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

+ **W.P. (C) 758/2021**

EX CT SOBENDRA BHADANAPetitioner

Through: **Mr. A.K. Trivedi, Advocate**

Versus

UNION OF INDIA AND ORSRespondents

Through: **Mr. Rahul Sharma with
Mr. C.K. Bhatt, Advocates**

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Date of Decision: 15th March, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petition has been filed challenging orders dated 07/08/2019 (conviction order), 2nd January, 2020 (order of appellate authority) and 14th May, 2020 (order in revision) as well as the Summary Force Court [SFC] proceedings. Petitioner also prays for a direction to the respondents to reinstate the petitioner in service from the date of his removal and grant him all the consequential benefits.

2. Briefly stated, the facts of the present case are that the petitioner, who was a Constable (GD) in Sashastra Seema Bal [SSB], while performing his duties in *Panchayat* election-2018 at Udhampur (J&K) in the intervening date of 20.11.2018 and 21.11.2018 at about 2315 to 0100

hrs misbehaved with the civilians at the counting place as well as his senior officers and used threatening language with the superior officer i.e. SI/GD Shailesh Kumar, when the superior officer tried to interfere in the aforesaid matter. It was also alleged that the petitioner had pushed and assaulted another senior officer ASI(GD) Subhash Chand Pathania which had resulted in the said senior officer falling into an abyss. Accordingly, the petitioner was charged under Sections 22 (a), 22(b) and 23(2)(a) of the SSB Act 2007. The petitioner was tried by Summary Force Court at 42nd Bn SSB Baharaich on 07.08.2019 wherein he was found guilty of all charges. The disciplinary authority i.e. Commandant, 42nd Bn SSB awarded the punishment of "Removal from service" on 07.08.2019 to the petitioner.

3. Against the removal order, the petitioner preferred an appeal, which came to be dismissed, vide order dated 2nd January, 2020. The petitioner further filed a revision petition that was also dismissed vide order dated 14th May, 2020.

4. He has now filed the present petition impugning all the three orders namely conviction order dated 7th August, 2019, appeal order dated 2nd January, 2020 and revision order dated 14th May, 2020.

5. Learned counsel for the petitioner states that the petitioner had never admitted his guilt in the present case. He further states that there is no evidence on record to prove that the petitioner had pushed ASI(GD) Subhash Chandra Pathania into a ditch.

6. He emphasizes that similar proceedings had been initiated against one Sh Bajrang Thakur, but he has been awarded only penalty of Reduction of two stages, whereas, the petitioner against whom there is no

evidence regarding alleged charges has been arbitrarily removed from service.

7. At the outset, it is pertinent to note that the scope of judicial review of the findings of a SFC is limited. In pursuance to the powers under Article 226, this Court is only required to examine whether the SFC has been properly convened and the proceedings of the SFC are in accordance with the procedure prescribed by the BSF Act and the BSF Rules. This Court, while exercising jurisdiction under Article 226, would not interfere with the findings of a SFC unless the findings are ostensibly perverse i.e. wholly without any supporting evidence or against the evidence on record.

8. In the present case, the record of evidence shows that PW1 SI(GD) Satish Kumar had categorically stated in his statement that the petitioner had pushed ASI(GD) Subhash Chandra Pathania. He had also stated that ASI(GD) Subhash Chandra Pathania was carrying a loaded carbine at the time of this incident and the same could have lead to a mishap.

9. Similarly, another witness being PW7 HC(GD) Satnam Singh had supported the case of the prosecution and gave a detailed description of PW3 ASI(GD) Subhash Chandra Pathania being pushed into a ditch by the petitioner. In fact, the officer who had been pushed i.e. PW3 ASI(GD) Subhash Chandra Pathania was also examined as a witness and he has corroborated the statements of the aforesaid witnesses.

10. It is pertinent to note that while cross-examining these witnesses, the petitioner had not challenged their statements wherein it was mentioned that the petitioner had pushed ASI (GD) Subhash Chandra Pathania. In fact, the questions put by the petitioner in the cross-

examinations indicate that he had admitted the factum of pushing PW3 ASI(GD) Subhash Chandra Pathania into a ditch.

11. The relevant portions of the statements of the PW1, PW3 and PW7 as well as the relevant portion of their respective cross-examinations are reproduced hereinbelow:-

A) Statement & Cross-examination of PW-1 SI (GD) Shailesh Kumar

“PW-1 First witness For prosecution

Statement of SI (GD) Shailesh Kumar of 42nd Bn SSB Bahraich-I

.....We stood with the polling personnel and policemen standing outside, then suddenly Sobendra bhadana, stood in front of the private Auto Car coming from the front on the road. After my instructions he was removed from the road by the Soldiers and after being persuaded by SI(GD)Surendra Prakash, he was sited in the bus, the man in Alto walked away by threatening to complain to the police, then ASI(GD) Subhash Chandra Pathania, urge not to do such acts in the gathering of the civilians. CT(GD) Bajrangi Thakur, started arguing in support of CT(GD) Sobendra bhadana with the Section commander, than Sobendra Bhadana, sitting inside the bus came out of the Bus and pushed ASI(GD)Subhash Chandra Pataniya and he had fallen into the 10ft Gadda. Subhash Chandra Pataniya had his personal weapon carbine on which the magazine was loaded, due to which a big accident could happen.....

Cross examination by the accused

In compliance to Rule 51 (2) SSB Rule 2009 the accused was given opportunity to cross examine from witness. Which he availed and requested for cross examination from the witness as under.....

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xxx

xxx

CT(GD) Sobendra Bhadana - Did I have my personal weapon when I fell into the abyss/ chasm with SI(GD) Shubhash Pathania?

SI(GD) Shailesh Kumar - You did not have your personal weapon.

CT(GD) Sobendra Bhadana - When the party went to lift you up from the abyss, did you order it?

SI(GD) Shailesh Kumar - Yes, I ordered.”

B. Statement and Cross-examination of PW-3 ASI (GD) Subhash Chander Pathania

“PW3-Third prosecution witness

“Statement of UIN-11080346 ASI(GD) Subhash Chander Pathania of 42nd Bn SSB Bahraich-1

.....At the same time civil vehicles were also coming. CT(GD) Sobendra Bhadana stood on the road, then ASI(GD) Surendra Prakash said that you should get off the road, then a civil driver said that within a minute I can remove your uniform. Then I told to CT(GD) Sobendra Bhadana that do not waste the respect we have received from this uniform. Then CT(GD) Sobendra Bhadana turned towards me and shouted loudly that you are a thief. I Immediately told the platoon commander, SI(GD) Shailesh Kumar, that CT(GD) Sobendra Bhadana is misbehaving with me, then the platoon commander said that you have to give in writing. On the same, CT(GD)Bajrangi Thakur said that I had seen many like you, I had also fight in RRT, but nothing happened to me. Then CT(GD)Bajrangi Thakur also started misbehaving with the platoon commander. Then I told him that you should not fight with him. Meanwhile, CT(GD) Sobendra Bhadana came and slapped on my face and push me in the abyss, at that time my personal weapon was also with me. I somehow manage to come over the abyss and

blood was coming out of my nose. The platoon commander took my photo and sent it to Deputy Commandant Jai Prakash Saheb.....

Cross examination by the accused

08. You said that I had slapped you and you fell into the abyss, did you fell into

the abyss alone or did I fell into the abyss with you too?

Answer: No, you did not fall, only I fell.

09. When you come up from the abyss, did I still did any Misbehave with you?

Answer: No, you did not misbehave with me.”

C. Statement and Cross-examination of PW-7 HC(GD) Satnam Singh

“Statement of Reg. No.050371042 HC(GD) Satnam Singh of 72nd Bn SSB Bahraich-1

.....On 20.11.2018 Polling Centre went to Osku to collect the ballot box at Pakhalai. Due to the absence of a bus in Pakhalai, we stayed near bus. At the same time, there was a debate between ASI(GD) Subhash Chander Pathania and CT(GD) Bajrangi Thakur. In the meantime CT(GD) Sobendra Bhadana pushed ASI(GD) Subhash Chander Pathania Sahab and both went into the abyss 10-15 feet below. This entire incident was being witnessed by the civil public there also. Some polling staff got off our bus and went to civil bus. At that time, we are facing difficulty to control CT(GD) Sobendra Bhadana.

Cross-examination by the accused

03. As you said, I pushed ASI(GD) Subhash Chander Pathania saheb, where were you at that time, are you standing close to me or at distance?

Answer: I reached you in 10-15 steps.

4. *When I pushed saheb, who were present there?*

Answer: At that time, there were ASI(GD) Subhash Chander Pathania, CT(GD) Bajrangi Thakur and some other people whom I do not know because the company was mixed because of elections.

05. *When I pushed saheb, SI(GD) Sailesh Saheb was present there?*

Answer: When you pushed Pathania Saheb and you both went down into the abyss and when you both were brought from the abyss, Sahilesh Saheb was present here.

06. *Did you see with my own eyes that I pushed Pathania saheb?*

Answer: Yes, I saw with my own eyes.

07. *When I pushed you, then how did I go with you into the abyss?*

Answer: You came from behind. That is why you also went along while pushing.

08. *Did I come from behind you or from front?*

Answer: You came in front of me.

09. *Which side of the abyss were you standing on and which side were Pathania aheb and Bajrangi Thakur standing?*

Answer: I stood on the hill adjacent to the road and Pathania Saheb and Bajrangi Thakur were standing on the side of the road towards the abyss.

10. *When I ran in front of you, did you tried to stop me or asked why you are running?*

Answer: You suddenly ran and pass away in front of me.

11. *When I rant in front of you, did I have any personal weapon at that time?*

Answer: No, you did not have.

12. When we fell down into the abyss, did anyone come to lift both, or did we come by own from there?

Answer: 3-4 jawans went to pick up ASI(GD) Subhash Chander Pathania Saheb, I did not remember their names, and I brought you up from abyss.

13. When you went to take me down from the abyss, did someone give you an order or go on your own?

Answer: No one had given me an order because when any of your partner has fallen into the abyss, then it is my duty to save him.”

12. In view of the aforesaid testimonies and cross-examinations, this Court is of the opinion that the findings in the impugned orders are not perverse or contrary to law as they are based on the evidence on record. In fact, the arguments raised by the petitioner herein are contrary to the record inasmuch as the statements of PW1, PW3 and PW7 remain uncontroverted and prove the charges against the petitioner.

13. This Court is also of the view that even if it were assumed that the petitioner had not admitted his guilt, the same would make no difference to the petitioner's case on account of the overwhelming evidence on record.

14. Further, the allegation of pushing a senior officer into a ditch while that senior officer was carrying a loaded carbine was only against the petitioner. Such allegations were not against Sh. Bajrangi Thakur and therefore, the petitioner cannot claim parity with him.

15. This Court is of the opinion that the incident of pushing a senior officer while that officer was carrying a loaded carbine is not something that can be brushed aside with a minor punishment. The petitioner is a member of a disciplined force and cannot be allowed to act in such an undisciplined manner. Consequently, the punishment of removal from service was appropriate in the facts of the present case.

16. In view of the aforesaid, present petition, being bereft of merits, is dismissed.

MANMOHAN, J

ASHA MENON, J

MARCH 15, 2021
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