

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6658 OF 2007

Machhindra Ganpat Gawali,
Age : 35 years, Occupation : Unemployed,
R/o Village and Post Apdhup,
Tehsil T.S.Parner,
District Ahmednagar.

...PETITIONER

-VERSUS-

- 1 The Union of India.
Through Ministry of Home Affairs,
New Delhi.
- 2 The Director General,
Border Security Force,
10th Block, CGO Complex,
Lodhi Road,
New Delhi-110003.
- 3 The Deputy Inspector General,
Border Security Force,
Cooch Behar,
West Bengal.

...RESPONDENTS

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Advocate for Petitioner : Shri A. K. Gawali.

Asst.SG for Respondents : Shri S.B.Deshpande.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 09th May, 2016

Oral Judgment:

1 This petition was admitted on 10.04.2008 and interim relief has been refused.

2 The Petitioner has challenged the order dated 11.07.2007 delivered by the Commandant, 46 BN BSF in his capacity as Presiding Officer of the Summary Security Force Court (for short “SSFC”) and the order dated 20.09.2007 delivered by Respondent No.2/ Director General, Border Security Force.

3 Shri Gawali, learned Advocate for the Petitioner, has strenuously criticized the impugned orders. Primarily his contention is that after the examination-in-chief was recorded in the enquiry, the Petitioner was not made aware that he could pray for an adjournment or seek some time for cross-examination of the witness.

4 Insofar as the merits of the charge are concerned, he has narrated the charge leveled upon him. It is stated that a person is alleged to have been permitted to cross over the Indian border and enter Bangladesh without authorization, on payment of Rs.100/- to the Petitioner. It is also alleged that the said person was waiting to cross over the border to make his return trip to India and was apprehended. One of

the witness, namely, S.I.Mahaveer Singh had animosity towards the Petitioner. He has orchestrated the said witness by projecting him as the person who had crossed over the fence towards Bangladesh.

5 Shri Gawali has taken me through the impugned orders as well as through the entire oral evidence of the witnesses of both sides. The contention is that there was no evidence before the Enquiry Committee to conclude that the charge has been proved against the Petitioner.

6 He further submits that the first order dated 11.07.2007 passed by the SSFC is a cryptic and non-speaking order. This aspect should have been gone into by Respondent No.2 who has failed to consider the said challenge posed by the Petitioner and has mechanically passed an order dated 20.09.2007.

7 Shri Gawali further submits that on the basis of the evidence on record, it is apparent that the sequence of events is not complete and the manner in which the tutored witnesses were brought before the Authority by projecting them to be the persons who have crossed over the border, would not convince any prudent person that the charges leveled upon the Petitioner have been proved.

8 Shri Gawali has placed reliance upon the judgment of the learned Division Bench of this Court in the matter of *Kantilal Bhanudas Dukare vs. Officiating Commandant, 21C, 102 BN, BSF, 2010 (5) Mh.L.J. 394*. He submits that this Court has ruled that when consequences are either of dismissal or removal from service, the SSFC must discuss the evidence on record on the basis of which it has reached the conclusion. Merely reproducing the evidence in the enquiry and thereafter, abruptly recording the finding, is not sufficient.

9 Shri Deshpande, learned Assistant Solicitor General appearing on behalf of the Respondents, submits that the evidence before the SSFC would clearly indicate that the guilt of the Petitioner has been established. Eleven witnesses were examined before the SSFC. Material testimony is of the person, namely, Arbindo Rai, who has crossed over the border by paying the Petitioner Rs.100/- since he wanted to enter Bangladesh purportedly to invite his relatives for attending the thirteenth day ceremony of his father, who had passed away. It is on the return trip to India that Mahaveer Singh noticed the said person along with a lady who he claimed to be his aunt. Both of them wanted to cross over the border to India.

10 Shri Deshpande, therefore, submits that it is in this backdrop

that the act of the Petitioner was exposed. He further submits that the totality of the evidence adduced before the SSFC was considered and the order was passed. The Petitioner had preferred a statutory petition before Respondent No.2 and the same has been decided by the said Authority by passing a speaking order. He, therefore, submits that this petition deserves to be dismissed.

11 Shri Deshpande has relied upon the following judgments:-

- (a) Union of India and another vs. Dinesh Kumar, AIR 2010 SC 1551.
- (b) Union of India vs. Ex Constable Amrik Singh, AIR 1991 SC 564.

12 It is contended on the basis of the observations of the Honourable Apex Court in paragraphs 6 and 7 of *Amrik Singh* judgment (supra) that the principles of natural justice cannot be transformed into fundamental rights. There has to be sufficient material before the Court to decide as to whether, the charges leveled upon the employee are proved or not. The Authorities have considered the entire evidence before it and have concluded that the charges leveled upon the Petitioner have been proved.

13 I have considered the submissions of the learned Advocates. I have also gone through the petition paper book with their assistance.

14 I have considered the testimony of Arbindo Rai who was the first witness. In his deposition, he has specifically identified the Petitioner as the person who was guarding the border at Gate No.3 and was the same person to whom he had paid Rs.100/- for crossing over the border. Even in the cross-examination, the said witness insisted that the Petitioner was the person who had taken Rs.100/- for allowing him to cross over the border.

15 S.I.Mahaveer Singh, who was the person due to which this entire episode was brought to light, has also deposed in the enquiry. He has narrated the whole incident in his deposition. He has stated that Arbindo Rai, after seeing the Petitioner, had identified him immediately and stated that he was the same person to whom he had paid money to cross over the border. Mahaveer Singh has reiterated his story in his cross-examination.

16 It is trite law that such enquiries are not to be conducted in a manner as if a criminal trial is being undertaken. It is trite law that there must be some evidence on record to conclude that the delinquent is guilty

of the charges levelled upon him. After considering the entire evidence of the witnesses and their cross-examination, I do not find that it could be said that there was no material before the SSFC to conclude that the Petitioner is guilty.

17 Insofar as the contention of Shri Gawali that the first order dated 11.07.2007 is a cryptic order, is concerned, I find that Respondent No.2 while considering the statutory petition submitted by the Petitioner, has gone into the entire facts of the case and evidence recorded. After considering the same, he has concluded that the disciplinary authority had rightly come to the conclusion that the Petitioner deserves to be dismissed from service. A speaking and well reasoned order has been passed by Respondent No.2.

18 Shri Gawali has contended that the Petitioner has put about 13 and ½ years in service. His past record is practically clean and he has been awarded 10 medals for good service. He could have opted for retirement after 1 and ½ years as the minimum required service is of 15 years. It is, therefore, prayed that leniency be shown to the Petitioner.

19 I find that this submission of Shri Gawali is an emotional appeal. I am of the view that in a case of such nature wherein the

delinquent is in the Border Security Force and guarding India-Bangladesh border, he deserves no sympathy in the light of the fact that the charge of accepting money for permitting persons to cross over to the other country illegally has been proved. Infiltration and insurgency today are the biggest challenge to the security of our country and no member of the Border Security Force or any other Force guarding the borders should be permitted to compromise the security of our country. No sympathy deserves to be shown towards such delinquents as such installations are zero-tolerance zones.

20 In the light of the above, I do not find any merit in this petition and the same is, therefore, dismissed.

21 Rule is discharged.