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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 8189/2016**

RANJEET KUMAR

..... Petitioner

Through Ms. Ankita Patnaik, Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Through Ms. Saroj Bidawat, Advocate

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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15.11.2018

1. The Petitioner challenges the findings of the General Security Force Court ('GSFC') dated 28th July, 2014 pursuant to the charge sheet dated 6th July, 2014 issued to the Petitioner finding him guilty of one of the three charges for which he was tried. The writ petition also challenges the confirmation order dated 17/20th July, 2015 issued by the Additional DG, HQ Special DG (Eastern Command), BSF (Law Branch) and the final order dated 27th July, 2015 issued by the DIG, BSF rejecting the pre-confirmation petition submitted by the Petitioner and affirming the following sentence:

“a) To take rank and precedence as if his appointment to the rank of Deputy Commandant bore the date 22nd May, 2010 instead of 22nd May, 2007.

b) To forfeit three years of service for the purpose of increased pay.

c) To forfeit three years of service for the purpose of pension.”

2. The Petitioner also challenges the Post Confirmation Order dated 27th June, 2016 of the Director General, BSF and the DG's Displeasure dated 26th September, 2014.

3. The Petitioner joined the Border Security Force ('BSF') as Assistant Commandant as Direct Entry Officer on 6th March, 2000. He was subsequently promoted as Deputy Commandant (DC) on 22nd May, 2007. The Petitioner was posted to the 19th Battalion, BSF Nalkata (Tripura) and reported there on 2nd October, 2012 on permanent posting after completing his tenure as DC at SHQ Raiganj.

4. The Petitioner submitted a complaint against his Commandant (arrayed as Respondent No.7) and alleged that he was being pressurised by Respondent No.7 to participate in illegal activities. He alleged that since the Petitioner refused to do so, Respondent No.7 was extremely vindictive towards him. According to the Petitioner, after Respondent No.7 returned from leave on 10th April, 2013, the Petitioner proceeded on leave. After he reported back from leave to his unit on 12th June, 2013 the Petitioner was not assigned any task till 16th June, 2013. On that date the Petitioner was asked to take over a Sector Commander which according to the Petitioner was illegal. This was modified subsequently by an order dated 20th June, 2013 passed by Respondent No.7 detaining the Petitioner as Company Commander. The Petitioner was aggrieved by this order as well.

5. On 2nd July, 6th August and 8th August, 2013 the Petitioner addressed

representations to the Director General BSF about the alleged illegal activities of Respondent No.7 but according to him no action was taken.

6. Meanwhile, a Staff Court of Inquiry was ordered by the DIG, BSF by an order dated 3rd July, 2013 to examine four charges against the Petitioner. An order passed by the Inquiry Officer on 1st October, 2013 detailing the charges and for preparing the Record of Evidence ('ROE') was provided to the Petitioner. Subsequently on 9th July 2014 the Petitioner was furnished with the charge sheet on which trial was take place before the GSFC on 14th July 2014. The first charge was that the Petitioner had disobeyed on 20th June, 2013 the lawful command of his Commandant to take over charge of E-Company at Border on Post ('BOP') Amar. The second charge was that on 6th August, 2013 when ordered by his Commandant to proceed to BOP, New Sewarampara for 2nd Ops Alert exercise from 8th to 15th August, 2013, he did not do so. The third charge was that on 24th June 2013 at about 0955 hrs he improperly and without any prior authorization left the BOP Amar and returned to HQ 19 Bn BSF, Nalkata.

7. The Court has perused the (ROE) and in particular the specific findings of the GSFC. As regards the first charge that the Petitioner disobeyed the order of his commandant issued on 20th June, 2013 to take over the charge of Company Commander in E-Company at BOP Amar it was concluded that the order itself could not be justified as it did not qualify the test of reasonableness and fairness and therefore it stood disproved.

8. As regards the second charge, viz., not obeying the lawful command to proceed to G-Company at BOP, New Sewarampara in connection with the

2nd Ops Alert exercise from 8th to 15th August 2013, the GSFC concluded that unlike the earlier command of 20th June, 2013 this order was pursuant to the specific instructions issued from the Headquarters that the Ops Alert exercise was to be conducted in order to enhance Ops activities in the bordering area to celebrate/organise an incident free independence day. The GSFC rejected the plea of the Petitioner that he was not given any staff appointment and despite holding the rank of DC he was equated to a company commander designation associated with the rank of Assistant Commandant (an inferior rank) and therefore the command was unlawful. It was concluded that:

“It was not an order given by the Commandant at his own exercising his discretion but it was a compliance of the orders of Higher Head Quarter and all the officers of the unit were ordered to participate in ops alert exercise. Therefore, bonafide of this order cannot be questioned by an individual on personal account.”

9. It was observed by the GSFC that the command being lawful, it was imperative duty of the Petitioner to first comply with the order and if he had any reservation he could have subsequently approached the superior authorities. The GSFC considered this to be an intentional defiance of a lawful order which was not acceptable in a disciplined force like the BSF. The third charge was held to have been neither proved nor disproved and accordingly failed.

10. Thereafter the sentence as noticed in para 1 above was awarded and this was confirmed by the orders noted hereinbefore.

11. Another aspect of the matter was that a show cause notice was issued to

the Petitioner on 4th June, 2014 by the Director General, BSF for tentatively conveying a 'DG's displeasure' to the Petitioner. After his reply was examined and rejected the Petitioner was issued the impugned DG's Displeasure dated 26th September, 2014.

12. Learned counsel for the Petitioner submitted that with the GSFC having found that the charges for disobeying the commands issued to the Petitioner on 20th June, 2013 by the Commandant as not proved, should have, by the same yardstick, also held him not guilty of the second charge of disobeying the command issued on 6th August, 2013 to proceed to the G-Company at BOP, New Sewarampara.

13. This Court is unable to agree with the above submission. The GSFC has carefully considered each of the charges separately. With specific reference to the second charge about disobeying the command dated 6th August 2013, the GSFC correctly noted that this was not actually an order of the Commandant issued out of his own will but in compliance with the instructions received from the HQs about strengthening the Ops for having an incident free Independence Day celebration. In the considered view of the Court, the GSFC was justified in observing that there was no valid excuse for the Petitioner not to have proceeded as directed by his Commandant on 6th August, 2013. Indeed this Court finds no justification whatsoever in the conduct of the Petitioner in declining to proceed to the G-Company at BOP, New Sewarampara pursuant to the order dated 6th August, 2013.

14. Learned counsel for the Petitioner then sought to argue that there were numerous illegalities committed procedurally by the GSFC. The same GSFC

following the same procedure has exonerated the Petitioner of the other two charges and this is not questioned by the Petitioner. Therefore, it is not open to the Petitioner to selectively assail the procedure followed by the GSFC only as regards to the one charge which has been held to be proved.

15. Learned counsel for the Petitioner then submitted that the penalty awarded to the Petitioner was disproportionate to the charge proved. The Court does not agree with this submission. Indeed the failure to join the 2nd Ops Alert exercise which was meant to have an incident free independence day at the BOP was a serious matter. In a disciplined force like BSF such insubordination was bound to attract a severe penalty. The penalty awarded cannot be said to be disproportionate. The Court also finds no error committed in awarding the Petitioner the DG's Displeasure for making allegations against his Commandant, which he could not substantiate.

16. The writ petition is accordingly dismissed.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

NOVEMBER 15, 2018

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