IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA-349-2018 (O & M)
Date of Decision: 24.11.2022

Union of India and others .....Appellant(s)

Versus

Som Dutt ....Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Piyush Bansal, Senior Panel Counsel,
for the appellants-UOI.

Mr. Navdeep Singh, Advocate,
with Mr. Manoj Tanwar, Advocate,
for the respondent.

G.S.SANDHAWALIA, J. (Oral)

CM-2438-LPA-2022

Application for placing on record status of case pending against the officials as Annexure A-1 and for exemption from filing certified copy of the same is allowed, subject to all just exceptions.

Annexure A-1 is taken on record.

CM stands disposed of.

LPA-349-2018 (O & M)

Challenge in the present letters patent appeal is to the order passed by the learned Single Judge dated 04.12.2017 passed in CWP No. 17564 of 2016, Som Dutt vs. UOI and others. The learned Single judge allowed the writ petition and came to the conclusion that the penalty of removal from service is too harsh and accordingly set aside the same alongwith the order of the Appellate Authority dated 02.06.2016 (Annexure

A-17) and remanded the matter to the disciplinary authority to impose any other penalty other than dismissal from service.

The reasoning which weighed with the learned Single Judge while considering the case of the writ petitioner, who was a Constable (Driver) with the 41st Battalion, SSB, Raniganda was that the charge sheet as such under Section 49 of the Sashastra Seema Bal, 2007 (in short 'the SSB Act) was on account of the fact that he had earned Rs.29,627/- as salary within the period from 01.01.2013 to 31.01.2013 which was deposited in his bank account. However, there was a credit of Rs.97,627/- and, thus, he had earned Rs.68,000/- disproportionate to his known source of income. It was found that though the money was present in his bank account but it was never proved that it was arising out of the corruption allegation and it was only proved that the money was deposited in the petitioner's account by his father and relative and the disproportionate known source of income was not on account of corruption allegations.

The case of the authorities was that there was a recruitment process and the deposit was in connection with getting the selection done and accordingly it was noticed that there was no charge to that effect in the charge sheet dated 27.03.2016 (Annexure P-6) and, therefore, the respondents were required to restrict the entry only to the amount which had been deposited in his account by his father and relative and would not amount to admission of the alleged charge. It was also noticed that the authorities had not examined the bank challans and other related material to prove the charges and that the amount was deposited by the father of the petitioner and relative and was not disproportionate to his known source of income. Resultantly, it was recorded that the finding was not appropriate and the major penalty was shocking to the alleged charge.

Counsel for the UOI has vehemently submitted that it was a case of recruitment scam as such and a large number of officials had been proceeded against while referring to Annexure A-1 and, therefore, in cases of misappropriation in financial transactions, this Court should be slow to interfere.

A perusal of the paper book would go on to show that initially charge dated 27.03.2015 (Annexure P-6) was served upon the employee, which reads thus:-

(See Rules 44 and 56 (2)
CHARGE SHEET
The accused CT (Dvr) Som Dutt of 41st BN SSB, Randanga is charged with:

Charge-I

Charged under section - 49 of SSB Act-2007 read with Sec 13 (i) e of prevention of corruption Act 1988.

In that,

He, while posted in 41st BN SSB, Ranidaga for the period from 02.04.2012to 03.08.2013 earned Rs. 3,17.930/- from Salary and other allowances, but got credited Rs.4,09,930/- in his bank account No. 20017643434 which is disproportionate to his known source of income.

Charge-11

Charged under section - 43 of SSB Act 2007: Violation of Good order and discipline.

IN THAT

He, while posted in 41st BN SSB, Ranidanga for the period from 02.04.2012 to 03.08.2013 made transaction of Rs. 92,000/- through bank credit in his account no. 20017643434 from unknown sources without intimating the transaction to his employer.

Place: 31st BN SSB, Ranidanga (WB)

Date: 27.03.2015."

Apparently, he had given his explanation on 23.06.2015 (Annexure P-9) before the Assistant Commandant that the amounts had been deposited by his relatives on account of the fact that he required medical treatment regarding Charge I. Regarding the other charge from 02.04.2012 to 03.08.2013, he stated that he was not aware that he was to take permission from the competent authority for the transaction of Rs.92,000/- through bank credit in his account. He was informed on 28.08.2015 that trial by Summary Force Court was to be done and it named the person who was joined as a friend of the accused.

In the reply filed by the Union of India also, it has been admitted that the charge sheet was amended under Section 88 of the SSB Act by excluding the period which exceeded 3 years and copy of the amended charge was given on 28.08.2015 for the preparation of his defence in a Summary Force Court. Thus, the amended charge is as under:-

(SEE RULES 44 AND 56 (2))

CHARGE SHEET

The accused no. 060480713 CT (DVr) Som Dutt of 41 Bn SSB, Ranidanga is charged with:-

CHARGE-I

CHARGED UNDER SECTION 49 OF SSB ACT-2007 READ WITH SECTION 13 (1) (E) OF PREVENTION OF CORRUPTION ACT 1988.

In that,

He, while posted in 41st Bn SSB Ranidanga for the period from 01.01.2013 to 31.01.2013 earned Rs. 29,627/- as salary from service which has been deposited in his bank account no. 20017643434, but *during said period he got credited Rs. 97,627/- in his bank account, thereby he earned Rs. 68,000/- disproportionate to his known source of income during the said period.*

Charge-II

CHARGED UNDER SECTION - 43 OF SSB ACT, 2007: VIOLATION OF GOOD ORDER AND DISCIPLINE.

In that

He, while posted in 41 Bn SSB, Ranidanga for the period of 01.01.2013 to 31.01.2013 involve din cash transaction of Rs. 68,000/- through his account no. 20017643434 from unknown source without information / prior permission competent authority.

Place: 41st BN SSB, Ranidanga (WB)

Date:

Sd/-
(Sudhir Verma)
Commandant
41st BN SSB, Ranidanga

Sd/- 16.9.15"

The convening of the order was ordered to take place vide order dated 14.09.2015 for 16.09.2015 at 10.00 a.m. The proceedings of the Summary Force Court would go on to show that they were presided over by the Commandant of the 41st Battalion and the defence as such specifically was that a sum of Rs.25,000/- was deposited in his salary account by Dharamveer Singh, who is his cousin brother and similarly, Rs.10,000/- again was deposited by the said person on 02.01.2013, which was for treatment and Rs.15,000/- by Baldev, friend of Dharamveer Singh as loan for the treatment as such on 31.01.2013. A sum of Rs.18,000/- had been deposited by Rajender Singh Yadav, who is the father and the amount was an ancestral amount. It was also mentioned that he was treated at Anandaloke Hospital, Siliguri and also took treatment at Composite Hospital, BSF Kadamtala and he had already incurred expenditure of Rs.26,000/-. He, however, could not produce any receipt regarding the same. It was put to him that he was in SHAPE-1 and that he was not ill and also question was put to him that there was a medical reimbursement bill for Rs.15,797 which was preferred against the bill of Rs.26,000/-. The explanation of Dharamveer Singh, the relative of not putting in appearance was that he was not relieved by his Commandant Officer and photocopy of the documents and an affidavit given by him was also produced. The father-Rajender Singh Yadav also appeared as a witness but stated that his son was ill for one month and he had sold some cattle and grains for Rs.18,000/- and given it to his son and he had also sent money in cash through his cousin brother Dharamveer Singh. The summary proceedings as such were closed at 11.20 a.m. while stating that service was of 7 years, 4 months and 25 days and he had earned 4 cash rewards and the order of punishment from removal from service as per Section 51(1)(c) of the SSB Act, 2007 was done by the Commandant. The formal order of removal dated 16.09.2015 reads thus:-

ORDER

> ***WHEREAS*** *No.060480713 Constable (Driver) Som Dutt of HQ Coy 41" Bn SSB Ranidanga was tried by a Summary Force Court on 16 September 2015 at 41 Bn Hqr. SSB at auditorium of ATC SSB Ranidanga,Dist: Darjeeling (West Bengal) for the following offences under section of SSB Act 2007.*

Charge-I: Charged under section-49 of SSB Act-2007 read with Sec. 13(i)(e) of <u>prevention of corruption Act 1988.</u>

In that,

He, while posted in 41ST Bn SSB Ranidanga for the period from 01.01.2013 to 31.01.2013 earned Rs.29,627/- as Salary from service which has been deposited in his bank account No.20017643434, but during said period he got credited Rs.97,627/- in his bank account, thereby he earned Rs. 68,000/- disproportionate to his known source of income during the said period.

Charge-11: <u>Charged under Section-43 of SSB Act 2007:- Violation of good order and Discipline.</u>

In that,

He, while posted in 41" Bn SSB, Ranidanga for the period 01.01.2013 to 31.01.2013 involved in cash transaction of Rs.68,000/- through his account No.20017643434 from unknown source without information/ prior permission of Competent Authority.

*2. **AND WHEREAS** No.060480713 Constable (Driver) Som Dutt of 'HQ' Coy 41" Bn SSB Ranidanga was found guilty of both the charges and awarded the sentence :-*

(i) Removal from service under Section 51(1)(c) of SSB Act 2007.

The finding and sentence of the Court were promulgated to the accused on 16th September '2015 at 1121 hrs.

The individual is at liberty to represent against the *judgment to the confirining authority under the provision of Rules 169 (1) (2) and 170 (1) (2) of SSB Rules 2009 from the date of promulgation."*

The appeal filed was dismissed on 02.06.2016 by the Deputy Inspector General on the ground that the procedural irregularity in the trial by the appellant was not supported by the facts of the case and the removal from service is less than the punishment prescribed.

Keeping in view the way and the manner the trial was conducted within a period of 1-1/2 hours, we are of the considered opinion that the reasoning given by the Appellate Court is not justified in any manner. Apparently, the defence is that there was a recruitment scam but neither that was the specific charge framed on account of the excess amount in the bank and he has been removed from service in a summary manner. Even a perusal of the details of case pending against the other officials, which have now been placed on record by way of Annexure A-1, would go on to show that out of the 9 persons which are stated to have been removed from service, all of them are Constables/Head Constables apart from one ASI and, thus, we are of the opinion that the effort as such to get behind the recruitment scam, if any, was never initiated in the right manner and the big fish and high ranking officers were never as such even acted against and neither any punishment orders were passed against them. The lowly ranks of the Constables and one ASI were proceeded against and, therefore, keeping in view the fact as such that the charge was also regarding the excess amount received in the bank account for a period of one month and it was not qua the recruitment, the counsel for Union of India, thus, would not be in a position to justify the argument that the dismissal was on account of corruption. It has already been noticed that the defence as such that the amount was deposited by the relatives for the purposes of medical treatment of the employee was never even considered and thus the principles of natural justice were openly violated while proceeding ahead with the summary procedure. The deposit in the accounts was pertaining to the year 2013 and the charge sheet was 2 years later and there was no such imperative immediate action which was called for which would have warranted the proceedings being conducted in the manner in which it has been done so. The learned Single Judge has kept all these facts in mind while keeping it open to the appellants to pass an appropriate order apart from a dismissal order and their interest has accordingly been protected.

Counsel is well justified in placing reliance upon the judgment of the Division Bench of the Delhi High Court in ***Ex. LN Vishav Priya Singh vs. UOI and others, 2008 SCC Online Del 95*** which was approved by the Apex Court in ***Union of India vs. Vishav Priya Singh (2016) 8 SCC 641*** that a summary court martial is only to be done in extreme cases. The argument as such by the Union of India that there were complaints and he was specifically named regarding the recruitment scam and that more officials were involved is baseless in as much as if that was so, there was no such hurry to dismiss the person in summary manner which has been done, which is apparently in violation of the principles of natural justice. In ***Randhir Singh vs. UOI and others, 2019 SCC Online SC 848*** also, while placing reliance upon the earlier three Judge Bench, punishment of dismissal on account of removal of petrol from the official Gypsy as such by way of summary court martial was modified by the Apex Court to the extent that the order should be read as discharge from service on the completion of minimum pensionable service. The relevant portion regarding when a summary court marital is to be convened was elaborated as under:-

> *"12 The above clarification indicates that the requirement of recording reasons for convening a Summary Court Martial shall apply from 5 July 2016. However, the fundamental principle of law which has been enunciated is that the power to order an SCM is a drastic power which must be exercised in a situation where it is absolutely imperative that immediate action is necessary. Sub-section (2) of Section 120 is prefaced by the words "when there is no grave reason for immediate action". In the present case, though the incident took place on 11 August 2007, the SCM took place on 22 May 2008. The convening of an SCM was contrary to law."*

We are, thus, of the considered opinion that the learned Single Judge was well justified to hold that the charge as such was never proved. We are also of the considered opinion that the defence as such that the amount had been received from the relatives and the father on account of an ailment was never even considered and the Commandant sat with closed eyes and in hell bent manner to dismiss the person within one and half hours without any justifiable reasons and with a pre determined mind.

Accordingly, we do not feel it is a fit case for interference and the present letters patent appeal stands dismissed.

(G.S. SANDHAWALIA)
JUDGE

24.11.2022 (HARPREET KAUR JEEWAN)
shivani JUDGE

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