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

Judgment Reserved on : April 16, 2015
%   *Judgment Delivered on : April 20, 2015*

+   W.P.(C) 3135/2014

EX-HC HARJINDER SINGH ..... Petitioner
Represented by: Mr.A.K.Gautam, Advocate.

versus

UOI & ORS ..... Respondents
Represented by: Mr.Rajesh Kumar, Advocate.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. The petitioner was enrolled as Constable in BSF in the year 1988. In the year 2011 while the petitioner was posted at 52nd Bn. BSF at Indo Bangladesh Border, the DIG BSF sent a communication dated March 07, 2011 to IG, BSF, South Bengal Frontier, Kolkata about deposit of ₹1,00,000/- in SBI Account No.10143691647 in the name of the wife of the petitioner which was ill gotten money for facilitating smuggling of cattle across the border.

2. For purpose of disciplinary proceedings the petitioner was attached to 91 Bn. BSF vide letter No.Pers./238/SHQ/BSF/2011/498 dated April 12, 2011.

3. On July 02, 2012 taking cognizance of the offence report, which was prepared in the prescribed proforma, the Commandant ordered preparation of ROE by Assistant Commandant Raj Kumar of 91 Bn.

4. Assistant Commandant Raj Kumar commenced recording of

evidence. At the stage of ROE the petitioner preferred not to cross examine any of the witnesses examined by the department. The petitioner declined to make any statement in his defence. However, at his request Sh.Sukhwinder Singh DW-1 and Sh.Sanjay Tiwari DW-2 were examined as defence witnesses. Sh.Sukhwinder Singh DW-1 stated that the petitioner was husband of his real sister. He was working as Truck Driver with Sh.Sanjay Tiwari on monthly salary of ₹2,000/- from the year 2009. He borrowed ₹80,000/- from his employer namely Sh.Sanjay Tiwari DW-2 and ₹20,000/- was with him. He handed over ₹1 lac to a Munshi, whose name he did not recollect, of a Brick Kiln, which was 3-4 kilometers away from Lal Gola to the side of Islampur, for depositing the same in SBI Account No.10143691647 which was of his real sister namely Nirmal Kaur who was married to the petitioner. The said amount was received by his (DW-1's) wife Amarjeet Kaur through his cousin Balwinder Singh. Sh.Sanjay Tiwari DW-2 stated that DW-1 Shukhwinder Singh was working as Driver with him since 2009. In the month of January, 2011 Sukhwinder Singh requested for a loan to construct his house. He paid ₹1 lac to Sukhwinder Singh out of which ₹50,000/- was due to him and ₹50,000/- was given as loan by him to Sukhwinder Singh.

5. On completion of ROE, in compliance of requirement of Rule 51 of BSF Rules, 1969 the same was place before the Commandant of the Battalion. The petitioner was ordered to be tried by the SSFC.

6. The imputation of charge against the petitioner read as under:-

<u>"BSF ACT-1968 SECTION-46</u>	<u>COMMITTING A CIVIL OFFENCE, THAT IS TO SAY CRIMINAL, MISCONDUCT FOR HAVING BEEN AS PUBLIC SERVANT IN POSSESSION OF PECUNIARY RESOURCES</u>

<u>DISPROPORTIONATE TO HIS KNOWN SOURCE OF INCOME FOR WHICH HE CANNOT SATISFACTORILY ACCOUNT FOR, AN OFFENCE SPECIFIED IN SECTION 13(1)(e) OF THE PREVENTION OF CORRUPTION ACT, 1988 PUNISHABLE UNDER SECTION 13(2) OF THE SAID ACT</u>

In that he, while deployed at BOP Rajanagar of 'E' Coy, 52 Bn BSF during January 2011 remitted the following amount in favour of his wife namely Narmal Kaur in her A/C No.10143691647 at SBI Nalwa Bridge, Pathankot through some local acquaintance, which is disproportionate to his known source of income for which he could not satisfactorily account for:-
i) ₹25,000/- on 18.01.11 through SBI Sagarpara

ii) ₹25,000/- on 19.01.11 through SBI Sagarpara

iii) ₹25,000/- on 20.01.11 through SBI Khagra

iv) ₹25,000/- on 25.01.11 through SBI Sheikhpara
Total ₹1,00,000/-"

7. The arraignment took place on February 08, 2013 when the petitioner pleaded not guilty. Before the SSFC following witnesses were examined on behalf of the Department:-

(i) ASI (M) M.Suresh Babu PW-1

(ii) Inspector Ram Mani Mishra PW-2

(iii) HC (Min.) Naresh Kumar Yadav PW-3

(iv) Mr.Sudip Chaterjee, Branch Manager, SBI Sheikhpara Branch PW-4

(v) Mr.Dinesh Ratna Prodhan, Branch Manager, SBI Khagra Branch PW-5.

8. The petitioner was given due opportunity to cross examine the witnesses but he declined to do so. At the stage of defence, the petitioner

declined to make any statement in his defence or produce any witness in his defence. After conclusion of the trial the petitioner was found guilty of the charge and on considering gravity of offence and his service record punishment of dismissal was inflicted upon him by the Disciplinary Authority.

9. The statutory petition preferred by the petitioner under Section 117(2) of BSF Act to Director General, BSF was rejected by the competent authority vide order dated September 27, 2013.

10. By filing this writ petition, the petitioner has impugned the order of his dismissal mainly on the ground that it is a case of no evidence. Taking into account that he had already put in 24 years of service, amount of ₹1 lac deposited in the account could not have been termed as disproportionate. Further the conviction has been passed only on hear-say evidence which is inadmissible. Neither the person who deposited the amount in the account has been examined nor SBI Account No.10143691647 is in the name of his wife. Rather account holder in respect of that account is some other lady by the name Narmal Kaur whereas name of his wife is Nirmal Kaur.

11. Respondent was asked to place on record the complete record of the disciplinary proceedings initiated against the petitioner. To satisfy our judicial conscience we have perused the record of disciplinary proceedings very minutely and note the gist of testimony of following witnesses examined at the trial.

12. ASI (M) M.Suresh Babu PW-1 produced the service record of the petitioner which also contained nomination form (FORM-3) [under Rule 54(12)] Exhibit-'K' filled by the petitioner. As per details given in the form Smt.Nirmal Kaur has been shown as wife of the petitioner and Rohit Singh

(DOB : 07.12.1999) and Gagan Singh (DOB : 11.11.2001) have been shown as sons of the petitioner. The record also contained entry of punishment 'severe reprimand and 14 days pay fine' for committing an offence punishable under Section 40 of BSF Act, 1968. The service record also contain in the prescribed proforma under Rule 45/45B of BSF Rules, 1969 the following incident :-

> *'On 16.01.2011 while he was performing the ACT duty negligently at ACP No.12 of BOP Rajanagar, Ex.52 Bn. BSF failed to be stop crossing of smugglers with cattle heads from India to Bangladesh side and also tried to erase the hoof marks.'*

ASI (M) M.Suresh Babu PW-1 also produced the letter No.Pers/238/SHQ/BSF/2011/498 dated April 12, 2011 Exhibit-'N' addressed to I.G. containing information of remittance of illegal money through CBS by the personnel of 52nd Bn. BSF namely Ct.Sukhwinder Singh, Ct.M.K.Meitai and HC Harjinder Singh (Petitioner) as well the details of cash remittance in the account of Smt.Nirmal Kaur, wife of the petitioner in four instalments of ₹25,000/- each on January 18, 19, 20 and 25 of 2011. He also produced the salary statement of the petitioner showing that ₹16,298/- was deposited in his account as salary for January, 2011. The GPF Statement for the year 2010-2011 did not show any withdrawal during the financial year.

13. Inspector Ram Mani Mishra PW-2 has stated that area of responsibility of BOP Rajanagar and its outpost Bamnabad is approximately 9.7 Kms. and complete area of responsibility was unfenced and riverine and this area is known for cattle smuggling, phensidyle smuggling, motor parts smuggling and other contraband items. He also produced the SOP dated July 27, 2007 circulated by Ftr. HQ South Bengal containing instructions

that troops deployed in the International Border of Indo-Bangladesh are not permitted to have money more than ₹500/-. In case of any emergent requirement the troops deployed at Indo-Bangladesh Border will inform to the BOP/Coy. Comdr. for transaction of money to their home town and entry to this effect will be made in the relevant register maintained at BOP and it should be duly signed by the respective Coy.Commanders.

14. HC (Min.) Naresh Kumar Yadav PW-3 has stated that 52 Bn. BAF was deployed at Indo-Bangladesh Border w.e.f. 2010 to March 06, 2011. He has produced the instructions received from 52 Bn. BSF regarding SOP – Possession of excess money by BSF personnel at BOP as per which all BOP personnel including Coy.Comdt./Bop Comdr. will not keep an amount exceeding ₹500/- only each out of pay and allowances as pocket money with them in the BOP. The Coy. Comdr. will ensure that these instructions are brought to the notice of each and every personnel of his Coy. regularly through roll call, interaction, placing on notice board/BOPs/Mess/Recreation Room and any personnel violating these instructions will be dealt with as per BSF Act and Rules. He has produced the record of leave period and deployment of the petitioner at Indo-Bangladesh Border. He has stated that the petitioner was deployed at BOP Raja Nagar from December 23, 2010 to January 17, 2011. He has also produced the certified copy of Naka/Ambush register of the BOP Rajanagar 'E' Coy, 52 Bn. BSF Exhibit- W, W1 to W9 in which duties performed/discharged by the accused at the International Border have been mentioned. As per the above register, the petitioner had performed the following duty at international border in the area of BOP Rajanagar :-

Sl.No.	Date	Where duty performed	Time	Remarks
01	24.12.2010	Sec No.01	241800 to 250600	P/21
02	25.12.2010	Sec No.04	251800 to 260600	P/22
03	27.12.2010	Sec No.01	271800 to 270600	P/24
04	29.12.2010	Sec No.01	291800 to 300600	P/26
05	07.01.2011	Sec No.01	071800 to 080600	P/36
06	09.01.2011	Sec No.03	091800 to 100600	P/39
07	10.01.2011	Sec No.03	101800 to 110600	P/40
08	12.01.2011	Sec No.01	121800 to 130600	P/42
09	14.01.2011	Sec No.01	141800 to 150600	P/44
10	16.01.2011	Sec No.03	161800 to 170600	P/47

15. Mr.Sudip Chaterjee PW-4 and Mr.Dinesh Ratna Prodhan PW-5 are the Branch Managers, SBI Sheikhpara Branch and SBI Khagra Branch, Distt. Murshidabad, West Bengal respectively. They have produced the computerised transaction inquiry statements as also cash deposit vouchers (Exhibit-X, X-1, Y, Y-1, Z, Z-1, AA, AB, AC, AC-1 and AD) in respect of Bank Account No.10143691647 which was maintained by Mrs.Narmal Kaur. Perusal of transaction inquiry statement and cash vouchers Exhibit-X, X-1, Y and Y-1 reveals that a sum of ₹ 25,000/- has been deposited in the said account on January 25, 2011 from Sheikhpara Branch and the name of the cash depositor is mentioned as Biswajit Mondal. Further as per inquiry statement Exhibit-Z, Z-1, AA and AB, a sum of ₹ 25,000/- each have been deposited in the said account on January 18, 2011 and January 19, 2011 from SBI Sagarpara Branch and the names of the cash depositors are mentioned as Bipul and Sukumar Mondal respectively. Perusal of transaction inquiry statement and cash vouchers Exhibit-AC, AC-1 and AD reveals that a sum of ₹ 25,000/- has been deposited in the said account on January 20, 2011 from Khagra Branch and the name of the cash depositor is mentioned as Sukumar Mondal.

16. After the evidence was closed by the Department, the petitioner was asked to enter his defence. The petitioner refused to make any statement or examine any witness in his defence. While recording proceedings before sentence, his general character was found to be 'just satisfactory'. He had put in 24 years and two months of service and had four cash rewards to his credit. After taking into consideration the material against the petitioner, he was ordered to be dismissed from service and suffer fine of ₹1 lac.

17. Learned counsel for the petitioner has tried to project it as a case of no evidence for the reason that neither the depositors of the money in SBI Account No.10143691647 has been examined nor the said account was established to be in the name of his wife. We find no force in the above contention for the reason that at the stage of ROE while given an opportunity to make statement in his defence, the petitioner declined to make any statement. He did not claim that SBI Account No.10143691647 was not in the name of his wife. Merely because the name of the wife of the petitioner is Nirmal Kaur and SBI Account No.10143691647 is in the name of Narmal Kaur is not going to make any difference so far as the petitioner is concerned because it is not his case that there is another lady by the name Narmal Kaur at his native place and that his wife is not holding SBI Account No.10143691647 at Nalwa Bridge Branch, Pathankot, Punjab. To the contrary Sukhwinder Singh DW-1 was examined by the petitioner to prove the following defence:-

(i) Smt.Nirmal Kaur, wife of the petitioner is real sister of Sukhwinder Singh DW-1.

(ii) Sukhwinder Singh DW-1 borrowed ₹80,000/- from his employer Sh.Sanjay Tiwari DW-2 and for contributing ₹20,000/- and handed over ₹1 lac to some Munshi of a Brick Kiln for depositing in the account of Smt.Nirmal Kaur. This money was subsequently received by Smt.Amarjeet Kaur, wife of Sukhwinder Singh DW-1 through his (Sukhwinder Singh's) cousin Balwinder Singh.

18. Without commenting on the truthfulness of the version of Sh.Sukhwinder Singh DW-1 which is not fully corroborated by Sh.Sanjay Tiwari DW-2 – his employer on vital aspects, the fact sought to be proved by the petitioner through Sh.Sanjay Tiwari DW-1 was that the amount received by his wife Nirmal Kaur in her SBI Account No.10143691647 was deposited by Sh.Sukhwinder Singh, his brother-in-law after borrowing it from his employer. Thus, it is not open to the petitioner now to contend before us that it is a case based on no evidence and his wife had nothing to do with SBI Account No.10143691647. The manner in which the account was operated and the amount was withdrawn is clear from the statement of account Exhibit-6 in respect of SBI Account No.10143691647 a sum of ₹25,000/- each were deposited in said account on January 18, 2011 and January 19, 2011 respectively from Sagarpara Branch, a sum of ₹25,000/- was deposited on January 20, 2011 from SBI Khagra Branch and a sum of ₹25,000/- was deposited on January 25, 2011 from Seikhpara Branch and on each date when the above deposits were made in the said account, a sum of ₹50/- each has been debited towards inter-city charges.

19. It may not be out of place to mention here that the one of the documents furnished by Sh.Sukhwinder Singh DW-1 and Sh.Sanjay Tiwari DW-2 in their defence is authorisation letter by Sh.Sanjay Tiwari DW-2 in favour of Sh.Sukhwinder Singh DW-1 to drive his vehicle and as admitted by DW-1 and DW-2 the signatures of Sh.Sukhwinder Singh DW-1 on

Exhibit-‘2’ are forged. Another document furnished by them is a letter with the heading ‘To Whom It May Concern’ showing payment of ₹80,000/- by Sh.Sanjay Tiwari DW-2 to Sh.Sukhwinder Singh DW-1 is dated April 03, 2012 whereas the deposits have been made on January 18th, 19th, 20th and 25th , 2011. There is no explanation coming forth to explain the deposit of ₹1 lac in four instalments of ₹25,000/- each by different persons who are unrelated and not even known to the petitioner as well to Sh.Sukhwinder Singh DW-1.

20. Another contention on behalf of the petitioner is that deposit of ₹1 lac in the account of his wife could not be held to be disproportionate to his known source of income as he had already put in 24 years of service. Undisputedly, as per SOP dated July 27, 2007 the troops deployed in the International Border of Indo-Bangladesh are not permitted to keep money more than ₹ 500/-. In case of any emergent requirement the troops deployed in the Indo-Bangladesh Border would inform BOP/Coy Comdr. for transaction of money to their home town and entry to this effect would be made in the relevant register maintained at BOP and it should be duly signed by the respective Coy Commanders. The petitioner could not have kept more than ₹500/- with him. It is emerging from record that during the year 2011 the petitioner was posted at Indo-Bangladesh Border and immediately after the date the petitioner was deployed for duty at Indo-Bangladesh Border, on January 16, 2011 it was noted that he allowed crossing of cattle herds by the smugglers and tried to remove the hoof marks. It is also emerging from record that there was cash deposit of ₹1 lac four times of ₹25,000/- each in SBI Account No.10143691647, which belongs to his wife Nirmal Kaur, from different branches on different dates immediately after

the date the petitioner was deployed for duty at Indo-Bangladesh Border. It has also come on record that his salary for the month of January, 2011 was ₹16,298/- and there was no withdrawal of ₹1 lac either from his GPF Account or from his Salary Account. Since no particulars of the depositors were available on the cash vouchers except the name which also could be fictitious, none could have been examined. Rather the petitioner could have produced his wife and record of her bank account which must be containing the complete particulars including the photograph of the holder of the account to prove that Narmal Kaur – the account holder had no connection with his wife Nirmal Kaur and two are distinct persons. As already pointed out by us, at the stage of ROE defence of the petitioner was that amount of ₹1 lac was deposited by Sh.Sukhwinder Singh DW-1 in the name of Nirmal Kaur, his real sister in her SBI Account No.10143691647.

21. The testimony of witnesses examined on behalf of department and even the defence witnesses clearly prove the charge against the petitioner. Thus, it is not open to the petitioner to challenge his dismissal on the ground that it is a case of no evidence.

22. Legal position is well settled that in exercise of power of judicial review the Court would not interfere with the penalty unless it shocks the judicial conscience. We find the penalty commensurating with the charge proved against the petitioner.

23. Learned counsel for the petitioner has tried to seek some relief on behalf of petitioner praying that the penalty of dismissal imposed on the petitioner after rendering service of 24 years with no serious act of misconduct in the past is disproportionate. Referring to the family condition of the petitioner learned counsel for the petitioner urged that petitioner was

the only earning member of the family and apart from dismissal, a fine of ₹1 lac was also imposed on him causing serious financial hardship to the petitioner. Thus, in the given circumstances, on compassionate ground under Rule 41 of CCS Pension Rules, 1972 the case of the petitioner may be considered.

24. The petitioner was held guilty by SSFC for facilitating smuggling of cattle herds for illegal consideration which deposited in cash in four instalments of ₹25,000/- each in SBI Account No.10143691647 held by his wife.

25. The petitioner was holding the responsibility to secure the borders in a very sensitive area at Indo-Bangladesh Border which was notorious for smuggling of cattle herds and other items. The prayer of the petitioner for compassionate allowance under Rule 41 of CCS Pension Rules, 1972 when examined in the light of principles laid down by the Supreme Court in CA No.2111/2009 *Mahinder Dutt Sharma vs. UOI & Ors.* decided on April 11, 2014, we find that the act committed by the petitioner not only involved moral turpitude but also is an act of betrayal towards the country and failure to secure the border. Thus, he is not entitled to any compassionate allowance under Rule 41 of CCS Pension Rules, 1972.

26. The writ petition has no merits and the same is dismissed.

27. No costs.

PRATIBHA RANI, J.

PRADEEP NANDRAJOG, J.

April 20, 2015/*st*