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

+ **W.P.(C) 8064/2015**

SURESH KUMAR

..... Petitioner

Through: Mr.Pawan K.Sharma with Mr.Sarvesh
Singh & Ms.Kanika Madan,
Advocates.

Versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr.Dev P.Bhardwaj, CGSC with
Ms.Anubha Bhardwaj & Mr.Jatin
Teotia, Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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07.02.2019

Dr. S. Muralidhar, J.:

1. The Petitioner, Suresh Kumar, has filed this petition seeking quashing of the findings and sentence awarded by the Summary Force Court (SFC) dated 18th September 2012 and the consequential dismissal order dated 30th June 2013. He also seeks the setting aside of the order dated 2nd July 2014 whereby his appeal was rejected.

2. The background facts are that the Petitioner was recruited in the year 2000 as Constable (General Duty) (Ct/GD) with the Sashastra Seema Bal (SSB). According to the Petitioner, in 2010 he was deployed to work at the official residence of Inspector General/IG (Administration) Shri A.K. Negi

along with Ct/(Cook) Shishpal Singh. According to the Petitioner, on 8th January 2011 an incident of theft occurred in the residence of the IG in the bedroom of his house on the first floor. On a complaint made by the IG, FIR 5/2011 was registered at PS Defence Colony on 9th January 2011.

3. According to the Petitioner, a thorough police inquiry was conducted and despite interrogation and forensic investigation, nothing was found against him and the others who were deployed at the residence of the IG. It appears that thereafter, a Court of Inquiry was ordered by the Respondents. The Assistant Commandant, C Company, SSB, R.K.Puram submitted a report on 5th May 2011 to the Commandant 25th Battalion, SSB, Ghitorni, New Delhi stating that during the inquiry into the incident of theft, instances of misconduct had emerged in respect of 5 persons which included the present Petitioner. By an order dated 20th May 2011, the Commandant Shri Manmohan Singh placed the Petitioner under suspension with immediate effect. In the same order it was alleged that the Petitioner “is accused of carelessness and committing illegal sexual activities in the residential premises of IG (Admn.), FHQ, when he was working as personal staff with him.”

4. The Commandant ordered a Record of Evidence (ROE) and passed an order to that effect on 1st June 2011. The said order records the offence with which the Petitioner was charged as under:

“In that No. 0066837 CT/GD Suresh Kumar "F" Coy, While performing duty with IG (Admn), FHQ as personal staff committed brought prostitutes in the residential premises of the said officer at C-13 Hudco Place, New Delhi during the month

of August 2010 and on 04.1.2011 and committed acts of immoral activities, violation of good order and discipline by indulging himself and involving other SSB personnel in illegal sexual activities.

After hearing of the accused the case has been remanded for preparation of Record of Evidence (ROE).

Sh. Rajendra Bhardwaj Dy Commandant of 25th Bn. SSB, Ghitorni, New Delhi is hereby appointed under Rule 51 (i) of SSB Rule 2009 for preparing the Record of Evidence.

The proceedings of ROE completed in all respects be submitted to the undersigned within 15 days from the date of issue of this order.”

5. By summons dated 4th June 2011, the Petitioner was summoned to attend the ROE. At the ROE statements were recorded of HC/GD Kishan Dutt (Witness No.1), HC/GD Rasik Lal (Witness No.2), Ct.(Sweeper) Bagru Dass (Witness No.3) and LNK (GD) Rigzin Dorjey (Witness No.4). The ROE also recorded that the present Petitioner was given an opportunity to present defence witnesses but he declined to do so.

6. Thereafter on 9th July 2012, the Commandant Shri Manmohan Singh ordered an SFC to be convened on 10th July 2012 at 10 am. There were four accused arraigned before the SFC i.e. the present Petitioner, Ct.(Cook) Shishpal, Ct.(GD) Om Prakash and Ct.(Cook) Onkar Chand. By a separate memorandum dated 16th July 2012, the Petitioner was informed that the SFC would be held on 17th July 2012. On 18th July 2012, the suspension of the Petitioner was revoked by a short order. Thereafter, on 18th September 2012, an order was passed awarding the Petitioner's punishment of dismissal from

service. This was confirmed by the order dated 13th June 2013 of the Commandant and the Petitioner was struck off from the strength of the 21st Battalion with effect from 13th June 2013.

7. Aggrieved by the dismissal order, the Petitioner filed WP (C) 2433 of 2014 which was disposed of on 15th May 2014 by this Court requiring the Respondents to decide his appeal by speaking order. The Petitioner's appeal was dismissed by the Inspector General (Administration) on 2nd July 2014. Thereafter, the present petition was filed

8. This Court has heard the submissions of learned counsel for the parties and has also examined the record produced before the Court.

9. In the counter-affidavit filed by the Respondents, it is contended that copy of the ROE had been provided to the Petitioner. The Court has perused the original record. It is seen that before the SFC, the Petitioner pleaded not guilty. Thereafter, the proceedings commenced in terms of Clause 147 of the SSB Rules, 2009. There were four witness examined. The first witness was HC/GC Kishan Dutt (PW-1). His statement by way of examination-in-chief was to the effect that when Ct.Shishpal went on leave, Ct.Onkar Chand replaced him at the IG's residence. He further stated that when the present Petitioner went on leave LNK (GD) Rigzin Dorje was deployed to replace him. He further stated as under:

“I also remember that from 26 to 30 August 2010, Sh. A.K.Negi was away on tour to Ranidanga alongwith Mrs.Negi and at that time CT/GD Suresh Kumar, CT/Cook Onkar Chand and LNK/GD Ringin Dorje were staying in the staff quarter of

IG residence.”

10. This statement is obviously contradictory to the earlier statement. If indeed the Petitioner went on leave and LNK (GD) Rigzin Dorje replaced him then all three i.e. the Petitioner, LNK (GD) Rigzin Dorje and Ct.(Cook) Onkar Chand could not have been staying together at the staff quarters between 26th and 30th August 2010. In any event, this witness does not state that during this time he noticed any instance where the Petitioner had brought a prostitute to the residence.

11. It will be recalled that the charge against the Petitioner is to the effect that while performing duty with the IG at C-13, HUDCO Place, New Delhi he brought prostitutes on two occasions, one during the month of August 2010 and then again on 4th January 2011. Not only does this witness PW-1 not speak of any incident of that nature in August 2010 involving the Petitioner but he says absolutely nothing about any incident having happened on 4th January 2011. He only speaks of getting a call on 9th January 2011 from Mrs. Negi at around 20.30 hours informing him that a theft had taken place at the residence and he was been shown by her the place from where the items have been stolen. Therefore, PW-1 is totally unhelpful to the prosecution *vis-a-vis* the charges against the Petitioner.

12. The position is no different as regards the next witness Rasik Lal examined as PW-2. He too speaks nothing about any activity in the month of August 2010 as alleged in the charge against the Petitioner. He too says nothing of any incident of 4th January 2011.

13. Bagru Dass (PW-3) also speaks nothing about any incident of August 2010 or of 4th January 2011. In fact there is no whisper of the Petitioner bringing prostitutes to the residential premises of the IG at any stage. On the contrary, he makes a positive statement as under:

“When I was performing duty at the residence at the said officer CT/GD Suresh Kumar and CT/Cook Shishpal Singh never discussed with me about prostitutes and also did not see them bringing prostitutes in the residence of IG (Admn). I also did not find anything objectionable on the part of their behavior when I was performing duty there.”

14. Therefore, it is seen that out of the four witnesses examined by the prosecution, three of them completely failed to support the prosecution vis-a-vis the charges against the present Petitioner.

15. The fourth witness was LNK (GD) Rigzin Dorje (PW-4). He has spoken of an incident on 26th August 2010. He has stated that at the time, he along with the Petitioner and Ct.Onkar Chand (Cook) were residing in the staff quarters of the IG's residence. It will be immediately noticed that this contradicts the statement of PW-1 who stated that when the Petitioner went on long leave LNK (GD) Rigzin Dorje was deputed to replace him. Therefore, it is unlikely that both PW-4 and the Petitioner were at the same place at the same time.

16. PW-4 states that on the day of the incident, he informed the Petitioner and left the residence at around 1400 hours. When he returned at around 1900 hours, he found that the Petitioner, Ct.Onkar Chand and one more person were drinking liquor in their quarters. PW-4 then states that the

Petitioner offered him alcohol but he refused. After having dinner the Petitioner, Ct.(Cook) Onkar Chand went outside to see off the other person i.e Ct.(GD) Om Prakash whereas PW-4 stayed back in the staff quarters. He alleges that one hour later, all three of them came back to the quarters with a woman. When he asked who she was, the Petitioner told him that it was the wife of Ct.Om Prakash. After a while, he along with the Petitioner and Ct.Onkar Chand went up to the roof. After some time, the Petitioner went inside the quarters and then Ct.Om Prakash came out. PW-4 immediately had a doubt and went to the quarters. To enter the room, he had to knock as the door was blocked and the lights were switched off. He alleges that on noticing the woman inside the Petitioner's room he objected and then the Petitioner took the woman out to the rooftop. PW-4 then went to sleep and states that he doesn't know when the Petitioner got back. On the next morning, the Petitioner was in the room and advised PW-4 not to mention the woman being brought to the house to anyone. He then states that he remained deployed at the residence of IG till 29th November 2010 and 'in the meantime Ct.(GD) Suresh Kumar came back from long leave.' PW-4 then speaks of the incident of 9th January 2011 when he was informed by Mrs.Negi that there had been a theft at the residence. In other words, he says nothing about any incident of 4th January 2011.

17. In the cross-examination of PW-4, it is recorded by the Commandant as under:

“CT/GD Suresh Kumar has argued that he has not brought any women to the staff room of the residence of Shri A.K.Negi, IG. He has also cross examined that can the witness produce that women whom I had brought. On this the witness has told that

he cannot bring that women but he has seen from his eyes and recognized that as women.

Other accused namely CT/Cook Shishpal Singh, CT/GD Om Parkash and CT/Cook Onkar Chand declined to cross examine the witness.”

18. There was also a cross-examination by the Court where it is recorded as under:

“I confirm/admit that CT/GD Suresh Kumar, CT/GD Om Prakash and CT/Cook Onkar Chand had brought the women in the staff room of residence of IG (Admn). I recognize that lady being introduced to me as wife of CT/GD Om Parkash. She was of about 35 years of age.

I hereby produce the minute to minute tentative tour programme of Shri A.K.Negi, IG and confirm that he remained on tour w.e.f. 26.08.2010 to 30.8.2010 to Sector Hqrs Ranidanga and to its various units (attached with the proceedings).”

19. Reading of the evidence of PW-4 as a whole reveals that he is unreliable on an essential aspect of the Petitioner going on long leave, being replaced by PW-4 and then the Petitioner coming back to relieve PW-4 only in November 2010. When this is read along with the testimony of PW-1 who stated that when the Petitioner went on long leave, PW-4 came in to replace him, it seems highly doubtful that the Petitioner and PW-4 could have been present at the same time and in particular that PW-4 was present and privy to what happened on 26th August 2010 in the manner described by him. Also it is surprising that PW-4 never spoke about this incident or report it to any authority till the FIR was lodged on 9th January 2011 after the theft at the

residence of the IG. Why he kept quiet so long about the incident is a mystery. This creates serious doubts about the credibility of PW-4. Further he says nothing about anything happening on 4th January 2011 although there is a specific charge against the Petitioner to that effect.

20. With three of the four prosecution witnesses have failed to implicate the Petitioner or even mention about the incidents he was charged with being involved in, and only PW-4 speaking of one incident of 26th August 2010, which is again not convincing, the only conclusion that can be drawn is that the prosecution evidence against the Petitioner was extremely weak and not at all sufficient to find him guilty of the charge.

21. The record also shows that defence statements of the co-accused Ct.(Cook) Shishpal Singh, Ct.(Cook) Onkar Chand and Ct.(GD) Om Parkash were recorded, after they had purportedly pleaded 'guilty'. However, the said co-accused could not have been and in fact were not cited as witnesses for the prosecution and against the Petitioner. In any event, they were not offered for cross-examination by the Petitioner. It may also be noted that by a separate order passed today in W.P. (C) 7843 of 2015 and 2510 of 2017 filed by the said co-accused, this Court has held that their plea of guilty was not recorded in accordance with Rule 144 (2) of the SSB Rules and has set aside the punishment awarded to them.

22. For the above reasons, the Court is of the view that the evidence led before the SFC was wholly inadequate to find the Petitioner guilty of the charges. The recording of his guilt by the SFC which was a single member SFC (being the Commandant himself) is, to say the least, perverse and

wholly unsupported by the evidence on record.

23. Consequently, the Court has no hesitation in setting aside the finding of guilt recorded by the SFC by the order dated 18th September 2012 and the consequential dismissal order dated 30th June 2013 as well as the appellate order dated 2nd July 2013.

24. The Petitioner is directed to be reinstated within a period of eight weeks from today with all consequential benefits with continuity of service including grant of notional increments, seniority and fitment etc. except arrears of salary. The writ petition is accordingly allowed. No order as to costs.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

FEBRUARY 07, 2019

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