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

+ **W.P.(C) 7293/2018**

**KIMTI LAL**

..... Petitioner

Through: Mr. Aldanish Rein, Advocate.

versus

**INDO TIBETAN BORDER POLICE FORCE**

..... Respondent

Through: Mr. Chiranjeev Kumar, CGSC with  
Mr. Jitendra Kumar Tripathi, CGP.

**CORAM:**

**JUSTICE S. MURALIDHAR**

**JUSTICE TALWANT SINGH**

**ORDER**

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**06.11.2019**

1. This writ petition has been filed by the Petitioner, who is a Head Constable in the Indo Tibetan Border Police ('ITBP'), praying for setting aside the order dated 29<sup>th</sup> December, 2015 passed by Summary Force Court ('SFC') 5<sup>th</sup> Battalion ITBPF, Leh and order dated 31<sup>st</sup> March, 2017 passed by the Appellate Authority of the ITBP and has sought directions to Respondent No.1 to reinstate the Petitioner with all consequential benefits.

2. The facts in brief are that on 8<sup>th</sup> February, 2015 the Petitioner was posted on the advance post of Thaa Kung as Head Constable (G) Quartermaster F. On 10<sup>th</sup> March, 2015 the Petitioner was allegedly seen to be giving kerosene oil to Civil Laama (Civil Businessman) and the incident was allegedly asked to be photographed by Ram Niwas and Kundan Biswakarma which led to a fight between Ram Niwas and Petitioner. The Company Headquarter was

informed on 15<sup>th</sup> March, 2015 about the fight between the Petitioner and Ram Niwas. On 2<sup>nd</sup> April, 2015 an Enquiry Committee was formed to look into the above allegations. The statements of the witnesses, including the Petitioner were recorded and thereafter the Enquiry Committee submitted its report coming to the conclusion that offence was committed. By order dated 30<sup>th</sup> October, 2015 it was directed to prepare a Record of Evidence (ROE) in terms of Rule 45(III) read with Rule 51 of ITBP Rules, 1994 against the Petitioner for the following charges:

“Charge 1: Misbehaviour with a subordinate under Section 28 of the ITBP Force Act, 1992.

Charge 2: Destruction of property under Section 33 of the ITBP Force Act, 1992.

Charge 3: Breach of proper management and discipline under Section 43 of ITBP Force Act, 1992.”

3. The matter was referred to SFC in view of Section 54 of ITBPF Rules. On 23<sup>rd</sup> December, 2015 SFC was constituted and the charges were framed by Commanding Officer of the SFC. Charge No.2 regarding destruction of property was dropped. The charges framed by the SFC are as under:

“Charge No. 1  
ITBP Act, 1992    Ill-treating a subordinate  
Section 28

In that, No. 030060786 HC(GD) Kimti Lal “F” Coy, (Now Spt Coy) 05<sup>th</sup> Bn ITBP Force who was deployed for duty of coy quarter master at forward post “Thakung” had fight on 10.03.15 with CT(GD) Ram Niwas and attacked with iron rod to

CT(GD) Ram Niwas with using criminal force, it caused injury “fracture lower end of Ulna (left) F Arm” in the left hand of CT(GD) Ram Niwas which is a serious offense as a member of UO Bank of dignity and disciplined force.

Charge No. 2  
ITBP Act, 1992      Violation of good order and discipline  
Section 43

In that, No. 030060786 HC(GD) Kimti Lal “F” Coy, (Now Spt Coy) 05<sup>th</sup> Bn ITBP Force who was deployed for duty of coy quarter master at forward post “Thakung”, on dated 10.03.15, he used abusive/unparliamentary language to Regtl. No 070312258 CT(GD) Ram Niwas and attacked with an iron rod to Regtl. No 070312258 CT(GD) Ram Niwas. As a member and UO of a discipline force, he violated the good order and discipline.”

4. As per the Petitioner, on 29<sup>th</sup> December, 2015 the SFC was seated and the Petitioner was under the impression that he would be given a minor punishment even if he agreed to plead guilty to the charges. So, the consequence of compulsory retirement on pleading guilty was not made known to the present Petitioner. The Petitioner pleaded guilty and on the basis of the same, on 29<sup>th</sup> December, 2015 the SFC declared that the present Petitioner was guilty of all the charges framed and ordered for his compulsory retirement. However, the copy of the SFC proceedings was not made available to the Petitioner.

5. An appeal was preferred by the Petitioner against the above order of the SFC and on 31<sup>st</sup> March, 2017 the appeal was dismissed by the letter of DIG SHQ (Ldk). The Petitioner engaged the lawyer on 1<sup>st</sup> May, 2017 to challenge his compulsory retirement before the appropriate forum and it was

found that the documents were incomplete, so on 2<sup>nd</sup> May, 2017 an RTI application was filed asking for entire record of the departmental proceedings and ROE. On 26<sup>th</sup> July, 2017 a reply was sent by ITBP mentioning that the record of ROE was already provided to the Petitioner on 27<sup>th</sup> December, 2015. On 17<sup>th</sup> August, 2017 first appeal under the RTI Act was filed. On 27<sup>th</sup> September, 2017 it was mentioned by Respondents in the reply that the requisite information does not fall under the category of the information which can be provided under the RTI Act. A second appeal was filed on 23<sup>rd</sup> October, 2017 before the Central Information Commission (CIC) on which no action was taken, forcing the present Petitioner to file a writ petition before this Court on 5<sup>th</sup> February, 2018 being W.P. (C) No.946/2018, where the Respondent was directed to furnish the Petitioner with all the relevant documents. In view of this order of High Court, the Respondents on 5<sup>th</sup> April, 2018 furnished few/incomplete documents of SFC proceedings.

6. The Petitioner has challenged the orders of the SFC and the Appellate Authority, on the ground that Section 64 (g)(k) of the ITBPF Rules has not been complied with; Section 65 (2) of the ITBPF Rules has not been complied with; similarly Section 69, 70, 137 of the ITBP Rules, 1994 have not been complied with; Section 80 (3)(a) of the ITBP Rules, 1994 has not been complied with; Rules 80 (4)(a)(b) of the ITBPF Rules has not been complied with; there is nothing on record to show that the accused were advised not to plead guilty; Rule 143 (2) of the ITBPF Rules has not been complied with as the same should be in the verbatim form; no evidence was taken after the plea of guilt, in terms of Rule 144(2)(a)(b) of ITBPF Rules;

because the friend of the accused appointed was also a Head Constable and incapable of really providing an effective defence. The Petitioner was not given an opportunity to exercise his legal rights; the certification was done in a typed format by the Respondents in compliance of the mandatory statutory provisions and the Petitioner was not properly guided about consequences of pleading guilty. On these grounds, it has been prayed that the impugned orders be set aside.

7. Notice in the petition was issued to Respondents on 20<sup>th</sup> November, 2018. A detailed counter affidavit has been filed on behalf of the Respondents mentioning therein that on 10<sup>th</sup> March, 2015 the Petitioner had given kerosene oil to a Civil Laama and Constable GD Ram Niwas had taken photographs in which the Petitioner's deeds have been recorded, so he assaulted his junior Constable GD Ram Niwas with an iron rod and he threatened and used abusive language. Due to his use of criminal force which tend to cause injury, the left arm of Constable GD Ram Niwas suffered fracture.

8. Departmental proceedings were initiated against the Petitioner in which he himself pleaded guilty to charge 1 and 2 on 29<sup>th</sup> December, 2015. So, the sentence of compulsory retirement from the service was awarded to him after following the due procedure. The Petitioner was provided with copies of proceedings of SFC, ROE and COI in compliance with the order of this Court dated 5<sup>th</sup> February, 2018. Office order No.336 dated 30<sup>th</sup> April, 2015 was issued to prepare Record of Evidence (ROE) which was accordingly prepared. Thereafter, charge-sheet was prepared mentioning the gravity of

offence. On receipt of ROE report second hearing of the Petitioner was conducted on 14<sup>th</sup> December, 2015 under Rule 45 of ITBPF Rules by Commandant and same was recorded in the prescribed proforma. As per the final remarks/order of the Commandant, the case was remanded to SFC. As per provisions laid down under Rule 60 of ITBPF rules, the SFC Convening Officer under Rule 59/75 has power to amend the charge-sheet by making any addition or omission in the interest of Justice and under this provision charge of destruction of property was dropped against the Petitioner.

9. It is stated by the Respondents that the act of the Petitioner of inflicting injury to Constable GD Ram Niwas, which left him with a fractured hand and inserted plate and relegated him to low medical category and the Petitioner has pleaded guilty for both the charges. After scrutinising the case mandatory and considering his previous service record of various indiscipline cases, the Officer conducting SFC proceedings firmly believed that the Petitioner had outlived his utility in this force. So, he was sentenced to be compulsorily retired from service on 29<sup>th</sup> December, 2015. The appeal of the Petitioner was rejected by the DIG vide letter dated 31<sup>st</sup> March, 2017.

10. According to the Respondents, there is no provision in the ITBPF Rules to provide copy to the SFC to produce, however, in compliance of the orders of this Court, copy of the SFC proceedings along with relevant documents was provided to the Petitioner. In reply to the grounds, it is mentioned that all the Rules were duly complied with. The Petitioner was given an opportunity to take assistance of any person including a legal practitioner and the Petitioner intimated name of Head Constable GD Chetan Funchuk as

friend of the accused and Inspector (GD) Jiwan Singh as defence witness. Rule 65 could not have been resorted to in an SFC trial as the same pertains to General Force Court and Petty Force Court. Provision of Rule 157 was duly complied with. Defence witness was present during SFC trial. The Petitioner was tried in SFC, so, Rule 137 of ITBP Rules, 1994 was followed. Rule 69 and 70 of ITBP Rules, 1994 relates to swearing/affirming of members and Judge Attorney and other Officers of General Force Court. Copies of oath/affirmation of the Court - Shri Vishwamitra Anand, Commanding Officer; Interpreter Inspector Roshan Lal and shorthand writer Head Constable Mahinder Singh have been filed on record.

11. It is further clarified by the Respondents that provision of Rule 80(3) (a) of ITBPF Rules are concerned with General Force Court and Petty Force Court. In the present case, provisions contained in Rule 143(2) of ITBPF Rules were followed. It is further mentioned that before recording the plea of guilty of the Petitioner on first and second charge, the Court translated and explained in detail the meaning of charge to which the Petitioner pleaded guilty and it was ascertained that the Petitioner understood the nature of this charge to which he had pleaded guilty. The Court also informed the Petitioner the general effect of the plea of guilt and the difference in the procedure which will be followed consequent to the said plea. He was also informed that at any point of time if he intends to withdraw his plea of guilt, he can do so. It is further mentioned in the counter that Rule 80 (4) (a) (b) of ITBPF Rules is not concerned with SFC. Similarly, Rule 144 (2) (a) (b) does not apply to the case of the Petitioner as he had pleaded guilty to both the charges. After finding the Petitioner guilty

of charges No.1 and 2, the ROE was read, translated, marked 'K', signed by the Court and attached to the proceedings. The Petitioner was also asked to call any witnesses in his defence but he replied in negative. On these grounds, it was prayed that the writ petition may be dismissed with costs.

12. We have heard both the sides. The Respondents were directed to keep the records of the case ready for perusal and in compliance thereto the Respondents have brought the complete records.

13. The crux of the argument of the learned counsel for the Petitioner is that the plea of guilt was not voluntary and the relevant Rules in this regard were not followed. On the other hand, learned counsel appearing for the Respondents has submitted that all the Rules have been duly followed. The relevant Rules in this regard are Rule No.143 and 144 of the Indo-Tibetan Border Police Force Act, 1992 which are reproduced here under:

“143. General plea of “Guilty” or “Not Guilty”. –

(1) The accused persons' plea of “Guilty” or “Not Guilty” (or if he refuses to plead or does not plead intelligibly either one or the other a plea of “Not Guilty”) shall be recorded on each charge.

(2) If an accused person pleads “Guilty”, that plea shall be recorded as the finding of the Court, but before it is recorded, the Court shall ascertain that the accused understands the nature of the charge to which he has pleaded guilty and shall inform him of the general effect of that plea and in particular of the meaning of the charge to which he has pleaded guilty, and of the difference in procedure which will be made by the plea of guilty and shall advise him to withdraw that plea if it appears from the record or abstract of evidence (if any) or otherwise

that the accused ought to plead not guilty.

(3) Where an accused person pleads guilty to the first two or more charges laid in the alternative, the Court may after sub-rule (2) has been complied with and before the accused is arraigned on the alternative charge or charges, withdraw such alternative charge or charges and follow the charge to which the accused has pleaded guilty without requiring the accused to plead thereto, and a record to that effect shall be made in the proceedings of the Court.

144. Procedure after plea of “Guilty”. – (1) Upon the record of the plea of “Guilty” if there are other charges in the same charge-sheet to which the plea is “Not Guilty”, the trial shall first proceed with respect to those other charges, and after finding on those charges, shall proceed with the charges on which a plea of “Guilty” has been entered, but if there are alternative charges, the Court may either proceed with respect to all the charges as if the accused had not pleaded “Guilty” to any charge, or may, instead of trying him, record a finding of “Guilty” upon any one of the alternative charges to which he had pleaded “Guilty” and finding of “Not Guilty” upon all the other alternative charges which precede such charge.

(2) (a) After the record of the plea of “Guilty” on a charge (if the trial does not proceed on any other charges) the Court shall read the record or abstract of evidence and annex it to the proceedings, or if there is no such record, or abstract shall take and record sufficient evidence to enable it, to determine the sentence, and the reviewing officer to know all the circumstances connected with the offence.

(b) The evidence shall be taken in like manner as is directed by these rules in the case of a plea of “Not Guilty”.

(3) The accused may, after such evidence has been taken or as the case may be, the record or abstract of evidence has been read, address the Court with reference to the charge and in mitigation of punishment and may call witnesses as to his

character.

(4) (a) If from the statement of the accused or from the record of evidence or otherwise it appears to the Court that the accused did not understand the effect of his plea of “Guilty”, the Court shall after the record and enter a plea of “Not Guilty”, and proceed with the trial accordingly.

(b) Any alternative charges withdrawn under sub-rule (1) shall be reinstated in the charge-sheet and the trial shall take place as if they had never been withdrawn.

(5) If a plea of “Guilty” is recorded on some charges and the trial proceeds with respect to other charges in the same charge-sheet, the proceedings under sub-rules (2) and (3) shall take place after the findings on the other charges in the same charge-sheet are recorded.

(6) When the accused states anything in mitigation of punishment which in the opinion of the Court requires to be proved, and would if proved, affect the amount of punishment, the Court may permit the accused to call witnesses to prove the same.”

14. Ld. Counsel for Petitioner has been relied upon a judgment of this Court titled *Ex-Head Constable Rajinder Singh v. Union of India* (W.P. (C) No.2715/2000 decided on 4<sup>th</sup> May, 2012). However, the said writ petition was decided on the basis of the peculiar facts placed before the Court, which are not similar to the facts of the present case and every petition is to be decided on the basis of the facts relevant to the instances/incidents in the said case. So, the said judgment in which SSFC proceedings based on the plea of guilty and consequent sentence ordered by the SSFC to the Petitioner was set aside cannot be made applicable to the facts and circumstances of this case. It has been also mentioned that the SLP Civil No.24657/2012 filed

by the Union of India in the said case was dismissed by the Hon'ble Supreme Court on 26<sup>th</sup> April, 2013. As mentioned earlier, the said judgment was dependent upon the peculiar facts pleaded in the said case and its ratio is not applicable to the facts of the present case.

15. Learned counsel for the Petitioner has submitted that instead of informing the Petitioner prior to recording his plea of guilt the consequences which may follow, the Commanding Officer had just reproduced the language of the said Rule. The said fact is not borne out from the record produced before the Court. The record shows that the charges, the consequences and the general effect as well as the difference in procedure were duly communicated to the Petitioner before his plea of guilt was recorded and even after recording his plea of guilt, the Petitioner was specifically asked a question related to the mitigation of punishment in reference to the charge. Here at this stage he changed his defence and tried to give a new twist to his defence. However, he had admitted that he had hit Constable GD Ram Niwas resulting in fracture on his left hand and he prayed for a lenient punishment. Petitioner refused to call any defence witnesses. The Petitioner has signed in English although his statements were recorded in Hindi/English. So, it cannot be said that he had not understood the procedure being followed. Although, the plea of guilt is recorded in English but it is specifically mentioned that the charge sheet was read, translated and explained to the accused before he pleaded guilty.

16. Under these circumstances, the stand of the Petitioner that he was not explained the nature of the charges; the general effect of the plea of guilt and

difference in procedure to be followed consequent to the plea of guilt before he pleaded guilty is without any foundation and the same is hereby rejected. Due compliance of the law as well as the Rules framed under the ITBP Act, 1994 was made by Respondents. There is no ground to allow the present writ petition. Writ Petition is hereby dismissed.

**S. MURALIDHAR, J.**

**TALWANT SINGH, J.**

**NOVEMBER 06, 2019**

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