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

+ **W.P.(C) 2542/2012**

SHANKAR RAM ..... Petitioner  
Through Mr. S. P. Verma, Advocate

Versus

UNION OF INDIA AND ORS ..... Respondents  
Through Mr. Anurag Ahluwalia, CGSC,  
Mr. Kartikeya Rastogi & Mr. Vinod  
Kumar, Advocates for Respondent/  
UOI

**CORAM:**  
**JUSTICE S. MURALIDHAR**  
**JUSTICE TALWANT SINGH**

**ORDER**  
**24.09.2019**

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1. The challenge in the present petition is to the order and sentence passed by the Summary Security Force Court ('SSFC') on 17<sup>th</sup> October, 2005 holding the Petitioner guilty of the offence under Section 46 of the Border Security Force Act, 1968 ('BSF Act') read with Section 7 of the Prevention of Corruption Act, 1988 ('PC Act') and dismissing the Petitioner from service.

2. The Petitioner has also challenged the entire proceedings of the SSFC held between 15<sup>th</sup> and 17<sup>th</sup> October, 2005 which led up to the above order and sentence. He has additionally challenged an order dated 30<sup>th</sup> May, 2006 passed by the Deputy Inspector General (DIG), BSF rejecting his appeal.

3. The charge against the Petitioner, who was posted as Constable with the 191 Battalion of BSF, was that on 19<sup>th</sup> July, 2005 while performing duties at Naka Point No.2 of the Border Outpost (BOP) in Nadia District, West Bengal from 1800 hrs (on 19<sup>th</sup>) to the midnight (on 20<sup>th</sup>), he accepted Rs.800/- as bribe from a notorious smuggler for providing safe passage ('line') for a consignment of tomatoes being taken to Bangladesh.

4. The proceedings of the SSFC reveal that the Petitioner made a confessional statement to the Company Commander that during the aforementioned period, when he and Constable Ashok Kumar were on duty a safe passage ('line') was given to the said smuggler by receiving Rs.800/- of which Rs.300/- was taken by Ashok Kumar and Rs.500/- was retained by the Petitioner. In the said statement the Petitioner stated that he was depositing the amount that remained with him. He undertook not to commit the mistake and that henceforth if he committed any such mistake, he would accept whatever punishment was given to him.

5. The circumstances under which the above confession was purportedly made was explained by prosecution witness (PW) No.1 Inspector J. B. Ahlawat who was performing the duty of Officiating Company Commander at the relevant point in time. He stated that on 19<sup>th</sup> July, 2005 he came to know through a source at around 2030 hrs that at Naka Point No.2 of BOP, Pipli a safe passage (line) had been given to a smuggler. He immediately rushed to the spot along with CHM Samar Das, Constable Swamy and Head Constable/Driver Ramjee Bhai. They noticed on the *kacha* track along the river bank the signs of tyre/wheels of a van. After remaining there for an

hour Inspector Ahlawat summoned the present Petitioner and Constable Ashok Kumar and asked them if they had given safe passage to smuggler. He showed them the marks of the tyres of the van. Both of them denied the same. Nothing suspicious was found in their possession. The team did not check the Naka machan on that day and sent the Petitioner and Constable Ashok Kumar back to the Naka Point with the direction to report to Inspector Ahlawat at the Company Headquarters the following day.

6. It transpired that the Petitioner had taken the bribe of Rs.800/- from the smuggler and had hidden it in the roof of the Naka machan itself.

7. Another incident took place on 1<sup>st</sup> August, 2005 in which one Rajat Mondal was brought to the Company Headquarters for questioning. In that process Constable Ashok Kumar was also questioned. He is stated to have confessed to having received Rs.300/- from the Petitioner on 21<sup>st</sup> July, 2005 for providing safe passage to the tomato smuggler on 19<sup>th</sup> July, 2005. In presence of three witnesses Constable Ashok Kumar gave a statement to the above effect in writing.

8. Constable Ashok Kumar appeared as PW No.3 in the SSFC proceedings. He stated that at around 1915 hrs on 19<sup>th</sup> July, 2005 the Petitioner being senior to him asked Constable Ashok Kumar to carry out patrol towards the BSF camp area stating that the area was sensitive. He confirmed that when the Company Commander questioned them both on 19<sup>th</sup> July and on following day i.e. 20<sup>th</sup> July, 2005 about the passage having been given by them, both of them denied it. Constable Ashok Kumar stated that he had to

appear at the Battalion Headquarters on 22<sup>nd</sup> July, 2005 but was having only Rs. 150/-. He approached the Petitioner for lending him some more money.

9. In response thereto the Petitioner handed over to Constable Ashok Kumar Rs.300/- and told him that the said amount was 'of tomatoes'. According to Constable Ashok Kumar he was unable to understand at that time the meaning of the said expression and that it was associated with the bribe money. It appears that the said bribe money was not taken in the presence of Constable Ashok Kumar. Incidentally Constable Ashok Kumar was also charged.

10. On the basis of statement made by Constable Ashok Kumar, the Petitioner was called for questioning by Inspector Ahlawat. He accepted having taken the bribe and having retained Rs.500/- and gave a statement in writing to that effect in the presence of the others. He also handed over the Rs.500/- note which was itself exhibited as Exhibit 'L' before the SSFC.

11. It appears that the Petitioner had asked Constable Sunil Kumar Pandit (who appeared as PW No.2) to fetch the bribe money which the Petitioner had hidden at the roof of the machan at Naka Point No.2. Constable Pandit in his deposition confirmed that he in fact retrieved the money from the Naka Point and handed it over to the Petitioner. He confirmed that there were three notes of Rs.100/- each and one note of Rs.500/- rolled into a paper which was opened by the Petitioner. For not revealing these facts at the appropriate time, Constable S.K. Pandit was also charged by the BSF.

12. Counsel for the Petitioner sought to suggest that the above confession by the Petitioner was coerced. However, the Court finds that at no point in time was an attempt made by the Petitioner to retract his confession. The above suggestion seems to be an afterthought and is unacceptable.

13. The Court has seen the original record of the proceedings before the SSFC. The Petitioner appears to have made the confession being fully conscious of the circumstances and of the legal position that has been explained to him clearly as is evident from the record. Further, the Court notes that preceding the SSFC there was a Record of Enquiry (RoE) proceedings in which all of the above PWs appeared, spoke consistently, and were cross-examined by the Petitioner. There does not seem to be any procedural irregularity in the conduct of the proceedings.

14. Learned counsel for the Petitioner then submitted that the punishment awarded to the Petitioner was too harsh. He pointed out how the punishment awarded to Constable Ashok Kumar was 89 days RI and the punishment awarded to Constable S.K. Pandit was an even milder sentence and that there was no justification in discriminating against the Petitioner in the matter of sentence.

15. The Court is unable to accept the above submission. The role of Constable S.K. Pandit was limited to not disclosing the fact of the Petitioner asking him to retrieve the bribe money that the Petitioner had hidden in the roof of the Naka. Clearly his misconduct cannot be equated to that of the Petitioner's which is far more serious. Again, as far as the role of Constable

Ashok Kumar is concerned, he was not privy to the taking of bribe by the Petitioner. His role was limited to not disclosing the fact that he had received from the Petitioner a part of the bribe money that had been taken by the Petitioner. Consequently, that the Court finds that no parallel can be drawn between the offence committed by the Petitioner and that of Constable Ashok Kumar or Constable S.K. Pandit.

16. The Court also notes that the previous track record of the Petitioner was another factor that weighed in with the Respondents in awarding the extreme punishment of dismissal. He had already been punished once under Sections 26 and 40 of the BSF Act and underwent 14 days of rigorous imprisonment in force custody from 8<sup>th</sup> to 21<sup>st</sup> September, 2001.

17. In the circumstances, the Court finds no ground made out to interfere with the order and sentence awarded to the Petitioner by the SSFC. The challenge to the proceedings before the SSFC also fails. The rejection of the Petitioner's appeal by the order dated 30<sup>th</sup> May, 2006 does not call for interference.

18. For the aforementioned reasons, the petition is dismissed.

**S. MURALIDHAR, J.**

**TALWANT SINGH, J.**

**SEPTEMBER 24, 2019/mw**