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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 5182/2015

OM PRAKASH SHARMA

..... Petitioner

Through: Mr. A. K. Bhardwaj with Ms. Jagrati
Singh, Advocates.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Ajay Digpaul, CGSC for UOI.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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18.12.2019

1. The challenge in this petition is to findings dated 13th February, 2013 of the General Security Force Court ('GSFC') on the 5th, 6th and 7th charges contained in the Memorandum of Charges ('MoC'), based on which the above GSFC was held against the Petitioner. The Petitioner has also challenged the sentence dated 13th February, 2013 of dismissal from service awarded by the GSFC as confirmed by the Director General ('DG'), Border Security Force ('BSF') on 7th May, 2013.

2. The Petitioner also challenges the order dated 11th March, 2014 passed by the Deputy Inspector General ('DIG') rejecting the statutory petition of the Petitioner. However, by the same order, the Petitioner was granted a compassionate allowance under the provisions of Rule 41 of the Central

Civil Service (Pension) Rules, 1972 not exceeding 50% of the pension with gratuity which would have been admissible to him if he had retired.

3. There were seven charges against the Petitioner. The first charge was that while performing the duties of adjutant in the 94th Battalion of the BSF during July, 2008 at Border Outpost, Kajuri. The Petitioner had directly obtained a sum of Rs. 700/- from Constable Chaman Lal, 'B' Company of the same Battalion as gratification by justifying the said amount as having been spent in the various visit of officers. The second charge was that while performing the duties of adjutant in September and October, 2009, he indirectly obtained through Constable Bajrang Lal a sum of Rs. 1,000/- from Constable Vikram Singh of the 'E' Company as reward for sending him on 30 days' EL.

4. The third charge was that on 23rd September, 2010 he obtained a sum of Rs. 400/- from Constable Kartar Chand as reward for passing him in the DPC for promotion from Constable to Head Constable. The fourth charge was that on the same date and at the same time he obtained a sum of Rs. 200/- from Constable Md. Hanif for passing him in the DPC for promotion to Head Constable. The fifth charge was that on 28/29th November, 2010 he was paid, through Constable Prahalad Singh, a sum of Rs. 500/- from Constable Bhadar Ram of the 'E' Company as reward for granting him 10 days' casual leave.

5. The sixth charge is that he on 11th December, 2010 obtained through Constable Prahalad a sum of Rs. 500/- from Head Constable A.

Bhattacharjee of the 'F' Company a sum of Rs. 500/- in lieu of granting him 30 days' EL. The seventh charge was that he obtained through Constable Prahalad Singh a sum of Rs. 1450/- from Constable Satpal of the 'D' Company as a reward for grant of leave.

6. In the GSFC, eleven prosecution witnesses ('PWs') were examined. Apart from cross-examining them, the Petitioner examined four defence witnesses. The GSFC also examined one Court witness and a witness in reply.

7. The GSFC found the Petitioner guilty on the 5th and 6th (with certain variations) and 7th charges, and not guilty of the 1st – 4th charges.

8. Perusal of the GSFC proceedings held on 13th February, 2013 shows that the GSFC found the evidence of Constable Prahalad Singh (PW-9) as reliable. He had served with the accused as a security aide till the accused had been relieved from the 94th Battalion. This fact has also been admitted by the Petitioner in his cross-examination.

9. A. Bhattacharjee (PW-8) confirmed that he got his leave in time only due to the Petitioner, even without attending any leave interview. Likewise, Satpal (PW-1) confirmed that it was only after the Petitioner assumed charge that he got his leave. Likewise, Constable Bhadar Ram (PW-7) also confirmed that he was granted leave only when the Petitioner assumed charge as adjutant, even though he had previously been denied leave pursuant to three leave interviews.

10. The GSFC *inter-alia* noted as under:

“However, the leave of coy personnel are planned by their respective Coy Comdrs and they are sent to Bn HQ for interview of Commandant. The Bn Adjt being staff Officer to Commandant plays very important role in sanctioning the leave as he is having the statement of manpower of every Coy.”

11. It was further noted:

“4. As on 31.01.2013, the petitioner was 51 years, 03 months & 19 days and with 33 years, 02 months and 19 days service in BSF. He has earned 26 cash rewards and a commendation card. He was awarded DG's CR during March 2009. He was issued IG's displeasure by Pers Dte FHQ during Oct 2006.”

12. On the above basis, the GSFC decided to impose on the Petitioner the punishment of dismissal from service. As already noted, the DIG, while affirming the above punishment, granted the Petitioner compassionate allowance.

13. This Court has heard the submissions of Mr. A. K. Bhardwaj, learned counsel for the Petitioner and Mr. Ajay Digpaul, learned counsel for the Respondent.

14. Mr. Bhardwaj first referred to Rule 157 of the BSF Rules and submitted that the Petitioner was not provided with a defence assistant of his choice as mandated thereunder.

15. Rule 157 of the BSF Rules reads thus:-

“157. Friend of the accused.- During a trial at a Summary Security

Force Court an accused may take the assistance of any person, including a legal practitioner as he may consider necessary:

Provided that such person shall not examine or cross-examine witnesses or address the Court.”

16. Mr. Bhardwaj referred to the decision dated 3rd June, 2010 of this Court in W.P.(C) 7875/2007 (*Balwinder Singh vs. Union of India*), wherein, in the facts of that case, it was held that the failure to comply with Rule 157 by providing the accused person with the Defence Assistant (DA) of his choice was a serious infraction which would vitiate the entire GSFC proceedings.

17. In the present case, the Petitioner admittedly did submit a list of eight officers as his choice of Das. However, when approached, those officers were either not available or willing to act as DAs. The Petitioner was indeed provided with a DA who, according to him, was junior to the Prosecutor and hence could not do justice to his case.

18. The Court finds that there is no obligation on the Respondents to provide a DA in terms of Rule 157 of the BSF Rules. The said Rule permits the accused person to engage a DA of his choice. It was open to the Petitioner, if he was not satisfied with the DA provided to him by the Respondents to engage a DA of his choice. That, clearly, the Petitioner did not do. The Court is unable to therefore agree that there was any violation of Rule 157 of the BSF Rules.

19. Now turning to the merits, the Court was taken through the evidence of

PWs and DWs. It was sought to be urged by Mr. Bhardwaj that the GSFC against the Petitioner was as a result of a conspiracy hatched by some officers of the 94th Battalion. According to the Petitioner, he had reported to his Commandant about a Deputy Commandant retaining a Constable at his residence to perform household work for his wife, who was staying at Rajouri at that time. The Commandant expressed his annoyance at the action of the DC. This in turn displeased the DC who was thereafter waiting for an opportunity to take revenge on the Petitioner.

20. An advice was issued to another DC by the Commandant who had asked the Petitioner to provide him a security aide at his residence, a request which had been declined by the Commandant when the Petitioner put it before him. According to the Petitioner, due to the Commandant issuing the aforesaid advice to the DC, the latter adopted a hostile and vengeful attitude towards the Petitioner. The Petitioner further alleges that the Commandant himself appointed a Constable, who had till then been working at his Second-in-Command, as his security aide. Since the Petitioner implemented the Commandant's directions, the said Second-in-Command also grew hostile towards him.

21. However, no evidence led by the Petitioner in the GSFC could substantiate the above case of the Petitioner. On the other hand, there was sufficient credible evidence to substantiate the 5th, 6th and 7th charges. If indeed the entire GSFC was biased against the Petitioner, it would not explain how he was found not guilty of the first four charges, and guilty only on the last three charges.

22. Mr. Bhardwaj, learned counsel for the Petitioner then pointed out that in the 5th and 6th charges, the dates on which the Petitioner is supposed to have taken illegal gratification, were changed by the GSFC when it was realised that he was on sanctioned leave on those dates. The Court is unable to find any serious error having been committed if indeed the PWs who spoke at the trial were able to prove that the Petitioner did accept illegal gratification on the altered dates.

23. It was submitted by learned counsel for the Petitioner that this was a case based on no evidence. The Court is unable to agree with this submission. The evidence of PW-1, PW-7, PW-8 and, of course, PW-9 proves the case of the Respondents against the Petitioner on the 5th, 6th and 7th charges. The Court is unable to find any perversity in the findings of the GSFC in this regard.

24. Lastly, it was submitted that the punishment awarded to the Petitioner was excessively harsh and disproportionate. The Court is again unable to agree with the submission. Higher standards are required to be maintained in the armed forces and acceptance of illegal gratification, particularly when obtained by a superior officer from his subordinates to enable them to obtain leave, has to be dealt with zero tolerance, given that it destroys the discipline of the force and is seriously detrimental to it.

25. Relying on the decision dated 27th November, 2019 of this Court in WP(C) No. 4450/2017 (*Virender Singh Chankot v. Union of India*), Mr. Bhardwaj submitted that the other co-accused with whom the Petitioner was *W.P.(C) 5182/2015*

to jointly face trial was let off with a relatively lenient punishment. His submission was that there could be no discrimination in the manner of holding the GSFC and punishment vis-à-vis the co-accused.

26. The evidence on record clearly brings out the role of the present Petitioner. The accusations against him under the 5th, 6th and 7th charges stand fully proved by the PWs. The mere fact that Mr. Anand Singh Takshak, the Commandant against whom a Staff Court of Inquiry was also ordered, was not given the same punishment is of no avail to the Petitioner. Clearly, the two cases are not comparable.

27. For all of the aforementioned reasons, the Court finds no ground made out for interference with the impugned order.

28. The petition is dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

DECEMBER 18, 2019

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