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

+ **W.P.(C) 1204/2013**

**SH. DEVENDER SINGH SANDHU**

..... Petitioner

Through: Mr. Ankur Chhibber & Mr. Udghosh  
Thakran, Advs.

versus

**UNION OF INDIA AND ORS**

..... Respondents

Through: Mr. Vikram Jetly, CGSC with Mr.  
Arvind Sharma, DC, BSF

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MS. JUSTICE DEEPA SHARMA**

**ORDER**

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**13.10.2015**

1. The petitioner is aggrieved by the order of the Director General (DG), Border Security Force (BSF) passed on 14.11.2011. By the impugned order, DG, BSF proposed General court martial in respect of the petitioner. The order reprimanding him, issued by his Commanding Officer i.e. Inspector General of Jammu Frontier on 24.09.2011 was sought to be overridden. The petitioner was issued attachment order on 05.02.2013 directing him to report SHO Rajouri to face Security Force Court. This was on the basis of the impugned order by which Director General quashed the displeasure issued by IGP, Jammu Frontier.

2. The petitioner submits that one Vinod Kumar, Assistant Commandant was alleged to have committed acts of defaultation whereby 3400 litres of kerosene was misappropriated and sold to outsiders. A Record of evidence

was ordered. After considering the record of evidence, the petitioner's commanding officer exercise his power under Section 54 of the Border Security Force Acts ("the Act"), issued show cause notice on 01.09.2011 asking him why displeasure be not recorded for his lack of supervision, dereliction of duty and for acts prejudicially to said order. The petitioner responded to the show cause notice on 13.9.2011, denying the allegations and resisting the move for imposition of the penalty of displeasure. Thereafter on 24.9.2011, the CO passed an order *inter alia* stating as follows:-

*"2. The matter has been thoroughly examined and pursued by me in the light of relevant documents and references submitted by you along with your reply. The reply so forwarded in inconclusive and do not justify the irregularities committed by you as Offg. Commandant of 76 Bn BSF.*

*3. I, therefore, issue my Displeasure to you for your lack of supervision, dereliction of duty and for an act prejudicial to good order and discipline of the Force".*

3. The petitioner did not file an appeal for the displeasure recorded. However, on 14.11.2011, the Inspector General (Personnel), at the behest of the Director General communicated the decision to review the said penalty and directed the petitioner to stand trial in the General Court Martial(GCM) proceedings proposed against the others i.e. the Commandant Ram Narayan Ram, the petitioner and Assistant Commandant, Vinod Kumar, all of whom were part of 76 Battalion, BSF. The said order reads as follows:-

*"4. The SCOI/Addl. SCOI had also recommended disciplinary action against all the above officers of 76 Bn BSF but decision to dispose of the case against Shri D.S. Sandhu, 2/IC administratively and try Shri Ram Narayan Ram, Commandant and Shri Vinod Kumar, AC by a Security Force Court in the similar circumstances does not appear to be in consonance with the principle of fair play. Since all three officers are similarly*

*placed, therefore, equal treatment needs to be given to all three of them.*

*5. Considering the evidence available on record, facts and circumstances of the case in entirety, the Competent Authority has decided to quash the IG's displeasure issued to Shri D.S. Sandhu, 2/IC and directed to dispose the case by holding a trial by a Security Force Court in respect of Shri Ram Naryan Ram, Commandant, Shri D S Sandhu, 2/IC and Shri Vinod Kumar, AC of 76 Bn BSF to meet the ends of justice."*

4. The petitioner's representation against the reappraisal of the penalty and the direction to face trial in the GCM were of no avail therefore. He consequently approached this Court at the preliminary hearing on 25.2.2013. After hearing counsel for the parties, this Court took into account the provisions of Section 55(1)(iii) of the BSF Rules and the penalty imposed by the petitioner's commandant. In view of the *prima facie* opinion that further action was not warranted, and, therefore, suspension of trial so far as the petitioner was concerned.

5. Mr. Ankur Chhibber, learned counsel, contends that once the petitioner was made to suffer in the charge of the penalty mandatory to the enactment i.e. the BSF Act, the matter attained finality and the respondents could not have exercised any further powers to review or cancel it. Urging that Section 55 confers powers upon certain officers to review or oversee penalties, learned counsel highlighted that the existence of such power excluded the possibility of a general power elsewhere under the enactment. Had the intention been otherwise either parent act or the rules would have been explicit in conferring a power of review. Learned counsel also relies upon Section 87 of the Army Act to say that wherever the power to review is conferred, the Parliament has expressed itself categorically. In that case,

Section 87 of the Army Act confers the power of review – in specific circumstances to the authorities concerned.

6. It is next argued, on the merits, that even the findings of the GCM fixed the culpability for the loss of kerosene was fixed on Assistant Commandant Vinod Kumar who was held guilty for the third charge. So far as the Commandant Ram Narayan Ram, the petitioner's superior officer was concerned, finding of guilt with respect to Fifth Charge, the lack of supervisory control was returned. Likewise, the Sixth charge that the Commandant had not issued any formal order regarding appointment of the Quarter Master led to finding of the Commandant's guilt. Mr. Chhibber said that in these circumstances, regardless of existence of power, the impugned order proposing that the petitioner stand trial in the GCM, is vitiated by non-application of mind.

7. Learned counsel for the respondent urged in reply to the first submission that the existence of Section 55 which confers limited power of supervision and review did not imply – as the petitioner argues- the exclusion of such power under Section 5 which generally confers supervisory and residual administrative role and overall administrative control and jurisdiction over the Force with the various authorities including the Central Government. It was highlighted that command and supervision of the Force vests in a Director General of the BSF. It is submitted that to adopt a narrow construction, advocated by petitioner's counsel, would lead to serious consequences because in given circumstances on account of collusion or utter non-application of mind, the concerned authorities charge with the task of disciplinary officers may pass grossly erroneous orders.

8. It was argued on the merits that the Director General took into account

all the circumstance while deciding that the petitioner ought to stand trial along with the other two charged officials.

9. This Court has carefully considered the submissions. So far as the first submission is concerned, the Court notes that facially, the petitioner's argument with respect to lack of powers appears to be convincing. However, the Court would prefer not to enter into that debate. Rather than any holding that the general power under Section 5 excludes power to review penalties which is otherwise not reviewable under Section 55, the Courts would base its conclusions on an assumption that such power is there, because of the peculiar circumstances of the case. The petitioner concededly was working as Second -in -command of the 76 Battalion. The instances complained against occurred sometime in December 2011. He was visited with the penalty of displeasure after the record of evidence. The occasion to review such order really arose on account of a similar order being made in respect of the other officers – perhaps in respect of Assistant Commandant Vinod Kumar. These officers role were acute. The Director General, in our opinion, while making the impugned order, failed to note the differences between the allegations levelled against the various officers. The final outcome of the GCM indicates that the role attributed to the Commandant Ram Narayan Ram was failure on Fifth and Sixth Charge respectively directly relating to supervision. Such being the case, the petitioner being Second-in-commandant could not have been dealt with in the same manner unless there was specific allegations of his lapses. We discern none from the record. In these circumstances, the Director General having noticed that there was similarity between the petitioner and the commandant, and the later having faced the court martial, and having even being visited the reprimand

penalty we are of the opinion that in the peculiar facts the basis of the impugned order dated 14.11.2011 was unwarranted; it was based on misappreciation of the circumstances and non-application of mind.

10. As a result, the impugned order is quashed, the consequence is that the penalty of reprimand issued by the Inspector General, would stand on the service record of the petitioner.

7. The writ petition stands disposed of in the above terms.

**S. RAVINDRA BHAT, J**

**DEEPA SHARMA, J**

**OCTOBER 13, 2015**

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