

GAHC010184462014



2024:GAU-AS:9051

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/956/2014

NO.119880274, EX. CT. MD. KAJI SAFIQUUL ISLAM
S/O- SHRI AZIZUR RAHMAN KAZI, VILL.- BANIA MARI, PT- VI, P.O.-
MAKRIJHUORA, P.S.- GOURIPUR, DIST.- DHUBRI, ASSAM.

VERSUS

THE UNION OF INDIA and 2 ORS
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, NORTH BLOCK, NEW DELHI.

2:THE DIRECTOR GENERAL BORDER SECURITY FORCE
BLOCK NO. 10 2ND FLOOR CGO COMPLEX LODHI ROAD
NEW DELHI- 110003.

3:THE DY. INSPECTOR GENERAL OF POLICE
BORDER SECURITY FORCE STC JODHPUR RAJASTHAN

Advocate for the Petitioner : MR.A KUMAR, MRS M ABDULLAH P,MS.R DUTTA,MR.H
BEZBARUAH,MR.R MAZUMDAR

Advocate for the Respondent : ASSTT.S.G.I., MR.K K PARASAR(R-1TO3),MRM R
ADHIKARI,MR.N BARUA,C.G.C.

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 05.09.2024

Date of Judgment : 12.09.2024

Judgment & order(CAV)

Heard Mr. R. Mazumdar, learned counsel for the petitioner. Also heard Mr.
K. K. Parasar, learned CGC, appearing on behalf of all the respondents.

2. The petitioner by way of instituting the present proceeding, has presented a challenge to an order, dated 28.08.2012, by which the petitioner was awarded with the sentence of dismissal from service on being found to be guilty of the charges so framed against him. The petitioner has also presented a challenge to an order, dated 07.02.2013, issued on behalf of the Director General, Border Security Force, dismissing the petition so filed by the petitioner against the order, dated 28.08.2012.

3. The petitioner, herein, was recruited as a Constable in Border Security Force, on 13.06.2011, and was thereafter, deputed for undergoing training at the STC, Border Security Force, Jodhpur. It is the allegation levelled against the petitioner that he had without leave, left the said training centre on 12.05.2012 and had returned on 14.05.2012. The petitioner, had, thereafter, again left the training centre on 15.05.2012, and had reported back to the training centre only on 29.05.2012. The petitioner again on 29.05.2012 left the said training centre and reported back to the training centre only on 28.06.2012. The said absence of the petitioner from the training centre, was without obtaining prior leave and/or permission from the competent authority.

4. The petitioner, on rejoining his training centre on 28.06.2012, was placed under 'close arrest' on 14.07.2012. Thereafter, it is seen that the proceedings were so initiated against the petitioner, herein, and he was tried by a Summary Security Force Court at STC, Border Security Force, Jodhpur, on 28.08.2012. The petitioner was allowed to choose a friend for the purpose of the conduct of proceedings so initiated against him and a charge-sheet in this connection was also so drawn. The petitioner, during

the Summary Security Force Court at STC, Border Security Force, Jodhpur, on 28.08.2012, had pleaded to guilty of all the 3(three) charges so levelled against him and thereafter, by applying the provisions of Rule 142(2) of the Border Security Force Rules, 1969; the Summary Security Force Court at STC, Border Security Force, Jodhpur, sentenced the petitioner to be dismissed from his service and accordingly, the order, dated 28.08.2012, came to be so issued imposing upon the petitioner, the sentence of dismissal from service. As provided under the provisions of the said Act Border Security Force Rules, 1969, and the Rules thereof; the petitioner preferred a petition against the order, dated 28.08.2012, to the Director General, Border Security Force, on 26.11.2012. The said petition was duly considered and vide order, dated 07.02.2013, came to be so rejected.

5. Mr. Mazumdar, learned counsel for the petitioner, by referring to the proceedings so initiated against the petitioner, herein, has contended that the petitioner was not given a fair opportunity to defend the charges so levelled against him. It is further contended by Mr. Mazumdar, learned counsel, that the respondent authorities had demanded the petitioner to plead guilty to the charges so levelled against him and to sign on the proceedings.

6. Mr. Mazumdar, learned counsel, has submitted that the petitioner being put under 'close arrest' on 14.07.2012; he was denied of a due opportunity to have a constructive consultation with the person so appointed as his friend in the proceedings and accordingly, the defence of the petitioner, herein, stood prejudiced.

7. Mr. Mazumdar, learned counsel for the petitioner, has further submitted that the petitioner had raised a plea that he had to leave the training centre on account of ailments suffered by his mother but the said aspect of the matter was not appreciated in the proceeding by the Summary Security Force Court at STC, Border Security Force, Jodhpur, while proceeding to impose the sentence upon the petitioner.

8. Mr. Mazumdar, learned counsel, has further submitted that in the proceedings so initiated against the petitioner, no prosecutor came to be appointed in the matter and the Presenting Officer assumed the role of both the prosecutor as well as the adjudicator in the matter and accordingly, on account of the said position; the proceedings so conducted against the petitioner by the Summary Security Force Court at STC, Border Security Force, Jodhpur, stood vitiated.

9. Mr. Mazumdar, learned counsel for the petitioner, in view of the above position; has submitted that the sentence as imposed upon the petitioner, herein, requires an interference from this Court, with a further direction to the respondent authorities to reinstate the petitioner in his service.

10. Per contra, Mr. Parasar, learned CGC appearing for the respondent authorities, has submitted that the petitioner, admittedly, had left the training centre during his training period on 3(three) different occasions without availing prior leave and/or permission from the competent authority. The reasons for absence of the petitioner from the said training centre, was not informed to the authorities at the relevant point of time. The learned CGC has further submitted that the prosecution witnesses

deposing in the matter were offered for cross-examination to the petitioner, however, he declined to cross-examine the said prosecution witnesses and further, no defence witnesses was appointed by the petitioner.

11. Mr. Parasar, learned CGC, has also submitted that the petitioner was extended with all due opportunity including appointment of a friend as per his choice.

12. Mr. Parasar, learned CGC, has further submitted that under the provisions of Rules holding the field; there is no provision for appointment of a prosecutor for conduct of the proceedings in a Summary Security Force Court, and it is the Court which itself examines the prosecution witnesses. The learned CGC has submitted that the petitioner having pleaded guilty to all the charges so framed against him and the authorities after complying with the provisions of Rule 142(2) of the Border Security Force Rules, 1969, had proceeded further with the matter and imposed the said sentence of dismissal from service upon the petitioner and accordingly, no error can be found in the procedure so adopted by the respondent authorities in the matter.

13. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

14. It is not disputed that the petitioner, admittedly, had remained absent from the said training centre on 3(three) different occasions. The period of absence of the petitioner, without leave, during the course of his training in

the training centre, is:- (a). w.e.f. 13.05.2012 till 14.05.2012; (b). w.e.f. 15.05.2012 till 29.05.2012; and (c). w.e.f. 29.05.2012 till 28.06.2012.

15. The petitioner on being subjected to a proceeding in the Summary Security Force Court at STC, Border Security Force, Jodhpur, and the charges being so explained to him; had pleaded guilty to all the charges. The plea of guilty of the petitioner came to be recorded during the course of the said proceeding. It is seen that the petitioner was explained of the consequential effect of the plea of guilt as accepted by him in the matter and thereafter, by recording a satisfaction to the effect that the petitioner had understood the charges and the effect of the plea of guilt; proceeded to further consider the effect of such plea of guilt with regard to the charges as levelled against the petitioner, herein.

16. Rule 142 of the Border Security Force Rules, 1969, deals with the plea of guilty or not guilty. Rule 142(2) mandates that if an accused pleads guilty, the plea should be recorded as a finding of the Court but before it is so recorded, the Court is to ascertain that the accused understands the nature of the charge to which he has pleaded guilty and shall inform him of the general effect of that plea and also of the difference in procedure which will be so followed on account of the plea of guilt and shall advise him to withdraw that plea if it appears from the records of the abstract of evidence or otherwise, that the accused ought to plead not guilty.

17. A perusal of the proceedings of the Summary Security Force Court at STC, Border Security Force, Jodhpur, would go to reveal that the petitioner had appended his signature to the findings of the guilt so recorded by the

said Court in the matter and the same was also endorsed by his appointed friend Shri Ajmer Singh.

18. Accordingly, it has to be held that the petitioner on understanding the nature of the charges so levelled against him; had pleaded guilty to the same. The proceedings of the Summary Security Force Court at STC, Border Security Force, Jodhpur, does not reveal any plea taken by the petitioner justifying his absence from the training centre. Accordingly, the sentence of dismissal from his service as imposed upon the petitioner by the Summary Security Force Court at STC, Border Security Force, Jodhpur, may not call for any interference in the matter.

19. The pleas as taken by the petitioner in the matter of an absence of a prosecutor in the matter and also with regard to the petitioner being under forced 'close arrest', he being denied of an opportunity to have a constructive consultation with the friend so appointed in his case; would not warrant a consideration in the matter in-as-much as the petitioner having pleaded guilty to the charges so levelled against him, further proceedings in the matter, was not called for.

20. Accordingly, the plea of guilt as recorded by the petitioner in the absence of any *mala fide* being alleged in the matter by the petitioner, would now be required to be upheld. Consequently, the sentence of dismissal from service upon the petitioner as awarded by the Summary Security Force Court at STC, Border Security Force, Jodhpur, vide the order, dated 28.08.2012, would also be required to be so upheld.

21. In view of the above conclusions; the order, dated 28.08.2012, as well as the order, dated 07.02.2013, would not call for any interference.

22. In view of the conclusions drawn hereinabove; the writ petition is held to be devoid of any merit and accordingly, the same stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant