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

+ W.P.(C) 11221/2021 & C.M.No.34545/2021

JAGBIR SINGH KAUSHIK

..... Petitioner

Through Mr.Abhay Kumar Bhargava with
Mr.Satyaarth Sinha, Advocates.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through Mr.Anurag Ahluwalia, CGSC

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Date of Decision: 21st October, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

MANMOHAN, J. (Oral)

1. This matter has been taken up for hearing today, as 18th October, 2021 was declared a holiday.
2. Present writ petition has been filed seeking directions to the respondents to comply with the order dated 20th July 2021 passed by this Court in Writ Petition No. 6745/2021 titled as *Jagbir Singh Kauhsik vs. Union of India & Ors.* Petitioner also seeks to challenge the order dated 25th August 2021 passed by IG, BSF and the disciplinary proceedings initiated against him.
3. In the present writ petition, it has been averred that the earlier writ petition preferred by the Petitioner was disposed of vide order dated 20th July 2021 by giving directions to the respondents that the officer scrutinising the charge and evidence against the petitioner would also examine the same from the Petitioner's point of view as well, specifically

whether there is merit in the complaint dated 5th August, 2020 filed by the petitioner and whether the action of the respondents was vindictive.

4. Learned counsel for the Petitioner contends that during the course of the inquiry proceedings, neither the Petitioner's point of view nor the evidence presented by the Petitioner was taken into account which is contrary to the directions passed by this Court.

5. He states that Para 4(II)(i) of the order dated 25th August, 2021 also stipulates that 3 persons were kept in one tent, which is a clear violation of the Covid-19 guidelines issued by the Government of India as well as the Government of Meghalaya's guidelines.

6. He further states that the said order dated 25th August 2021 passed by the IG of BSF only deals with accommodation of subordinate officers and personnel and therefore it is clear that special accommodation as well as services were given to the officers of BSF which is arbitrary. He contends that based on faulty findings of the inquiry proceedings, a General Summary Security Force Court has been ordered against the Petitioner.

7. A perusal of the paper book reveals that the learned Single Judge had closed the Contempt Petition filed by the Petitioner being Cont.Cas(C) No.618/2021 vide order dated 02nd September, 2021 on the ground that the order dated 20th July, 2021 passed by the Division Bench stood complied with. Admittedly, no appeal has been filed challenging the order dated 02nd September, 2021 passed by the learned Single Judge .

8. Further, a perusal of the order dated 25th August, 2021 passed by BSF, Headquarters Meghalaya Frontier, Shillong, Ministry of Home Affairs, Govt. of India reveals that each and every contention of the Petitioner has

been specifically dealt with and rejected by a well-reasoned order. The relevant portion of the said order is reproduced hereinbelow:-

2. *The backdrop of the case is that due to COVID-19 pandemic, personnel reporting to the units/HQrs were supposed to be quarantined for 14 days as per Covid-19 guidelines/protocols. In this regard, one of the quarantine center was Established at BSF campus, Mawpat(Shillong) in a tentae accommodation with all the basic amenities as per guidelines/instructions issued by Health Ministry as well as Higher Headquarters from time to time. The tentage accommodation is considered to be better for quarantine purpose as it could accommodate personnel in smaller lots. Accordingly, on 05/08/2020, when the petitioner returned from leave, he was also sent to said quarantine center but he refused to stay there in a tent and demanded other accommodation. Officials there apprised him about the scarcity of accommodation, but he did not listen and started instigating other inmates of said quarantine center that the place of quarantine center is a Jungle infested with scorpions/snakes and they should not stay there. On the same day, for want of other comfortable accommodation, the accused did insubordination to Sh. Veerpal Singh, Deputy Commandant of 97 Bn BSF which is a serious offence as per BSF Act, 1968 and entails punishment upto five years of imprisonment. On this, Sh. Veerpal Singh, DC left the place to avoid further escalation of the incident and reported the matter to the Nodal Officer Covid-19, Comdt(Adm) SHQ B5F, Shillong who arranged to shift the petitioner on the same day in a type-II quarter which was reserved for lady constables/families. In the meantime, Sh Veerpal Singh, DC received two whatsapp messages from the petitioner, addressed to none,complaining against the arrangements made at quarantine Centre and also showing his refusal to live in that quarantine centre.*
3. *Thereafter, the petitioner started behaving abruptly, questioning the authority and started making frivolous correspondences with higher Headquarters based on his own speculations against the force discipline. Subsequently, for separate reasons, three inquiries were ordered including one ordered by Commandant, 11 Bn BSF on the basis of the complaint made by the petitioner vide whatsapp messages dated 05.08.2020. Later on, on the request of the petitioner he was interviewed by DG BSF on 11/12/2020 who directed to ensure fair and expeditious enquiry. Consequently, a two men Staff Court of Inquiry(Hereinafter referred as SCOI) presided over by an officer of*

the rank of DIG was ordered vide order dated 15/01/2021 by Inspector General, Ftr Meghalaya after cancelling all earlier inquiries. The terms of reference of this inquiry was to investigate the complaint made by the petitioner vide his whatsapp messages dated 05/08/2021. Nonetheless, the petitioner did not wait for the outcome and continued making direct correspondence with higher authorities and threatening them to approach Police, Court, Media, Govt etc. Subsequently, the Inquiry did not find any substance in the complaint made by the petitioner vide his whatsapp message dated 05/08/2020 and his other complaints. Said SCOI was finalised with remarks of IG Ftr Meghalaya dated 06/05/2021, wherein, the petitioner was found to be blameworthy for various offences under BSF Act, 1968 and accordingly, disciplinary action has been initiated against him. Now the accused has approached the Hon'ble High court of Delhi at New Delhi by filling the subject WP which has been disposed of by the Hon'ble court vide order dated 20/07/2021.

4. Whereas, in compliance of the Hon'ble Court order dated 20/07/2021, the testimony of the witnesses and connected documents in the said Staff Court of inquiry conducted vide Ftr Meghalaya order dated 15/01/2021 has been again examined from the petitioner's point of view by the undersigned, who is Scrutinising the charges and evidence against the petitioner in terms of Rule 59(2)(b) of BSF Rules, 1969. It has been examined as to whether there is merit in the complaint dated 05.08.2020 forwarded by the petitioner and whether the action of the respondents was Vindictive. It is pertinent to mention that the complaint of the petitioner forwarded vide whatsapp messages dated 05/08/2020 is one of the terms of reference of the said SCOI. Points raised by the petitioner in his complaints and its detailed deliberation on the basis of said SCOI, is as under:-

- 1. That when he reported back from leave on 05/08/2020, the medical staff did not reacted promptly and he was made to sit in the bus alongwith other inmates for more than one hour to let them die due to heat. Thereafter, the medical staff did their formalities for about one hour.***

That Personnel who reported back from leave, temporary duty or Courses were required to undergo screening and other documentation in relation to Covid-19 one by one which ought to have taken time. However, the climate in the Shillong (Meghalaya) remains cool even in summers so complaint regarding exposure to excessive heat which may cause death is without any basis. As per testimony of HC (NA) Shyam

Sundar of 123 Bn BSF(witness no. 7) who performed the duties of Nursing Assistant in Combine Hospital SHQ BSF, Shillong (Meghalaya), on 5th Aug' 2020, total 25 Personnel from leave, course and T/duty etc reported at Gate No. 1, BSF Mawpat campus, Shillong. On getting the information, it took only about ten to fifteen minutes to reach him at the Gate NO.1 for conducting required screening. Thereafter, it took 3 to 4 minutes for screening and filling up the suggestive format for a single person.

From the above statement, it is clear that it might have take about one and half hour for screening and documentation formalities in view of the Covid-19 of the party including the petitioner which arrived at the BSF campus. The circumstances which the petitioner faced at the gate of BSF campus upon his arrival from leave were not exceptional or specific to him but more or less same procedure was being adopted at the BSF campus. Hence, the complaint of the petitioner seems to be exaggerated as much as inconvenience is part of COVID protocol.

II. That the tented quarantine center was established at the firing range in a jungle and there was threat to life due to snakes/scorpions/insects. Further, there were inadequate administrative arrangements and also that guidelines and protocols for quarantine center were not being followed.

That the quarantine centre was established in an open area at the firing range inside the BSF Campus, Mawpat (Shillong) only. As per record 16 Inspectors, 33 Sub Inspectors, 160 Asstt. Sub Inspectors, 195 Head Constables and 1070 Constables were quarantined at said quarantine centre under 97 Bn BSF and not a single person made any complaint pertaining to basic amenities and arrangements made over there. In this regard, the testimony of Shri Veerpal Singh, DC, 97 Bn BSF, SI/GD Vikash Godara of 97 Bn BSF, ASI/GD Ram Chandar of 97 Bn BSF and Dr. Rachhpal Singh, CMO (SG) of SHQ BSF Shillong i.e, Witnesses No.1,2,3 and 31 at the SCOI are relevant. On scrutiny of the same and connected documents, it is revealed that adequate arrangements were made at the said center which included following amongst others.-

- a) Cots*
- b) Separate water tanks with tap for drinking water.*
- c) 12 number of bathig points & toilets with water tank, buckets and mugs.*
- d) Lighting arrangements and charging points in each tent.*
- e) All personnel were being provided, one time Kadha, one time tea and three times packed food per day.*

- f) One toilet block, one bathing point and four separate tents duly fenced with barbed wire were marked for symptomatic personnel.
- g) The potable water tank was placed in open duly covered with lid and regular cleaning of the tank was being done every second day. Even tents were being sanitized on arrival of new personnel, toilet blocks were being cleaned and sanitized regularly.
- h) An individual could have tied mosquito net for him inside the tent.
- i) Further, as per directions 3 people were being accommodated in a single tent with appropriate distance due to constraint of resources, however in case of Subordinate Officers, only two were being accommodated in a tent as per availability.

On this issue, Dr. Rachhpal Singh, Chief Medical Officer(Selection Grade)(witness No 31) has stated that said quarantine center was established as per the guidelines/instructions of Govt. of Meghalaya and BSF authorities. There were no reports for snakes bite, scorpions bite and malaria. No COVID-19 positive person was quarantined there. However, if any personnel detected positive, he was immediately evacuated to Composite Hospital BSF, Shillong or other designated hospital at Shillong. That apart, there was proper hygiene and waste management of human Sewage and regular cleaning was being done with Sodium Hypochlorite. Bleaching powder was sprayed at and near the toilets/bathrooms. Furthermore, the surveillance officers of District Health Medical Officer (DHMO) Shillong, Dr. Robert had Visited and inspected the said quarantine center and he was satisfied with overall arrangements of quarantine facilities for the troops. Therefore, the complaint made by the petitioner regarding inadequate facilities is not made out and appears to have been made for want of some special treatment to him during quarantine period.

III. That Sh Veerpal Singh, DC 97 Bn BSF came to him and started using discourteous language(Tu Tadak) and said that he has to stay there only and they did not have any other place for him.

It has also come out in the inquiry that Sh Veerpal Singh, DC(Witness No.1) did not talk any discourteous language(Tu Tadak) to the petitioner. However, when Shri Veerpal, DC asked about the problem in the said quarantine center, the petitioner became angry and started behaving aggressively. Shri Veerpal Singh tried his best to convince him but the accused did not listen and further continued his insubordination to Sh Veerpal Singh, DC. Nonetheless, to resolve the issue, said officer, informed the higher authorities that the petitioner was not satisfied with the arrangements and has asked to make

immediate alternate arrangement for him either in guest house or in vacant family quarter. Thereafter, he was shifted to a Quarter on the same day which was reserved for lady Govt. servants or families. Petitioner also accepted said privilege happily and subsequently never showed any concern about facilities at the said quarantine center for other inmates whom he was stated to have instigated for his own cause.

5. On scrutiny of the SCOT as well as facts and circumstances of the case, the issues raised by the petitioner in his complaints dated 05.08.2020 are not substantiated by evidence brought on record and are without any basis. On the other hand, it is evident that his conduct has been below par in the time of Covid-19 Pandemic when every BSF personnel was required to perform his duties as frontline worker. More so, a member in combat force often needs to stay in tents and difficult terrain while performing duties where all kinds of threat persist. But the petitioner has been found to have behaved in disorderly manner during this tough time and has been found blameworthy for various offences in the said SCOI as per evidence available therein and same does not look to be vindictive. Therefore, disciplinary action was directed to be initiated against him and accordingly, same has been initiated against the petitioner as per BSF Act and Rules. An examination of Abstract of Evidence (AOE) prepared in the case as per Rule 49 of BSF Rules, 1969, reveals that there is sufficient evidence available to proceed further on the charges framed against the petitioner. However, the petitioner shall be accorded all opportunity to defend his case as per law.

6. This order is issued in respectful compliance of the Hon'ble Court order dated 20.07.2021 passed by Honble High Court of Delhi at Delhi in WP(c) 6745 of 2021."

9. This Court is also of the view that the BSF Act is a complete code in itself and it gives a number of opportunities to the members of the force to raise their grievances during the course of inquiry. It is settled principle of law that the Court cannot interfere in the disciplinary/inquiry proceedings at the interim stage. (See: ***State of Uttar Pradesh vs. Brahm Datt Sharma, (1987) 2 SCC 179***).

10. Consequently, this Court is of the view that the present writ petition along with pending application is bereft of merit. Accordingly, the same is dismissed with costs of Rs.5000/- to be deposited by the Petitioner with the High Court of Delhi Middle Income Group Legal Aid Society, Old Lawyer Chamber Block, Chamber No.33, Delhi, within two weeks.

MANMOHAN, J

NAVIN CHAWLA, J

**OCTOBER 21, 2021
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