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

+ W.P.(C) 6353/2006

EX.CONSTABLE AZAD SINGH Petitioner
Through: Mr. Surender Singh Hooda, Advocate

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Anurag Ahluwalia, CGSC with
Ms. Sristi Banerjee, Advocate

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
01.04.2016

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1. The petitioner is aggrieved by the order dated 20.06.2005, passed by the Commandant, recording *inter alia* that that he was tried by the Summary Security Force Court (in short 'SSFC') on 20.06.2005, for an offence under Section 20(a) of the BSF Act, 1968 (hereinafter referred to as '**the Act**'), for using criminal force against his superior officer and awarding him a sentence of dismissal from service. The petitioner has also assailed the order dated 25.01.2006 passed by the Directorate General, BSF, the Appellate Authority, rejecting his statutory appeal and confirming the dismissal order.

2. The incident in question that resulted in convening of the SSFC had occurred on 08.06.2005, when as per the respondents, at about 8 PM, the petitioner had entered into an altercation with Head Constable Purushottam Naik in respect of an incident that had taken place in the afternoon of the same day when Head Constable Purushottam Naik had ordered the petitioner not to leave the campus without carrying his personal weapon in an area that was sensitive and militancy infested (Srinagar, Jammu and Kashmir) but he disobeyed the said order and went out of the campus on his own. In the evening, the petitioner had allegedly abused Head Constable Purushottam Naik, caught hold of him by the scruff of his collar, threatened to kill him and had slapped him thrice.

3. It is the petitioner's version that he had reacted so sharply on account of the fact that Head Constable Purushottam had rained abuses on him and had he not been provoked so intensely, he would not have entered into an altercation with his superior officer or assaulted him. On 13.06.2005, the petitioner was charged for using criminal force on his superior officer. Full opportunity was granted to him to cross-examine the prosecution witnesses, but he had declined to do so. After hearing the charge against the petitioner,

a Record of Evidence (in short '**ROE**') was recorded under Rule 48 of the BSF Rules. During the course of the ROE, the petitioner was granted an opportunity to cross-examine the prosecution witnesses, namely, PW-1 HC Purshottam Naik, PW-2 HC Harsh Kumar, PW-3 HC K.R. Besra, PW-4 Ct. Pradeep Kumar and PW-5 Ct. Surendra Singh. The petitioner had declined to cross-examine PW-1 and PW-2 on 13.06.2005 and he had refused to sign the statement of opportunity for cross-examination that was declined by him. On 14.06.2005, the petitioner had cross-examined PW-3. On 15.06.2005, he had declined to cross-examine PW-4 and PW-5. On 17.06.2005, the petitioner was provided with a copy of the charge-sheet and as per his choice, a 'friend of accused' was appointed to assist him during the trial directed to be conducted by the SSFC.

4. On 20.06.2005, during the SSFC trial, the petitioner had voluntarily pleaded guilty to the charge levelled against him and had requested that he be pardoned, being poor person and having the liability of his family. On 20.06.2005, the SSFC had found the petitioner guilty of the charge and awarded him a sentence of dismissal from service. Aggrieved by the said decision, the petitioner had preferred an appeal, which was rejected by the Appellate Authority on 25.01.2006. The petitioner has filed the present

petition assailing the said decisions.

5. In the course of perusing the records, particularly, the statements of the prosecution witnesses, we notice that on the date of the incident, the petitioner had evidently reacted under sudden provocation. Counsel for the petitioner states that the Disciplinary Authority ought to have taken note of the said provocation and inflicted a suitable punishment against the petitioner, who had pleaded guilty, which punishment ought to have been less than the penalty of dismissal from service as has been inflicted on him. He states that at the time when the incident had taken place, the petitioner was a 25 years old youth who had acted in the heat of moment at the provocation of HC Purushottam Naik. By then, he had rendered service of two years and seven months and there was no previous incident of misconduct in that short duration of service. He submits that the petitioner belongs to a rural background and after dismissal from service, had gone back to his native place in District Bhiwani, Haryana and is still jobless. Learned counsel urges that if the punishment of dismissal from service inflicted on the petitioner is scaled down, there is a likelihood of his getting some kind of employment in the private sector/public sector undertaking.

6. In response to the submission made by counsel for the respondents that dismissal from service is a punishment contemplated under Section 48 of the Act, which in the sequence of gravity is just below the highest punishment of death, followed by imprisonment for life or a lesser term, counsel for the petitioner places reliance on the decision of a Division Bench of this Court in the case of UOI and Anr. Vs. Major Singh reported as **2001 (58) DRJ 282**. In the captioned case, the question that had arisen before the Division Bench of this Court for determination was as to whether the Appellate Authority in the BSF enjoys the powers and jurisdiction to impose a punishment in the nature of “removal from service” which has not been specifically enumerated and serialized as one of the punishments contemplated under Section 48 of the Act. Just as in the present case, in the said case, the respondent therein was tried by the SSFC for remaining absent without leave and during the course of the trial, he had pleaded guilty and the Court had awarded him a punishment of dismissal from service. The statutory appeal preferred by the respondent before the Appellate Authority had resulted in the punishment of dismissal from service being converted into removal from service.

7. Aggrieved by the said decision, the respondent therein had preferred a

writ petition in the High Court and vide judgment dated 15.05.1998, the learned Single Judge had set aside the order passed by the Appellate Authority and remitted the matter back for a fresh consideration of the appeal. Aggrieved by the judgment of the learned Single judge, the Union of India had preferred an appeal and stated before the Division Bench that while exercising powers of an Appellate Authority under Section 117(2) of the Act, the Director General is not bound to confine his order to the punishments enunciated under Section 48 of the BSF Act and he is well entitled to exercise his discretion by awarding a lesser punishment, which would be lesser than dismissal from service, by resorting to Section 128 of the Act. After hearing the parties, the Division Bench had allowed the appeal filed by the Union of India and taken a view that Section 128 of the Act empowers the Central Government or the Director General to pardon or remit the punishment and the said powers are very extensive and wide and given such extensive powers, the Director General was well entitled to mitigate the punishment awarded to the respondent in the captioned case.

8. For a proper understanding of the consideration that had weighed with the Division Bench while allowing the appeal filed by the Union of India in the case of Major Singh (supra), it is apposite to refer to the relevant paras,

which are reproduced hereinbelow:-

“25. In the Summary Security Force Court, the respondents pleaded guilty and they were awarded sentence of dismissal from service. On the respondents' preferring statutory petition under section 117(2) and 128 of the BSF, the Director General, BSF converted the sentence of dismissal to that of removal from service. The learned Single Judge set aside the order passed by the Director General, BSF and remitted the petitions to the respondents for deciding them afresh on merits.

26. On careful reading of Section 117(2) of the Act, we do not find that the Central Government or the Director General are under an obligation to confine its or his order only to the punishments enumerated under Section 48 of the Act. The legislature in its wisdom has used the words that the Central Government, the Director General or the prescribed officer, as the case may be, may pass such order thereon as it or he thinks fit". These words have to be given proper meaning and the interpretation. By plain reading of this Section, it is abundantly clear that the legislature has given ample freedom, liberty and discretion to the Central Government, the Director General or the prescribed officer to pass such order or orders as it or he thinks fit, meaning thereby that any order which is considered just, proper and appropriate in the facts and circumstances of the case, can be passed by any of these authorities.

27. In case the legislature wanted the Central Government or the Director General or the prescribed officer to confine its or his order only to the various offences enumerated and Serialized under Section 48, in that event the legislature would have specifically mentioned this in the Act. The Courts have to make serious endeavor to clearly discern the legislative intention while interpreting any provision of the Act. This is the fundamental rule of the interpretation of the statute.

28. In our considered opinion, the Central Government, the Director General or the prescribed officer is not bound to confine it or his order to the punishment enumerated under Section 48 of the Act, in

other words no fetters not envisaged by the legislature can be placed on the Central Government or the Director General or the prescribed officer in exercise of the power under Section 117(2) and 128 of the Act.

29. *The legislature has given the liberty and freedom to the Central Government, the Director General and the prescribed officer to pass, just, proper and appropriate order according to the peculiar facts and circumstances of each case. We can clearly see the laudable object behind giving this freedom and discretion to the authority exercising powers under Sections 117(2) and 128 of the Act. It is not always possible to visualise all the situations, contingencies and circumstances. Therefore, certain amount of freedom, liberty and discretion have rightly been given to these authorities by the legislature which cannot be legitimately curbed by the Court.*

30. *Section 128 of the Act gives power, to the Central Government or the Director General, of pardon and remissions. The powers are very extensive and wide. They can accept pardon or remit the whole or any part of the punishment awarded. When the legislators in their wisdom have given such wide powers under the provisions of Section 128, then it would hardly be proper or appropriate for the courts to interpret them differently. Giving restrictive meaning or the interpretation to Section 117(2) would necessarily render Section 128 of the Act redundant.*

31. *Under Section 128, the Central Government or the Director General also enjoy power to mitigate the punishment. They have also been given power to commute such punishment for any less punishment. The authorities have also been given powers either with or without condition, release the person on parole. The framers of the statute in their wisdom have given such wide and extensive powers to the Central Government and to the Director General under Sections 117 & 128 of the Act, then it would hardly be appropriate or proper to take away these powers by giving restrictive meaning or interpretation to the provisions of the Act. The Courts are under an obligation to discern the legislative intention and give interpretation to the provisions of the Act accordingly.*

32. The legislators in their wisdom have specifically incorporated the word "removal" in Sections 10 & 11 of the Act. We are of the considered opinion that no infirmity can be found with the order of the Director General while converting the sentence from dismissal to removal. He has in fact not travelled beyond the ambit of the Act. The learned Single Judge has erred in setting aside the order of the Director General and remitting the matter for reconsideration afresh on merit.

33. In the interest of justice, it has become imperative to set aside the order of the learned Single Judge and consequently the order of the Director General is revived.

34. The appeals filed by the Union of India are allowed. However, in the facts and circumstances of this case, we direct the parties to bear their own costs." (emphasis added)

9. In the present case too, having regard to the fact position that has emerged on perusing the evidence, wherein it is apparent that there was some immediate provocation under which the petitioner had reacted adversely, we are of the opinion that the matter ought to be remanded back to the respondents on the aspect of quantum of punishment, which could be less than the punishment of dismissal from service imposed on the petitioner but at the same time, the said punishment ought to be commensurate with the charge framed against him, for which he had pleaded guilty.

10. Accordingly, the impugned order dated 25.01.2006, insofar as it upholds the punishment awarded to the petitioner is quashed and set aside

and the matter is remanded back to the Appellate Authority for a fresh consideration on the quantum of punishment. The statutory appeal filed by the petitioner is revived for being considered afresh by the Appellate Authority on the aforesaid aspect, within a period of two months from today. The decision taken shall be communicated in writing to the petitioner. While awarding the punishment, the respondents shall take into consideration the past record of the petitioner, his financial background and other relevant factors, as per law.

11. The writ petition is allowed limited to the aforesaid extent, while leaving the parties to bear their own expenses.

HIMA KOHLI, J

SUNIL GAUR, J

APRIL 01, 2016

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