

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5715 of 1999

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Manager Prasad son of late Sudarshan Prasad resident of village Chaumukha P.O.-
Vijayipur P.S. Vijayipur District Gopalganj-841508 (Bihar)

.... Petitioner

Versus

1. The Government of India
2. The Commandant 68 Bn Border Security Force, Gokulnagar Tripura
3. The Director General Border Security Force, New Delhi

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Atul Kumar Pandey, Adv.
Mr. Nityanand Mishra, Adv.

For the Union of India : Mr. Awadesh Kumar Pandey, SCGC
Mr. Ravinder Kumar Sharma, CGC

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT

Date: 24-06-2015

This is an application seeking quashing of an order dated 15.04.1999 passed by the Commandant 68 Battalion, Border Security Force, Gokulnagar, Tripura, whereby, punishment of dismissal from service has been imposed upon him, with immediate effect, for having committed offence under Section 20 (a) of the Border Security Force Act, 1968 (hereinafter referred to as the Act).

2. The petitioner, at the relevant point of time, was posted as L/NK at Gokulnagar (68 Bn., B.S.F.) in Tripura when a charge-sheet was issued against him dated 07.10.1998 under the signature of the Commandant 68 Bn., B.S.F., Gokulpur, Tripura containing the allegation that on 19.09.1998, upon being asked by the

Sub Inspector of B.S.F., admittedly an Officer superior to the petitioner, about his late return from the outpost duty, he struck the said Sub Inspector on his jaw. Such conduct of the petitioner, being an offence under Section 20(a) of Chapter III of the Act, the said proceeding was initiated against him.

3. From the pleadings in the writ application it appears that the hearing of the charges commenced on 07.10.1998, when the witnesses were examined. It is not the case of the petitioner that when the witnesses were examined, he was not present and he was not given any opportunity to cross-examine them. The petitioner himself has referred to the statement of witnesses, in the writ application.

4. In paragraph 16 of the writ application, it has been stated that the petitioner himself made statement in course of the proceeding that on 19.09.1998, the petitioner had caught the hand of said Sub Inspector, who was trying to make a call to the Company Headquarter and in course of such attempt, the mouth of the said Sub Inspector was hit by the window-bar, whereafter bleeding from his mouth had started.

5. Upon conclusion of the proceeding, by an order dated 15.04.1999, the Commandant 68 Battalion, B.S.F. awarded the sentence on the petitioner of dismissal from service with effect from 15.04.1999.



6. It is the case of the petitioner that he had not assaulted the said Sub-Inspector of B.S.F. It is his further case that the order of dismissal is in violation of Rule 63 of Chapter 8 of the Border Security Force, Act, 1968 (hereinafter referred to as the Act) inasmuch as, the said provision has been completely overlooked. It is the case of the petitioner, in the writ application that the defending officer was not appointed to defend the petitioner nor he was allowed to make arrangement of a legally qualified person to defend him.

7. A counter-affidavit has been filed on behalf of the respondent-Union of India, denying the stand of the petitioner in the writ application that he was not given due opportunity of hearing before the concerned officer/court. It has been stated that the petitioner was handed over copy of the record of evidence on 09.02.1999 and upon proper receipt and after supply of record of evidence, the petitioner was tried on 15.04.1999. An undertaking given by the petitioner has been brought on record by way of Annexure-B to the counter affidavit wherein he is said to have stated that he did not require any friend during the trial and he did not have any objection if a defending officer was appointed by the Commandant himself. It has further been stated in the counter affidavit that following the procedure prescribed under the Bihar Security Force Rules, since the petitioner gave no objection to the



Commandant to appoint a defending officer, an officer of the rank of Assistant Commandant was appointed as the friend of the petitioner to defend him in course of the trial before Summary Security Force Court. It has also been stated that the petitioner was heard by the Commandant under Rule 45 of the Border Security Force Rules, 1969 and a copy of the record of enquiry was handed over to him by the Commandant himself on 09.02.1999, well in advance, in order to give him an opportunity to prepare his defence. Much thereafter, on 15.04.1999, the Summary Court proceeding was held in compliance with the principles of natural justice and the extant rules.

8. On the last date of hearing on 12.05.2015, learned counsel for the petitioner had raised an issue that Rule 47 of the Border Security Force Rules, 1969 (hereinafter referred to as the Rules) framed under the Act provides that such charges cannot be dealt with summarily. Charge under Section 20(1) of the Act, is one of such charges mentioned in Rule 47 of the Rules. He had submitted that in such circumstance, the trial for the offence under Section 20(1) of the Act could not have been held by the Summary Security Force Court constituted under the Act.

9. In view of the said submission made by learned counsel for the petitioner, the respondents were directed to file an affidavit as to whether the charge against the petitioner was dealt with



summarily or otherwise. Pursuant to the said order, supplementary counter affidavit has been filed on behalf of the respondent-Union of India. It has been stated in the counter affidavit that the said Summary Security Force Court's trial was conducted on the basis of evidence taken as per Rule 47 of the B.S.F. Rules. It has specifically been stated in paragraph 10 of the said supplementary counter affidavit that the case of the petitioner was not dealt with summarily, though dealt by the Summary Security Force Court, after observing the requirements of law.

10. Learned counsel appearing on behalf of the petitioner attempted to impress upon this Court that the proceeding before the Summary Security Force Court was held on a single date and the petitioner was not given due opportunity to defend his case. He has also attempted to impress upon me that even if the statement of witnesses recorded in course of preparation of record of enquiry are taken to be true on their face value, the charge of assault levelled against the petitioner is not proved.

11. At the first place, I do not find any substance in the stand taken by the petitioner that he was not provided with a defending officer as required under Rule 63 of the Rules, in view of specific statement made in the counter affidavit that an officer of the rank of Assistant Commandant was appointed as friend of the



petitioner in course of Summary Security Force Court's proceeding for defending this case. This is to be noted that there has been no denial of the averments made in the counter affidavit filed on behalf of the Union of India by way of filing any rejoinder. Secondly, the petitioner himself has stated in his writ application that he had caught hold of the said Sub Inspector of the Border Security Force when he was attempting to make a call to the Company Headquarters. Admittedly, the said Sub Inspector sustained injuries. It is the petitioner's case that he had merely caught his hand and the Sub Inspector, B.S.F. received injuries because his mouth hit the window bar whereafter, bleeding started from his mouth. The plea of the petitioner in such circumstance that he could not have held guilty of assault upon the said Sub Inspector of B.S.F. cannot be gone into in the present proceeding under Article 226 of the Constitution of India as it is not within the scope of judicial review of this Court under Article 226 of the Constitution to re-appreciate the evidence. The findings of Summary Security Force Court cannot be said to be without any evidence and, therefore, perverse.

12. Much emphasis has been made by learned counsel for the petitioner that the proceeding before the Summary Security Force Court is vitiated because the entire proceeding was held on the same date. This cannot be a ground for interference by this Court with

the findings of the Summary Security Force Court, holding the petitioner guilty of the offence committed by him punishable under Section 20(a) of the Act. The petitioner has referred to the statement of witnesses recorded in his presence, in the writ application. In such circumstance it cannot be said that findings of the Court are not based on any evidence.

13. In view of the above, the impugned order requires no interference by this Court, in the present writ proceeding under Article 226 of the Constitution of India.

14. This application is accordingly, dismissed.

15. There shall, however, be no order as to costs.

(Chakradhari Sharan Singh, J.)

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