

80 12.11.2024
AN Ct. No. 07

WPA 1039 of 2009
IA No.: CAN 1 of 2023
CAN 2 of 2023

Md. Badsha Alam
Vs.
Union of India & Ors.

Mr. Sukanta Ghosh
Mr. Arghya Chatterjee
Ms. Shilpa Thapa

... for the petitioner

Mr. Anindya Sundar Das

... for the Union of India

In Re: CAN 2 of 2023

Learned counsel appearing for the petitioner submits that CAN 2 of 2023 was filed for restoration of the writ petition as the petitioner came to know from the website of this Court that the writ petition stood dismissed for default on 02.03.2020. However, from the record it does not appear that on 02.03.2020 or on any other date the writ petition stood dismissed.

The application being CAN 2 of 2023 stands dismissed as infructuous.

Heard learned counsel for the parties respectively.

The petitioner has challenged the order of the disciplinary authority, the appellate authority and the revisional authority in a disciplinary proceeding.

The petitioner was tried by Summary Force Court on a charge under Section 30(a) of the BSF Act for committing theft of property belonging to a person subject to BSF Act. The charge against the petitioner was that at

SHQ-BSF Amritsar on 14.07.2008 while undergoing EPABX committed theft of Rs. 40,000/- of the property of the constable Janakraj of 131 Battalion, BSF.

The disciplinary authority by an order dated 17.12.2008 held that the sentence of dismissal from service awarded by the Court is justified as well as commensurating with the offence.

Learned counsel appearing for the petitioner submits that false complaints were lodged against the petitioner. The petitioner subsequently returned the said sum of Rs. 40,000/- to Janakraj. He submits that the petitioner ought not to have been dismissed from service.

Heard the learned counsel appearing for the respondent on such submission.

After going through the order dated 17.12.2008, this Court finds that at the trial, the petitioner pleaded guilty to the charge and the Court after compliance of BSF Rule 142(2), recorded finding of "guilty" as pleaded by the petitioner. The said order further recorded that the petitioner was heard by his Commandant under BSF Rule 45 on a proper offence report where he pleaded guilty to be charged and declined to cross-examine the prosecution witness. He even chose not to make a statement in his defence. The said order further records that four prosecution witnesses were examined in the R.O.E., who supported the charge against the petitioner. R.O.E. was prepared in the presence and within the hearing of the petitioner and he was given opportunities to cross-examine

the prosecution witnesses to make a statement in his defence and to produce the defence witnesses. The said order further records that the petitioner preferred to make a statement after having been cautioned under BSF Rule 48(3) in which he admitted his guilt.

Learned counsel appearing for the petitioner in course of his argument could not point out any infirmity in the decision making process. It is well settled that the judicial review is not an appeal against an order passed by the disciplinary authority but it is a review of decision making process. Since no infirmity in the decision making process could be pointed out by the learned counsel appearing for the petitioner in course of his argument, this Court is not inclined to interfere with the instant writ petition and the same stands **dismissed**. Consequently, connected application, if any, also stands **dismissed**.

There will be however no order as to costs.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Hiranmay Bhattacharyya, J.)