

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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IN VIRTUAL COURT

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**CWP No. 12050 of 2021
Date of decision : 8.7.2021**

Satyender Kumar Bind

.....Petitioner

Vs.

The Director General, BSF (Disc. & Lit Branch), New Delhi and others

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Rahul Dev Singh, Advocate, for the petitioner

Rajbir Sehrawat, J. (Oral)

This petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of mandamus, directing the respondents to consider the application dated 12.6.2021 (Annexure P-5) of the petitioner for providing the copy of Record of Evidence and Charge Sheet to the petitioner, for preparing his defence. Further prayer of the petitioner is appointment of defending officer of his choice, names of which have already been submitted to the respondents, as per BSF Rules, 1969.

Relying upon the Rule 63 of BSF Rules, 1969, counsel for the petitioner has submitted that the petitioner has a right to choose the defending officer of his choice to present his case during the proceedings of the trial. However, the authorities have not provided him one of the officers which the petitioner had nominated. The second argument of counsel for the petitioner is that the respondents are required to furnish the copy of the charge sheet, as well as, un-expunged record or extract thereof, at least, 4 days before the start

of the trial. However, even that has not been provided to the petitioner.

Notice of motion.

Mr. Dheeraj Jain, Senior Counsel for Union of India has put in appearance on behalf of the respondents and accepts notice.

It is submitted by counsel for the respondents that there is no such Rule which gives any right to a delinquent officer to choose the officer of his choice as a defending officer. However, the respondents authorities had given option to the petitioner to nominate a panel of three officers of his choice to be appointed as defending officer. The petitioner had named 3 officers as a panel. The authorities had sought consent from the officers nominated by the petitioner. Out of those 3 officers, one is not available and other has already communicated in writing his unwillingness. Third officer mentioned by the petitioner is Mr. S.R. Panda. Counsel for the respondents submits that the authorities would again contact Mr. S.R. Panda through E-mail and would seek his consent to be defending officer for the petitioner. If he consents to the same, then the petitioner shall be provided the assistance of Mr. S.R. Panda by appointing him as defending officer. Even on the point of furnishing of the documents, counsel for the respondents submits that copy of the charge sheet has already been supplied to the petitioner. Other record, as required under the Rules, is required to be supplied to him at least 4 days before the start of the trial. Trial is not going to start in next 4 days. Therefore, there is no illegality in the action of the respondents. However, the respondents shall comply with the rules and ensure that the petitioner is furnished with the copies of charge sheet and requisite and prescribed record at least 4 days before the start of the trial.

Having heard counsel for the parties, this Court finds that the Rule 63 of the BSF Rules, 1969 does talk of providing a defending officer to the delinquent official. However, that rule nowhere gives an option or choice to the concerned delinquent official to nominate any panel or choose the name of the defending officer for himself in advance. The rule only requires that when the departmental authorities name and appoint a defending officer, the delinquent official shall be given an opportunity to object to the said names. However, the rule does not provide any further right to the delinquent official to insist upon any particular officer. A fair reading of the rule would make it clear that if the circumstances so require then despite objection of the delinquent official, the authorities can provide him the same defending officer which was proposed by the authorities in the first instance. Hence, this Court does not find any such right with the petitioner to choose the defending officer of his choice.

Moreover, as counsel for the respondents has fairly submitted, the petitioner was granted an opportunity to propose 3 names. The petitioner had furnished 3 names. Out of those 3 names, one has already communicated his unwillingness and the second is not available as per the official records. So far as third officer, which is most desired by the petitioner, Mr. S.R. Panda is concerned, counsel for the respondents has submitted that the department will communicate with this officer in writing through E-mail and if he consents to be the defending officer; then they will provide the said officer as the defending officer to the petitioner. In view of this situation, this Court need not go further on this issue.

So far as providing the record is concerned, the grievance of the

petitioner already stands redressed with the statement of counsel for the respondents that in compliance of the rule, the petitioner would be provided with the requisite record or extract thereof; at least 4 days in advance before the start of the trial.

Hence, this issue also stands settled with the above said statement of counsel for the respondents.

In view of the above, the present petition is disposed of with a direction to the respondents to comply with the above said statement made by counsel for the respondents and, accordingly, seek a written consent from Mr. S.R. Panda qua his becoming defending officer of the petitioner. However, if he does not agree to be defending officer; then the proceedings shall continue with the defending officer which has already been nominated by the departmental authorities or with any other defending officer which the departmental authorities may think appropriate to provide to the petitioner. The respondents are further directed to furnish the copies of the charge sheet, the requisite record or extract thereof, in compliance of the rule, at least 4 days before the actual start of the trial.

(RAJBIR SEHRAWAT)
JUDGE

8.7.2021.

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No