

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

+ **W.P(C) No.7633/2011**

% **Date of Decision: 21.10.2011**

Vir Singh Petitioner

Through Mohd.Mobin Akhtar, Advocate

Versus

Union of India & Ors. Respondents

Through Mr.Himanshu Bajaj, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. The petitioner has challenged the order dated 1st May, 2006 passed by respondent No.2 dismissing the petitioner from the service after trying him by Summary Security Force Court held at HQ 121 Bn. BSF on 1st May, 2006 on account of furnishing false information, by stating that he belongs to a Scheduled Tribe, while knowing fully well that he does not belong to a Scheduled Tribe, as well as the order dated 15th July, 2010 passed by the respondents rejecting the Statutory

Petitions dated 1st December, 2009 and 1st April, 2010 submitted by the petitioner against his trial by the Summary Security Force Court.

2. The pleas of the petitioner are that he could not be dismissed from service merely on the basis of the information given by the Sub Divisional Magistrate, which according to the petitioner was not conclusive and required further enquiry. The petitioner has categorically contended that he belongs to the Scheduled Tribe, i.e. Rathwa Tribes of Gujarat and that the Sub Divisional Magistrate, City Ahmedabad also had not denied that the petitioner does not belong to the Scheduled Tribes Category rather, what is stated by the Sub Divisional Magistrate is “the caste certificate has not been issued by his Office and it is fake.” The petitioner has also challenged the Summary Security Force Court proceedings on the ground that neither he had been informed about what was happening before the Summary Security Force Court, nor had he been provided the relevant documents during the trial.

3. This Court has heard the learned counsel for the petitioner. Respondent No.2 dismissed the petitioner from service by the order dated 1st May, 2006 holding that the petitioner despite knowing the fact that he does not belong to a Scheduled Tribe when questioned by AD Commandant Ftr. HQ BSF Jodhpur before whom he had appeared for enrolment in BSF, had stated that he is a member of a Scheduled Tribe,

however, his certificate was found to be fake and, therefore, the petitioner was dismissed from service.

4. The petitioner filed the Statutory Petitions dated 1st December, 2009 and 1st April, 2010 against his trial by the SSFC. The respondents by the order dated 15th July, 2010 again considered the facts and circumstances, and the relevant documents and held that the charge against the petitioner was that despite knowing the fact that he does not belong to the Scheduled Tribes he had made a false statement and declared that he belongs to the ST Category and produced a certificate allegedly issued by the Sub Divisional Magistrate, City Ahmadabad which was found to be fake consequent to the enquiry made from the Sub Divisional Magistrate, City Ahmadabad who had intimated by communication dated 9th August, 2005 that the certificate had not been issued by his Office and that it seems to be a fake certificate.

5. The respondents also noted that the petitioner pleaded “guilty” to the charge and in compliance of BSF Rule 142(2) also recorded its finding of guilty of the said charge.

6. The petitioner on being questioned to make a statement in reference to the charge or for mitigation of punishment, admitted that he had committed mistake and requested that he might be given the least punishment so that he could look after his wife and children.

7. That the respondent while considering the statutory petitions of the petitioner dealt with the pleas and contentions raised by the petitioner, inter-alia, that the proceeding before the SSFC had been done by the department without any information regarding the matter and no opportunity being given to the petitioner before dismissing him from service; that he had not admitted his guilt and no such plea was ever offered by him before the SSFC or before any authority; that the petitioner was not given proper documents/papers of the proceedings and that the charge against the petitioner that he does not belong to Scheduled Tribes is false as the Sub Divisional Magistrate, City Ahmadabad had not denied that the petitioner belongs to a Scheduled Tribe, except that the certificate relied on by the petitioner was a fake certificate.

8. Respondent No.3 while disposing of the statutory petitions of the petitioner noted that on the basis of the record of the proceedings under BSF Rule 45 reflects that the petitioner was heard by his Commandant by a proper offence report and that he was given opportunities to cross-examine the witness, and to make a statement in his defense, but he declined to avail the said opportunities and instead pleaded guilty. Relying on the ROE proceedings, it was held that the petitioner was given opportunities under BSF Rules 48 (2), 48(3) and 48(4) to cross-examine all the witnesses of the respondents, however, the petitioner

unequivocally pleaded guilty and he did not produce any witness and he had also admitted his mistake and, therefore, the plea of the petitioner that he was not given a reasonable opportunity cannot be accepted. Regarding the plea of the petitioner that he had not pleaded guilty, respondent no.3 relied on the documentary evidence which unequivocally reflects that he pleaded guilty during the hearing under the BSF Rules 45, as well as, while being tried by the SSFC and as the petitioner had declined to make any statement in his defense under the BSF Rule 45 despite being cautioned under BSF Rules 48 (3) in the ROE during trial, the plea of the petitioner is false and seems to be an afterthought.

9. The impugned order dated 15th July, 2010 also reflects that the petitioner was handed over the copy of each of the charges and the ROE proceedings, well before his trial and that no particulars of the documents which were allegedly not supplied to him have been revealed by the petitioner. The learned counsel for the petitioner has also failed to show details of any documents which were allegedly not provided to the petitioner or allege any specific prejudice caused to the petitioner on account of the non-supply of the alleged documents.

10. Regarding the plea of the petitioner that he belongs to a Scheduled Tribe and that the Sub Divisional Magistrate's letter stating that the certificate is fake is not conclusive proof of the fact that he does

not belong to a Scheduled Tribe, respondent no.3 noted that the appropriate authority to issue the certificate regarding the petitioner belonging to the Scheduled Tribes is the Sub Divisional Magistrate, City Ahmadabad and that the certificate which was produced by the petitioner was a fake certificate. Respondent no.3 also noted that even along with the statutory petitions filed by the petitioner no document had been produced by the petitioner to demonstrate that he belongs to a Scheduled Tribe.

11. The learned counsel for the petitioner is unable to show any documents or any other fact on the basis of which it can be inferred that the petitioner did not plead guilty before the Court in compliance of BSF Rule 48 (2). The learned counsel for the petitioner is unable to give any satisfactory reply as to why the petitioner did not cross-examine any of the witnesses produced by the respondents and why the petitioner did not produce any evidence to show that he really belongs to a Scheduled Tribe as alleged by him. The observations in the impugned order that the petitioner admitted his mistake and requested that he might be given the least punishment so that he could look after his wife and children, has not been denied categorically in the writ petition.

12. The order of the respondents also cannot be challenged on the ground that copies of relevant documents were not given to the

petitioner, since the petitioner has neither stipulated which documents were not given to him, nor has he been successful in showing how he has been prejudiced on account of the alleged non-supply of the copy of the alleged relevant documents. The petitioner cannot succeed on this ground, and thus, the order of the respondents' dated 15th July, 2010 cannot be faulted.

13. The plea of the petitioner that the petitioner belongs to a Scheduled Tribe has not been established as the certificate produced by him from the Sub Divisional Magistrate, City Ahmadabad was found to be fake and no other certificate was produced by the petitioner along with his statutory petitions dated 1st December, 2009 and 1st April, 2010 which had been rejected by an order dated 15th July, 2010. Even with the present writ petition, no document has been filed which would establish that the petitioner belongs to the Scheduled Tribes.

14. In the totality of the facts and circumstances, the petitioner has failed to make out any ground which will entail interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India against the order dated 1st May, 2006 and 15th July, 2010. The petitioner has failed to make out any ground which would show in any manner that the order passed by the respondents is illegal or suffers from any irregularity or any such perversity which is liable to be corrected. There are no grounds to interfere with the order of the

Tribunal. The writ petition is without any merit and, therefore, it is dismissed.

ANIL KUMAR, J.

SUDERSHAN KUMAR MISRA, J.

OCTOBER 21, 2011

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