (A) pertains to absence without leave, there exists one recorded instance of punishment under Section 19(f) read with Section 26, which relates to intoxication. Specifically, the petitioner was found in a state of intoxication and was either beyond prescribed limits or present at a prohibited location. It is noteworthy that the respondents do not contend that these acts or omissions occurred while the petitioner was actively performing duties assigned to him at his post or otherwise. These infractions, therefore, appear to be of a minor nature. The characterization and gravity of these punishments thus must be carefully weighed in the overall assessment of the petitioner's suitability for continued service.

22. It is an established principle of judicial procedure that any document or correspondence upon which a party relies in support of its pleadings must be placed before the Court for its examination. In the present case, it is noted with concern that the respondents, despite prominently relying upon the letter of the Frontier Head Quarter dated 19th May, 2013, and the letter of the Station Head Quarter dated 20th May, 2014, directing the assessment of personnel with three or more adverse entries under Rule 26 of the BSF Rules, have failed to append these critical communications to their reply or any subsequent filings. The inexplicable absence of these documents is further underscored by the admission of the Counsel for the respondents that he neither possesses nor has seen these letters. Such an

omission gravely impairs the Court's ability to ascertain the precise scope and intent of the said communications, including whether they indeed mandate a specific period during which three or more adverse entries must have accrued prior to the initiation of proceedings under Rule 26. This Court cannot, in fairness and in the interest of justice, speculate or infer the content and effect of these letters in the absence of their production on record.

23. This Court has consistently noticed that the conduct of the Union of India and its officials, in filing replies, often places reliance upon documents or correspondence that are neither produced nor placed on record. The same is manifestly at variance with the fundamental principles of transparency, fairness, and due process which govern the filing of pleadings and supporting material relied upon or referred to by them, before a Court of law. Such a practice is wholly unacceptable in judicial proceedings. Prudence, as well as established principles of sound judicial practice, mandate that every document upon which reliance is sought to be placed must be produced and appended to the pleadings, so as to enable the Court to verify, with precision, whether the stand taken by the respondents finds any substantive foundation in the said communications or whether such reliance is, in fact, misplaced or without basis. The omission to produce and bring on record the very documents which are asserted to support the respondents' case not only undermines the credibility of their pleadings but also casts a serious reflection on the bona fides of the defence put forth. Litigants, more so the State and its instrumentalities, are duty-bound to act with candour and complete disclosure when placing their case before the Court. Any deviation therefrom strikes at the very root of the integrity of the judicial process and hampers the Court's ability to render a decision

founded on all relevant and material facts. The preservation of public confidence in the administration of justice demands nothing less than full, forthright, and transparent disclosure of all documents upon which reliance is proposed to be placed.

24. In any case, the said letter cannot be accorded any greater significance than that of a guiding instruction, indicating that all such cases are required to be assessed. It cannot, by any interpretative process, be construed to mean that in every instance where a personnel has three or more adverse entries, a final order of compulsory retirement must necessarily follow under Rule 26 of the Border Security Force Rules, 1969. At best, the said communication can be understood as prescribing a threshold i.e. a point beyond which a personnel becomes liable to assessment and evaluation with respect to his service performance, professional competence, and overall suitability to continue as a member of the Force. Such threshold merely triggers the process of scrutiny; it does not predetermine its outcome. It is only after a comprehensive appraisal of the individual's performance record, conduct, integrity, discipline, and overall personality, viewed in the context of the duties and responsibilities of service in the Force, that a reasoned conclusion can be drawn as to whether the personnel in question merits retention in service or warrants compulsory retirement in accordance with law.

25. It was also specifically put to learned counsel for the respondents as to whether the Border Security Force follows any uniform policy or standing order mandating the release from service of all personnel having three or more adverse entries. Counsel, however, was unable to furnish any categorical answer and, on the contrary, submitted that no such

standing order exists and that the assessment in such cases is a matter to be undertaken by the competent authority on a case-to-case basis. This unequivocally establishes that the existence of three or more adverse entries in the service record of a personnel is, at best, a trigger point for consideration under Rule 26 of the Border Security Force Rules, 1969 it is not, in itself, the culmination point or an automatic ground for compulsory retirement. Once such a threshold is crossed, it remains the bounden duty of the respondent-authorities to prima facie demonstrate, on the basis of cogent material, that the individual concerned not only possesses a uniformly adverse service record but also exhibits no reasonable prospect of improvement in the foreseeable future.

26. When the governing guidelines are applied to the service record of the present petitioner, no material is forthcoming to suggest that his record of service has, in fact, been consistently poor or that there exists no scope for his improvement. In the case of Choudhary Dashrath Bhai, it is apparent that the impugned order of termination was passed in 2014, whereas the last recorded instance of misconduct was three years prior to the initiation of proceedings under Rule 26. On such a factual matrix, there was no basis to conclude that the said employee showed no possibility of improvement. Similarly, in the case of the petitioner, Shri Shrikant Gowda Patil, no finding whatsoever has been recorded by the respondents to the effect that he displays no signs of future improvement or that his service record has been uniformly adverse. On the contrary, the respondents' own appraisal reports belie their stated position. The punishments recorded, which are of a minor nature, pertain not to the quality of his professional performance or operational duties, but rather to matters of punctuality. In

circumstances where the extreme penalty of removal from service is contemplated, infractions relating solely to punctuality, absent any sustained poor professional performance, cannot, by themselves, be treated as sufficient to justify the extreme measure of compulsory retirement under Rule 26. Such a course would be disproportionate to the nature of the lapses and contrary to the principle that termination of service must rest on substantive, objective, and sufficiently grave grounds. Further, this Court has also perused the order dated 20.11.2014 passed by the Commandant in the matter of Shrikant Gowda Patil and the same is extracted as under:-

“Whereas, I have personally gone through the service record of No. 991013525 Constable/GD Srikant Gouda Patila of B Coy of this unit and whereas, a duly constituted Board of Officers had assessed his suitability and the said Board recommended him to be retired from service on ground of unsuitability.

02. And whereas, he was given an opportunity to show cause against tentative action of retiring him from service on ground of unsuitability under Rule-26 of BSF Rules 1969 which he has availed of and submitted reply for his retention in service. His reply has been considered and rejected being devoid of merit.

03. I am, satisfied that his further retention in service is undesirable. I, therefore retire him from service on ground of unsuitability under Rule-26 of BSF 1969 with effect from 20/11/2014 (AN). On retirement, he is granted not exceeding two-thirds of pension or gratuity or both which would have been admissible under Rule-40 of CCS (Pension) Rules 1972 and Retirement Gratuity under Rule 50 of CCS (Pension) Rules-1972.

04. The outstanding dues, if any against him be recovered from the dues payable to the individual concerned and deposited into the Govt. treasury.

05. The individual is struck off strength of this unit w.e.f. 20/11/2014.

27. It is evident from a perusal of the impugned order that the same fails to disclose any reasoning or material on the basis of which it can be held that the tests and parameters prescribed by the respondents vide the Circular dated 26.05.1992 were examined and considered prior to holding the petitioner unsuitable for continued service. The absence of any reference to these essential criteria in the order of compulsory retirement militates against the requirement that the exercise of power under Rule 26 of the Border Security Force Rules, 1969 must be founded on objective, cogent material and a reasoned application of the parameters prescribed for such exercise.

28. Needless to mention, when an authority is vested with an extreme and exceptional power, such power is to be invoked sparingly, cautiously, and only in appropriate cases where the factual matrix clearly justifies its exercise. The conferment of such power does not warrant or imply that an order of removal or compulsory retirement must inevitably follow in every case where some adverse entry exists, without a holistic evaluation of the employee's overall conduct and service record throughout the entire tenure of his service. It is incumbent upon the competent authority to appreciate whether the incidents in question truly pertain to, and materially affect, the individual's performance as a member of a disciplined force, or whether they are merely reflective of certain aspects of his personal conduct that do not impinge upon his professional duties or operational integrity. In the present case, there is no allegation nor is any charge on record that the petitioner has ever been guilty of insubordination, wilful

disobedience, misconduct while on duty, abandonment of post, dereliction of duty, acts of cowardice, inattention while performing duties, or any conduct prejudicial to the operational efficiency and discipline of the Force. The instances relied upon against him are confined to delayed reporting and a condition of intoxication, neither of which has been shown to have resulted in any act of misconduct during duty, nor to have brought the Force into disrepute. Such lapses, without demonstrable nexus to operational failure, breach of core discipline, or any showing that the petitioner has become a liability to the organisation, cannot, by themselves, sustain the extreme conclusion that he is unfit for retention in service or “unworthy of any issue,” so as to warrant the drastic exercise of power resulting in his removal from service.

29. It would also be pertinent to refer to the judgment of the Hon’ble Supreme Court in the matter of Veerendra Kumar Dubey versus Chief of Army Staff and Others, reported as (2016) 2 SCC 627, wherein the Court considered analogous provisions under Rule 13 of the Army Rules, 1954. In that case, the petitioner was found to have accumulated as many as four adverse or "red" entries in his service record. The Hon’ble Supreme Court observed with clarity that the mere presence of four red entries does not inexorably mandate the discharge of an employee. It was held that while such adverse entries may bring an individual closer to the threshold of discharge, they do not, in and of themselves, constitute conclusive grounds to justify removal from service. The decision to discharge necessitates a more nuanced and comprehensive assessment, considering all relevant factors including the overall service record, prospects of improvement, nature and gravity of the adverse entries, and the personnel’s conduct at

large. The relevant extract of the said judgment reads thus:-

“10. The Government has, as rightly mentioned by the learned counsel for the appellant, stipulated not only a show-cause notice which is an indispensable part of the requirement of the Rule but also an impartial enquiry into the allegations against him in which he is entitled to an adequate opportunity of putting up his defence and adducing evidence in support thereof. More importantly, certain inbuilt safeguards against discharge from service based on four red ink entries have also been prescribed. The first and foremost is an unequivocal declaration that mere award of four red ink entries to an individual does not make his discharge mandatory. This implies that four red ink entries is not some kind of Laxman rekha, which if crossed would by itself render the individual concerned undesirable or unworthy of retention in the force. Award of four red ink entries simply pushes the individual concerned into a grey area where he can be considered for discharge. But just because he qualifies for such discharge, does not mean that he must necessarily suffer that fate. It is one thing to qualify for consideration and an entirely different thing to be found fit for discharge. Four red ink entries in that sense take the individual closer to discharge but does not push him over. It is axiomatic that the Commanding Officer is, even after the award of such entries, required to consider the nature of the offence for which such entries have been awarded and other aspects made relevant by the Government in the procedure it has prescribed.

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14. It is true that Rule 13 does not in specific terms envisage an enquiry nor does it provide for consideration of factors to which we have referred above. But it is equally true that Rule 13 does not in terms make it mandatory for the competent authority to discharge an

individual just because he has been awarded four red ink entries. The threshold of four red ink entries as a ground for discharge has no statutory sanction. Its genesis lies in administrative instructions issued on the subject. That being so, administrative instructions could, while prescribing any such threshold as well, regulate the exercise of the power by the competent authority qua an individual who qualifies for consideration on any such administratively prescribed norm. Inasmuch as the competent authority has insisted upon an enquiry to be conducted in which an opportunity is given to the individual concerned before he is discharged from service, the instructions cannot be faulted on the ground that the instructions concede to the individual more than what is provided for by the rule. The instructions are aimed at ensuring a non-discriminatory, fair and non-arbitrary application of the statutory rule.

15. *It may have been possible to assail the Circular instructions if the same had taken away something that was granted to the individual by the rule. That is because administrative instructions cannot make inroads into statutory rights of an individual. But if an administrative authority prescribes a certain procedural safeguard to those affected against arbitrary exercise of powers, such safeguards or procedural equity and fairness will not fall foul of the rule or be dubbed ultra vires of the stature.*

16. *The procedure prescribed by the Circular dated 28-12-1988 far from violating Rule 13 provides safeguards against an unfair and improper use of the power vested in the authority, especially when even independent 9 of the procedure stipulated by the competent authority in the Circular aforementioned, the authority exercising the power of discharge is expected to take into consideration all relevant factors. That an*

individual has put in long years of service giving more often than not the best part of his life to armed forces, that he has been exposed to hard stations and difficult living conditions during his tenure and that he may be completing pensionable service, are factors which the authority competent to discharge would have even independent of the procedure been required to take into consideration while exercising the power of Discharge. Inasmuch as the procedure stipulated specifically made then relevant for the exercise of the power by the competent authority there was neither any breach nor any encroachment by executive instructions into the territory covered by the statute.

17. *The procedure presented simply regulates the exercise of power which would, but for such regulation and safeguards against arbitrariness, be perilously close to being ultra vires in that the authority competent to discharge shall, but for the safeguards, be vested with uncanalised and absolute power of discharge without any guidelines as to the manner in which such power may be exercised. Any such unregulated and uncanalised power would in turn offend Article 14 of the Constitution.*

18. *Coming then to the case at hand, we find that no enquiry whatsoever was conducted by the Commanding Officer at any stage against the appellant as required under Para 5(a) of the procedure extracted above. More importantly, there is nothing on record to suggest that the authority competent had taken into consideration the long service rendered by the appellant, the difficult living conditions and the hard stations at which he had served. There is nothing on record to suggest that the nature of the misconduct leading to the award of red ink entries was so unacceptable that the competent authority had no option but to direct his*

discharge to prevent indiscipline in the force. We must, in fairness, mention that Mr Maninder Singh, ASG, did not dispute the fact that any number of other personnel are still in service no matter they have earned four red ink entries on account of overstaying leave. If that be so, the only safeguard against arbitrary exercise of power by the authority would be to ensure that there is an enquiry howsoever summary and a finding about the defence set up by the Individual besides consideration of the factors made relevant under the note to Para 5(f) of the procedure.

19. *It is common ground that a red ink entry may be earned by an individual for overstaying leave for one week or for six months. In either case the entry is a red ink entry and would qualify for consideration in the matter of discharge. If two persons who suffer such entries are treated similarly notwithstanding the gravity of the offence being different, it would be unfair and unjust for unequals cannot be treated as equals. More importantly, a person who has suffered four such entries on a graver misconduct may escape discharge which another individual who has earned such entries for relatively lesser offences may be asked to go home prematurely. The unfairness in any such situation makes it necessary to bring in safeguards to prevent miscarriage of justice. That is precisely what the procedural safeguards purport to do in the present case.”*

30. It is evident, upon a careful perusal of the foregoing, that the Hon’ble Supreme Court took due cognizance of the principle that while a red entry against a personnel for overstaying leave may legitimately qualify as a ground for consideration under compulsory retirement provisions, a differential treatment of two individuals with similar adverse entries would render the impugned order vitiated for want of fairness and equality. The

Court underscored that procedural safeguards enjoin not only a holistic appraisal of the entire service record of the individual concerned but also a sensitive and contextual consideration of his living and personal conditions. In the present matter, the respondents have conspicuously failed to adduce any affidavit or formal statement asserting that no personnel possessing more than three red entries has been retained in service. Such omission consequently gives rise to a strong inference that inconsistent yardsticks or disparate measures of penalty are being employed arbitrarily by the competent authorities in the invocation of powers under Rule 26 of the Border Security Force Rules, 1969. Furthermore, the respondents have not elucidated, either through pleadings or documentary record, a clear demarcation or categorical definition distinguishing which penal entries constitute “red ink” (major punishments) and which are “black ink” (minor punishments). This absence of clarity and transparency regarding the criteria applied to classify penalties and execute disciplinary action is alarming. The respondents’ failure to disclose and publish any uniform, objective, and universal criteria applicable to all personnel, irrespective of individual records or circumstances, bespeaks a discretionary exercise devoid of principled guidance or standardization. Such a nebulous and unregulated application of Rule 26 is liable to engender arbitrariness in decision-making and impairs the fundamental right to equality before the law as enshrined under Article 14 of the Constitution of India. It is settled jurisprudence that disciplinary and administrative powers vested in State authorities must be exercised pursuant to fair, transparent, and equitable principles, respecting the rule of law and the constitutional mandate against arbitrariness. The apparent absence of objective, uniform standards in the present case

therefore constitutes a grave procedural infirmity, rendering the resultant orders liable to be struck down as violative of Article 14.

31. Consequently, for the reasons recorded hereinabove, the instant writ petitions stand allowed. The impugned orders dated 20.11.2014, passed by the Commanding Officer, as also the subsequent order dated 07.08.2015 in CWP-23129-2016 and the order dated 23.02.2015 in CWP-22945-2016, are hereby set aside. The matter is remanded to the Commanding Officer for passing a fresh order in accordance with law after taking into consideration the guidelines/instructions issued by the respondents for invoking and exercising the jurisdiction under Rule 26. The petitioner(s) shall appear before the Commanding Officer of their respective Battalion on **01.10.2025** whereupon further proceedings shall be initiated by the Commandant as per law and final order be passed within a period of four months thereafter.

AUGUST 11, 2025
Vishal Sharma

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No