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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 3169/2022 & CMs 9224-95/2022**

EX CONST MADAN KUMAR KHAN Petitioner
Through Mr.Ajit Kakkar, Mr.Puru Mudgil,
Mr.Ayush Saxena, Advs.

versus

UNION OF INDIA & ORS. Respondents
Through Ms.Bharathi Raju, Adv.

(58) **W.P.(C) 3174/2022 & CMs 9233-34/2022**

EX CONST RAMESH KUMAR TIWARI Petitioner
Through Mr.Ajit Kakkar, Mr.Puru Mudgil,
Mr.Ayush Saxena, Advs.

versus

UNION OF INDIA & ORS. Respondents
Through Mr.Rajesh Gogna, CGSC.

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Date of Decision: 21st February, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVING CHAWLA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petitions have been filed challenging the sentence and order dated 19th February, 2021 as well as charge sheet dated 18th February, 2021, in W.P.(C)-3169-2022 and the sentence/order dated 08th February, 2021 in W.P.(C)-3174-2022, all issued by Respondent No.3. Petitioners in



both the writ petitions also seek reinstatement in service and release of arrears of pay and allowances till date.

2. Learned counsel for the Petitioners states that both the writ petitions challenge the actions of Respondent No.3, i.e. Sh. Pramod Kumar Nautiyal, who was the Petitioners' commandant in 71 Bn BSF.

3. He states that both the Petitioners were Constables in BSF and were serving in 71 Bn, BSF. He states that while the Petitioners were posted at 71 Bn BSF, certain allegations of misbehavior with superior officer were levelled against them, based on which the legal proceedings were initiated against the petitioners and they were tried by two separate Summary Security Force Court (SSFC), which were convened, presided over and adjudicated upon by the CO, 71 Bn BSF and resultantly both the Petitioners were dismissed from service.

4. He states that both SSFCs were conducted in haste and were concluded without granting any opportunity to the Petitioners to cross-examine the witnesses and seek legal help.

5. He states that the provision of conducting SSFC is at par with Summary Court Martial conducted in the Army, and the issues pertaining to the constitution of a Summary Court Martial have been dealt with by the Apex Court in ***Union of India & Ors. v. Vishav Priya Singh (2016) 8 SCC 641***, wherein it has been held that constituting an SCM is an exception, not a rule, and the powers of the CO to constitute and convene the Summary Court Martial proceedings should be exercised rarely only when it is absolutely imperative.

6. He states that in the present two cases, the CO has failed to provide a reasonable statement as to why the constitution of SSFC was necessary in



the cases of the Petitioners and resultantly, the Petitioners have been awarded a disproportionate punishment of dismissal from service without giving them an option to exercise their legal rights.

7. He states that the representation preferred by the Petitioner in W.P.(C) 3169/2022 dated 26th March 2021, addressed to the IG BSF Ftr PB has been rejected by the IG BSF vide order dated 22nd June 2021.

8. He states that the representation preferred by the Petitioner in W.P.(C) 3174/2022 addressed to the IG, BSF has not been considered and no reply has been received till date.

9. Issue notice. Mr.Rajesh Gogna, learned counsel accepts notice on behalf of the respondents. He states that IG, Ftr HQ BSF, Punjab has disposed of the representation filed by the petitioner, in WP(C) No.3174/2022 vide order dated 28th June, 2021. He undertakes to supply another copy of the said decision to the petitioner within two weeks.

10. Recording the above statement, WP(C) No.3174/2022 is disposed of with liberty to the said petitioner to challenge the order of IG, Ftr HQ BSF, Punjab by way of an appropriate legal proceeding.

11. As far as the case of the petitioner in WP(C) No.3169/2022 is concerned, this Court finds that in the order, disposing of petitioner's representation, it has been stated that the present petitioner has received five adverse entries during his eight years of service. The petitioner in WP(C) No.3169/2022 had been awarded 28 days' rigorous imprisonment on 27th January, 2018; 14 rigorous imprisonment on 1st February, 2019; 5 day's pay fine on 29th May, 2020; 89 days' rigorous imprisonment on 3rd July, 2020; 7 days pay fine on 4th January, 2021.



12. Moreover, on 7th February, 2021, at around 4.00 PM, the petitioner was found in the state of intoxication at Amritsar police station, while he was en route from 169 Bn BSF after cancellation of posting from 71 Bn BSF to 169 Bn. due to Covid-19 pandemic and he was required to join 71 Bn BSF.

13. During SSFC, the present petitioner had pleaded guilty to all the charges leveled against him. He had also stated that the petitioner was given some kind of intoxication by a rickshaw driver while on his way from Amritsar bus stand to hotel. However, he failed to substantiate his defence during the enquiry.

14. Considering the fact that the petitioner had admitted his guilt before SSFC and he had received five adverse entries in his eight (8) years of service, this Court finds no ground to interfere with the impugned orders in writ jurisdiction. Accordingly, WP(C) No.3169/2021 is dismissed.



MANMOHAN, J



NAVIN CHAWLA, J

FEBRUARY 21, 2022
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