



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

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Judgment reserved on: 04th October, 2023
Judgment delivered on: 12th December, 2023

+ **W.P.(C) 18998/2006**

JAI SINGH

..... Petitioner

versus

UOI & ORS.

..... Respondents

Advocates who appeared in this case:

For the petitioners: Mr. Ankur Chhibber, Advocate

For the Respondent: Ms. Arunima Dwivedi, Central Government Standing Counsel with Ms. Pinky Yadav and Mr. Aakash Pathak, Advocates

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J

1. Petitioner challenges the findings given by General Security Force Court (GSFC) whereby he has been held guilty under Section 46 of Border Security Force Act and has been sentenced to suffer rigorous imprisonment for a period of one year and has also been dismissed from service.

2. As per the averments made in the Writ Petition, petitioner had joined Border Security Force (BSF) as Constable in the year 1972. He kept on doing his work with utmost sincerity and devotion and, eventually, rose to the rank of Sub Inspector in 1993. He earned 31 cash rewards/good entries during his service tenure. According to petitioner, he has been falsely implicated and wrongly convicted, in contravention of settled proposition of law. It is contended that



despite the fact that it was a case of no evidence, GSFC found him guilty. It has been contended by him that nothing surfaced during the trial suggesting that he was in touch with any smuggler or that he possessed any property disproportionate to his income from known sources. According to petitioner, even if the entire evidence led by the prosecution is to be believed *in toto*, it does not show his complicity in any manner whatsoever and, therefore, there was no reason or occasion for GFSC to have held him guilty. It has thus been prayed that he be reinstated in service from the date of dismissal along with full back wages and all consequential benefits.

3. According to respondents, this Court, while exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India, cannot act as an appellate court and cannot re-appreciate the evidence during the course of judicial review. It is contended that even otherwise the evidence led during the GSFC proceedings clearly indicts the petitioner and goes on to establish that he was in contact with smugglers and was in possession of bank drafts, for which he could not account for. It is contended that his income from the known sources during the relevant period i.e. from December 2002 to February 2003 was Rs. 19,429/- whereas during the same period, he got prepared bank drafts worth Rs. 3.50 lacs and since the evidence on record is of sterling quality, it does not lie in the mouth of petitioner to say that it was a case of no evidence.

4. We have given our thoughtful consideration to the rival contentions and carefully gone through the entire record. The original



record of GSFC was also called for and was comprehensively examined to appreciate the aforesaid contentions.

5. Before touching the aspect about adequacy and reliability of the evidence led before GSFC, we need to remind ourselves that this Court cannot act as appellate court and reassess and reappraise the evidence. However, indubitably, if we come across any instance suggesting violation of principles of natural justice or gross violation of the laid down procedure or denial of fair trial, the intervention can be made exercising power under Article 226 of the Constitution of India. The aspect of fair trial enshrined under Article 21 of Constitution of India also implies adherence to relevant statutory provisions including those contained under Indian Evidence Act. The Co-ordinate Bench of this Court in *Balwinder Singh Vs. Union of India & Ors.* (2010) 172 DLT 200 (DB), while making reference to the judgment given by Division Bench of Guwahati High Court, observed as under:-

“So far as the rights of members of security forces as the Border Security Force and the permissibility and scope of challenge to the proceedings of the security force courts by way of proceedings under Article 226 are concerned, the Division Bench of the Guwahati High Court had occasion to consider the same in the pronouncement reported at MANU/GH/0170/2007 : (2007) 1 GLT 903 Director General, Border Security Force vs. Iboton Singh (KL). In para 14 & 15, it was held as follows:-

“14. While considering the scope of judicial review by the High Court in matters of the proceedings of a trial by a SFC, what is also pertinent to note is that Article 33 of the Constitution has conferred, on Parliament, the power to abridge the fundamental rights of not only armed forces, but also of the forces entrusted with the maintenance of public order. This, however, does not mean that merely because of the fact that a person belongs to an armed force or a force



entrusted with the maintenance of public order, he is denuded of the constitutional guarantees given to him by Article 21 of the Constitution, which ensures to every person a fair trial in accordance with law. Viewed from this angle, it is clear that when the procedures prescribed are followed as a mere formality by a SFC and not in substance or in its true spirit, the accused may, in an appropriate case, be held to have been denied a fair trial and such a proceeding may warrant interference by the High Court in exercise of its extra-ordinary jurisdiction under Article 226. The procedure prescribed adopted for trial by a SFC has to be tested on the touchstone of Article 21 and if the procedural safeguards given to a person from the Border Security Force, under the BSF Act and/or the BSF Rules, are violated, violation thereof would, in substance, be denial of the right to a fair trial. A person, even when he comes from the BSF, is as much a citizen as any other citizen of India and he is entitled to all such protections as have been given to him by making various laws in conformity with the provisions of Article 21. The Constitution-makers were conscious of the fact that no more restriction should be placed than what are necessary and indispensable for ensuring maintenance of discipline and proper discharge" of duties by the armed forces and the forces entrusted-with the maintenance of public order. Hence, when an Indian citizen, being a member of any such forces, is tried under its own established mechanism, such as, SFC, on a charge of having committed the civil offence of 'murder' punishable under Section 320 IPC, it is the duty of the High Court to examine, when such a person approaches the High Court with an application under Article 226, to determine if, while holding the trial, the provisions of the BSF Act and the Rules made thereunder, which provide protection to the accused, have been adhered to or not and whether, for the purpose of reaching its findings, the SFC has kept itself informed of all the relevant provisions of the Evidence Act and the Indian Penal Code.

15. It is for the reasons indicated above that in Union of India v. LT Ballam Singh reported in MANU/SC/0360/2002 : 2002(81)ECC236, the Apex Court has pointed out that even an army personnel is entitled to the protection, which the Narcotic Drugs and Psychotropic Substances Act (in short, 'the NDPS Act') gives to any other person. In other words, the protection available, in the form of Sections 42 and 50 of the NDPS Act, shall be applicable to the case of even an army personnel, for, there is nothing, in the law, that the protection, given in the NDPS Act, are not applicable to the members of the armed forces. Logically, therefore, when the Evidence Act is applicable to the proceedings of a trial by a SFC, it is but natural to interfere, and, in fact, we have no hesitation in



holding, that if the provisions of the Evidence Act are ignored or are not taken into account by a SGFC and/or when the provisions of the Indian Penal Code are not properly applied, such noncompliance may, in an appropriate case, compel the writ Court to interfere, in exercise of its powers under Article 266, with the findings, which may have been reached by either ignoring, or in ignorance of, the relevant provisions of law, particularly, when such non-compliance results in gross miscarriage of justice. This apart, and as already indicated above, the procedural safeguards, which the BSF Act and the Rules themselves provide, cannot be ignored, for, ignoring them may amount to, in a given case, denial of a fair procedure to a person accused of having committed offence under the Indian Penal Code.”

6. Thus, though this Court cannot act as appellate authority but it can certainly see whether any material finding is based on ‘no evidence’ and thereby warranting interference by the court.

7. Let us now see the nature of misconduct.

8. If the case of the respondents is to be believed, then the petitioner, who was at the relevant time deployed at Indo-Bangladesh Border, was having close relation with the smugglers of the area and used to send money to his relatives through such smugglers. According to respondents, the income from pay and allowances of the petitioner from his known sources of income was Rs.19,429/- during the check period of December 2002 to February 2003 whereas he was found in possession of bank drafts worth Rs. 3.50 lacs. According to respondents, the petitioner was in possession of unaccounted money which he initially handed over to one alleged smuggler Sh. Montu Mondal (PW8). Such amount was further handed over by Sh. Montu Mondal to Sh. Asit Sonar (PW4), another smuggler and with the help of such money, Sh. Asit Sonar got prepared bank drafts worth Rs.



3.50 lacs from SBI Branch of Berhampore and SBI Branch of Lalgola during January-February 2003. These drafts were got prepared in the names of friends/relatives of petitioner. Since the relationship between petitioner and said smuggler Sh. Asit Sonar got strained and since petitioner started threatening Sh. Asit Sonar, he spilled the beans and brought the incriminating material to the knowledge of BSF authorities which resulted in GSFC trial.

9. According to the petitioner whereas he was performing his duties during the relevant period in the most sincere manner and made seizure of smuggling articles like cattle heads etc. He was approached by certain persons for releasing those articles which he refused and those persons, in connivance with others, have fabricated a false story and implicated him.

10. It will be now relevant to see the charge with which petitioner/accused was served. It reads as under: -

CHARGE SHEET

The accused No. 729220394 SI Jai Singh of 51 Bn BSF Attached with 26 Bn BSF is charge with BSF ACT

SEC-46 Committing a civil offence that is to say criminal misconduct for having been as public servant in possession of pecuniary resources, disproportionate to his known source of income for which he can not satisfactorily account for an offence specified in Section 13 (1) e) of the Prevention of Corruption Act 1988 punishable under Section 13 (2) of the said Act.

In that he,

At BOP DMC and BOP Asirdah while performing the duties of platoon Comdr and Offg Coy Comdr. Between Dec' 2022 to Feb 2003, got remitted an amount of Rs. 3,50,000/- (Three Lakh and Fifty Thousand) only through Bank Drafts as per details given



below to his son and relatives, disproportionate to his known source of income, which he could not satisfactorily account of,

<i>S No.</i>	<i>BD No.</i>	<i>Date</i>	<i>Amount</i>	<i>In favour of</i>
1	650049	24.01.03	Rs. 30,000/-	Fouran Singh
2	650050	24.01.03	Rs. 40,000/-	Fouran Singh
3	650291	05.02.03	Rs. 40,000/-	Rakesh Singh
4	650292	05.02.03	Rs. 30,000/-	D Singh Bhaduria
5	650293	05.02.03	Rs. 30,000/-	Rakesh Singh
6	650294	05.02.03	Rs. 30,000/-	D Singh Bhaduria
7	672417	13.01.03	Rs. 25,000/-	Fouran Singh
8	672418	13.01.03	Rs. 25,000/-	Fouran Singh
9	649656	03.01.03	Rs. 25,000/-	R Singh
10	649657	03.01.03	Rs. 25,000/-	R Singh
11	649694	06.01.03	Rs. 25,000/-	Rakesh Singh
12	649695	06.01.03	Rs. 25,000/-	Rakesh Singh
	<i>Total Amount</i>		<i>Rs. 3,50,000/-</i>	

11. In order to bring home the aforesaid charge, respondents examined following witnesses: -

Bank officials:

PW - 1 Sh. S K Datta (Bank Manger SBI, Lalgola)
 PW - 5 Sh. M K Sahu (Dy. Manager, SBI Behrampur)
 PW - 7 Sh. Biswajit Sen (Assistant, Cash & Accounts, SBI Lalgola)
 PW - 13 Sh. A.S Moghi (Dy. Manager, SBI, Morena M.P.)

Public witnesses

PW - 4 Sh. Asit Sonar (alleged smuggler)
 PW - 8 Sh. Montu Mondal (alleged smuggler)
 PW - 9 Sh. Arun Mondal
 PW - 12 Sh. Radhu Mondal



BSF Officials

PW - 2 Insp. Raj Kumar (Member of 51 Bn BSF)
PW - 3 ASI C Venkateshan (Member of 62 Bn BSF)
PW - 6 HC Mahavir Singh (Member of 62 Bn BSF)
PW - 10 SI S N Sharma (Member of 62 Bn BSF)
PW - 11 Sh. Kamaljeet Singh (Recording Officer)

12. It will be also useful to make reference to Section 13 (1)(e) of the Prevention of Corruption Act 1988 punishable under Section 13 (2) of the said Act. It reads as under: -

13. Criminal misconduct by a public servant:

(1) A public servant is said to commit the offence of criminal misconduct-

.....

.....

(e) If he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

13. According to department, petitioner had income from his known sources i.e. pay and dearness allowance etc. of Rs. 19,429/- from December, 2002 to February, 2003. There is no challenge about the aforesaid fact as even the petitioner admitted the same during trial. Reference be also made to statements of PW3 ASI C. Venkateshan and PW6 HC Mahavir Singh.

14. As already noted above, according to respondents, petitioner was in contact with smugglers and he had unaccounted money. He gave such amount to one smuggler Sh. Montu Mondal who, in turn,



handed over the same to other smuggler Sh. Asit Sonar and Sh. Asit Sonar got prepared eight bank drafts worth Rs. 3.50 lacs which were to be sent to the friends and relatives of petitioner. As per respondents, since the petitioner had threatened Asit Sonar that his whole family would be wiped out in case remaining bank drafts were not dispatched, Sh. Asit Sonar reported the matter to G. Branch and thereafter such bank drafts worth Rs. 2 lacs were seized from Sh. Asit Sonar and bank drafts of Rs. 50,000/- from Sh. Montu Mondal by the Recording Officer.

15. In order to prove the entire chain of events and all the crucial links, first and foremost are the statements of Mr. Montu Mondal and Mr. Asit Sonar.

16. Unfortunately, both these material public witnesses, who have also been projected as smugglers of the area, have not supported the case of prosecution at all.

17. PW8 Sh. Montu Mondal has not whispered even a single word in favour of the respondents. He was, therefore, cross-examined by the department but despite such cross-examination, he did not utter even a single incriminating word against the petitioner. The petitioner had allegedly handed over a sum of Rs. 4.30 lacs to him and he then handed over said amount to Sh. Asit Sonar for the purposes of preparation of bank drafts. However, in his deposition, he has denied the aforesaid fact. So much so, he also failed to identify petitioner/accused during the GSFC proceedings claiming that he had never seen him. He also deposed that he did not know any Asit Sonar.



He claimed that he never entered into any transaction with BSF personnel and had nothing to do with them. It also needs to be highlighted that PW8 Sh. Montu Mondal, supposedly a key witness for the prosecution, divulged that when he was earlier called before BSF officer for making statement, he had been beaten up by BSF officials and made to sign some statement. Thus, the very foundation of the case stands smashed as he was the one who had allegedly received unaccounted money by the petitioner.

18. The testimony of PW4 Sh. Asit Sonar is also equally damaging to the prosecution.

19. Though he did claim that he knew the accused (petitioner herein) who used to come to his STD Booth for making calls and identified him also but in, no uncertain terms, he deposed that he never entered into any financial transaction with him. Since he was also found not revealing the truth, the prosecutor cross-examined him after declaring him hostile but despite such cross-examination, the department could not elicit anything from his mouth which may even remotely indict the petitioner. He categorically claimed that he had not got prepared any bank draft on behalf of petitioner. This also has caused enormous harm to prosecution which had come with specific allegation that Asit Sonar was the one who got prepared eight bank drafts favouring relatives and friends of petitioner. It is worthwhile to mention that at the earlier stage of Court of Inquiry (CoI), Sh. Asit Sonar had claimed that he had got prepared bank drafts but when few of those were not dispatched to such relatives, petitioner started threatening him on telephone and, therefore, he informed Sh. Rakesh



Negi, DC(G), SHQ, KNR about the same. However, when Sh. Asit Sonar made deposition before GSFC, he claimed that neither he was threatened by the accused nor he got prepared any draft for accused. He reiterated that he was never given any amount by the petitioner.

20. As regards drafts, he rather testified that he handed over some bank drafts to Sh. R.P. Kukreti, Deputy Commandant who was conducting Court of Inquiry (CoI). He was confronted with two bank drafts in original (bearing no. 650049 dated 24.01.2003 for Rs. 30,000/- payable at SBI Berhampore favouring Fouran Singh and bank draft bearing no. 650050 dated 24.01.2003 for Rs. 40,000/- payable at SBI Berhampore in favour of Fouran Singh) but in his further deposition, he created flutter by claiming that some BSF personnel had come to him in the first half of January 2003 and made him sign some requisition forms of the bank. He deposed that couple of days later, same BSF personnel came back and gave him two drafts in favour of Fouran Singh instructing him to give those to some officers. Thus, as per him, these drafts were rather planted and were handed over to him by some BSF official with some instructions, suggesting implication of petitioner.

21. PW4 Sh. Asit Sonar also denied having dispatched any bank drafts at the address given by accused/petitioner. The department was heavily relying upon the fact that some letters were dispatched to the wife and other relatives of the petitioner by Asit Sonar and the acknowledgment cards thereof were handed over by him to the petitioner. These letters, allegedly, contained some drafts. Fact remains that the corresponding original AD cards have never seen the



light of the day. No official from Post Office has either been examined in order to, at least, substantiate that any such letter was sent at said addresses. Thus, there is no admissible proof of dispatch of any letter. It is nothing but a wild imagination of prosecution that any such registered letter was containing any draft.

22. It needs to be highlighted right here that petitioner was saddled with getting 12 bank drafts prepared in the names of his friends and relatives. However, GSFC excluded drafts mentioned at Serial No. 5, 6, 7 & 8 as mentioned in the charge-sheet. The drafts at Serial No. 5 & 6 were got prepared through Sh. Mithu Saha and drafts mentioned at Serial No. 7 & 8 were got prepared through Sh. Arun Mondal & Sh. Radhu Mondal. GSFC noted that the prosecution failed to establish any link between Sh. Mithu Saha and Sh. Radhu Mondal with the accused and, therefore, gave him benefit of doubt regarding preparation of bank drafts through said witnesses.

23. Therefore, question is whether it stands proved that the remaining eight drafts were got prepared by the petitioner through PW5 Sh. Asit Sonar. As discussed already, the testimony of Asit Sonar and Montu Mandal does not impeach the petitioner in any manner whatsoever.

24. It is quite obvious that GSFC got swayed away by incriminating statement made by Sh. Asit Sonar during Court of Inquiry. Such statement, recorded during the earlier stage is merely a previous statement which is not *per se* admissible and can only be used by the prosecution or the defence, as the case may, be for the



purposes of cross-examining any witness.

25. This Court has gone through the BSF Act and Rules made thereunder. Chapter XIV of BSF Rules deals with Court of Inquiry. Undoubtedly, the aspect related to admissibility of any statement recorded during the Court of Inquiry is not specified either in BSF Act or BSF Rules but these statements are merely previous statements and GSFC is required to give its findings based on the evidence led before it and not based on the statements recorded during the Record of Evidence. We are fortified in our view as Rule 182 of Army Rules 1954 also lays down that any statement made during the proceedings of Court of Inquiry shall not be admissible in evidence though these could be used by the prosecution or the defence for the purposes of cross-examination. The procedure of court martial by BSF is almost akin to one provided under Army Act. Moreover, as per Section 87 of BSF Act, Indian Evidence Act 1872 shall, subject to provisions of BSF Act, apply to all proceedings before Security Force Court. Therefore, the previous statement can be used for limited purpose only.

26. In the present case, it is quite obvious that on the basis of the statements recorded during the Court of Inquiry, GSFC tried to connect the dots and gave findings that the eight drafts had been got prepared by the petitioner through Sh. Asit Sonar.

27. Even if this Court takes into consideration the statements of the concerned bank officials, at best, it can be held that eight drafts (mentioned at Serial No. 1 to 4 & Serial No. 9 to 12 of charge-sheet)



were got prepared by PW5 Sh. Asit Sonar but there is nothing at all to indicate that these were prepared by him either at the instance of petitioner or with the help of money provided by the petitioner.

28. Moreover, it also needs to be kept in mind that as per prosecution, Sh. Asit Sonar was apprehending some threat from petitioner and, therefore, he confided in some BSF official and handed over some such drafts in original. For the reason best known to the prosecution, such BSF official was never examined. No necessity was felt of examining either Sh. Rakesh Negi or Sh. R.P. Kukreti and, therefore, it is at all not clear as to under what circumstances, these original drafts came in possession of the prosecution. The BSF official in whom Sh. Asit Sonar confided was the most material one, in our view. There was no reason to have held him back.

29. Eight drafts, which GSFC linked with the petitioner, are in the names of Fouran Singh, Rakesh Singh and D. Singh Bhadoria. However, there is no elucidation from the prosecution as to who are they. Evidently, prosecution could not reach Sh. Fouran Singh and as already noticed above, two drafts mentioned at Serial No. 7 & 8 which were also in the name of Fouran Singh could not be linked with the petitioner. Qua Rakesh Singh, PW13 Sh. A.S. Moghi, bank official was examined from SBI Branch Morena and he did claim that four such drafts (mentioned at Serial No. 9, 10, 11 & 12) were presented for payment in their branch and amount was accordingly credited in the account of Sh. Rakesh Singh on 25.1.2023 but fact remains that there is nothing on record indicating any connection of any kind between such Rakesh Singh and the petitioner. Such account holder



has also not been examined. Details about the names of the family members of the petitioner were proved by PW2 Sh. Raj Kumar and it is quite apparent that petitioner has no family member with the name of Fouran Singh or Rakesh Singh.

30. According to respondents, petitioner had a son with the name of Sh. Dharmendra Singh Bhadoria and there were two bank drafts in the name of Sh. Dharmendra Singh Bhadoria and, therefore, the complicity of petitioner stands exposed. This argument also does not click simply due to the reason that as per the original record of GSFC trial, in all eight drafts, including the two original drafts in the name of Sh. Dharmendra Singh Bhadoria, came to the possession of BSF and these were never used or credited in the account of said Sh. Dharmendra Singh Bhadoria. Reference be made to one order dated 16.10.20204 passed by Inspector General South Bengal Frontier under Section 105 of BSF Act whereby all these eight drafts (mentioned at Serial No. 1 to 8) were directed to be taken off from GSFC trial proceedings and were directed to be deposited in the government treasury as there were no claimant of these drafts. Thus, none of these eight drafts were actually used. One of said drafts i.e. draft mentioned at Serial No. 8 favouring Dharmendra Singh Bhadoria was allegedly prepared by PW4 Sh. Asit Sonar. As already noticed, PW4 Sh. Asit Sonar has denied the same. The other draft in the name of Sh. Dharmendra Singh Bhadoria is mentioned at Serial No. 6. It was allegedly got prepared by Sh. Mithu Soha but fact remains that said draft was excluded by GSFC itself. Thus, merely because name of one son of the petitioner is Dharmendra Singh as per Service Record



would not mean anything significant in absence of any corroborating material.

31. Prosecution labeled PW Asit Sonar & PW8 Montu Mondal as smugglers but there is no material to indicate the same. Undoubtedly, PW10 Sh. S.N. Sharma claimed that they were smugglers operating in the area of BOP Asirdah but except for one line oral assertion, there is nothing which may project them as smugglers.

32. As noted already, Petitioner is facing charge for committing offence under Section 13 (1)(e) of Prevention of Corruption Act but there is nothing which may indicate that any bank draft was recovered from his conscious or constructive possession and, therefore, the question of his being found in possession of disproportionate assets does not arise at all. PW4 Sh. Asit Sonar and PW8 Sh. Montu Mondal have not supported the case of prosecution during GSFC proceedings and have denied any connection with the petitioner. Sh. Asit Sonar has denied that he had got prepared any bank draft in the names of friend/relatives of petitioner

33. Thus, apparently the conviction of the petitioner is based on the previous statements made during Court of Inquiry. These previous statements are not *per se* evidence. Moreover, it has also come to fore that these material witnesses had deposed before GSFC that they were pressurized to make statements during Court of Inquiry.

34. In view of aforesaid, it becomes obvious that it was a case of “no evidence” and in view of hostile and unsupportive evidence of both the key witnesses, there was no occasion for returning finding of



guilt against the petitioner. As a result thereof, the order of sentence directing the petitioner to suffer imprisonment for one year and his dismissal from service deserves to be set aside. Consequently, petitioner becomes entitled to consequential reliefs.

35. As per the details available in record of GSFC, the date of birth of petitioner is 12.06.1954. Therefore, he has already attained age of superannuation. He was dismissed in the year 2004 when he was around 50 years.

36. Thus, the petitioner shall be deemed to be in service till the date of his superannuation and would be entitled to all benefits, actual and notional as the case may be, in terms of FR 54A as if he was in service till the date of his superannuation. All such consequential benefits be released to him within eight weeks from today.

37. Petition stands allowed in aforesaid terms.

MANOJ JAIN, J

SANJEEV SACHDEVA, J

December 12, 2023

dr