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

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W.P.(C) 7377/2018

CT. RAMPHAL

..... Petitioner

Through: Mr D.S. Kauntae, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr Vijay Joshi, Senior Panel Counsel
for UOI.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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23.01.2019

1. The Petitioner, who was earlier working as a constable with the Border Security Force ('BSF') is back before the Court for a third time. This time, he has challenged an order dated 10th March, 2016 whereby his appeal dated 28th October, 2014 against the sentence imposed upon him pursuant to a trial by the Summary Security Force Court ('SSFC') was dismissed.
2. The brief background facts are that the Petitioner enrolled in the BSF on 3rd March, 1989 as a constable. On 2nd May, 1994, he was posted at Jaiselmer, Rajasthan. On 22nd May, 1994, he was arrested under the Section 20 of the BSF Act on the allegation of using criminal force against one Head Constable ('HC') Harbans Singh of the same battalion. He was tried thereafter by the SSFC and dismissed from service.
3. Aggrieved by the dismissal order, the Petitioner filed W.P.(C)

No.3436/1996 in this Court. By a judgment dated 27th July, 2011, this Court sets aside the dismissal order for the following reasons:

“16. As per the record, when the indictment was read out to the petitioner, he pleaded guilty and based on the admission of guilt, the Commandant directed petitioner's dismissal from service.

17. Petitioner alleges that he never pleaded guilty.

18. .The original record produced before us shows that it has been recorded that when the indictment was read at the trial the petitioner pleaded guilty. But we find that the petitioner has not signed the plea of guilt. Now, if a person pleads guilty to charge, the least what is required to be done is to obtain the signatures of the accused under the plea of guilt, for the reason this was to be the only evidence, if there is a dispute, whether or not the accused pleaded guilty.”

4. Accordingly, this Court disposed of the writ petition setting aside the dismissal order and the conviction recorded by the SSFC. The Respondents were permitted to try the Petitioner afresh. This left the competent authority to determine as to in what manner the period post levying of penalty of dismissal from service till the reinstatement of the Petitioner pending trial would be reckoned.

5. It was directed that the Petitioner should be reinstated forthwith.

6. Pursuant to such reinstatement, the trial commenced *de novo* with effect from 27th April to 3rd May, 2012. By an order dated 3rd May, 2012 of the SSFC, the Petitioner was found guilty of the charge and sentenced as under:

“(i) To suffer rigorous imprisonment for 89 days in force

custody.

- (ii) To take rank and precedence as if his appointment as Constable bore the date . 04-03-1993 instead of 05-03-1989.
- (iii) To forfeit four years of service for the purpose of promotion.”

7. For a second time, the Petitioner challenged the order of conviction by filing an appeal under Section 117 of the BSF Act on 28th October, 2014.

8. When the said appeal was not disposed of by the Respondents, the Petitioner filed W.P.(C) No.169/2016, which was disposed of by a Division Bench of this Court on 11th January, 2016 by the following order:

“Issue notice. Mr. Anuj Aggarwal, Advocate appearing on Behalf of the respondents accepts notice.

The limited claim in these proceedings is that the Director General/Border Security Force has not considered the petitioner's appeal, against the conviction and order of sentence made against him on 03.05.2012 by the Commandant 97 Battalion. The respondents urge that the appeal-dated 28.10.2014/09.01.2015 has not yet been received and in any case it is delayed.

The Court is of the opinion that the petitioner's right to departmental or administrative review by an appellate authority cannot be denied even though the BSF has not apparently received the appeal. The appeal is annexed at Pages 45 to 56 as Annexure P-4.

In these circumstances, the Director General/Border Security Force shall pass a speaking order within eight weeks on the said appeal and communicate his decision[^] directly to the petitioner

in case the appellate order is adverse to him.

The writ petition is disposed of in above terms.”

9. Pursuant to the above order, the Director General of BSF passed the impugned order dated 10th March, 2016, confirming the aforementioned sentence awarded to the Petitioner by the SSFC.

10. The present petition was thereafter filed on 30th May, 2018 by the Petitioner seeking the setting aside of the above order of conviction and sentence dated 3rd May, 2012 as well as the order dated 10th March, 2016 of the Appellate Authority, confirming the said sentence and conviction.

11. At the hearing of 27th July, 2018, the Court passed the following order:

“1. At the outset, learned counsel for the petitioner states that he shall not press ground (h) taken in the petition to assail the impugned order passed against the petitioner to the effect that the said order amounts to a second trial. Accordingly, ground No.(h) is treated as deleted.

2. At the outset, we have inquired from learned counsel for the petitioner to explain the unreasonable delay in filing the present petition. Learned counsel for the petitioner states that he may be granted six weeks' time to enable the petitioner to file an affidavit to explain the delay. Needful shall be done within six weeks.

3. List on 02.11.2018.”

12. Pursuant to the above order, the Petitioner has filed an affidavit. However, the explanation offered therein that he could not have filed the writ petition in good time because of the death of his son on 17th February, 2011 and his wife in 2004, is not very convincing. The said bereavement

happened many many years ago. The Petitioner had to explain the delay in approaching the Court after the order was passed by the Appellate Authority on 10th March, 2016.

13. Be that as it may, the Court has also considered the present writ petition on merits.

14. It is submitted by Mr. Kauntae, learned counsel for the Petitioner, that the proceedings of the SSFC in the second round show that the witnesses who were earlier examined before the SSFC in 1994, again deposed before it and that the defence assistant for the Petitioner cross-examined the witnesses. He states that in fact the Petitioner was not given the opportunity of cross-examining any witnesses. Learned counsel for the Petitioner, therefore, questions the legality of the entire proceedings, as according to him, adequate opportunity was not granted to the Petitioner even in the second round to defend himself before the SSFC.

15. The Court then drew the attention of the learned counsel for the Petitioner to the following observations in the appellate order, which specifically deal with the plea of the Petitioner that he was not afforded an opportunity to get a defence / legal expert of his choice and no prior intimation was given to him to prepare his defence. The Appellate Authority has passed a very detailed order discussing each of the grounds of challenge raised by the Petitioner. Specific to the above plea, it was observed by the Appellate Authority as under:

“...Further, before conducting this trial, the petitioner was given

due opportunity vide 97 Bn BSF letter No. 6413 dated 21.04.2012 to nominate an officer to perform the duty as 'friend of accused and he was also informed vide same letter that he was at liberty to engage a legal practitioner at his own expenses, if he so desired. In turn, the petitioner vide his letter dated 24.04.2012 nominated Shri Raman Kumar Jha, AC who was appointed as friend of accused' as per his choice and defended him during the trial. Before commencement of SSFC trial on 27.04.2012, the petitioner was provided with copies of charge-sheet and ROE well in advance on 25.04.2012 before commencement of trial. He was also intimated vide 97 Bn BSF letter No. 6840 dated 25.04.2012 to provide list of defence witnesses, if any to make them available. At the trial, the petitioner was afforded opportunity to cross examine PWs, to make statement in defence and to produce defence witnesses. He submitted a written signed statement voluntarily and not under any promise of showing leniency or mercy as alleged. He also examined a defence witness. Hence, the contentions raised by the petitioner are without any substance.”

16. When asked whether there was any ground raised in the present writ petition, questioning the above findings of the Appellate Authority, learned counsel for the Petitioner answered in the negative. At that stage, learned counsel for the Petitioner sought permission to file an additional affidavit raising proper grounds for challenge. This Court is not inclined to grant its indulgence, particularly since this is the third round of litigation.

17. It was then pleaded that the Petitioner hails from an economically weaker section of the society, was illiterate and, therefore, could not seek to file the writ petition in time.

18. This Court finds no substance in any of the above pleas. The Petitioner is a veteran litigant having approached this Court twice earlier. He could not

therefore be said to be a person ignorant of the law or legal procedures. He is certainly not an 'illiterate', as contended by learned counsel for the Petitioner, when it comes to the matter of pursuing remedies in Courts.

19. Indeed, the Court finds that the Petitioner engaged his own defence assistant and also cross-examined the witnesses.

20. Lastly, it is submitted by learned counsel for the Petitioner that the punishment awarded to him for the alleged misconduct was disproportionate.

21. The Appellate Authority in discussing this issue has observed as under:

“97 Bn BSF has written that the charge u/s 20(a) of BSF Act for which the petitioner was convicted carries maximum punishment upto 14 years imprisonment. However, the Court has taken a lenient view and awarded punishment "(i) to suffer rigorous imprisonment for 89 days in force custody; (ii) to take rank and precedence as if his appointment as Constable bore the date 04.03.1993 instead of 05.03.1989 and (iii) to forfeit 04 years of service for the purpose of promotion" which is lesser than the maximum punishment awardable for the offence; The punishment awarded to the petitioner is very much commensurate with the gravity of the offence committed by him and does not warrant any interference.

4, On the date of conviction 03.05.2012, the petitioner was 43 years, 05 months and 20 days old and has rendered 23 years, 01 month and 22 days of service in BSF. During his service, he has earned 01 cash reward and 02 Appreciation cards with no punishment.”

22. This Court is inclined to concur with the findings of the Appellate

Authority on the question of sentence in the present case.

23. For all of the aforementioned reasons, the petition is dismissed.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

JANUARY 23, 2019

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