

**Union of India and Others Vs. Head Costable Pyare Lal**

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**SooperKanoon Citation :** [sooperkanoon.com/696413](http://sooperkanoon.com/696413)

**Court :** Delhi

**Decided On :** Apr-30-2001

**Reported in :** 94(2001)DLT586

**Judge :** Mr. B.A. Khan and; Mr. M.S.A. Siddiqui, JJ.

**Acts :** BSF Rules - Rules 26 and 48; Army Rules, 1950 - Rule 14(2)

**Appeal No. :** LPA64/96

**Appellant :** Union of India and Others

**Respondent :** Head Costable Pyare Lal

**Advocate for Def. :** Mr. V.P. Sharma, Adv.

**Advocate for Pet/Ap. :** Mr. Keshav Dayal, Sr. Adv. and; Ms. Barkha Babbar, Adv

**Judgement :**

ORDER

Khan, (J).

1. The short question that arises in this Appeal is whether there was any material before Commandant to retire Respondent under Rule 26 and whether it was obligatory on him to record satisfaction that it was inexpedient and impracticable to take disciplinary proceedings to logical conclusion in order to take recourse to administrative action.

2. Respondent joined BSF in 1968. He was charged of allowing NAKA (illegal passage on border) for Rs.1,000/- on 30.3.1974. Commandant ordered recording of evidence against him under Rule 48 of BSF Rules on 11.9.74. Three prosecution witnesses were examined in this but no further disciplinary proceedings were taken pursuant thereto. On the contrary he issued a show cause notice to Respondent on 16.1.1975 under Rule 26 of BSF Rules for his retirement from service. Respondent submitted his reply but commandant found it unsatisfactory and passed order dated 26.2.75 ordering his retirement from service. He failed a revision against this which was rejected vide order dated 5.8.1975. He then filed CWP 1380/75 to challenge the action primarily on the plea that once Commandant had taken recourse to Rule 48, providing for ordering of record of evidence, he could not abandon the disciplinary proceedings and resort to administrative action under Rule 26. It was also urged that for this he had at least to record satisfaction that it was inexpedient and impracticable to carry on the disciplinary proceedings leading to holding of SSF Court and also to record reason for taking to administrative side. Support for this was sought from a Supreme Court Judgment in Chief of Army Staff Vs . Maj. Dharmpal : 1985 CriLJ913

3. Appellants contested this position and justified the action repelling both contentions. It was explained by them that commandant had taken action on the basis of evidence on record and that neither BSF Act nor Rules created any bar to act on administrative side subsequent to initiation of disciplinary proceedings.

4. Writ Court on consideration of the matter accepted appellants contention that there was no bar for taking administrative action under Rule 26 after recording of evidence was ordered under Rule 48. But it struck down the Commandant's order for want of requisite material and basis. It held as under :-

'Though there is no serious lack of jurisdiction in issuance or invoking Rule 26 by respondent but that invocation must be on the basis of certain material wherein it must be brought to notice as to why it was expedient to invoke Rule 26. Nothing has been brought to the notice of the court in this regard.

5. Appellants feel aggrieved and have filed this appeal to urge tht requisite material was available with the Commandant on the basis of which he had validly

passed the order under Rule 26 retiring respondent from service. In this regard it is explained that he had testimony of three prosecution witnesses on record which furnished him requisite basis to take action. It is also submitted that writ court had placed wrong reliance on judgments referred by it and that there was no requirement for Commandant to record any satisfaction or reasons that it was inexpedient and impracticable to carry on the disciplinary proceedings before embarking on the administrative action or why it was expedient to take such action.

6. L/C for respondent Mr. Sharma stuck to his guns reiterating that once appellants had initiated action under Rule 48, they were debarred from taking administrative action under Rule 26 unless Commandant recorded his satisfaction that it was expedient and impracticable to proceed with disciplinary proceedings on the analogy of Army Rule 14(2). He also alleged that they had resorted to administrative action after sensing the failure of disciplinary proceedings and for this they were required to record reasons to take to Rule 26. Their failure in this regard proved that they had no material to support the action.

7. It all boils down to whether Commandant had passed the impugned order in the absence of any material and whether he was required to record satisfaction that it was inexpedient and impracticable to carry on the disciplinary action so as to resort to administrative action under Rule 26 or that it was expedient to take such action.

8. The first issue, in our view should go in favor of Appellants. It is a matter of record that they had examined three prosecution witnesses who had prima facie supported the charge against Respondent and it was their case that they had taken action on that basis. Once they had justified the action on that basis, there was no scope for the view that action lacked in requisite material. Nor could the Court go into the sufficiency or otherwise of such material or substitute its satisfaction for that of the Commandant to determine whether the impugned action was warranted or not. It appears that Writ court had lost sight of this aspect and had wrongly concluded that the action suffered from lack of material because it was not a case of total absence of relevant material which could render the action

perverse or arbitrary. Its finding in this regard therefore cannot sustain and so would not be the direction quashing the action.

9. This should have clinched the issue but it still remained to be seen Whether Commandant was required to record satisfaction that it was inexpedient and impracticable to proceed with disciplinary proceedings and hold trial of respondent or to give reasons that it was expedient to take administrative action before embarking on such action. L/C for respondent Mr. Sharma believes and vehemently urges so and for this he draws analogy from Army Rule 14. We find his submission rather far fetched and to prove the obvious it would be appropriate to extract the relevant provisions of these Rules to bring out its fallacy.

'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 where he considers it to be impracticable to give such opportunity), retire from the Force the said enrolled person.'

'14. Termination of service by the Central Government on account of misconduct.-  
(1) .....

(2) When after considering the reports on an officer's misconduct, the Central Government or the Chief of the Army Staff is satisfied that the trial of the officer by a court-martial is inexpedient or impracticable, but is of the opinion, that the further retention of the said officer in the service is undesirable, the Chief of the Army Staff shall so inform the officer together with all reports adverse to him and he shall be called upon to submit, in writing, his Explanationn and defense:

Provided that the Chief of the Army Staff may withhold from disclosure any such report or portion thereof if, in his opinion, its disclosure is not in the interest of the security of the State.

In the event of the Explanationn of the officer being considered unsatisfactory by the Chief of the Army Staff, or when so directed by the Central Government, the case shall be submitted to the Central Government, with the officer's defense and

the recommendation of the Chief of the Army Staff as to the termination of the officer's service in the manner specified in sub-rule (4).

10. A plain reading of the two rules would show that these stand poles apart and that there is nothing common between them. The two deal with different subject matters and contain their own conditions and requirements.

11. Rule 26 of BSF Rules empowers the Commandant to retire an enrolled person where he feels satisfied that he was unsuitable to be retained in force and for this he had only to provide him an opportunity to show cause and he could dispense with this also where he found it impracticable to do so. It was his domain and satisfaction to adjudge his suitability or otherwise for retention in force and to decide whether to retire him or not and his decision was not liable to scrutiny unless it was shown to be lacking in requisite basis or material rendering it perverse in the process. This provision does not provide for any other requirement, least of all requiring Commandant to record satisfaction that it was inexpedient and impracticable to proceed with the disciplinary proceedings and to hold trial and thus necessitating an administrative action. Nor does it require him to record reasons to show that it was expedient to take action on the administrative side.

12. Once Rule 26 does not provide for all this no such condition or requirement could be read into it or any analogy drawn from Army Rule 14(2) which deals with a different subject matter and contained its own terms and condition. This Rule deals with termination of service of an Army Officer on mis-conduct and its sub-section 2 requires Central Govt. or Army Chief to record satisfaction that it was inexpedient or impracticable to hold trial of such officer before terminating his service for such 'reduced prescribed qualifications' and issued a writ of quo warranto which could only issue in a case where infringement of binding rule/law was proved in the appointment of an unqualified candidate to the public post. A relaxation of prescribed qualifications would not attract a writ of quo warranto straightaway unless it was shown that incumbent suffered from patent lack of qualification to hold a public post.

13. Adverting to the relied upon Recruitment Rules we find that a candidate for the post of Vice Principal/Principal was required to possess a Second Class Master's

degree and ten years experience in Higher Secondary School. But this eligibility was applicable for direct recruitment to the post and not promotion and, therefore, it was inconsequential whether private appellant satisfied it and whether she had secured the requisite Division in Master's degree. Her deficiency allegedly was that she held a third Division Master's Degree instead of Second and did not possess necessary teaching experience of 10 years in Secondary School though she possessed 15 years over all teaching experience. This, in our view, did not tantamount to lack of essential qualifications so as to invite a writ of quo warranto. Nor was it a case of relaxation of essential qualification by an unauthorised action.

14. This appeal is accordingly allowed and impugned Writ court judgment dated 12.12.95 passed in CW No. 1380/75 set aside.

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