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

% **Date of Judgment: 29th July, 2021**

+ W.P. (C) No.7159/2021
RAKESH KUMAR Petitioner
Through: Mr. Shahrukh Ejaz, Mr. Nilotpal Bansal,
Mr. Sahil Sood and Ms. Namita Jose, Advs.
versus
UNION OF INDIA & ANR. Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

C.M. No.22619/2021 (Exemption)

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

W.P. (C) No.7159/2021

3. The petitioner was appointed as a Constable/General Duty (GD) with the respondents Sashastra Seema Bal (SSB) on 13th September, 2010. Vide Memorandum dated 1st February, 2019, a vigilance inquiry was initiated against the petitioner regarding his involvement in a recruitment racket. A convening order in respect of a Court of Inquiry was issued on 10th June, 2019 to investigate into the aforesaid conduct of the petitioner. Pursuant to the Court of Inquiry, a Memorandum dated 20th August, 2020 was issued to the petitioner by the office of the Commandant wherein offence under Sections 33 (f) and 43 of the Sashastra Seema Bal, 2007 (SSB Act) was

alleged. Subsequently, on 22nd August, 2020, an order for preparation of Abstract of Evidence was issued by the respondents. After the Abstract of Evidence was prepared, a Memorandum dated 31st August, 2020 was issued to the petitioner informing him that a Summary Force Court shall be held against him on charges under Sections 33 (f) and 43 of the SSB Act. The charges levelled against the petitioner in the charge sheet, annexed as Annexure P-9 to the petition, are set out below:

“Charge No. I

Section 33(f) of SSB Act, 2007

Does any other thing with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person

In that he,

Counterfeits seal/stamp of In-Charge Line Office, SSB, FHQ with intention of committing forgery which was found in his possession on 06 September, 2017, knowing same to be counterfeit.

Counterfeits seal/stamp of Asstt. Account Officer (Admin) PAO, SSB, (MHA) New Delhi with intention of committing forgery which was found in his possession on 06 September 2017 knowing same to be counterfeit.

Made false railway protection force ID Card in the name of Constable Rakesh Kumar with intent to commit fraud which was found in his possession on 06 September 2017

Charge No. II

Section 43 of SSB Act, 2007

Violation of good order and discipline

In that he,

Counterfeits seal/stamp of In-Charge Line Office SSB, FHQ counterfeits seal/stamp of Asstt. Account Officer (Admin) PAO SSB, New Delhi, false railway protection force ID card in the name of Constable Rakesh Kumar was found in his possession on 06 September 2017

Charge No. III

Section 43 of SSB Act, 2007

Violation of good order and discipline

In that he,

Was found involved in corrupt practices of taking bribe from the candidates assisted in getting to pass from written and trade test of driver. ”

4. On 19th October, 2020, the impugned order was passed by the Commandant and the petitioner was found guilty of all charges and awarded a sentence of dismissal from service under Section 51(1)(c) of the SSB Act. The petitioner moved a petition under Section 131 read with Section 169 of the SSB Act in the office of Directorate General, SSB against the order dated 19th October, 2020 which was dismissed by the office of Directorate General vide order dated 16th June, 2021.
5. The aforesaid two orders dated 19th October, 2020 and 16th June, 2021 have been impugned by the petitioner in the present petition.
6. The counsel for the petitioner has drawn our attention to the charge-sheet issued against the petitioner. The counsel for the petitioner has submitted that the time and place of the incident have not been mentioned in the charge sheet. He contends that in terms of Rule 57(5)(a) of the SSB Rules, the charge sheet is required to state the time and place of the alleged offence. He further relies upon Section 88 of the SSB Act to contend that the trial by the Summary Force Court against the petitioner would be time barred, as it was commenced after a period of three years of the offence, and since no date of offence has been mentioned in the charge sheet, the petitioner ought to be given the benefit of the same.

7. In our view, there is no merit in the said contention of the petitioner. A perusal of charges nos.1 and 2 levelled against the petitioner shows that the said charges clearly mention 6th September, 2017 as being the date on which the counterfeit seal/stamp and other incriminating evidences were found in possession of the petitioner, which essentially means that the offences were committed on the said date, and the Summary Force Court was convened on 4th September, 2020, within three years of the commission of the offences. A reading of charge no.3 makes it abundantly clear that the said charge has to be read with charges nos.1 & 2. Therefore, the contention of the petitioner that the proceedings were time barred, is rejected. No prejudice has been caused to the petitioner even if the place of the offence was not mentioned, the petitioner was well aware of the proceedings against him since 2017.

8. Next, it is contended on behalf of the petitioner that there is no evidence against the petitioner that he has counterfeited the seal/stamp of the respondents. Again, the said contention is devoid of merits and is based on a misreading of the charge no. 1. What emerges from a reading of the charge no.1 is that the petitioner was found in possession of counterfeit seal/stamp of the respondents with the intention of committing forgery.

9. We have also gone through the order dated 16th June, 2021 passed in exercise of Section 131 of the SSB Act. It is a detailed and well reasoned order, wherein all contentions made by the petitioner have been duly considered. It is neither the case of the petitioner and nor was it contended by the counsel for the petitioner that the submissions made by the petitioner have not been duly considered in the said impugned order. Relevant extracts from the impugned order are set out below:

“Reply Para (8,9,10,11):-It is not just one article but four illicit/forged articles (two forged government stamps (AAO(Admn) PAO, Line office, FHQ), one fake RPF Identity card, photos of petitioner in uniform of Sub-Inspector) apart from other articles corroborating petitioners's involvement in influencing recruitment processes were found together at a time in the possession of the petitioner. Moreover, the statements of prosecution witnesses further substantiate the wrongdoings by the petitioner. Also, the petitioner was given enough opportunity to present his defense at all stages but no defense witness or evidence were brought to the fore.

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Reply:-The petitioner was tried by SFC as per SSB Act & Rule. During the proceedings of SFC, all witnesses and evidences were examined; all the charges against the petitioner were proved on the basis of statements given by independent witnesses and evidences so produced before the Court. The petitioner was given all opportunities at all stages to defend his defense but failed to corroborate his explanation.

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Reply:- The statements of CT/WM Hemraj, 46 Bn recorded during COI and AOE and also during SFC as prosecution witness-01 which brought out to that the petitioner demanded Rs. Two lakhs from him as bribe to help a candidate clear the trade test during Constable Driver recruitment process.”

10. As is evident from the above, the findings of the Summary Force Court against the petitioner were based on statements of nine witnesses and material evidence available on record. Based on the above, it was concluded that the petitioner was taking bribe from the candidates to enable them to pass written and trade test for the post of Driver. Additionally, incriminating material and documents were recovered from the petitioner, corroborating

the charges against the petitioner of having been in possession of counterfeit seal/stamp of the respondents.

11. Having gone through the record and the impugned orders, no case is made for interference. We are satisfied that the authorities have duly applied their mind and have passed well-reasoned orders as per the evidence on record. The petitioner has been provided ample opportunities to defend his case and all principles of natural justice have been followed in full. No procedural irregularities have been found to be committed by the respondents. It is well settled that scope of interference by High Courts under Article 226 of the Constitution of India in matters involving departmental disciplinary proceedings against an employee, is very limited. Such interference is confined to correcting errors of law or procedural errors resulting in manifest miscarriage of justice or principles of natural justice. It is only in those cases where the principles of natural justice have not been followed and the respondent has acted in violation of the corresponding Rule or the punishment is disproportionate to the offence that Courts ought to exercise their powers of judicial review. In this regard reference may be made to ***B.C. Chaturvedi Vs. Union of India & Ors.*** (1995) 6 SCC 749, ***Govt. of A.P. & Ors. Vs. Mohd. Nasrullah Khan*** (2006) 2 SCC 373 and ***Deputy General Manager (Appellate Authority) & Ors. Vs. Ajai Kumar Srivastava*** (2021) 2 SCC 612.

12. All the contentions raised by the counsel for the petitioner are in the nature of appreciation/re-appreciation of evidence, and under powers of judicial review, the Court is not to act as an appellate body to re-appreciate evidence and arrive at its own independent findings. Reference in this regard may be made to ***B.C. Chaturvedi*** supra.

13. The counsel for the petitioner has relied upon the judgment of the Supreme Court in *Ranjit Thakur Vs. Union of India* (1987) 4 SCC 611. The said judgment defines the scope of judicial review in departmental proceedings. It is provided that exercise of the writ jurisdiction under Article 226 of the Constitution is against the decision making process and not against the decision. It has further held that the punishment should suit the offence and should not be unduly harsh or so disproportionate to the offence as to shock the conscience. Even though, in *Ranjit Thakur* supra, the Court interfered with the impugned orders on the ground that the punishment was strikingly disproportionate to the alleged offence committed by the petitioner therein, the same is not the situation in the present case. Based on concurrent findings of two authorities, the petitioner in the present case has been found guilty of forging official seal/stamps of the respondents and has indulged in acts of corruption by taking bribes from candidates to enable them to pass the written and trade test for the post of Driver. The aforesaid offences are grave in nature and the punishment of dismissal from service awarded to the petitioner is not unconscionable in the facts and circumstances of the present case.

14. There is no merit in the petition.

Dismissed.

AMIT BANSAL, J.

RAJIV SAHAI ENDLAW, J.

JULY 29, 2021

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