

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No.1155 of 2017 (O&M) in
CWP No.4340 of 2016
Date of Decision : 18.01.2018

Suresh Kumar Kaushik (IRLA No.49668735)

.... Appellant

VERSUS

Union of India & ors.

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Narender Pal Bhardwaj, Advocate for the appellant.

B.S.WALIA, J.,

CM No.2413-LPA of 2017

1. CM is allowed subject to all just exceptions.

CM No.2960-LPA of 2017

2. CM is allowed. Written statement filed on behalf of the respondents to the writ petition, which was earlier not placed on record, is taken on record.

LPA No.1155 of 2017

3. The appellant, a Deputy Commandant in the Border Security Force (BSF), presently posted in 181 BN BSF Mizoram, filed a writ petition seeking directions to the respondents to get the allegations leveled against respondent Nos.12 and 13 probed through an Independent Agency i.e. CBI/NIA as also to direct respondent Nos.3 and 4 to defer/stay the Staff Court of Inquiry (SCOI)

career/family/reputation till final outcome of investigation against respondent Nos.12 and 13 as also to issue directions to respondent No.1 to extend facilitation to him as requested for vide his letter dated 3.11.2015 (Annexure P-27) for fair and impartial investigation. The writ petition was dismissed by the learned Writ Court by observing that the appellant was a busy body, therefore, could take his prayers elsewhere particularly when he stood against his parent force.

4. Intra-court appeal has been filed on the ground that the appellant could not appear before the Writ Court when the case was taken up for hearing and the writ petition was dismissed without appreciating that the appellant, a whistle blower had invoked the jurisdiction of the Writ Court after having failed to get redress from the BSF authorities/Public Body constituted under the Public Interest Disclosure and Protection of Informers (PIDPI) Resolution, 2004 (hereinafter referred to as “the Resolution 2004”) despite the case relating to militant infiltration which was facilitated by respondent No.13. Plea is that despite representation to the BSF authorities, the complaint was never enquired into, instead the appellant was victimized by his seniors and not given any promotion since past 13 years and further that even inquiry against respondent No.12 i.e. Former Commandant, M.A. Joyee had also not been conducted despite there being sufficient evidence on record.

5. We have heard learned counsel and perused the paper book.

6. Stand of the respondents was that the appellant could not invoke the writ jurisdiction without exhausting remedy under the Resolution, 2004. In fact the appellant under the guise of National interest was agitating his own private grievances against his superiors by levelling totally false and baseless allegations. A detailed inquiry was conducted by the Department into the allegations levelled by the appellant against respondent No.12 and the same remained unsubstantiated.

No embezzlement of any kind was found in the inquiry. However, DG's

Pushpinder Gajni
2018.05.23 14:59
I attest to the accuracy and
integrity of this document

displeasure was issued to respondent No.12 for administrative lapse(s).

7. As regards allegations against respondent No.13 (wrongly mentioned as respondent No.12 in the written statement), stand is that infiltration as alleged by the appellant in the writ petition did not take place within the operational area of respondent No.13 and the allegations levelled by the petitioner were found baseless, besides, adverse remarks stood recorded against the appellant in the ACRs/APARs for the year 2004, 2005, 2009, 2013, 2014 as well as 2015.

8. Respondents have also given details of the acts and conduct of the appellant, unbecoming of an officer whereupon Staff Court of Inquiry was ordered and the same is in progress. Besides, after a thorough inquiry under the directions of the Commission for the Scheduled Castes and Scheduled Tribes, Punjab, FIR No.142 dated 30.05.2016 (Annexure R-2) stands registered against the appellant and his wife.

9. Details have also been mentioned of the appellant being a cantankerous litigant, engaged in one litigation or the other against the Department.

10. We have considered the submissions of learned counsel for the appellant and perused the record.

11. Allegation of infiltration made by the appellant against respondent No.13 have been found to be incorrect by the BSF authorities. Allegation of embezzlement and generation of illegal money levelled by appellant against respondent No.12 have also not been found to be correct and only led to issuance of DG's displeasure on account of administrative lapse. Apparently allegation of the appellant that the enquiry against respondent No.12 had been managed as no action has been taken against the aforesaid officer is totally incorrect. FIR No.142 dated 30.5.2016 stands registered against the appellant and his wife on account of

Jawans. Other incidents of misbehaviour and conduct unbecoming of an officer are also alleged against the appellant for which he is facing Staff Court Enquiry. The appellant despite belonging to a highly disciplined force appears to be spending much of his time in unsuccessful litigation against the force in which he is working.

12. In the circumstances, we find no infirmity with the order passed by the learned Writ Court. Accordingly, the appeal is dismissed. However, if so, advised, the appellant would be at liberty to seek redress of his grievances, if any, under Resolution, 2004 in accordance with the procedure stipulated therein before the competent Authority.

(RAJESH BINDAL)
JUDGE

(B.S.WALIA)
JUDGE

January 18, 2018

ps

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No