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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 8698/2016

DHEERAJ PATEL

..... Petitioner

Through: Mr. Srinivasa Rao K, Advocate.

versus

THE DIRECTOR-GENERAL, BORDER SECURITY FORCE &
ANR

..... Respondents

Through: Mr. Rakesh Kumar and Ms.
Santwana, Advocates.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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20.11.2019

1. The Petitioner has challenged his order of dismissal from service dated 6th August, 2013 and an order dated 6th January, 2013 passed by the Appellate Authority and has sought further directions to Respondents to reinstate him back in service.

2. In brief, the facts set out in the petition are that the Petitioner had joined Border Security Force (BSF) as Constable/General Duty (GD) in 2004. While serving in 75th Battalion at Dakshina Dhinajpur in West Bengal in April, 2013, he suffered the wrath of his immediate superior Mr. B. N. Mishra as he was indulging in many acts of financial malpractices and Petitioner refused to cooperate with him. Hence, Mr. B.N. Mishra nourished

animosity towards the Petitioner. In furtherance to his evil design and plan, Mr. B.N. Mishra issued a charge sheet dated 26th July, 2013 containing four false allegations/charges levelled against the Petitioner. Vide order dated 4th August, 2013 the Summary Force Court (SFC) proceedings were convened against the Petitioner, which were conducted with pre-planned mindset to dismiss the Petitioner from the service. Respondent No.2 kept on telling the Petitioner that only a warning would be issued to the Petitioner. A house arrest order was passed on 5th August, 2013. Vide impugned order dated 6th August, 2013 the Petitioner was dismissed from the services of BSF against which he preferred a statutory appeal dated 21st May, 2014 praying for his reinstatement. Respondent No.2 vide letter dated 29th May, 2014 intimated the Petitioner to apply for a copy of the proceedings of the SFC. The Appellate Authority also dismissed the statutory appeal without application of mind on 6th January, 2015.

3. It has been submitted on behalf of the Petitioner that the Appellate Authority failed to appreciate that Respondent No.2 had acted as Prosecutor and Judge; Petitioner was not given copies of the relied upon statements of the witnesses; the prosecution witnesses were threatened by Respondent No.2 and due to the pressures of Respondent No.2, no fellow employee came forward in favour of the Petitioner to help him as friend of the accused. Reliance has been placed on judgment of the Hon'ble Supreme Court in the matter of *Union of India v. Vishav Priya Singh 2016 SCC Online 658 SC* where it was held that "the SFC proceedings should be exceptional but where penal consequences such as losing job are involved General Force Court (GFC) proceedings are sine qua non." The grounds on

which the Petitioner has challenged the act of the Respondents are that the Petitioner has no alternative remedy except to invoke the extraordinary civil jurisdiction of this Court; Respondent has not considered the grievance of the Petitioner and Respondent No.1 is trying to protect the Respondent No.2; action of the Respondents is based on extraneous conditions; the arbitrary or unreasonable orders of the Government are amenable to the writ jurisdiction of this Court; the case in hand constitutes a glaring instance of state inaction; act of the state resulting in panel consequences must pass the test mandated by Article 14 and 21 of the Constitution and Rule of law must prevail.

4. The Respondents have filed a detailed counter affidavit mentioning therein that the Petitioner has concealed many material facts. On 16th May, 2013 at about 22:00 hours, the Petitioner appeared before his Company Commander Inspector Mr. B.N. Mishra in intoxicated condition and said that he was not being granted leave, whereas he had neither applied leave nor had made any such request. Inspector B.N. Mishra assured the Petitioner to send him on leave the next day, i.e. 17th June, 2013. However, at 22:30 hours, Inspector B.N. Mishra saw the Petitioner quarrelling with Head Constable Narayan Singh and Head Constable Gurbax Singh and he tried to intervene and pacify the Petitioner but the Petitioner picked up a DAH (lethal weapon) and threatened Inspector B.N. Mishra and used insubordinate language. In these circumstances, the Petitioner was tried by SFC for offences under Section 20(A), 20(C), 40 and 19(a) of the BSF Act for assaulting his superior officer, doing acts prejudicial to good order and discipline of the Force and absenting himself without leave respectively. On being arraigned by the Court, the Petitioner pleaded guilty to all the four

charges.

5. As per the Respondents, the Court complied with provisions of BSF Rule 142(2) wherein the Petitioner was explained the nature of charges, general effect of his plea and difference in procedure to be followed consequent to said plea of guilt. After having fully satisfied that the Petitioner had understood the same, the Court recorded findings of 'guilty' on all the four charges. Thereafter, his previous convictions, character and rewards, etc. were recorded and Petitioner was sentenced to be dismissed from service on 6th August, 2013. The said trial proceedings were counter-signed by DIG Raiganj on 21st July, 2014. The appeal filed by the Petitioner was dismissed on 6th January, 2015.

6. The counter affidavit of Respondents also gives details of previous punishments awarded to the Petitioner which included absenting without leave for 46 days for which he was awarded 40 days enforced custody; again he overshoot leave granted to him without sufficient reason in July/August, 2010 by 15 days for which he was awarded punishment of seven day's pay fine in a month. Keeping his previous record in view after his trial for the third time under Summary Security Force Court (SSFC), Petitioner was dismissed from service. As per the Respondents, there is no legal infirmity in the impugned order dated 6th August, 2013 and order of the Appellate Authority dated 6th January, 2015. Reliance has been placed on the judgment of this Court in **Rohit Kumar v. Union of India** W.P. (C) 6953/2016 where it was held that in writ proceedings this Court does not exercise appellate power over enquiry findings and/or disciplinary actions.

7. As per Respondents, in the ROE proceedings, the prosecution witnesses were examined in the presence of Petitioner as well as an independent witness. The Petitioner was given an opportunity to cross-examine the witness. The statements were read over to him and explained in the language understood by him. The Petitioner was also given an opportunity to make statement and to examine the witnesses. The ROE proceedings were conducted strictly as per provisions of the BSF Act and rules and principles of natural justice were followed. The Petitioner was provided due opportunities to defend himself during the trial before the SSFC and he confessed his guilt and pleaded for pardon or lesser punishment. In para wise comments, the same facts have been repeated. It has been denied that Inspector B.N. Mishra had indulged in any financial malpractices. It has been submitted that Petitioner has levelled false and baseless allegations against his senior officers without any proof thereof. The offences under which the Petitioner was charged, carry maximum punishment of imprisonment up to 14 years, however, taking into account his past service, the Petitioner was only awarded with the punishment of dismissal from service and a lenient view was taken.

8. We have heard learned counsel for the Petitioner Mr. Srinivasa Rao K. and learned counsel for the Respondents Mr. Rakesh Kumar and we have perused the record. The Petitioner was charged for four offences as detailed in charge sheet Annexure P2 as under:

“CHARGESHEET

The accused Regt No 041566235 Rank - Constable (GD),

Name - Dheeraj Patel,
'E' Coy of 75 Bn BSF is charged with:

1st CHARGE
BSF AQ1968
BSF AQ
SEC-20(a)

USING THREATENING
LANGUAGE TO HIS
SUPERIOR OFFICER

in that he, on 16.05.2013 at about 2230 hrs while at BOP Sonapara, picked up a DAH (Lethal Weapon) and threatened to hit the Insp BN Mishra, Offg Coy Comdr E Coy.

2nd CHARGE
BSFACT1968
BSF AQ
SEC-20(C)

USING INSUBORDINATE
LANGUAGE TO HIS
SUPERIOR OFFICER

in that he, on 16.05.2013 at about 2200 hrs while deployed at BOP Sonapara used insubordinate language i.e 'BAHANCHOD' 'MADERCHOD' or words to that effect against No.780030543 Insp B.N. Mishra, Offg Coy Comdr 'E' Coy.

3rd Charge
BSF AQ 1968
BSF ACT
SEC-40

AN ACT PREJUDICIAL TO
GOOD ORDER AND
DISCIPLINE OF THE FORCE

in that he on 16.05.2013, at about 2200 hrs while deployed at BOP Sonapara, consumed illicit liquor in contradiction to Bn HQ order issued vide Sig No. O-7208 dtd 14/11/2012.

4th CHARGE
BSF ACT
1968
BSF ACT

ABSENTING HIMSELF
WITHOUT LEAVE

in that he, at Bn HQ Patiram (WB) on 17.05.2013 absented himself

SEC- 19(a)

without leave and voluntarily reported at Bn HQ Patiram on 24 July 2013 (FN) after AWL for 68 days.

Total period of absence - 68 days”

9. In ROE, nine prosecution witnesses were examined from 30th July, 2013 to 1st August, 2013. Prosecution witness No.1 is Inspector B.N. Mishra, prosecution witness No.2 is Head Constable Gurbax Singh. The accused had declined to cross-examine the first witness but he had put a question to prosecution witness No.2, Head Constable Gurbax Singh. Prosecution witness No.3 was also examined on 30th July, 2013 who is Head Constable Narayan Singh. The Petitioner declined to cross-examine the said witness prosecution witness No.4 examined on 31st July, 2013 is Head Constable Gopal Ram and he was also not cross-examined by the Petitioner. Prosecution witness No.5 examined on the same date is Constable Manas Chetiya who was again cross-examined by the Petitioner PW6 is Constable S.K. Nair who was also examined on 31st July, 2013 apart from PW7 Subhash Yadav who was again not cross-examined PW8 is Shiv Kumar and PW9 is Vijay Kumar Tirki, both of them were examined on 1st August, 2013 but Petitioner/Accused declined to cross-examine them. After recording statements of these witnesses, the Petitioner was given an opportunity to make a statement as detailed above. He was cautioned that it is not necessary for him to make the statement and whatever he would state, the same may be used in evidence. This was done in the presence of an independent witness Inspector S.C Rana. In the statement made by the Petitioner he has explained that his father was ill and he was getting calls

from his wife, so he asked his Company Commander for leave but he was told that he could not be sent on leave immediately, so he called Adjutant Shiv Kumar, DC on phone and as per his advice he again went to Company Commander who again refused to send him on leave and since he was mentally disturbed, so he did all the things including absenting and threatening the company personnel including the Company Commander. The statement was read over to the Petitioner and he cited the same as correct after understanding it. He was again given an opportunity to examine witnesses to his defence but he declined to do so. So, all this record of evidence was made in the presence and hearing of the Petitioner and as such certified by Rupinder Bhardwaj to IC of 75th Battalion BSF on 2nd August, 2013.

10. On 1st August, 2013 the proceedings of SSFC were recorded as under:

The accused No. 041566235 CT Dheeraj Patel of 'E' Coy 75 Bn BSF is cautioned in the presence of independent witness No. 79411021 Insp (T) 8CRana of 75 Bn BSF as under:

"You may make a statement if you wish to do so, you are not bound to make one and whatever you state shall be taken down in writing and may be used in evidence".

On giving the above caution the accused No. 041566235 Ct Dheeraj Patel makes the following statement:

I being only son of my parents. I was getting phone calls from my wife on 16/05/13 informing me about my father's illness. I requested Offg Coy Comdr Insp B N Mishra for leave. He told me that I cannot be sent on leave immediately then I called on Adjutant Sh. Shiv Kumar, DC on phone and spoke to him, he told me to inform Offg Coy Comdr and also told me that I will get leave. I again went to Offg Coy Comdr to inform that

Adjutant has told me that I will get leave. He told me he cannot send me on leave, I mentally disturbed and dis all the things including abusing and threatening the coy personnel including Offg Coy Comdr.

The above statement has been read over to the accused in the language

(Hindi) he understands and signs it as correct.

In the presence of

sd-xxx-01/08/2013

No. 79411021

Insp (T) S CRana

sd-xxx-01/08/2013

No. 041566235

CT Dheeraj Patel

Recorded by me

sd-xxx-01/08/2013

Rupinder Bhardwaj, 2IC

75 Bn BSF

The accused No. 041566235 CT Dheeraj Patel is given opportunity to examine witness in his defence to produce witness in his defence. The accused No. 041566235 CT Dheeraj Patel declines to do so.

In the presence of

sd-xxx-01/08/2013

No. 79411021

Insp (T) S CRana

sd-xxx-01/08/2013

No. 041566235

CT Dheeraj Patel

Recorded by me

sd-xxx-01/08/2013

Rupinder Bhardwaj, 2IC

75 Bn BSF”

11. The SSFC under Border Security Force Act, 1968 was convened by the order of Shri R. Muthu Krishnan Commandant 75th Battalion BSF. The presiding Officer of the SSFC was Shri R. Muthu Krishnan. The members

were Inspector Chand Rana and Sub-Inspector Dilip Singh Karki. Shri S.K. Singh, AC was appointed as friend of the accused vide order dated 4th August, 2013. The said convening order reads as under:

**“CONVENING ORDER
/ ORDER OF ASSEMBLING OF SUMMARY SECURITY
FORCE COURT UNDER BORDER SECURITY FORCE
ACT 1968**

Order By Shri R Muthu Krishnan, Commandant,
75 Bn BSF

Place Patiram, Atrai, Dakshin Dinajpur (WB)
Date 4th Aug 2013

No. 041566235 Rank CT

Name - Dheeraj Patel

Unit - 75Bn BSF

The composition of the court as mentioned below will assemble at Bn HQ 75 Bn BSF Patiram Dakshin Dinajpur (WB) on 06 Aug 2013 at 1030 hrs for the purpose of trying by a Summary Security Force Court, the accused person named in the margin (as such person or persons may be brought before the court).

Presiding Officer : Shri R Muthu Krishnan, (IRLA
NO. 18736502),
Commandant, 75 Bn BSF

Members in attendance : 1, Regt No. 794110217
Inspector (Tech)
Shri Chand Rana

2 Regt No. 800014212 Sub-Inspector

Name: Dilip Singh Karki

Friend of accused : Sh S K Singh, AC (IRLA No.
10899632)

The accused will be warned and all witnesses duly required attending

Signed this day 4th Aug 2013.
No. Estt-75/Disc-DP/13/13836-41
Dated, the 4th Aug '2013

Distributions

1. Presiding Officer
2. Friend of Accused
3. Members
4. No. 041566235 CT Dheeraj Patel
of 75 Bn BSF
5. ASI/Adj
6. Estt-I : For BRO
7. File"

12. On 5th August, 2013 order of close arrest of Petitioner was passed by Commandant, BSF under Rule 36 (d) and 38 of BSF Rules, 1969 and it was directed that he will not leave the premises of the Battalion Headquarter without permission of the Competent Authority. The convening order shows that a friend of the accused was duly appointed. On 6th August, 2013, the impugned order was passed after considering the charges, his plea of guilt and his previous record.

13. The provision regarding pleading guilty is contained in Rule 142 of the Border Security Force Rules, 1969 and the same is reproduced here under:

“General plea of “Guilty” or “Not Guilty”

(1) The accused person’s 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 guilty:

[Provided that after recording plea of guilty, signature of the accused and friend of the accused shall be obtained.]

(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 as follow the charge to which the accused has pleaded guilty without requiring the accused to plea thereto, and a record to that effect shall be made in the proceedings of the Court.

143. 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 the 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 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 alter 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. In our view, the procedure prescribed by above quoted rules was duly followed and all necessary compliances were made in the case in hand. *Ld.*

Counsel for the Petitioner has failed to point out any violation of the established procedure while conducting the ROE or proceedings of SSFC.

15. Here at this stage, even as per the case put up by the Petitioner, he had pleaded guilty but he was promised a lighter punishment by his superior officers but from the documents on record no such promise can be proved. No witnesses have been examined by the Petitioner before SSFC and all the four charges have been duly admitted by him after he was warned in advance about consequences of doing the same.

16. Another circumstance to be noted here is that in a case where the charges have been explained, duly understood and the accused makes voluntary confession of guilt and the SSFC has been lenient of not visiting him with the maximum punishment of 14 years imprisonment provided for the offences under which Petitioner was charged and he was only punished with dismissal from service, then, in view of this Court compliance with the BSF Act and Rules as well as with the principles of natural justice and fair play has been made.

17. There is nothing on record to prove that the Petitioner was coerced, forced or persuaded to plead guilty without his own consent. The previous conduct of the Petitioner was also considered before awarding him the punishment. The acts of the Respondents cannot be termed as violative of Article 14 or 19 of the Constitution of India or violative of the principles of natural justice and fair play. Hence, no ground is made out to allow the petition.

18. The writ petition is hereby dismissed on merit.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 20, 2019
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