

6.
4.4.2023
S.D.

W.P.A. 4254 of 2023

Shri Prakash Chand, Deputy Commandant (Elect)

Vs.

The Union of India & Ors.

Mr. Indranil Nandi
Mr. Gunjan Shah
Ms. Shreya Agarwal

... For the Petitioner

Mr. Sukanta Chakraborty
Mr. Debapriya Gupta

...For the Respondent No. 6

In the present writ petition, charge sheet dated March 31, 2023 has been challenged.

Mr. Nandi, learned counsel appearing on behalf of the petitioner submits that the charge sheet is perverse since it is based on complaints, which are not existent. He submits that there are no complainants who have made complaint against the petitioner, and, therefore, the very initiation of the charge sheet is perverse. Therefore, he prays for setting aside and quashing the said charge sheet.

Pursuant to the filing of the writ petition, proceedings have commenced before the General Security Force Court (GSFC). The petitioner is working with the Boarder Security Force (BSF). The petitioner was discharging his duties as a

Deputy Commandant (Elect) when disciplinary proceeding was initiated against him on March 28, 2022.

Mr. Chakraborty, learned counsel appearing on behalf of the Union of India submits that the trial has already commenced and all the issues raised in the present writ petition has been urged by the petitioner in the trial before GSFC. As such, the writ petition is not maintainable.

Considering the rival submissions of the parties and the materials placed on record, this Court is of the view that there is no perversity on the face of the records. Whether or not the charge sheet has been initiated on the basis of a complaint received by the authorities or whether or not the complainants are actually fictitious or present is a matter of evidence that has to be weighed during the course of trial. The Writ Court is not the appropriate forum to weigh the evidence or to decide an issue relating to the sufficiency of evidence.

This Court also finds that the trial has already commenced under the statutory provisions of the BSF Act, 1968 and the Rules 1969.

Therefore, this Court thinks that the writ petition is misconceived and no interference is merited on the charge sheet at present.

There is no *decision* arrived at since the disciplinary proceedings have only commenced. Hence, this Court cannot review the '*decision making*' process of the 'disciplinary authority' before a decision is arrived at. The writ petition has been filed prematurely.

In the light of the discussions hereinabove, **W.P.A. 4254 of 2023 is dismissed.**

Since no affidavits have been directed to be exchanged in the present writ petition, all the allegations contained in the present petition are deemed not to have been admitted by the parties.

All parties shall act on the server copy of this order duly downloaded from the **website** of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all the formalities.

(Lapita Banerji, J.)