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

+ **W.P.(C) 434/2016**

Decided on : 22.1.2016

IN THE MATTER OF:

RAJESH KUMAR

..... Petitioner

Through : Mr. Victor Dhissa, Advocate

versus

SECRETARY, MINISTRY OF HOME, GOVT. OF INDIA & ORS

..... Respondents

Through : Mr. Arun Bhardwaj, Advocate

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUNIL GAUR

HIMA KOHLI, J. (Oral)

1. The present petition has been filed by the petitioner praying *inter alia* for setting aside the order dated 18.5.2015 passed by the respondent No.3/Inspector General (Admn.), Force Head Quarter, Sashastra Seema Bal, New Delhi (Appellate Authority), upholding the order dated 28.2.2015, passed by the Commanding Officer (Disciplinary Authority), imposing upon him a punishment of "reduction to lower rank of CT/GD" for a period of three years.

2. At the relevant point in time, prior to issuance of the Memorandum dated 28.8.2014, when the petitioner was working on the post of a Head Constable in the 25th Battalion of the SSB, he was called upon to explain his conduct in view of the allegations levelled against him to the effect that on 8.7.2014, he had been ordered to move for the rehearsal of DG Guard of Honour on 9.7.2014, but he reached the headquarters on 8.7.2014 at 21.15 hrs., without informing anyone and without obtaining the approval of the Company Commander; it was noticed that the petitioner had not handed over the charge to the next Guard Commander and had failed to sign on the register maintained by the Guard Commander; the petitioner was also informed that on 26.8.2014, when he was guarding the main gate, the duty hours were from 9.00 AM to 1.00 PM, but he had failed to attend the general falling in at 3.00 PM; further, on remaining absent, the petitioner had failed to give his joining report in the office.

3. Vide letter dated 1.9.2014, the petitioner submitted his reply to the aforesaid Memorandum. Not satisfied with the said reply, a Summary Force Court under Section 82 of SSB Act, 2007 (in short '**the Act**') was held at the 25th Bn., SSB, New Delhi on 27.2.2015 and

three charges were levelled against the petitioner under Sections 21(d), 22(b) & (c) and 23(1) of the Act, which refer to the following offences :

- i). Failing to appear at the time fixed at the parade or place appointed for exercise or duty without sufficient cause;
- ii). Using insubordinate language to a superior officer; and
- iii). Disobedience to a superior officer.

4. In the course of appearing before the Summary Force Court, the petitioner pleaded "guilty" in response to charges No.1 and 2 and "not guilty" in response to charge No.3. After recording the proceedings in respect of the plea of not guilty taken by the petitioner with respect to charge No.3 and on going through the records of the said proceedings, the petitioner was found guilty in respect of charge No.3 and a punishment of "reduction to lower rank of CT/GD" for a period of three years under Section 51 (F) of the Act was awarded to him with immediate effect.

5. Aggrieved by the order dated 28.2.2015, passed by the Disciplinary Authority (Commanding Officer), the petitioner had filed a writ petition in the High Court, registered as WP(C)No.8038/2015, which was subsequently withdrawn by him. Though the order dated 25.8.2015 does not indicate so, counsel for the petitioner states that

he had withdrawn the said petition with liberty to file an appeal before the Appellate Authority against the order passed by the Disciplinary Authority.

6. Subsequently, the petitioner had filed an appeal against the order dated 28.2.2015 (pages 26 to 29) and vide Order dated 18.5.2015, the Inspector General (Admn.), the Appellate Authority had expressed an opinion that there was no reason to differ with the decision taken by the Commandant, the Disciplinary Authority and accordingly, the petitioner's appeal was rejected.

7. Counsel for the petitioner states that during the Summary Force Court held by the respondents, the petitioner was given an assurance that if he would plead guilty in respect of the charges levelled against him, he would not face any adverse consequences and the respondents would take a lenient approach and it was only in this background that the petitioner had pleaded guilty. He further states that the petitioner has rendered eighteen years of blemishless service which aspect ought to have been taken into consideration by the respondents while imposing any punishment on him.

8. No other challenge has been laid by the petitioner to the impugned order dated 28.2.2015 passed by the Disciplinary Authority that stands merged in the order dated 18.5.2015, passed by the Appellate Authority.

9. We have considered the submissions made by learned counsel for the petitioner in the light of the averments made in the petition. A perusal of the order dated 28.2.2015 passed by the Disciplinary Authority reveals that the petitioner had selectively pleaded guilty in respect of the three charges levelled against him. While he had pleaded "guilty" in respect of charges No.1 and 2, he had elected to plead "not guilty" in respect of charge No.3, which shows that contrary to the stand taken in the present petition, the petitioner was not under any pressure or coercion during the Summary Force Court proceedings and he had duly considered each of the charges levelled against him and responded as per his own choice. Had it been a case of pressure/coercion having been imposed on the petitioner, as alleged, there was no good reason for him to have pleaded "not guilty" in respect of charge No.3 and contest the said charge.

10. It is further relevant to note that the punishment prescribed for the offence committed under Section 21(d) of the Act is imprisonment for a term that may extend to three years; similarly, the punishment prescribed for an offence under Section 22(b) & (c) of the Act is imprisonment for a term that may extend upto fourteen years and under Section 21(1) of the Act, the punishment may extend for a term upto fourteen years. Despite the same, the respondents have shown leniency towards the petitioner and awarded a lesser punishment to him of reduction to a lower rank of Constable (GD) for a period of three years.

11. The submission made by learned counsel for the petitioner that the petitioner was coerced into pleading guilty is unfounded and the punishment imposed on him appears to be commensurate to the offence and far less than the maximum punishment envisaged under the relevant provisions of the statute. The argument advanced by learned counsel for the petitioner that his client had rendered blemishless service for eighteen years earlier to the date of the incident, cannot be a ground to completely overlook his misconduct and even otherwise, it appears from the punishment imposed on the petitioner that this aspect was factored in by the respondents while deciding his case.

12. In view of the aforesaid facts and circumstances, we are not inclined to interfere in the impugned order as it does not suffer from any illegality, arbitrariness or perversity.

13. Accordingly, the present petition is dismissed as being devoid of merits.

(HIMA KOHLI)
JUDGE

(SUNIL GAUR)
JUDGE

JANUARY 22, 2016
sk/ap