

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.707 of 1998

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Ranjit Kumar, son of Shri Raghu Singh, resident of Karpuri Market, Town
and District- Lakhisari

.... Petitioner/s

Versus

1. The Union of India through the Ministry of Home, South Block, New Delhi
2. The Director General Boarder Security Force, C. G.O. Complex, New Delhi
3. Mr. Om Prakash, Deputy Commandant, 60 Battalion, Boarder Security Force, Kishanganj, Bihar
4. Mr. V.K. Giri, Assistant commandant, 60 Battalion, Boarder Security Force, Kishanganj
5. The Commandant, 60 Battalion, Border Security Force, Kishanganj, Bihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Subodh Kumar Jha, Advocate &
Mr. Pranav Kumar Jha, Advocate

For the Union of India : Mr. Sanjay Kumar, Assistant S. G.

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

ORAL JUDGMENT

24 06-04-2015 1. An order dated 06.03.1997 passed by the

Commandant, 60 Battalion, Border Security Force,

Kishanganj dismissing the petitioner from service

consequent upon confirmation of the findings and sentence

awarded by Summary Security Force Court constituted

under the provisions of Border Security Force, Act, 1968

(hereinafter referred to as the Act), by way of sentence is

under challenge in the present writ application.

2. A counter affidavit has been filed on behalf of

the respondents. The petitioner has filed a reply to the said counter affidavit, which is there on record.

3. The petitioner, at the relevant point of time was attached with 60 Battalion of the Border Security Force, Kishanganj, Bihar performing the custom duties, as a sepoy. The occurrence leading to holding of enquiry and subsequent reference to the Summary Security Force Court constituted under the Act had taken place on 11.12.1995. It is the case of the respondents that on the alleged date the petitioner along with another constable C. Kadiresan of Border Out Post (BOP) Satvita 'D' Coy had gone to Islampur to deposit seizure memo and to purchase essential articles and also to make telephone call to their home. While returning, the petitioner is said to have brought an ill-reputed lady for immoral purpose on payment of a Sum Rs. 100/- in advance and the balance was to be paid later. When the petitioner reached near the out post with the lady, he was intercepted by Naka Party led by head constable S.B. Thapa. It is alleged that the petitioner assaulted the head constable S.B. Thapa who was finally rescued by constable

P. V. Chandran. Another constable Namul Ram Bhagat on the sentry duty also came. The lady in the meanwhile, strayed away and the head constable S.B. Thapa sustained injuries. It is the specific case of the respondents that the lady, who was brought by the petitioner was subsequently identified by the villagers of Satvita Village.

4. Thereafter, on the basis of the statement of head constable S.B. Thapa, constable C. Kadiresan, constable P.V. Chandran and member Panchayat of Satvita Village, a departmental action was initiated. Following charges were framed against the petitioner:-

" BSF Act Sec. 20(a)

Ist Charge

USING CRIMINAL FORCE
TO HIS SUPERIOR
OFFICER

In that he,
At BOP Satvita on 11 Dec' 1995
when No. 67911136 HC (Now
SI) S.B. Thapa of his coy asked,
one Smt. Anita Roy, a lady of
reportedly ill reput present
there, to accompany him for
her being taken to the coy
Commander, gave a below of
first thrice at his face causing
injury to his nose.

2ND chargeBSF Act Sec.40AN ACT PREJUDICIAL TO
GOOD ORDER AND
DISCIPLINE OF THE FORCE

In that he,

At BOP Satvita on 11 Dec' 1995 while performing duties in "D' Coy improperly procured Smt. Anita Roy, a lady of reportedly ill repute from Islampur and attempted to take her into BOP Satvita."

5. Before I deal with the procedure which the respondents adopted before issuing the impugned order sentencing the petitioner to dismissal from service, I must indicate the relevant procedure contemplated under the Border Security Force Act, 1968 read with Border Security Force Rules, 1969.

6. Chapter IV of the Act deals with punishment. Section 48 of the Act provides that a person subject to the Act and convicted by Security Force Courts may be inflicted punishment in respect of offences committed by him, which would include dismissal from service. Section 53 of the Act deal with minor punishments which is not relevant for the purpose of present judgment. Chapter V of Act deals with



the arrest and proceedings before trial whereas Chapter VI of the Act deals with different Security Force Courts, the manner of constitution, composition and their dissolution. As per Section 64 of the Act, there are three kinds of Security Force Courts, namely, (a) General Security Force Courts (b) Petty Security Force Courts; and (c) Summary Security Force Courts. In the present case the order of dismissal is based on petitioner's conviction by a Summary Security Force Courts. Section 74 of the Act lays down the power of a Summary Security Force Court. There is no controversy over the fact that Summary Security Force Court has power to try any person subject to the Act and can impose any sentence which may be imposed under the Act, except the sentence of death or of imprisonment for a term exceeding the limit specified in sub-section(5). The Summary Security Force Court has thus, the power to pass the sentence of dismissal from service.

7. Chapter VII of the Act deals with the procedure of Security Force Court. There is provision of confirmation and revision of sentence passed by the Security Force Court

under Chapter 8 of the Act. As has been noted in the very beginning, the order of sentence of dismissal has been imposed upon the petitioner after confirmation by the competent authority.

8. Coming to the Rules anme Border Security Force Rules, 1969, (hereinafter referred to as the Rules) framed under the Rule making power of Section 41 of the Act, Chapter VII of the said Rules deals with investigation and summary disposal. Rule 44 of the Border Security Force Rules, 1969 (hereinafter referred to as the Rules) provides for framing of charge-sheet and Rule 45 of the said Rules, hearing of the charge against an enrolled person. Rule 45 of the Rules prescribes the manner in which the charge shall be heard by the Commandant and requires that the charge and statement of witnesses, if recorded, shall be read over to the accused etc,. Rule 45(2) of the Rules confers discretion upon the Commandant after hearing the charge under sub-rule (1) either to award any of the punishments which he is empowered to award, or dismiss the charge or remand the accused for preparing a record of evidence or for

preparation of an abstract of evidence against him, or remand him for trial by a Summary Security Force Court. In the present case, the Commandant remanded the accused for preparing a record of evidence as contemplated under Rule 45 (2) (iii) of the said Rules.

9. Rule 48 of the Rules exhaustively deal with the manner in which a record of evidence is to be prepared. The said Rule is relevant for the purpose of adjudication of the present case and is being quoted hereinbelow:-

“48. Record of evidence.- (1) The Officer ordering the record of evidence may either prepare the record of evidence himself or detail another officer to do so.

(2) The witnesses shall give their evidence in the presence of the accused and the accused shall have right to cross-examine all witnesses who give evidence against him.

(Provided that where statement of any witness at a Court of inquiry is available, examination of such a witness may be dispensed with the original copy of the said statement may be taken on record. A copy thereof shall be given to the accused and he shall have the right to cross-examine if he was not afforded an opportunity to cross examine the witness at the court Inquiry).

(3) After all the witnesses against the accused have been examined, he shall be cautioned in the



following terms: "You may make a statement if you wish to do so, you are not bound to make one and whatever you state shall be taken down in writing and may be used in evidence." After having been cautioned in the aforesaid manner whatever the accused states shall be taken down in writing.

(4) The accused may call witnesses in defence and the Officer recording the evidence may ask any question that may be necessary to clarify the evidence given by such witnesses.

(5) All witnesses shall give evidence on oath or affirmation:

Provided that no oath or affirmation shall be given to the accused nor shall be cross-examined.

(6) (a). The statements given by witnesses shall ordinarily be recorded in narrative form and the officer recording the evidence may, at the request of the accused, permit any portion of the evidence to be recorded in the form of question any answer.

(b) The witnesses shall sign their statements after the same have been read over and explained to them.

(6A) The provisions of Section 89 of the Act shall apply for procuring the attendance of witnesses before the officer preparing the Record of Evidence).

(7) Where a witness cannot be compelled to attend or is not available or his attendance cannot be procured without any undue expenditure of time or money and after the officer recording the evidence has given a certificate in this behalf a written statement signed by such witness may be read to the accused

and included in the record of evidence.

(8) After the recording of evidence is completed the officer recording the evidence shall give a certificate in the following form:-

“Certified that the record of evidence ordered by Commandant..... Was made in the presence and hearing of the accused and the provisions of Rule 48 have been complied with.”

10. There is specific provision under Rule 48(5) of the Rules that the witnesses shall give their evidence on oath or affirmation. Rule 48 (6) (b) requires that the witnesses shall sign their statements after the same have been read over and explained to them. As would be evident from Rule 48 (2) of the Rules, witnesses are required to adduce their evidence in presence of the accused and the accused shall have right to cross-examine all the witnesses to give evidence against him.

11. Before I proceed further, I must indicate here itself that the attested copies of the records of evidence and the proceedings before Summary Security Force Act, have been produced by learned Assistant Solicitor General appearing on behalf of Union of India. Upon perusal of the



records for the purpose of preparation of record of evidence, I find that the witnesses were examined in presence of the petitioner, the petitioner was given opportunity to cross-examine and the specific requirement under Rule 48(6) (b) of the Rules that witnesses shall sign their statement has been complied with. Rule 49 of the Rules provides for preparation of abstract of evidence which should include signed statement of witnesses wherever available or a precise thereof and copies of all documents intended to be produced at the trial. It further requires that the copy of the abstract of the evidence shall be given by the officer making the same to the accused and the accused shall be given an opportunity to make a statement if he so desires.

12. Chapter IX of the Rules deals with the procedure for Security Force Courts. Chapter XI of the Rules lays down the special procedure to be adopted by a Summary Security Force Courts. Rule 147 of the Rules which deals with evidence of witnesses under Chapter XI of Rules provides that Rules 88,89 and 90 shall, so far as may be, apply to the evidence of witnesses at a Summary

Security Force Court as they apply to the evidence of witnesses at a General or Petty Security Force Act.

13. I have perused the proceeding before the Summary Security Force Court on the basis of record which has been produced before me from which I find that it has been recorded that the petitioner pleaded not guilty. The witnesses including head Constable S.B. Thapa, constable P.V. Chandran, constable Namul Ram Bhagat and constable C. Kadirsan were examined in presence of the petitioner. One Narayan Singh, a villager of the village Satvita was also examined in course of the proceeding. It further appears, as recorded by the Commandant that the petitioner was given opportunity to cross-examine the witnesses before the Summary Security Force Court which opportunity he availed and he cross-examined the witnesses.

14. From the pleadings in the writ application it will appear that one Ranveer Singh, Subedar had also given his evidence before the Summary Security Force Court as prosecution witness no.6. The petitioner was given

opportunity to cross-examine him. He put questions to cross-examine said Ranveer Singh. Another witness Lalsit Kumar, Deputy Commandant was also examined and the petitioner is said to have cross-examined him also. It further appears from the record that he was given opportunity to call any witness in his defence and finally he did not show any intention to call any witness in his defence. It is recorded in the said proceeding of the Summary Security Force Court that petitioner submitted his defence as follows:-

“I, No. 890029242 Constable Ranjit Kumar ‘D’ Coy of 60 Bn. BSF, am performing duties in ‘HQ’ Coy, as Constable GD. During the month of Dec’95, I was posted at BOP Satvita of ‘D’ Coy, 60 Bn BSF. On 10.12.1995, 18 cattle heads were seized by the men of My. Coy. On 11.12.95 I was directed by Offg. Coy Comdr. Sub Ranbir Singh to go to Islampur for depositing the seizure memo of above 18 cattle heads seized last night. I went to Islampur and completed my task given by the Coy Comdr. After depositing the seizure memo at 1915 hrs, I was returning back from Islampur via Darvitta. When I reached near to Naka Party, there I met with HC (Now SI) S.B. Thapa and const. P. V. Chandran. HC (now SI) S.B. Thapa asked me, “From where you are coming?” I told him, “I am coming from Islampur.” At that HC (now SI) S.B. Thapa caught hold of my collar from behind and said that you have brought an ill reputed lady



with you in the camp. On this I told him, do not make fun, you have left you naka position on your own, go and take rest. In the meantime scuffle i.e. pulling & pushing took place between us. HC (now SI) S.B. Thapra was also holding his personal weapon i.e. C.M. There was a ditch behind him. I gave him a push resulting which HC (now SI) S.B. Thapa fell down in that ditch and he got himself injured from his C.M. At this, he i.e. HC (now SI) S.B. Thapa went to the Copy Comdr Sub Ranbir Singh and reported him that Const. Ranjit Kumar has beaten him.”

15. The Commandant on the basis of such evidence came to a finding that the petitioner was guilty of both the charges.

16. Now coming to the pleadings in the writ application, I find that there is no specific averment that there has been violation of any of the provisions under the Act or the Rules framed thereunder. The plea which the petitioner has taken in the writ application is that on the said date of occurrence i.e. 11.12.1995, he along with the said constable C. Kadirsan were given a order for submitting a seizure memo with the Customs Office, Islampur and when they returned back to BOP Satvita at about 8 P.M. the said head constable S.B. Thapa was found in inebriated



condition. Allegedly, said S.B. Thapa abruptly said that the petitioner had brought a lady with him and attempted to assault the petitioner. While the petitioner was trying to flee away himself from the clutches of S.B. Thapa, S.B. Thapa fell down and received minor injuries with his own carbine and thereafter he made a false allegation that the petitioner had brought a lady of ill-repute. It has been stated in paragraph 12 of the writ application that an enquiry was conducted by one V.K. Giri, Assistant Commandant by keeping the petitioner in confinement where after he was released from confinement. It has further been stated in paragraph 13 of the writ petition that the petitioner was fully exonerated from all the charges earlier but abruptly a Summary Court Marshal proceeding was started against him after lapse of several months and after manipulating the evidences of earlier enquiry. It has been stated in paragraph 14 that the petitioner had requested the Inquiry Officer to call Mr. V.K. Giri as defence witness but was not brought as defence witness for oblique reasons. These averments have been denied in the counter affidavit. It has



been specifically averred that the said V.K. Giri was provided as defence witness to the petitioner as was requested by him who was present in the Battalion and despite opportunity given to the petitioner during preparation of record of enquiry as well as in Summary Security Force Court proceeding, he declined to call any witness in his defence.

17. The petitioner has also taken a plea that the copies of the evidences and other related documents were not given to him which amounted to violation of principle of natural justice. I must indicate here that Rule 129 of the Rules provides for supply of the copies of the proceedings to a person being tried by the Security Force Act. The said Rules reads thus:-

“129. Right of person tried to copies of proceedings.-Every person tried by Security Force Court shall be entitled to obtain on demand, at any time after the confirmation of the finding and sentence, when such confirmation is required and before the proceedings are destroyed, from the Chief Law Officer a copy thereof, including the proceedings upon revision, if any.”



18. A bare reading of said Rule 129 will show that such right is subject to demand being made by the person concerned. There is no whisper in the writ application that despite any demand having been made by the petitioner, any copy of the proceeding was not supplied to him.

19. From the pleadings in the writ application, it appears that the petitioner seeks to challenge the impugned action mainly on the ground of violation of Sections 75 and 77 of the Act. According to the petitioner, as per pleading in the writ application, there could not have been second proceeding on the same charge. According to him, he was earlier exonerated of the charge in his report dated 12.12.1995 by one Ranveer Singh, Subedar and therefore, no second enquiry ought to have been held. A letter dated 12.12.1995 written by said Ranveer Singh has been brought on record by way of Annexure 1 to the writ application. It is evident from Annexure-1 that it was a merely report which was sent by Subedar Ranveer Singh to the Commandant on the basis of his own assessment of the occurrence which had taken place on 11.12.1995. The submission on behalf of

the petitioner of violation of provision of Section 75 on such basis is wholly misconceived. I do not find any substance made in such submission on behalf of the petitioner that there has been any violation of Section 77 of the Act. Section 77 of the Act reads as follows:-

“77. Trial, etc., of offender who ceases to be subject to this Act.-(1) Where an offence under this Act had been committed by any person while subject to this Act, and he has ceased to be so subject, he may be taken into and kept in Force custody and tried and punished for such offence as if he continued to be so subject.

(2) No such person shall be tried for an offence, unless his trial commences within six months after he had ceased to be subject to this Act:

Provided that nothing contained in this sub-section shall apply to the trial of any such person for an offence of desertion or for any of the offences mentioned in Section 17 or shall affect the jurisdiction of a criminal court to try any offence triable by such court as well as by a Security Force. Court.”

20. The submission that after six months, Summary Security Force Court proceeding could not have been ordered in view of the provisions under Section 77(2) is wholly misconceived on the face of it as there is no denial of the fact that till passing of the impugned sentence dated

6.3.1997, the petitioner was subject to the provision of the Act as he had not ceased to be the subject of the Act.

21. Learned counsel appearing on behalf of the petitioner has submitted in course of argument that as a matter of fact, no proceeding at all was held and the entire proceeding is sham and just documents had been prepared in order to punish the petitioner. This submission is not acceptable to me as there is no such pleading in the writ application. In the absence of any pleading, the Court cannot go into the correctness of such submission. He has submitted, referring to the records of the Summary Security Force Court proceeding, which has been produced before this Court, that the evidence of witnesses do not bear the signature of the petitioner and therefore, these documents has no sanctity in the eye of law. He has, however, not been able to show from the provisions under the Act or the Rules that signatures of the witnesses were required to be taken on the evidence given by the witnesses. As has been indicated above, Rule 48(6) (b) provides for taking of the signature of the witnesses on their evidence while preparing record of



evidence. I have also taken note of the fact that such provisions has been complied with at the stage of preparation of record of evidence where the petitioner was given ample opportunity to cross-examine the witnesses who were examined in his presence. The petitioner had put his signature on those documents. On the ground that the evidence given by the witnesses in course of Summary Security Force Court trial do not bear the signature of the petitioner, the trial cannot be said to have been vitiated. I do not find any specific pleading of malafide so as to consider such aspect in the present proceeding.

22. In the facts and circumstances of the case, I am of the view that the impugned action of the respondents do not require any interference in a proceeding under Article 226 of the Constitution of India as I am of the view that there has been no infringement of principle of natural justice. The sentence imposed upon the petitioner cannot be said to be excessive requiring this Court's interference. There is no material in the pleadings of the writ application which can be said to be making out any case of malafide

against the respondents.

23. I accordingly, find no merit in this application.

This application is accordingly, dismissed.

24. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

ArunKumar/-

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