

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

% **Date of decision: 12th July, 2021.**

+ **W.P.(C) 6357/2021**

KARAN SINGH **Petitioner**

Through: Mr.Prateek Gupta, Adv

versus

UNION OF INDIA & ORS. **Respondents**

Through: Mr.Prasanta Varma, Mrs.Prativa
Varma, Mr.Amit Singh Khalsa and
Ms.Hiteshi Kakkar, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

CM No. 20013/2021 (for exemption)

1. Allowed, subject to just exceptions and as per extant Rules.
2. The application is disposed of.

W.P.(C) 6357/2021 and CM No. 20012/2021 (for interim orders)

3. The petitioner, appointed as a Constable in the respondent Border Security Force (BSF) on 5th January, 2001, has filed this petition impugning the order dated 20th June, 2019 of the Inspector General of BSF of dismissal of the statutory petition under Section 117 of the BSF Act, 1968 (BSF Act), preferred by the petitioner against the order dated 9th January, 2019 of the Summary Security Force Court holding the petitioner guilty of the charges of (i) assaulting a superior officer, (ii) insubordination, and (iii)

being intoxicated on duty and imposing the punishment under Sections 20 and 26 of the BSF Act on the petitioner of dismissal from service.

4. Considering the action impugned, the delay of more than 2 years in preferring this petition indicates that the petitioner, though dismissed from service, is not seriously affected thereby.

5. The counsel for the petitioner has drawn our attention to page 109 of the e-file, being the letter dated 23rd December, 2018 of the Commandant, BSF to the petitioner as under:-

“No. Estt./03 Bn/Disc/SSFC/CT Karan/18/19472-74

*Headquarters, 3 Bn BSF
82 Miles Nalkata
Tripura – 799266
Dated the 23rd Dec. 2018*

To,

*Sr. 010035120
CONST.(GD) KARAN SINGH
“A” COY*

Sub: SUMMARY SECURITY FORCE COURT

I propose to try you by holding a Summary Security Force Court on 07 Jan 2019 in the office of the COMMANDANT, 3 Bn BSF at Bn HQ 82 Miles, Nalkata, Tripura for following offence under BSF Act 1968 as committed by you:-

- (i) U/s 20(a) - ASSAULTING HIS SUPERIOR OFFICER*
- (ii) U/s 20(c) - USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER*
- (iii) U/s 26 - INTOXICATION*

2. This is to inform you that under provision to BSF Rule 157 during trial at a Summary Security Force Court you may take

assistance of any person including a legal practitioner as you may consider necessary provided that such person shall not examine or cross examination witness or address the court.

3. *Under the provision of BSF Rule 63(2) you are hereby directed to intimate name of one of the available officer of this unit who will remain present throughout the trial as friend of the accused. Your reply should to reach to the undersigned by 1st Jan 2019 positively.*

*Sd/-
COMMANDANT
03 BN BSF"*

and has argued, that Rule 63(2) of the BSF Rules, 1969 (BSF Rules) referred to in para 3 of the aforesaid communication is not applicable to the Summary Security Force Court, in light of Rule 63(6) of the BSF Rules and it is Rule 157 of the BSF Rules which is applicable. It is contended that thus the direction to the petitioner in para 3 of the letter aforesaid, to intimate name of one of the available officers of the unit who would remain present throughout the trial, as friend of the petitioner, was contrary to the Rules and owing thereto, the findings of the Summary Security Force Court are liable to be set aside and the Inspector General of respondent BSF has not considered the said aspect and wrongly rejected the statutory petition of the petitioner.

6. We have enquired from the counsel for the petitioner, whether the petitioner, in his statutory petition to the Inspector General, took the aforesaid plea.

7. The counsel for the petitioner fairly states that the said plea was not

taken and has been taken in this petition for the first time.

8. We have drawn the attention of the counsel for the petitioner to para 2 of the letter dated 23rd December, 2018 aforesaid, where the petitioner has been informed of Rule 157 of the BSF Rules and been given an opportunity required to be given thereunder. We have further enquired from the counsel for the petitioner, whether the petitioner availed of the opportunity given vide para 2 of the letter dated 23rd December, 2018.

9. The answer is in the negative.

10. The reason therefor is obvious. The petitioner did not choose to contest the three charges against him and pleaded guilty. Thus, the question of the Summary Security Force Court conducting any trial did not arise and there was no occasion for the petitioner to take assistance of any person including a legal practitioner, before the Summary Security Force Court.

11. The counsel for the petitioner has also argued that the petitioner is a recipient of 10 cash awards and that in the year 2004 had met with an accident, owing thereto he remained hospitalised for a year and still suffers from epilepsy. It is pleaded and argued that the said accident has deeply impacted the behaviour of the petitioner, justifying a lenient view to be taken.

12. The incident which led to the petitioner being charged, is of 26th July, 2018 i.e., of after 14 years from the accident suffered by the petitioner. The petitioner, after such long period of time from the accident pleaded, is not entitled to any benefit thereof. The charge against the petitioner of abusing and assaulting his superior officer, upon the superior officer checking the petitioner for being intoxicated, is of a serious nature; personnel of a disciplined force like BSF, likely to be posted in camps and in hard terrains,

if keep on fighting with each other, would be unable to protect the borders of the country and for affording which protection they are posted at such places. There is thus no place for conduct in which the petitioner indulged. Unless zero tolerance to such conduct is exhibited, the discipline in the force will be marred.

13. No other argument has been otherwise raised by the counsel for the petitioner.

14. Once, the only procedural irregularity argued, is found to be of no avail and/or having not resulted in any prejudice to the petitioner, the question of interfering with the punishment meted out to the petitioner, of dismissal from service, when the said punishment has been inflicted by following the procedure prescribed in law, does not arise.

15. The counsel for the petitioner, during the arguments also contended that the entire proceedings were in English language, which the petitioner did not understand.

16. However, on enquiry whether the petitioner at any time complained that he was not understanding the proceedings and/or demanded the same to be conducted in Hindi language, it is stated that there is no such thing on record.

17. As aforesaid, this petition itself has been filed after 2½ years of the order of the Summary Security Force Court and after 2 years of the rejection of the statutory petition; considering such lapse of time, the pleas now taken, appear to be an afterthought and which, at the contemporaneous time are not found to have prejudiced the petitioner in any way whatsoever.

18. The counsel for the petitioner has lastly contended that the petitioner, till the date of his dismissal, has served for 18 years and on completion of

20 years of service would have been eligible for retiral benefits.

19. The fact however remains that the petitioner has not completed the minimum eligible service and once as per the counsel for the petitioner himself, the petitioner, without completing service for the said tenure is not entitled to any retiral benefits. No case for granting the same to the petitioner is made out.

20. There is no merit in the petition.

21. Dismissed.

RAJIV SAHAI ENDLAW, J

AMIT BANSAL, J

JULY 12, 2021
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