

S/L 18
29.06.2021
Court. No. 19
GB

WPA 10645 of 2021

Kumar Sanjay Jha
VS
Union of India & Ors.

(Through Video Conference)

*Mr. Kushal Paul,
Mr. S. Shankar.*

...for the Petitioner.

*Mr. Arijit Majumder,
Mr. Debapriya Gupta.*

...for the Respondents.

The writ petition has been filed challenging the decision of the respondent No.4, that is, the Inspector General Border Security Force, to dissolve the General Security Force Court and convene a *de novo* General Security Force Court to try and charge the petitioner under Sections 40 and 46 of the Border Security Force Act, 1968.

The first contention of the writ petitioner is that an earlier Record of Evidence (ROE) dated June 15, 2020 was abandoned/cancelled and a subsequent Record of Evidence was held on July 20, 2020 just to harass the petitioner and prolong the issue. Pursuant to the Record of Evidence of July 20, 2020, a further General Security Force Court has been convened since June 28, 2021. The petitioner apprehends that the persons whose statements were recorded in the ROE dated June 15, 2020 and the previous General Security Force Court would be examined in the present General Security

Force Court without the petitioner being allowed an opportunity to cross-examine them and without being given the statements of such witnesses.

The next contention of the petitioner is that, the respondents may win over the other charged personnel, involved in the offence namely Pradep Kumar, Balbir Singh and Surjit Singh Kundu, use them as prosecution witnesses and thus exonerate them from the offences and single out the petitioner and impose penalties upon him alone. This according to the petitioner would be discriminatory, arbitrary and contrary to law.

Thirdly, it is submitted that the petitioner and the three of his sub-ordinates should be tried together as the incident out of which the disciplinary proceeding has been initiated was one and the same.

Mr. Gupta, learned advocate appearing on behalf of the respondents submits that the ROE dated June 15, 2020 had been cancelled and abandoned and *de novo* ROE had been initiated. The petitioner being a commandant could not be tried together with the other subordinates, as per the BSF rules. He further submitted that the documents relied upon by the respondents had already been served upon the petitioner. The earlier General Security Force Court was dissolved by invoking the provision of Section 71(3) of the Border Security Force Act, 1968 and a *de novo* General Security Force Court had been convened as per law.

It is submitted by Mr. Gupta that records of the abandoned ROE dated June 15, 2020, and the evidence recorded earlier shall not be used in this proceeding. The General Security Force Court will be a fresh proceeding.

Having heard the contentions of the respective parties, the writ petition is disposed of directing the petitioner to participate in the General Security Force Court, being held *de novo* on and from June 28, 2021. It is made clear that all documents relied upon by the respondents to be used in the proceeding against the petitioner, shall be supplied to the petitioner. The statements of all witnesses, which shall be recorded in this proceeding, shall be supplied to the petitioner. The petitioner shall be allowed to cross-examine all the witnesses produced by the prosecution. The petitioner shall be allowed an opportunity to examine himself and his witnesses. The petitioner shall also be entitled to summon such witnesses who may be necessary for proving his innocence. The apprehension of the petitioner that his subordinates may be exonerated cannot be decided at this stage of the proceeding when the ROE against such persons are in progress. The petitioner shall always be at liberty to challenge the any order at the appropriate stage and all points urged in this writ petition shall be left open for the petitioner to urge at the appropriate stage. Any statements of witnesses that may have been recorded in the earlier proceeding shall not be included in this proceeding. The *de novo* proceeding will continue afresh

from the very initial stages. The authority shall act fairly, impartially and comply with the requirement of law and principles of natural justice.

This writ petition is disposed of.

There will be however no order as to costs.

All parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)