

**HIGH COURT OF TRIPURA
AGARTALA**

WA No. 85 of 2023

Dipankar Pramanik,
(No.069440621, Constable G.D),
S/o- Late Kanailal Pramanik of Village-Bhimpur,
Uttarpara, P.O. Bhimpur, Police Station-Kotwali,
District-Nadia, PIN-741167, Age-41 years, presently
camping at C/o. Satyajit Sutradhar, A. D. Nagar,
Road No.1, Agartala, West Tripura, PIN-799003.

..... Appellant(s)

V E R S U S

1. Union of India,
To be represented by the Secretary,
Ministry of Defense, having its office at CGO Complex,
Lodhi Estate, New Delhi-110003.
2. The Director General of BSF,
Having his office at CGO, Lodhi Estate,
New Delhi-110003.
3. The Assistant Commandant,
74 Bn, Frontier Headquarter,
BSF, Salbagan, Agartala, West Tripura.
4. The Commandant,
74th BN, BSF, presently inducted in
Gujarat Frontier Service through the
Frontier Headquarters of BSC, Gujarat.

..... Respondent(s)

For Appellant(s) : Mr. Samarjit Bhattacharjee, Advocate.
Mr. D Paul, Advocate.

For Respondent(s) : Mr. Bidyut Majumder, Dy. SGI.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

JUDGMENT & ORDER (ORAL)

01/04/2024

This appeal arises out of judgment & order dated 22.09.2022 passed by the learned Single Judge in WP(C) No.367 of 2022, whereby the writ petition of the appellant was dismissed.

2. The appellant was engaged as Constable (GD) in Border Security Force (BSF) in the year 2006. A Summary Security Force Court (for short, “SSFC”) was constituted to initiate a court proceeding against the appellant for the alleged commission of offence punishable under Sections 46 & 22(e) of BSF Act, 1968 (for short, “the Act”) whereby two charges under above said provisions of law were framed against the appellant.

3. The first charge contained the allegation that while deployed at BOP Gorungula (Tent post) of 74 Bn. BSF, during February, 2019, he deposited total amount of Rs.76,439/- on various dates, in the Bank accounts of his younger brother, Sri. Dinesh Pramanik and his brother-in-law, namely, Sri. Kalyan Shil, which was disproportionate to his known source of income, and he could not satisfactorily account for the same and thereby committed an offence under Section 46 of BSF Act, 1968 read with Sec.13(2) of the Prevention of Corruption Act, 1988.

4. The second charge contained the allegation that during said period of deployment at BOP Gorungula, he allegedly contravened an SOP issued by 74th Bn. BSF vide letter No.961-979 dated 19-4-2018 and Ftr. HQ BSF, Tripura letter No.678-81 dated 22nd March, 2016 which prescribed that no individual deployed on border was allowed to retain any amount more than Rs.500/- at any given point of time in his possession, but in contravention thereto, he got deposited the said amount of Rs.76,439/-.

5. After completion of proceeding in the said SSFC the appellant was found guilty of both the charges, and he was sentenced to be dismissed from service vide an order passed by the Commandant, 74 Bn. BSF dated 19.04.2021. The appellant, thereafter, preferred a statutory appeal to the

Inspector General of BSF which was kept pending by the appellate authority, and being aggrieved thereby, he preferred writ petition No. W.P.A. 19065 of 2021 in Calcutta High Court and vide order dated 06.12.2021, said High Court directed the appellate authority to dispose of the appeal within twelve weeks. The appeal was thereafter disposed of by way of rejection and then, the above said writ petition bearing WP(C) No.367 of 2022 was filed before this court. The relevant portion of observations and decision of learned Single Judge in the impugned order are extracted below:-

“9 The submissions of learned counsel appearing for the petitioner are too two-pronged.

Firstly, it is submitted that the petitioner was not given enough opportunity to cross-examine the prosecution witness no.2.

In view of the above submission, I have perused the examination-in-chief and cross-examination. It is found that the examination-in-chief part was made understood to the petitioner, and thereafter he was given opportunities to cross-examine the prosecution witness no.2. As such, it is difficult for this court to hold that the petitioner was not given reasonable opportunity to cross-examine the prosecution witness no.2. Accordingly, this submission of learned counsel appearing for the petitioner is repelled.

10. Second fold of submission of Mr. Ghoshal, learned counsel for the petitioner is that the appellate authority while disposing of the Memo of Appeal submitted by the petitioner was found to be much inclined upon the findings of the inquiring authority, and, according to learned counsel, the finding of the appellate authority is a replica of the findings of the inquiring authority.

I do not find any substance in the submission of learned counsel for the petitioner because the appellate authority is under obligation to discuss and appreciate the findings of the inquiry authority to apply his independent mind.

11. That apart, Mr. Ghoshal, learned counsel for the petitioner has submitted that the punishment imposed upon the petitioner is disproportionate to the offence he had committed.

I have considered the above submission. The petitioner is a member of a disciplined Force of this country. He must be honest, committed and sincere to his service

towards the nation in all respects whatsoever. Charge that was framed against him is that some money had been deposited to the accounts of his two relatives which is disproportionate to his known source of income. The prosecution witnesses appearing before the inquiry authority during the course of proceedings had categorically stated that those sums of money were given by the petitioner to them to deposit the same to the accounts of his relatives. On the other hand, the petitioner could not justify the source of this money. Even if it is viewed otherwise, then, there will be a natural question that from where those two witnesses, namely, Tapesb Debnath and Sahalam Khan had received the account numbers of the relatives of the petitioner. That means, the petitioner had obtained the charged money from illegal source while in service. It is a serious offence and dismissal from service is appropriate punishment in this nature of offence. I do not find any illegality in imposing penalty of dismissal against the petitioner.”

6. Mr. Samarjit Bhattacharjee, learned counsel for the appellant, argues that the appellant was not provided with a reasonable opportunity to defend his case, which was a gross violation of the principles of natural justice. He was also not given sufficient scope to cross examine the witnesses and the questionnaires of examination were made in ‘YES’ or ‘NO’ format in a preconceived manner. The learned counsel referring to Section 48(h) of the Act, contends that the prescribed punishment so far as the first charge was concerned, falls within the category of civil offences as defined in Section 46 of the Act and, therefore, imposition of a fine would be the proper punishment as was prescribed under Section 48(h) of the Act.

7. Learned counsel Mr. Bhattacharjee, further contends that PW-1 (a civilian witness alleged to have deposited the money in the Bank account of relatives of the appellant) though initially stated that total Rs.50,000/- was deposited by him but subsequently he admitted that the appellant had paid him Rs.500/- to facilitate such transaction. Learned counsel also argues that the cross examination of the witnesses ought to have been conducted by an

advocate or any legal expert but the appellant was denied that opportunity. Learned counsel submits that no scope was provided to the appellant to furnish the name of his legal assistant and the letter of the department asking him to furnish the name of his legal assistant or his legal practitioner was even received by him after the expiry of stipulated date.

8. According to Mr. Bhattacharjee, learned counsel, the cross-examination was recorded in a predetermined manner and the appellate authority also failed to consider the grounds taken in the appeal by the appellant. Learned counsel finally prays for setting aside the impugned order of learned Single Judge and to pass necessary order by quashing the order of dismissal of the appellant from the service.

9. On the contrary, learned Dy. SGI, Mr. Bidyut Majumder, appearing for the respondents-Union of India, argues that all reasonable opportunities during the proceeding were provided to the appellant, including the opportunity to cross-examine the witnesses and the appellant was also given the liberty to engage any legal practitioner during the trial. Learned Dy. SGI also submits that in said proceeding the appellant pleaded his guilt against both the above charges and the offences committed by him were also serious in nature, warranting dismissal from the service as he, being a member of a disciplined force, indulged in financial corruption.

10. According to Mr. Majumder, learned Dy. SGI, there were no lapses in the said proceeding and all required legal formalities were complied by the authority as per law before imposing the punishment. Mr. Majumder, learned Dy. SGI, therefore, prays for the dismissal of this appeal.

11. From the record, it is found that in total six witnesses were examined in the said proceeding, including two civilians who stated about the deposit of money by witness No.1 in the Bank account of said relatives of the appellant at the instance of the appellant. Said witness Nos.1 & 2 were cross-examined by the appellant and other witnesses were not cross-examined by him. Cross-examination done by him on witness Nos.1 & 2 was recorded in question answer format by the Recording Officer. Just because the same was recorded in question answer format, it cannot be said that he was not given the opportunity to cross-examine the witnesses. As per Rule 48(4) of BSF Rules 1969, he was also given the opportunity to produce his own evidence, but he declined.

12. The appellate authority also elaborately discussed its decision in the said appeal and it was also observed that the appellant himself pleaded his guilt in the proceeding. He was also given scope to make a statement of his defense.

13. Mr. Bhattacharjee, learned counsel, though referring to Section 48 (h) of the Act, argued that for civil offences, a fine was supposed to be imposed but such submission is not convincing, as Section 48 of the Act nowhere creates a bar for imposing any other punishment as enumerated therein other than the fine. So far the submission of Mr. Bhattacharjee, learned counsel regarding the receipt of letter by the appellant beyond the stipulated date for the purpose of nominating one person including a legal practitioner is concerned, it appears that no such plea was taken by the appellant before the appellate authority and no material is also placed in the record to prove such an allegation. Therefore, we do not find any error in the decision of learned Single Judge in the impugned judgment.

In view of the foregoing discussions, it is held that the appeal is devoid of any merit and the same is, accordingly, dismissed.

Pending application(s), if any, also stand disposed of.

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ



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