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

+ **WRIT PETITION (CIVIL) No. 7758/2017**

Date of decision: 4th September, 2017

EX- CT. RANA PRATAP SINGH Petitioner

Through Mr. L. Ojha & Mr. Akash Ojha,
Advocates.

versus

UNION OF INDIA AND ANR. Respondents

Through Mr. Ankur Chhibber, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (ORAL):

This is the second round by the petitioner, who is an ex-Constable in the Border Security Force (BSF).

2. The petitioner was tried vide General Security Force Court on six charges, including four charges under Section 46 of the Border Security Force Act, 1968 for committing murder of three Bangladeshi nationals and for attempting to take life of another Bangladesh civilian after entering Bangladesh. Another change was the petitioner had left the picket with which he was stationed without orders from the superior officers.

3. The petitioner had pleaded not guilty. Evidence was lead. After due appraisal of the evidence both oral and documentary, the petitioner was held to be guilty by the General Security Force Court

and sentenced to suffer imprisonment for life and dismissal from service.

4. Statutory petition addressed by the petitioner to the Union Home Minister was rejected vide order dated 28th June, 2011.

5. The petitioner had thereafter challenged the aforesaid orders in Writ Petition (Civil) No. 5878/2011, which was dismissed by a detailed reasoned judgment dated 13th September, 2011. This judgment had examined and considered the evidence and material on record on the basis of which the petitioner was held to be guilty.

6. The petitioner had filed a Special Leave Petition against the said judgment, which was dismissed vide order dated 19th August, 2014.

7. The petitioner is undergoing sentence and has been dismissed from service.

8. On or about 13th December, 2016, the petitioner made a representation to the Director General, BSF for annulment of the General Security Force Court. In addition to factual assertions, the petitioner had alleged violation of Rule 60 of the Border Security Force Rules, 1969.

9. The aforesaid representation was considered and has been rejected vide order dated 31st January, 2017.

10. The petitioner has filed this writ petition impugning the findings and sentence of the General Security Force Court dated 28th October, 2009. The contention of the petitioner is that one Rajesh Kumar Sahay, second in command in 23rd Battalion, BSF, who was detailed to prepare Record of Evidence, had appeared as the prosecutor in the

General Security Force Court trial and thus there was violation and contravention of Rule 60. It is submitted that Rajesh Kumar Sahay though a prosecutor should be treated as “officers serving on court” under Rule 60. Reliance is placed on ***Balwinder Singh versus Union of India and Others***, 172 (2010) DLT 200 (DB).

11. Another contention raised by the petitioner relates to the merits of the findings recorded in the General Security Force Court trial.

12. We do not think the petitioner can be allowed to raise and plead the aforesaid contentions, which would be hit and barred by the *principles of constructive res judicata*, assuming though not accepting there was a violation of Rule 60. The alleged violation cannot be construed affecting the “jurisdiction” of the General Security Force Court trial making and rendering the trial void or illegal so as to be a nullity. This is not a case of “inherent lack of jurisdiction”. The pleas, we do not think, can be allowed to be raised after the orders passed in the aforesaid General Security Force Court trial have been upheld by this Court in the judgment dated 13th September, 2011 passed in Writ Petition (Civil) No. 5878/2011. The said orders have attained finality.

13. In view of the above, we do not find any merit in the present writ petition and the same is dismissed, without any order as to costs.

SANJIV KHANNA, J.

NAVIN CHAWLA, J.

SEPTEMBER 04, 2017

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