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

+ **W.P.(C) No.3765/2013**

% **Date of decision: 30th July, 2013**

ANIL KUMAR RAI Petitioner
Through Mr.Sanjay Sharma, Adv. with Mr.R.D.
Upadhyay, Adv.

versus

UNION OF INDIA & ORS. Respondents
Through Mr.Anuj Aggarwal, Adv.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MS. JUSTICE DEEPA SHARMA

GITA MITTAL, J (ORAL)

1. The petitioner in the instant case was tried by a Summary Security Force Court in respect of an alleged incident dated 1st January, 1999. By a charge-sheet dated 12th October, 1999, the following charges were issued against the petitioner:-

“First Charge BSF Act 1968 Sec.20(a)

Using Criminal Force to his Superior Officer

In that he, at BOP Ranian on 4.1.99 at about 2100 hrs struck with their fist on the body of No.66577167 Subedar Harbhajan Singh of the same Coy and dragged him out side from the room by pulling his hair.

First Charge BSF Act 1968 Sec.22(a)

Neglecting to Obey local order

In that he, at BOP Ranian on 4.1.99 at about 2100 hrs found consumed Contravention of Bn Hq Order No.Esst/841/99/1338-43 dated 01 Jan 99 which directs that all ranks deployed on border are forbidden to drink liquor.”

2. The hearing of the charges against the petitioner under Rule 45 of

the Border Security Force Rule was conducted by the Commandant 128 Battalion, BSF on 7th January, 1999. During this hearing, six prosecution witnesses were examined in addition to examination of documents. The record of evidence was directed to be prepared by Shri Rajendra Singh 2 1/C after completion of the hearing. During the recording of evidence, again 11 prosecution witnesses were examined in the presence and hearing of the petitioner and he was given opportunity to cross-examine these witnesses. The petitioner duly availed of such opportunity.

3. The petitioner was also given an opportunity to make a statement in his defence and to produce defence witnesses.

4. There is no challenge to the legality and validity of any of these proceedings by the petitioner.

5. The petitioner was tried by a Summary Security Force Court (hereinafter referred to as 'SSFC') on 15th October, 1999. It is on record before us that the petitioner had nominated Shri Prem Pal, Assistant Commandant as "friend of the accused" and who was so detailed after the written request in this behalf as per his choice.

6. The petitioner set up a plea of not guilty whereupon the trial proceeded on such plea and 11 prosecution witnesses were examined. The petitioner was again given full opportunity to cross-examine all witnesses. The petitioner chose not to lead any defence though opportunity was given to him at the trial. He, however, made a

statement in his defence.

7. In this background, so far as the procedural aspect is concerned, no violation is pointed out to us by the petitioner so far as the conduct of the pre-trial proceedings as well as the trial by the Summary Security Force Court is concerned.

8. The petitioner was found guilty of both charges by the SSFC and by an order dated 20th November, 1999, the sentence of dismissal from service was imposed upon him.

9. A statutory appeal assailing the above proceedings and the order was filed by the petitioner to the Office of the Directorate General of the Border Security Force which came to be rejected by an order dated 22nd November, 2000.

10. The petitioner assailed these orders against him, by way of Civil Miscellaneous Writ Petition No.51172 of 2000 before the High Court of Judicature at Allahabad. This writ petition came to be dismissed by the High Court of Judicature at Allahabad by an order passed on 27th August, 2012. The material extract thereof deserves to be considered in extenso and reads as follows:-

“It appears that the statutory petition filed by the petitioner has been rejected mechanically without giving any reason and therefore, it is not sustainable. While deciding the statutory petition/appeal, the Director General, Border Security Force acts as a quasi judicial authority, therefore, it is incumbent upon him to consider the case and pass a reasoned order, giving

reason for acceptance or rejection of the pleas of the appellant, but no such order has been passed. In view of the above, the order dated 22.11.2000 and any other order passed in the file by the Director General, Border Security Force are quashed. The Director General Border Security Force is directed to decide the statutory petition/appeal dated 23.12.1999, filed by the petitioner, afresh, after giving opportunity of hearing to the petitioner, by passing a reasoned order as stated above. The petitioner shall file the certified copy of this order before the Director General, Border Security Force, within two weeks and the Director General, Border Security Force is directed to decide the statutory petition/appeal dated 23.12.1999 within another period of two months.

With the aforesaid observations and directions, the writ petition stands allowed.”

11. In compliance of the directions of the Allahabad High Court, the Director General, BSF considered the statutory petition of the petitioner afresh and has passed a reasoned and speaking order dated 12th November, 2012 altering the finding of guilt of the petitioner in respect of the two charges and substituting the same by a finding of not guilty. The Director General as appellate authority, did not vary the finding of guilty so far as the first charge is concerned and also held that the punishment which was imposed on the petitioner, was commensurate with the gravity of the offence committed by him.

12. Before us, the petitioner has assailed the order dated 12th November, 2012 on the ground that the Director General, BSF had no jurisdiction to pass the impugned order. It is contended that the matter should have remanded to the Summary Security Force Court for

consideration afresh which alone had the authority to consider the matter. It is further contended that the Summary Security Force Court ought to have complied with the requirement of Rule 99 of the BSF Rules which required the SSFC to record reasons for its findings.

13. We have heard learned counsel for parties at this stage itself, given the narrow area of consideration which is pressed before us. So far as the challenge to the findings of the Summary Security Force Court is concerned and the orders passed by it, the petitioner appears to have assailed them in the first writ petition being Writ Appeal No.51172/2007 before the High Court of Judicature at Allahabad which conclusively passed the judgment dated 27th August, 2012 issuing the above directions. The petitioner accepted the adjudication in his first writ petition and did not assail the same by way of any appeal or petition any.

14. The Director General, BSF has considered the matter in compliance with the directions passed by the High Court in the order dated 22nd August, 2012 and has passed a reasoned and speaking order which has been duly communicated to the petitioner. In this background, it is not open to the petitioner to now contend that the Director General could have only remanded the matter and could not have considered the matter afresh.

15. So far as the challenge to the order passed by the SSFC is concerned, the same rests on the sole ground that the order dated 15th

October, 1999 is not a reasoned or speaking order. This challenge is premised on the petitioner's reading of Rule 99 of the BSF Rules. Even if this challenge is maintainable, which we have held is not, we find that Rule 99 of the BSF Rules does not relate to a trial by a Summary Security Force Court but applies to the record and announcement of finding by the General Security Force Court and the Petty Security Force Court. As per the scheme of the Border Security Force Act, 1908 & Rules thereunder, Rule 99 is mentioned in Chapter 9 which relates to "Procedure for Security Force Courts".

16. So far as the Summary Security Force Court is concerned, there is a separate chapter assigned to the proceedings and the procedure which has to be followed. The legislature has prescribed the procedure to be followed for conduct of a Summary Security Force Court in Chapter 11 of the Rules. Our attention has been drawn to Rule 149 in Chapter 11 which requires the Summary Security Force Court to record its findings in the following manner:-

"149. Finding.- (1) The finding on every charge upon which the accused is arraigned shall be recorded and except as mentioned in these rules shall be recorded simply as a finding of 'Guilty' or of 'Not Guilty'.

(2) When the Court is of opinion as regards any charge that the facts proved do not disclose the offence charged or any offence of which he might under the Act legally be found guilty on the charge as laid, the Court shall find the accused 'Not Guilty' of that charge.

(3) When the Court is of opinion as regards any charge

that the facts found to be proved in evidence differ materially from the facts alleged in the statement of particulars in the charge, but are nevertheless sufficient to prove the offence stated in the charge, and that the difference is not so material as to have prejudiced the accused in his defence, it may, instead of a finding of 'Not Guilty' record a special finding.

(4) The special finding may find the accused guilty on a charge subject to the statement of exceptions or variations specified therein.

(5) The Court shall not find the accused guilty on more than one of two or more charges laid in the alternative, even if conviction upon one charge necessarily connotes guilty upon the alternative charge or charges.”

17. Mr.Anuj Aggarwal, learned counsel for the respondents has submitted that the issue raised by the petitioner is not res integra and stands finally settled by the judicial pronouncement reported at ***AIR 2010 SC 1551 Union of India & Anr. Vs. Dinesh Kumar.*** Placing reliance on Rule 149, in this pronouncement, it was held as follows:-

“12. On this backdrop, it is clear that the provisions for the SSFC and the appellate authority are para materia, more particularly in case of Rule 149 and Section 117(2) of the Act, with the provisions which were considered in both the above authorities. Therefore, there cannot be any escape from the conclusion that as held by the Constitution Bench, the reasons would not be required to be given by the SSFC under Rule 149 or by the appellate authority under Section 117(2) of the Act. This position is all the more obtained in case of SSFC, particularly, as the Legislature has chosen not to amend Rule 149, though it has specifically amended Rule 99 w.e.f. 9.7.2003. It was pointed out that in spite of this, some other view was taken by the Delhi High Court in the decision in *Nirmal Lakra v. Union of India and Ors.* [2003 DLT (102) 415]. However, it need not

detain us, since Rule 149 did not fall for consideration in that case. Even otherwise, we would be bound by law declared by the Constitution Bench in the decision in S.N. Mukherjee v. Union of India (AIR 1990 SC 1984).”

18. In view of the above, the challenge by the petitioner to the findings of the Summary Security Force Court in the instant case, relying on Rule 99 of the BSF Rules, is wholly misconceived. We have noted above the compliance of the statutory requirements and the rules framed thereunder by the respondents. The findings against the petitioner rests on a consideration of eleven witnesses and ample evidence in support of the charges.

19. In this view of the matter, the challenge in the instant writ petition to the order dated 12th November, 2012 of the Director General of the BSF as well is wholly misconceived and legally untenable.

We find no merit in this writ petition which is hereby dismissed.

(GITA MITTAL)
JUDGE

(DEEPA SHARMA)
JUDGE

JULY 30, 2013

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