

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

% **Date of decision: 21st December, 2020**

+ **W.P.(C) 9849/2020**

JEEVAN SINGH BATHYAL

..... Petitioner

Through: Dr. Surender Singh Hooda, Adv.

Versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Sushant Singh, Adv. for Mr.
Vishal Bakshi, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

JUSTICE RAJIV SAHAI ENDLAW

1. The petitioner, appointed as a Constable with the respondents Border Security Force (BSF) on 7th April, 2011, has filed this petition impugning the sentence dated 5th December, 2019 of dismissal from service, imposed by the Summary Security Force Court (SSFC), and countersigned by Deputy Inspector General (DIG), S.H.Q., Kolkata on 8th January, 2020 as well as the order dated 29th October, 2020 in the statutory petition/ appeal preferred by the petitioner and seeks reinstatement in service, with all consequential benefits.

2. The petitioner was chargesheeted by the SSFC on the following charge:

“CHARGE SHEET

The accused No.112769158 Const/GD Jeevan Singh Bathyal, F Coy, 64 Bn BSF is charged with:

<i>BSF ACT 1968, SEC 40</i>	<i>AN OMISSION PREJUDICIAL TO GOOD ORDER AND DISCIPLINE OF THE FORCE</i> <i>In that he,</i> <i>On 17th Nov.2019 at about 1730 hrs, while performing 2nd Shift OP duty from 1200 hrs to 1800 hrs at OP Point No.06 in the AOR of BOP Gunarmath, failed to perform his duty properly and was negligent enough which resulted in an exfiltration bid by Bangladeshi Nationals, wherein a heavy iron ladder was placed on the fence to scale over the fence and attempt was made in his presence to cross the fence in close proximity to his place of duty. He also didn't take any interest in apprehending these illegal migrants, which resulted in few illegal migrants managing to escape.”</i>
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3. The SSFC found the petitioner guilty of the charge and punished the petitioner with the sentence of dismissal from service.
4. The counsel for the petitioner has contended that he is challenging the dismissal of the petitioner from service on two grounds; firstly, on the ground of unreasonableness and secondly, on the ground of proportionality.
5. We have requested the counsel for the petitioner to first address us on proportionality.

6. The counsel for the petitioner has contended that, (i) the conduct of the petitioner has otherwise been good; (ii) no integrity issues have been found or proved against the petitioner; (iii) the Sub Inspector (SI) who was also on duty along with the petitioner and who appeared as a witness before the SSFC, deposed that he could not apprehend the infiltrators because he did not jump into the *naala*; (iv) it is thus not as if the petitioner alone is to be blamed; (v) no action has been taken against the other two personnel who were on duty at the time of the incident along with the petitioner; and, (vi) the petitioner would have been satisfied if all had been dismissed from service, but the petitioner only has been targeted.

7. We have enquired from the counsel for the petitioner, whether not the misconduct of negligence while on duty to guard the Indo-Bangladesh Border, and across which, it is matter of common knowledge, infiltration at a large scale takes place, is not serious enough to warrant a dismissal from service. We are further of the opinion that the officers / personnel of the force entrusted with guarding the said border, unless, while on duty, act with complete vigilance and commitment, it will be difficult to guard the border and infiltrations, which to the extent of becoming a political issue, will continue. We are thus of the opinion that the ground of proportionality is not available to the petitioner. Even otherwise the ground of proportionality entitles a petitioner to contend the punishment to be disproportionate to the misconduct and does not permit comparison with others against whom mere allegations, as distinct from findings of fact exist.

8. The counsel for the petitioner has next, on the ground of unreasonableness contended that PW-2, being the Assistant Commandant, Incharge of the border at that place, himself in his cross-examination

deposed that, (i) on checking the petitioner immediately after the incident, nothing objectionable was found from his possession; (ii) during day time the neighbouring two guard points are not occupied and half of the area is looked after from the point where the petitioner was posted; so the area of responsibility increases and there are chances of infiltration / infiltration bids; and, (iii) that there had been no earlier complaint against the petitioner.

9. We have however drawn the attention of the counsel for the petitioner to examination-in-chief of the said witness, where he has deposed, that (a) on receiving a call, he reached the subject guard post at 1730 hours, where he found one heavy iron made ladder to have been placed; (b) the petitioner was on guard duty at a distance of about 35-40 yards from the place of incident; (c) it was not possible to place the ladder unless the person on duty had connived; (d) the place where the ladder had been put was too close to the point of duty of the petitioner; (e) the SI aforesaid also present at the time when PW-2 reached the spot, informed him that the petitioner did not show any interest to apprehend the illegal migrants; and, (f) the illegal migrants caught, informed that they had paid money to a tout for crossing over to India.

10. The counsel for the petitioner has contended that what was deposed by the PW-2 Assistant Commandant was on the basis of what he was informed but else in cross-examination he has opined that the area of responsibility where the petitioner was on guard, was large and which led to chances of infiltration / infiltration bid.

11. We are afraid, we are not entitled to go into the question, whether the area of responsibility was large, leading to possibilities of the guard on duty not being able to detect infiltration/infiltration bids. We have to presume

that when it is day time, the guards are entrusted with the larger area of vigilance / supervision, it is within their capability / capacity and if any illegal migration takes place from the area under the supervision, the guards cannot be heard to raise the said ground then.

12. We have also asked the counsel for the petitioner, whether we, sitting in writ jurisdiction, are entitled to interfere with the findings of facts arrived at by the Disciplinary Authorities at as many as four stages. In our opinion, the scope of interference in writ jurisdiction with such decisions is confined to any error of procedure prescribed in conducting the enquiry or in the decision making process or perversity in findings of fact and not on the merits of the decision. In writ jurisdiction, all we have to examine is whether there was some evidence on the basis whereof the authority entrusted with the duty to hold the inquiry and which evidence reasonably supports the conclusion reached. It is not the duty of the High Court, in a petition under Article 226, to review the evidence and to arrive at an independent finding on the evidence. The Departmental Authorities are the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court. In exercising judicial review in disciplinary matters, the High Court has to follow the rule of restraint, as the determination whether a misconduct has been committed, lies primarily within the domain of the Disciplinary Authority; deference to a finding of fact by the Disciplinary Authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service and that disciplinary enquiries are not governed by strict rules of evidence which apply to judicial proceedings; the standard of proof is hence not the

strict standard which governs the criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Reference in this regard may be made to *State of Andhra Pradesh Vs. S. Shree Rama Rao* AIR 1963 SC 1723, *State of Andhra Pradesh Vs. Chitra Venkata Rao* (1975) 2 SCC 557, *Union of India Vs. G. Ganayutham* (1997) 7 SCC 463, *Apparel Export Promotion Council Vs. A.K. Chopra* (1999) 1 SCC 759, *R.S. Saini Vs. State of Punjab* (1999) 8 SCC 90, *Ashok Kumar Vs Sita Ram* (2001) 4 SCC 478, *Registrar General, High Court of Judicature of Madras Vs. K. Muthukumarasamy* (2014) 16 SCC 555, *Director General of Police, Railway Protection Force Vs. Rajendra Kumar Dubey* 2020 SCC OnLine SC 954 and *State of Rajasthan Vs. Heem Singh* 2020 SCC OnLine SC 886.

13. The counsel for the petitioner has drawn our attention to the dicta of this Court in *Ramesh Chander Vs. Union of India* (2016) 232 DLT 113 (DB), where this Court, in paragraphs 28 and 29 of the judgment, after perusing the record and statement of witnesses, found the case to be of no evidence against the petitioner.

14. We find, that why this Court interfered in that case was because the petitioner therein had been meted out the penalty on the basis of an opinion of the witness that delay of 5 minutes by the petitioner in that case in reaching the scene of the incident was deliberate and by reasoning that there was no evidence of deliberate attempt by the petitioner in that case to delay. On the contrary, in the present case, we find the petitioner to have, in his own statement before the SSFC stated that he was alerted about the infiltration on hearing the sounds of “pakro” (catch) and otherwise he was concentrating on the possibility of infiltration at another point. The

petitioner has thereby admitted that he was not paying attention to the entire area under his supervision. The incident of infiltration otherwise is not disputed by the petitioner.

15. We also find from a reading of the testimony of the 3rd, 5th and 6th prosecution witnesses at pages 47, 51 and 53 respectively of the paper book, that there was ample evidence for the charge on which the petitioner has been dismissed.

16. We thus do not find the present to be a case of the petitioner having been meted out the punishment without the evidence being on record. Once there is evidence found on record, the weightage to be given thereto is not in the domain of the writ court and the conclusions to be drawn therefrom are in the exclusive domain of the Disciplinary Authorities who are well versed with the spot and with the duties which are required to be performed.

17. The counsel for the petitioner has then contended that unlike in the Armed Forces where outside the Disciplinary Authorities, a forum of appeal in the form of the Armed Forces Tribunal (AFT) has been set up, there is no such forum for paramilitary forces like BSF; it is argued that for this reason, a little latitude is required to be given in writ jurisdiction.

18. We are afraid the writ jurisdiction cannot be converted into appellate jurisdiction.

19. If the grievance of the personnel of the paramilitary forces is of discrimination viz-a-vis Armed Forces, the same has to be raised separately and the same cannot enlarge the scope of interference in writ jurisdiction.

20. The counsel for the petitioner has lastly drawn attention to the impugned order dated 29th October, 2020 of the Director General of BSF, where the contention of the petitioner that on the subject date i.e. 17th

November, 2019 he was on camp guard duty from 0600 hours to 1200 hours and was ordered to perform OP duty from 1200 hours to 1600 hours and that it was not humanly possible to maintain high level of alertness after continuously performing hard labour duty for almost 12 hours at a stretch, is noticed.

21. The very fact that the Director General, in the impugned order has noticed the aforesaid contention of the petitioner and after noticing the same has dismissed the revision petition of the petitioner, again shows that the final order of dismissal from service is after proper consideration of all facts, findings and contentions.

22. It is also significant that the petitioner, when appeared before the SSFC to depose, did not give the same as a ground.

23. No case for interference is made out.

Dismissed.

RAJIV SAHAI ENDLAW, J.

DECEMBER 21, 2020
'gsr'..

ASHA MENON, J.