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

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Date of Decision: 05.08.2019

% **W.P.(C.) No. 7729/2019**

MOHAR SINGH

..... Petitioner

Through: Mr. Shrish Kumar Mishra and Ms.
Deepika Mishra, Advocates.

Versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Kamal Kant Jha, Sr. Panel
Counsel.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

RAJNISH BHATNAGAR, J. (ORAL)

CM No. 32065/19

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

CM No. 35008/2019

Dismissed being meritless.

W.P.(C) No. 7729/19

1. Issue notice. Counsel for the respondents accepts notice. We have heard learned counsels for the parties, perused the record, and we proceed to dispose of the petition at this stage itself.

2. The petitioner has filed the present writ petition with the prayer to issue Writ in the nature of Certiorari or any other appropriate Writ, quashing the Order dated 21.02.2018 passed by the Director General Border Security Force.

3. The relevant facts of the case are that No. 970077512 Ex-Ct (now Ex-HC) Mohar Singh of 200 Bn BSF, the petitioner alongwith Const. Sunil Kumar M V of his unit was tried jointly by a SSFC for an offence U/s 40 of the BSF Act, 1968. The charge against the petitioner is that he, at BOP Putikhali of 'D' Coy on 18.08.06, in between 1500 hrs to 1630 hrs, while on OP duty at gate No. 01 of BOP Putikhali, improperly omitted to exercise proper duty and to prevent smuggling thereby providing safe passage to smugglers as a result of which approx. 20 Qtls. of sugar crossed over from India to Bangladesh side and approx. 10.5 Qtls of sugar was seized due to timely intervention of SI Sudhanshu Kumar and party. This omission on the part of the petitioner was found to be contradictory to good order and discipline of the Force. On being arraigned by the Court, the petitioner pleaded "guilty" to the charge.

4. After complying with the provisions of BSF Rule 142(2), wherein he was explained the nature of offence and general effect of his plea and difference in procedure to be followed consequent to said plea of 'Guilty', and after having fully satisfied that the petitioner understood the same, the Court accepted his plea and recorded finding of 'Guilty' on the charge. Thereafter, the Court recorded his previous convictions,

character, and rewards etc and sentenced him to be dismissed from service on 29.08.2006.

5. Feeling aggrieved by the findings and sentence of the SSFC, the petitioner submitted a statutory petition to DG BSF with the prayer to reinstate him in service and give him any other punishment, except dismissal, which was duly considered and rejected being devoid of merit and the decision was communicated to the petitioner vide letter dated 17.11.2006.

6. Thereafter the petitioner filed WP No. 6485 (W) of 2007 before the High Court of Calcutta with prayer to direct the respondent authorities to cancel and / or withdraw the order of dismissal and reinstate him in service with all consequential benefits. The WP was allowed vide order dated 11.12.2009.

7. The department filed an appeal against the said order dated 11.12.2009 being FMA No. 853/2010 before the High Court. However, vide interim order dated 09.06.2010, the respondents were directed to allow the petitioner to resume duty. So the petitioner was reinstated in service on 07.07.2010 subject to outcome of appeal and on 13.12.2017, the appeal was allowed with the directions to the department to consider and dispose of the Statutory Appeal filed by the petitioner U/s 117(2) of BSF Act, 1968 within 04 weeks by passing a reasoned order which was to be communicated to the petitioner forthwith.

8. Thereafter the petitioner submitted a statutory petition dated 08.01.2008 addressed to DG BSF with prayer to set aside the order of the SSFC or, at least, award him other lesser punishment. Pursuant to the

above order dated 13.12.2017, the statutory petition of the petitioner dated nil submitted against his trial by Summary Security Force Court and his petition dated 08.01.2018 were considered together by Director General, Border Security Force who, vide order dated 21.02.2018, rejected the petitions submitted by the petitioner being devoid of merit, which is under challenge in the present writ petition.

9. We have heard the submissions of the Ld. counsels and given our due consideration to the matter.

10. The main contention of the counsel for the petitioner is that the signatures of the petitioner were obtained on blank papers and the said blank papers were later on converted into his confessional statement of guilt, on the basis of which he has been dismissed from the service on 29.08.2006. It is further submitted by the Ld. counsel for the petitioner that the principles of natural justice have not been followed.

11. On the other hand, it is urged by the counsel for the respondents that the petitioner has pleaded guilty to the charges framed against him. It is further urged by him that it is for the first time in the present proceedings, that the petitioner is claiming that his signatures were obtained on blank papers. He further urged that there is no infirmity in the impugned order dated 21.02.2018. It is further submitted by the counsel for the respondents that in judicial review, the scope of interference by this Court is very limited.

12. As far as the contention of the counsel for the petitioner that the principles of natural justice have not been followed is concerned, we are of the opinion that this contention of the counsel for the petitioner has no

force in it because a perusal of the letter dated 25 August, 2006-sent by the respondents to the petitioner, shows that the petitioner was directed to nominate one Officer/SO of 200 Bn BSF as his friend for his assistance during the trial. The respondents during the trial proceedings have examined 4 PWs who have supported the case of the department. The petitioner was also afforded opportunity to cross examine the prosecution witnesses. Further, the petitioner was also given an opportunity to examine the witnesses in his defence. During the trial the petitioner was also given an opportunity to make statement in reference to the charge, or any mitigation of punishment, but the petitioner requested for pardon, and to give him a chance to improve.

13. The petitioner had filed statutory petition which was rejected on 17.11.2006 by the Director General, B.S.F. The relevant extract of the same are as follows :

“3. As per records, the petitioners were heard jointly by their Commandant on a proper offence report where they were given opportunity to cross-examine all the witnesses and to make statements in their defence. Further, during ROE opportunities under BSF Rules 48 (2) 48(3) and 48 (4) were given to the petitioners to cross examine prosecution witnesses, to make a statement under Rule 48(3) and to produce defence witnesses. The petitioners had made their written statements in which they requested to pardon their mistakes. The petitioners unequivocally pleaded Guilty to the charge during the trial and provisions of BSF Rule 142(2) were complied with by the Court in letter and spirit in reply to question in reference to the charge or in mitigation of punishment, the petitioners requested to pardon them and give one more chance to

improve / serve. In the record of Evidence both the petitioners have confessed for having given a safe passage to smugglers to smuggle out sugar across the Border.

4. Const. Mohar Singh had put in 09 years, 5 months and 14 days service with 4 good entries to his credit but he was punished earlier also twice on 20.07.1999 for an offence under section 19 (b) for without sufficient.

5. The petitioner has compromised with his primary task of preventing smuggling on the international border, hence the Director General has rejected the petition being devoid of merit.”

14. Therefore, in our opinion, looking to the evidence and the circumstances mentioned hereinabove, it does not lie in the mouth of the petitioner to say that there was violation of principles of the principles of natural justice.

15. The petitioner has taken the plea in the present Writ Petition that on 29.08.2006, the respondents obtained his signatures on certain blank papers on which his plea of guilt was recorded and his termination order dated 29.08.2006 was passed. This contention of the petitioner has no force in it. This we say because when the petitioner filed Writ Petition No. 6485/2007 before the High Court at Calcutta, he had therein stated that before issuing the convening order of Summary Security Force Court, he was forced to sign a prepared statement regarding admission of guilt and that admission of guilt was accepted as the conclusive proof of evidence. The record further reveals that when the petitioner submitted the statutory petition dated 08.01.2018, he has nowhere stated that his signatures were obtained on blank papers, rather it has been stated by

him that the Coy. Comdr. and Post Comdr insisted upon him to give in writing about his guilt but he told them that he did not commit any mistake intentionally. So, the petitioner is blowing hot and cold at every stage of the proceedings undertaken by him. In none of the proceedings filed by him prior to the filing of the present writ petition, he has stated that his signatures were obtained on blank papers which were converted into his confessional statement of guilt on the basis of which his services has been terminated. This point has been raised by him for the first time in the present writ petition which is nothing but an afterthought. Had there been any truth in the petitioner's submission, we fail to understand why the petitioner did not raise it before the Calcutta High Court, and even in his statutory petition dated 08.01.2018.

16. It is also pertinent to mention here that the dismissal order of the petitioner was passed on 29.08.2006 and the present writ petition has been filed on 15.07.2019. During this entire period, the petitioner has undertaken many legal recourses, be it filing of writ petition and pursuing his remedies before the department, but nowhere this plea of obtaining of his signatures on blank papers was ever raised which has now been raised in the present Writ Petition for the first time. So, in our opinion, this plea of the petitioner has no force and is simply an afterthought and is liable to be rejected.

17. The findings returned by the Director General Border Security Force against the petitioner vide impugned order dated 21.02.2018, cannot be said to be unreasonable, without any basis, or not borne out from the record. The guilt of the petitioner has not been determined merely on the basis of his

confessional statement, the respondents led in the oral evidence of other material witnesses. Moreover, a huge quantity of sugar i.e. 10.50 quintals was seized while in the process of being smuggled outside the Indian territory. The petitioner's conduct in facilitating the same stands established. This Court is not sitting as an appellate forum and it is not for this Court to re-appreciate the evidence. There is nothing on record to show that there has been miscarriage of justice or violation of principles of natural justice as the petitioner was afforded sufficient opportunity to defend himself. Reliance in this regard can be placed upon ***Government of Andhra Pradesh versus Mohd. Nasrulla Khan***, [2006 (2) SCC 373], in which the Supreme Court has held that the scope of judicial review is confined to correct the errors of law or procedural error if they result in manifest miscarriage of justice or violation of principles of natural justice. The Apex Court in para 11 has held that :

“By now it is a well established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an Appellate Authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error if any resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by appreciating the evidence as an Appellate Authority.”

18. The Supreme Court in the case of ***S.R. Tewari Vs. Union of India***, [2013 (7) SCALE 417], has reiterated that *“The role of the court in the matter of departmental proceedings is very limited and the Court cannot substitute its own views or findings by replacing the findings*

arrived at by the authority on detailed appreciation of the evidence on record. In the matter of imposition of sentence, the scope for interference by the Court is very limited and restricted to exceptional cases. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review.”

19. Therefore, in view of the discussions mentioned hereinabove, we do not find any infirmity in the impugned order dated 21.02.2018, passed by the Director General Border Security Force. The petition is, therefore, dismissed being meritless.

RAJNISH BHATNAGAR, J.

VIPIN SANGHI, J.

AUGUST 5, 2019

Sumant