

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA No. 317 of 2021 (O&M)

Date of Decision: 22.03.2021

Roshan Singh

....Petitioner

Versus

Union of India and others

.....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

Present : Mr. J.K. Khetarpal, Advocate, for the appellant.

(Through Video Conferencing)

JASGURPREET SINGH PURI, J.

The present Letter Patent Appeal has been preferred under Clause X of the Letters Patent Act against the impugned order dated 23.02.2021 passed by the learned Single Judge of this Court in Civil Writ Petition No. 10777 of 2019, titled 'Roshan Singh V/s. Union of India and others'.

By way of aforesaid order dated 23.02.2021, the learned Single Judge had vacated the interim order dated 20.05.2019.

The petitioner/appellant had filed a writ petition under Articles 226/227 of the Constitution of India challenging the charge-sheet dated 30.05.2018 issued to the petitioner under the provisions of the Border Security Force Act, 1968 (for short, 'the BSF Act') with a further prayer for quashing of the order regarding vacation of Government quarter.

On 20.05.2019, the learned Single Judge stayed the operation of the impugned order dated 30.05.2018 and directed the respondents to maintain status quo with regard to the contemplated action pursuant to the impugned charge-sheet in view of the submissions made by the learned counsel for the petitioner/appellant that the action of the respondents was in violation of the Section 140 of the BSF Act and was also belated action beyond three months.

Thereafter, the respondent-Union of India filed CM-4568-CWP-2020 for vacation of the stay order dated 20.05.2019. On 23.02.2021, the learned Single Judge vacated the interim order dated 20.05.2019 by observing that the petitioner had not placed the correct perspective before the Court at the time of passing of the stay order. The basic reliance of the petitioner was made on Section 140 of the BSF Act by claiming that there can be no proceedings against the petitioner, who being a member of the Border Security Forces, for an act done by him while he was in active service and that no action could have been taken against the petitioner beyond three months from the date of incident.

The learned Single Judge had observed that Section 140 of the BSF Act provides protection to a member of the service only qua the acts done by him which he performs under the warrants or orders of the competent authority and not qua all the acts and omissions committed by him. The charge-sheet in the present case is not regarding any act on the part of the petitioner qua performance of his duty, as such, as per orders of higher officers and rather the charges alleged against the petitioner are qua disobedience of the orders of the appropriate authority. Furthermore, the limitation of three months for initiation of action against a member of the

Force is regarding those acts which he has performed while exercising powers under the provisions of the Act or if such action is taken by such member of Force in pursuance of the provisions of the Act and by any means, the disobedience to the orders of higher authorities cannot be deemed to be done in pursuance of the powers conferred under the Act or in pursuance of the provisions of the Act and therefore, the case of the petitioner does not appear to be the one covered under the protection provided by Section 140 of the BSF Act.

So far as the other prayer of the petitioner with regard to vacation of house is concerned, the petitioner had already vacated the house himself.

The learned counsel for the appellant has submitted that initiation of the charge-sheet against the petitioner is violative of Section 140 of the BSF Act and Rules 45B and 46 of the Border Security Force Rules, 1969 (for short, 'the BSF Rules'). He has made threefold submissions. Firstly, the appellant stood protected under the provisions of Section 140 of the BSF Act as no action could have been taken against him while he was in service of BSF; secondly, the action, if any, could not have been taken after expiry of three months from the time of incident and thirdly, the charges against him could not have been made or heard by a Commandant other than 'his Commandant', in view of Rules 45B and 46 of the BSF Rules.

We have heard the learned counsel for the appellant.

So far as the first submission made by the learned counsel for the appellant that the appellant stood protected under Section 140 of the BSF Act is concerned, a perusal of Section 140 of BSF Act shows that the acts

done by a member of the Force while performing duties under the Act or in pursuance of any provision of the Act or the Rules stands protected. However, in the present case a perusal of the charge-sheet Annexure P-3 would show that the charges against the appellant pertain to disobeying a lawful command given by his superior officer, knowingly making a false statement in a certificate signed by him and using threatening language to his superior officer and therefore, these charges cannot said to be actions done in pursuance of the provisions of the Act or Rules.

So far as the second submission made by the learned counsel for the appellant that action could not have been taken beyond a period of three months from the date of incident under Section 140(3) of the BSF Act, is concerned, Section 140 (3) provides for a non-obstante clause to protect those legal proceeding (civil or criminal) which may lawfully be brought against any member of the Force for anything done or intended to be done under the powers conferred by, or in pursuance of any provision of the Act or the rules to commence within three months after the act complained of was committed. However, in the present case, the complaint/charges against the appellant are not pertaining to any act done or intended to be done under the powers conferred by, or in pursuance of any provision of the Act or the rules and therefore, the limitation of three months would not apply to the appellant.

So far as the third submission made by the learned counsel for the appellant, that the charges against him could not have been initiated by a Commandant other than his own Commandant is concerned, a perusal of orders Annexure P-2 and P-3 would show that the appellant was posted in the office of Commandant, 96 Bn BSF, whereas the incident took place in

the year 2017 while he was deployed under 40 Bn BSF Baramulla. The provision of Rule 46 shows that a Commandant shall not deal with any case where the offence with which the accused is charged is against the Commandant himself, or where the Commandant is himself a witness in the case against the accused, or where the Commandant is otherwise personally interested in the case and the accused shall be attached to another battalion or unit for disposal of the case under the order of the Deputy Inspector General. Sub Rule 1(a) of Rule 45B provides that the charge against an officer or subordinate officer shall be heard by his Commandant. In the present case, the charge-sheet was issued on 13.05.2018 by the Commandant 96 Battalion BSF and the appellant was posted in the same unit i.e. 96 Battalion BSF and therefore, it cannot be said that there is any infringement of Rules 45B and 46 of the BSF Rules.

The submissions made by the learned counsel for the appellant are misconceived. There does not seem to be any perversity or error or any legal infirmity in the order dated 23.02.2021 passed by the learned Single Judge.

Consequently, the present appeal is hereby dismissed.

(JASWANT SINGH)
JUDGE

(JASGURPREET SINGH PURI)
JUDGE

22.03.2021
rakesh

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No