

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

**WPA 9320 of 2021
Babu Halder
versus
Union of India & ors.**

For the Petitioner : Mr. Soumya Majumder
Mr. Victor Chatterjeeadvocates

For the Union of India : Mr. Kalyan Chakraborty
Mr. Amal Kumar Datta ... advocates

Reserved on : 20.07.2023

Judgment on : 03.08.2023

Hiranmay Bhattacharyya, J.:-

1. The writ petitioner has prayed for issuance of a writ of mandamus to command the respondents to set aside and cancel the order of dismissal from service passed by the appellate authority on 26.10.2020 affirming the order of the Summary Force Court dated 12.06.2020.
2. The petitioner was served with the Memorandum of charges dated 09.06.2020 while he was posted at the 57th Battalion of Sashastra Seema Bal (for short "SSB") and was holding the rank of Constable (G.D.). The petitioner was charged under Sections 21(d), 23(1), 22(b) and (c) and 24(c) of the Sashastra Seema Bal Act, 2007 (for short "SSB Act") and was tried by the Summary Force Court. Upon conclusion of trial the Summary Force Court (for short "SFC") found the petitioner guilty of all the four charges and the sentence of dismissal from service was awarded on 12.06.2020. Challenging the said order dated 12.06.2020, petitioner preferred an appeal and the Inspector General, Frontier SSB, Headquarter at Ranikhet, being the appellate authority, upheld the punishment of dismissal from service by an order dated 26.10.2020.

3. Mr. Majumder, learned advocate appearing in support of the writ petition, contended that principles of natural justice has been grossly violated as the petitioner did not get any opportunity to produce witness as none was willing to depose against the authority. He further contended that the petitioner also did not get any assistance of a legal practitioner. He submitted that the prosecution has failed to prove the charges leveled against the petitioner. He next contended that the petitioner could not appear at parade due to his illness. He contended that the allegation against the petitioner that he used threatening/insubordinate language is without any basis as the petitioner cannot speak Hindi language. By placing reliance upon Section 23(1) of the SSB Act, Mr. Majumder contended the second charge do not fall within Section 23(1) of the SSB Act.
4. Mr. Chakraborty, learned advocate representing the Union of India contended that the respondent authority after following the provisions of the SSB Act and the rules framed thereunder held the petitioner guilty of all the charges and was awarded the sentence of dismissal from service.
5. Heard the learned advocates for the parties and perused the materials on record.
6. Four charges were leveled against the petitioner. The first charge was under Section 21(d) of the SSB Act that the petitioner without sufficient cause failed to appear at the time fixed at the parade or place appointed for exercise or duty. The second charge was disobedience to superior officer under Section 23(1) of the SSB Act. The third charge was under Section 22(b) and (c) of the SSB Act for using threatening and insubordinate language to officers. The fourth charge was under Section 24(e) of the SSB Act that the petitioner neglected to obey the general, local or other order.
7. Pursuant to direction passed by this Court the proceedings of SFC was filed. It appears from the said proceedings that the SFC was held by the Commanding Officer and the proceedings were attended by two other persons as per the provisions of the SSB Act.
8. From the record of evidence it appears that altogether eight witnesses for the prosecution adduced their evidence and the statements that were recorded were read over in the presence of the petitioner/accused and the concerned witnesses duly signed on the said statements. It further

appears therefrom that the petitioner was given opportunity to cross-examine the witnesses and the petitioner declined to cross-examine any of the prosecution witnesses. That the petitioner also refused to sign the statements recorded as evidence is also evident from the records. After the statements of all the prosecution witnesses were recorded, the petitioner was cautioned in accordance with Rule 51(3) of the SSB Rules. Thereafter, in compliance with the provisions of Rule 51(4), the petitioner was asked as to whether he wants to call any defense witness or produce any document in support of his defence to which the petitioner replied in the negative and also refused to sign on the records.

9. Mr. Majumder would contend that the petitioner was deprived of the services of a legal practitioner. Rule 158 of the SSB Rules allows an accused to take the assistance of any person including a legal practitioner. Proviso to the said rules state that such person shall not examine or cross-examine witnesses or address the Court. It appears from the proceedings of SFC that Sh. Sodha Kaabji, Assistant Commandant, 57th Bn. SSB was present before SFC as the friend of the accused. Therefore, such contention of Mr. Majumder cannot be accepted by this Court.
10. The prosecution produced evidences in support of the third charge of using threatening/insubordinate language to officer in Hindi language. The petitioner refused to cross-examine the prosecution witnesses. Therefore, it is too late in the day for the petitioner to contend that he does not know and also cannot speak Hindi language.
11. Mr. Majumder would contend that the petitioner could not produce any witness in support of his defense case as no one was willing to depose. SSB Act contains a provision for summoning of witnesses. It does not appear from the materials placed that the petitioner approached the Commandant by providing the list of defense witnesses and, therefore, such contention of Mr. Majumder cannot be accepted.
12. By referring to Rule 46(1) of the SSB Rules, Mr. Majumder would contend that since the complainant was the Commandant, a commanding officer above the rank of Commandant ought to have heard the charge. It is, however, not the case of the petitioner that it is the complainant who had heard the charges. Mr. Majumder, however, clarified that a person who is holding the same rank as that of the complainant should not hear the

charges. Rule 46(1) states that the Commanding Officer of and above the rank of Commandant may hear the charges. Therefore, the Commandant who heard the charge was competent to hear the charges as there is no embargo in that regard in the SSB Act or the rules framed thereunder.

13. After going through the materials on record, this Court holds that all the charges leveled against the petitioner has been duly proved. The provision of the SSB Act and the procedures laid down under the SSB Rules have been duly followed by the authorities. The allegation of violation of principles of natural justice is also not substantiated.
14. The appellate authority took note of the grounds raised by the petitioner in the appeal and returned its findings on all such grounds. The appellate authority after considering the facts and evidences on record held that the charges leveled against the petitioner has been proved and accordingly upheld the punishment of dismissal from service.
15. Mr. Majumder, learned advocate referred to the decisions of the Hon'ble Supreme Court in the case of Chennai Metropolitan Water Supply and Sewerage Board and others vs. T.T. Murali Babu reported at (2014) 4 SCC 108 and Mavji C. Lakum vs. Central Bank of India reported at (2008) 12 SCC 726 in support of his contention that the High Court can interfere if the punishment is shockingly disproportionate to the proved guilt. He contended that the nature of the charges cannot be said to be so grave so as to warrant the punishment of dismissal from service.
16. It is well settled that indiscipline by a member who is serving at SSB cannot be tolerated. After going through the provisions of Section 21, 22, 23 and 24 qua the nature of punishments that may be inflicted as laid down in Section 51(1) it is evident that the punishment of dismissal from service is a degree less than the punishment of imprisonment laid down under Clause (b) of Section 51 (1) which the SFC is competent to award as would be evident from Section 51(2) which states that each of the punishment specified in subsection (1) shall be deemed to be inferior in degree to every punishment preceding it. Therefore, this Court is not inclined to accept the contention of Mr. Majumder that the punishment awarded in the case on hand is shockingly disproportionate to the proved guilt. In view thereof, the aforesaid decisions do not come to the aid of the petitioner.

17. For all the reasons as aforesaid this Court is of the considered view that the impugned orders do not suffer from any infirmity warranting interference under Article 226 of the Constitution of India.
18. Accordingly, the writ petition fails and the same stands dismissed. There shall be, however, no order as to costs.
19. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)

(P.A.-Sanchita)