

108

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

-. -

CWP-19266-2022
Date of decision: 20.09.2022

Roshan Singh

.....Petitioner

Versus

Union of India and others

.....Respondents

Coram: Hon'ble Mr. Justice Rajbir Sehrawat

Present: Mr. Abhay Bhargava, Mr. Satyarth Sinha and
Mr. Arjun Dhingra, Advocates
for the petitioner

-. -

Rajbir Sehrawat, J. (Oral)

The present writ petition has been filed under Articles 226/227 of the Constitution of India, praying for issuance of a writ in the nature of Certiorari for quashing impugned order dated 07.12.2021 (Annexure P2) and order dated 17.02.2022 (Annexure P1) with certain other prayers.

Notice of motion.

Ms Anita Balyan, Advocate, who is present in Court, accepts notice on behalf of the respondents-Union of India.

The case of the petitioner, as has come to the fore, is that

the petitioner was serving with the respondent - Border Security Force. However, he was charge-sheeted by the departmental authorities for the offences, primarily, for submitting fake LTC claim, insubordination and mis-behaviour with the officers. The General Security Force Court (GSFC) had proceeded with the trial against the petitioner. Ultimately, the order of punishment was passed by the GSFC; inflicting upon the petitioner punishment of dismissal from service and sentencing him to imprisonment for two years. The matter was sent to the confirming authority for confirmation of the punishment, as required under the Border Security Forces Rules, 1969. That authority has confirmed the punishment. Hence, the present writ petition.

Arguing the case, counsel for the petitioner has submitted that there was no evidence on the charges levelled against the petitioner. The procedure, as prescribed under the Rules has not been duly followed and complied with by the punishing authorities. Counsel for the petitioner has submitted that Rule 45 has not been complied with by the authorities. No certificate, so contemplated in the Border Security Force Manual qua compliance of Rule 45 has been placed on record. Counsel for the petitioner has further argued that the revisional/confirmation order has not even been signed by the competent authority and the same has been issued without signatures of the competent authority. Counsel has also submitted that no fresh

evidence has been recorded in the present case in the revisional proceedings despite a provision in the Rules to this effect and despite an order to this effect passed by the confirming authority while sending the matter back for revision. Moreover, no reconsideration on evidence has been made in the revision proceedings despite the fact that the initial view of the confirming authority had been that it may require re-consideration.

On the other hand, counsel for the respondents has submitted that due procedure, as prescribed under the Rules has been complied with meticulously. The petitioner was afforded full opportunity of hearing by the GSFC, including opportunity of cross examination of the witnesses of the department. Therefore, the procedure as prescribed under the Rules, as well as, the principles of natural justice were duly followed and complied with. As regards requirements of Rule 45, counsel for the respondents has submitted that the Rule does not require issuance of any certificate as such. Counsel has further submitted that even if such certificate is contemplated under the BSF Manual, the proceedings would not necessarily vitiate unless any prejudice is claimed and shown to have been suffered by the charged employee. No such prejudice is even asserted by the petitioner. Therefore, this argument of the counsel for the petitioner is totally irrelevant. Qua recording of fresh evidence in the revisional proceedings, counsel for the respondents has submitted

that it is only in a case, where the authority find that some issues have not been properly dealt with after recording of the evidence that the confirming authority can direct the recording of fresh evidence as such. Otherwise, there is no question of recording of fresh evidence in the revision proceedings. In the present case, although, in the first instance, the confirming authority had desired that the evidence of Shri Vijay Kumar Thapa be recorded in the revision proceedings, however, Shri Vijay Kumar Thapa had expired before conduct of the revision proceedings by the GSFC. Therefore, his statement could not be recorded. Otherwise also, there was sufficient material on record against the petitioner. Therefore, after re-appreciating the evidence, the GSFC retained the punishment inflicted upon the petitioner even after revision. That order has rightly been confirmed by the confirming authority.

On the aspect of non-signing of the confirmation order by the confirming authority, counsel for the respondents has pointed out that the petitioner has relied upon only the 'duplicate copy' of the proceedings supplied to him, however, the original copy of the same has duly been signed by the revisional/confirming authority. Counsel further submits that only after everything has been properly undertaken, as required under the Rules, the petitioner was handed over to the jail authority and he is now serving the punishment as such.

Having heard counsel for the parties and having gone

through the paper book, this Court does not find any substance in the arguments raised by counsel for the petitioner. The record of the case itself shows that the petitioner was granted due opportunity of hearing; including the opportunity of cross examining of the witnesses. All the facts have been duly brought on record by the respondents by way of documents and witnesses. So far as the requirement of issuance of certificate qua compliance of Rule 45 is concerned, needless to say that there is no such requirement qua issuance of certificate as prescribed under the Rules. It is only so mentioned in the Manual, which is for the guidance of the authorities only. Accordingly, this Court finds itself in agreement with the argument raised by the counsel for the respondents that even if such certificate is contemplated under the manual, the proceedings would not necessarily vitiate on account of non-issuance of said certificate unless any prejudice having been caused to the petitioner is shown. Rather, the record shows that the procedure has been duly followed qua examining of the witnesses and grant of opportunity to the petitioner in the matter. Even a certificate, as required under the Rule 48 qua compliance of the due procedure, has also been placed on record by the authorities. This leaves no doubt that the petitioner has been duly heard, as required under the law; and no prejudice has been caused to the petitioner.

Although counsel for the petitioner has relied upon the provisions regarding powers of the revisional authority to take fresh

evidence and the order of the confirming authority to that effect, however, in the present case, there is nothing pointed out as to on which point, the evidence was required to be recorded afresh except the recording of the statement of Shri Vijay Kumar Thapa. However, admittedly Shri Vijay Kumar Thapa had expired before the proceedings of revision could be undertaken. Therefore, in the present case, there was no requirement of recording of fresh evidence as such. Otherwise also, it is not mandatory or even desirable to take fresh evidence at the stage of revision; without there being any concrete reasons for the same. Although the record shows that the confirming authority had required the revision authority to re-appreciate the evidence on charges and to pass the fresh order, however, record also shows that the revision authority had re-appreciated the material and then only reiterated the order of punishment. Thereafter even the confirming authority had appreciated the material on record and only then confirmed the order of the punishment. Hence, even on this count, the petitioner cannot derive any advantage.

Needless to say that in the departmental proceedings, particularly the GSFC proceedings in relation to the Armed Forces, the High Court is not required to sit as a Court of appeal to re-appreciate the material. The High Court can interfere only in the cases where there is a clear violation of the prescribed statutory procedure and principles of natural justice or there are allegations of mala fide by the

charged employee against the authority or where it shown to be a case of no evidence against the employee and the findings are alleged to be totally perverse. However, in the present case, there is no violation of any material rules of procedure or principles of natural justice. The petitioner has not alleged any mala fide against any person holding charge of the punishing authority or of the revisional or confirming authority. As per the record, this case, by no means, is a case of no evidence. Nothing has been pointed out to show perversity of findings. Mere alleged insufficiency of the evidence is not the same thing as absence of evidence or perversity of findings. The High Court is not required to go into the matter qua assertion of insufficiency of the evidence. It is for the departmental authority to appreciate the material against the petitioner and to pass the appropriate punishment/sentence against the charged employees. In the present case, this Court does not find any ex-facie flaw either in following the procedure as prescribed under the Rules or in the appreciation of the evidence relied upon against the petitioner; as such.

At the fag end, the learned counsel for the petitioner has again raised argument that the respondents have deliberately not examined Shri Vijay Kumar Thapa despite having ample opportunity for his examination during the GSFC proceedings. However, even this argument is totally non-sustainable in the eye of law. It is for the departmental authorities to decide as to which witness the department

intended to examine in the departmental proceedings against the petitioner. The petitioner can find fault in the testimony of the witness whosoever is examined in the departmental proceedings. The petitioner, by any mean, cannot ask or force the respondents to examine a particular witness in support of his case. If at all the petitioner considered that the testimony of the said witnesses was so important, then the petitioner could have brought or summoned him as a defense witness during the original proceedings. Therefore, the petitioner cannot be heard to say, at this stage, that the said witness has been withheld by the department.

In view of the above, finding no merits, the present writ petition is dismissed.

(Rajbir Sehrawat)
Judge

September 20, 2022
mohan bimbura

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No