

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 20021 of 2014

Jaswant Singh

Versus

Union of India & Ors.

For the petitioner : Mr. Mainak Bakshi
.....Advocate

For the UOI : Ms. Chandreyi Alam
.....Advocate

Heard lastly on : 05.08.2022

Judgment on : 16.09.2022

Jay Sengupta, J.:

1. This is an application seeking direction upon the respondents to set aside the order of dismissal from service of the petitioner dated 30.04.2002, vide Memo No. Estt/SSFC/Hc-JS/63 Br/02/5505 Headquarters, 63 Bn., BSF, Baishnabnagar, West Bengal and the entire Summary Security Force

Court Trial proceeding arising out of charge-sheet dated 25.05.2002 and 26.04.2002.

2. The petitioner was recruited in the Border Security Force (BSF, for short) as a personnel on 01.03.1985. On 12.12.1993 he was posted in 63 Bn at Malda. In the night 28/29.01.2002, the alleged incident of cattle smuggling occurred. On 25.02.2002 a charge-sheet was issued against the petitioner. The petitioner was heard by his Commandant under Rule 45 of the BSF Act on 25.02.2002 on an offence report in which one prosecution witness was examined. After conclusion of the hearing, the Commandant ordered preparation of record of evidence (ROE). 5 witnesses were examined. At the conclusion of evidence the petitioner made a statement. The Summary Security Force Court passed an order against the petitioner on 26.04.2004. He was dismissed from service on 30.04.2002. Being aggrieved, he preferred an application before the High Court at Allahabad, which passed an order on 04.04.2003. Finally, the appeal preferred by the petitioner was dismissed on 15.03.2014.

3. Mr. Mainak Bakshi, learned counsel for the petitioner submitted as follows. The petitioner was detailed to perform naka duty at naka point 2 of BOP Kanchantar along with CT. Bhanwar Singh and CT. Bhowmik. The duty of naka party was detailed as - HC Jaswant Singh from 23.00 to 00.20 hours, CT. Bijay Kumar Bhowmik from 00.20 to 01.40 hours and CT Bhanwar Singh from 01.40 to 03.00 hours. The opening time of the Naka was 03.00 hours to 05.00 hours. After performing the naka, the petitioner reported back at BOP Kanchantar. Before leaving the naka, the petitioner

along with CT Bhowmik checked the AOR of naka 2 and did not find any hoof marks of cattle heads. Again the petitioner reported at BOP Kanchanter and was again detailed to perform duty with CT. Bhowmik at OP 1 where he reported at 07.20 hours. Balkar Singh, DC Coy Commdr arrived . CT. Bhowmik raised an alarm alerting cattle movement. 8 cattle heads were apprehended. Soon thereafter SI Hoshier Singh arrived along with HC Omprakash and CT Roshan Prodhan. The petitioner denied to have said that SI Hoshier Singh told him to make seizure of cattle heads after giving line to the smugglers. During the proceeding at the Summary Security Force Court (SSFC, for short), the petitioner pleaded guilty to the charge under Section 40 of the BSF Act, but pleaded not guilty to the charge under Section 34(a) of the BSF Act. The SSFC proceeded in respect of the second charge, examined two witnesses and awarded dismissal of the petitioner from service. The evidence adduced during ROE raised doubts about the involvement of the present petitioner in the alleged wrong doing. PW 4 Balkar Singh, DC Coy Commdr alleged the petitioner was told by SI Hoshier Singh to catch or seize cattle heads and due to this they had given the line to the smugglers. PW 3 Hoshier Singh in his evidence stated that the visibility was very poor due to heavy fog. The company Commandant reached at BOP Kanchantar at 8:45 hours on 29.01.2002 and asked whether the former had permitted Hoshier Singh, Jaswant Singh to seize cattle after giving the line to the smugglers. Hoshier Singh requested him to call HC OP Pandey and Jaswant Singh recording such false statements and HC Jaswant Singh denied that he had been told to catch cattle heads. The

above referred purported making of false statement by the petitioner was not proved by any independent witness. In fact, CT. Bhowmik denied to have heard Jaswant Singh say anything as alleged. Moreover, PWS 1, 2, 3, 4 and 5 corroborated each other on the factual aspect of poor visibility due to heavy fog at the relevant point. The petitioner accepted the blame in terms of Section 45 of the BSF Act in respect of proven adverse weather conditions. That apart, the hoof marks of cattle heads found at the border might not be due to a movement of cattle on the fateful night. First, on merits the charge was not made out against the present petitioner. The petitioner was not provided with the abstract of evidence prepared and the evidence recorded post arraignment. He was only provided with the ROE. No document was available to show acknowledgment of receipt by the petitioner of such documents. Non-supply of relevant documents post arraignment was a violation of principles of natural justice. The petitioner was not made to understand or allowed to have access to a private lawyer to defend himself. The charges were not read out or made comprehensible in Hindi, the petitioner's mother tongue. The SSFC based its finding of uncorroborated evidence. The conclusions arrived were based on surmises and conjectures and were absolutely arbitrary. Evidently, it was a foggy night with poor visibility. Relevant aspects were not taken into consideration. The appellate authority also did not appreciate the evidence in its true prospective. It excluded relevant evidence and relied on selected uncorroborated evidence. The punishment imposed was disproportionate and oppressive. The petitioner had an excellent service record, was never punished and rewarded

five times by the Commandant. Judicial review, though having a limited scope, could be exercised in cases where there was violation of principles of natural justice. Reliance was placed on the decisions of the Hon'ble Apex Court reported at 2007 (1) SCC 437, 2009(2) SCC 570, 2008 (3) SCC 484, 1995(6) SCC 750 and 2000(1) SCC 416.

4. Ms. Chandreyi Alam, learned senior counsel representing the Union of India, submitted as follows. There was no violation of principles of natural justice in the impugned proceeding. The petitioner was given adequate opportunity to defend himself during the ROE as well as at the trial before the SSFC. During ROE the petitioner was given opportunity to cross-examine the witness, but he declined to do so. He only examined PW 4. The petitioners' statement was recorded during ROE, but he did not want to adduce any evidence. On the contrary, the petitioner pleaded guilty on the charge under Section 40 of the BSF Act. The plea of guilt was recorded as per the procedure mentioned in Rules 142 to 145 of the BSF Act. A friend of the accused was present. Therefore, there could be no grievance as regards recording of the plea of guilt. There was ample evidence to haul up the present petitioner. This was a case where a person who had been engaged to prevent cattle smuggling was found to have assisted such illegal act. Therefore, the punishment could not be termed as excessive. In any event, a judicial review could not be directed against the decision, but was confined to the decision making process. On this, reliance was placed on the case of BC Chaturvedi reported at 2009 15 SCC 620. On the issue of natural justice

and personal hearings, reliance was placed on the decisions reported 1991 Crlj 669 and Manu/WB/0295 2016.

5. I heard the learned counsels appearing on behalf of the parties and perused the writ petition and the written notes.

6. There were two charges brought against the petitioner, the first under Section 40 of the BSF Act for an omission prejudicial to good order and discipline of the force and the second under Section 34(a) of the BSF Act for making false accusation against a person subject to the BSF Act knowing such accusation to be false. It is quite significant that the present petitioner pleaded guilty to the second charge. Consequently, the Court proceeded in respect of the second charge. The petitioner was heard by his Commandant on an offence report wherein one prosecution witness was examined. He was given opportunity to cross-examine the witness and to make a statement, but he declined. After conclusion of hearing, the Commandant ordered the preparation ROE. The ROE was prepared in presence of the petitioner. Several prosecution witnesses were examined. The petitioner was permitted to cross-examine all the witnesses and to make a statement and produce defence witnesses. However, the petitioner only made a statement after preparation of ROE. The Commandant decided to try the petitioner by the Summary Security Force Court. The petitioner was provided with copies of ROE and charge-sheet on 27.04.2002. The petitioner pleaded guilty to the first charge. The Court proceeded in respect of the second charge and examined two witnesses. The witnesses supported the case against the present petitioner.

7. So far as the procedure followed in respect of the petitioner is concerned, there is hardly any room for complaint. There is nothing on record to show that copy of any relevant document was not supplied to the petitioner or that the petitioner complained about it at the initial stage. There was no apparent violation of the principles of natural justice as all possible opportunities were given to the petitioner to cross-examine the witnesses and to produce defence witness.

8. From the evidence, it appeared that crossing of cattle heads from India to Bangladesh did take place or the area of responsibility from naka point 2 in the night 28-29/01/002, where the petitioner was performing his duties. But he did not report the matter either to the Platoon or to the Company Commander. In fact, the petitioner falsely quoted SI Hoshiar Singh, Platoon Commander to have given him order to give safe passage to the smugglers and seize cattle heads at the subsequent stage. Moreover, there is no evidence forthcoming that the foggy night or the purported poor visibility was of such nature that cattle smuggling could not be detected. Witnesses deposed against the petitioner and their testimony could not be shaken. Thus, there is ample evidence to prove the charge against the petitioner.

9. Although the petitioner was cast with the duty of protecting the borders of the country, he breached all degrees of trust and loyalty and engaged in unlawful acts of assisting illegal cattle smuggling. Even on the touchstone of proportionality, one cannot term the punishment of termination from service as excessive.

10. In any event, the scope of judicial review is very limited. This Court cannot act as an appellate Court and can only review the manner in which the decision was taken. On this reliance is placed on the ratio laid down in *BC Chaturvedi (supra)*. This Court can only consider whether the punishment awarded could shock the conscience of the Court, which is clearly not the case here.

11. In view of the evidence and the other materials available against the petitioner, the punishment is found fair and appropriate.

12. Besides, quite like the first order, the appellate order is also a reasoned one and has carefully dealt with the issues involved.

13. In view of the above discussions, I do not find any merit in the writ petition. Accordingly, the same is dismissed.

14. However, there shall be no order as to costs.

15. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)