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17.10.2023
(P.A.)RB
Court No. 12

**In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side**

FMA 3470 of 2015

**Ashok Kumar Singh
Versus
Union of India & Ors.**

**Mr. Debdutta Basu
... for the appellant**

**Mr. Debapriya Gupta
... for the respondent no. 5**

The appellant while working in CISF was issued charge-sheet alleging certain misconduct. The respondent conducted a Summary Security Force Court and held that charges levelled against the appellant were proved. Based on the finding of the Court, the appellant was struck off from the strength of the Border Security Force Unit with effect from 18th December, 2006. The appeal filed by the appellant was also dismissed by the Appellate Authority (Director General of Border Security Force, New Delhi) vide order dated 18th April, 2007. Challenging the said orders of dismissal, the appellant has filed W.P. No. 16753 (W) of 2007.

Before the learned Single Judge, it is the case of the appellant that the appellant was not given opportunity to cross-examine the witnesses and has not given any reason for dismissing the appellant. It was the further case of the appellant that the Appellate Authority did not consider the

grounds raised and did not give any reason for rejecting the ground raised by the appellant.

The learned Judge, after considering the entire materials on record and the proceedings conducted in Summary Security Force Court, held that the appellant was given opportunity to cross-examine witnesses but he declined the same. The learned Single Judge also held that the Summary Security Force Court and the Appellate Authority had considered the objection and passed order and there is no illegality in the concurrent finding of the fact recorded by the Authority and dismissed the writ petition.

Against the said order of dismissal, the appellant has come out with the present appeal.

The learned Counsel appearing for the appellant contended that the witnesses examined were not persons witnessing the incident. The respondent did not examine the informant/complainant and has denied the opportunity to the appellant to disapprove the case of the respondent. The appellant was not given the opportunity to cross-examine the witnesses and erroneously recorded that appellant was given opportunity to cross-examine. The Summary Security Force Court considered only the evidence of prosecution witnesses, mainly, P.W. 2, P.W. 4 and P.W. 5 and did not consider the statement of the appellant and the evidence of the defence witness examined by him. The respondent no. 3 is bound to prove the charges leveled against the appellant and cannot give the finding based on the statement of the appellant. The respondents must independently prove the charges leveled against the appellant as enumerated in Section 58 of the

Evidence Act. The Appellate Authority is the last fact finding Authority. The Appellate Authority after extracting the evidence of prosecution, did not consider the appeal independently and erroneously dismissed the appeal. Even if past history of the appellant is taken into consideration for dismissing him from service, he ought to have been given opportunity by issuing notice. The orders of the Summary Security Force Court and Appellate Authority are erroneous and are liable to be set aside. In support of his contention, the learned counsel appearing for the appellant relied on the following judgments:

1. ***(2011) 4 CHN 176 (Robert Xess vs. Union of India) – Paragraphs 9, 11 and 14***
2. ***AIR 2009 SC 1100 (Rajiv Arora vs. Union of India & Ors.) – Paragraphs 13, 14 and 16.***
3. ***AIR 2019 SC 381 (Ramveer vs. Chhaakki Lal and Another)***
4. ***(2019) 6 SCC 82 (Jagdish Prasad Patel vs. Shivnath and Others) – Paragraph 15***
5. Order of the Hon'ble Apex Court dated 9th July, 2012 passed in ***SLP (Civil) No. 6079 of 2012*** in the case of ***Union of India vs. Robert Xess, (paragraphs 11 and 14)*** wherein the judgment of this Court reported in ***(2011) 4 CHN 176*** was confirmed.

Learned counsel appearing for the respondent contended that the respondent examined five witnesses and proved the charges leveled against the appellant. Appellant gave a statement and examined one defence witness but failed

to prove his case. The informant is not a complainant but only gave information to P.W. 2, Sub-Inspector Shishupal Singh about crossing of 10 pairs of cattle crossing the international border from Indian Territory to Bangladesh. Sub-Inspector, Shishupal Singh, Sub-Inspector K.P. Roy and Inderjeet Choudhary, Head Constable, went to the spot and found the hoof marks of eight to ten pairs of cattle crossing to Bangladesh from Indian Territory wherein the appellant was on-duty. P.W. 2 had taken Rs. 10,000/- from the appellant and the appellant admitted that he received the said amount for allowing the cattle to cross the border by civilians and sought for pardon. The five witnesses were examined in the presence of the appellant who deposed of taking money by the appellant and confession of the appellant. The appellant did not cross-examine the prosecution witnesses P.W. 2, P.W. 3 and P.W. 4. He cross-examined only P.W. 1 and P.W. 5 but he did not cross-examine P.W. 5 with regard to taking of Rs. 10,000/- and his confession. Both prosecution witnesses and the statement of the appellant and the defence witness deposed in uncontroverted manner about cattle crossing the international border from the Indian Territory to Bangladesh. The incident happened was admitted by the appellant himself. In view of the same, non-examination of the informant is not fatal to the case of the prosecution. The respondents by examining five witnesses, proved the charges leveled against the appellant and in view of the same, the judgments relied on by the learned counsel for the appellant are not applicable to the facts of the present case. The P.W. 2 received information about cattle crossing. The source of information should not be

disclosed. The respondents followed Chapter XI of the Border Security Force Rules and conducted Summary Security Force Court and on proving of the charges, appellant was dismissed from service.

The appellate authority considered the evidence and rightly confirmed the dismissal order and prayed for dismissal of the appeal.

Heard the learned counsel appearing for the appellant as well as the respondents and perused the entire materials on record.

From the materials on record, it is seen that the following charges are leveled against the appellant:

<u>"FIRST CHARGE:</u> <u>BSF ACT</u> <u>SEC-46</u>	COMMITTING A CIVIL OFFENCE, THAT IS TO SAY CRIMINAL MISCONDUCT FOR HAVING BEEN AS PUBLIC SERVANT IN POSSESSION OF PECUNIARY RESOURCES, DISPROPORTIONATE TO HIS KNOWN SOURCE OF INCOME FOR WHICH HE CANNOT SATISFACTORILY ACCOUNT FOR AN OFFENCE SPECIFIED IN SEC.13(i)(e) OF THE PREVENTION OF CORRUPTION ACT, 1988, PUNISHABLE U/S 13(2) OF THE SAID ACT.
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In that he,

At BOP Sovapur on the night intervening 12-13 July, 2006 at about 01:45 hrs. while carrying out checking by No. 750017191 Sub Inspector Shisupal Singh, Post Comdr of said BOP on a specific information of 'G' source about smuggling of approximately 08 to 10 pairs of cattle heads from India to Bangladesh with connivance of Ambush No. 02 of BOP Sovapur, was found in possession of a sum of Rs. 10,000/- (Rupees ten thousand) only at Ambush No. 2 disproportionate to his known source of income which he could not satisfactorily, account for.

SECOND CHARGE: AN ACT PREJUDICIAL TO GOOD ORDER AND DISCIPLINE OF THE BSF ACT SEC-40 FORCE

In that he,

At BOP Sovapur on the night intervening 12-13 July, 2006, while performing Ambush duty at Ambush point No. 2 from 21-00 hrs. to 01-00 hrs. allowed to smuggle approximately 08-10 pairs of cattle heads from India to Bangladesh with connivance of employer.”

From the above materials on record, it is seen that the P.W. 2 was informed that cattle were crossing the border. On such information, P.W. 2, P.W. 4 and P.W. 5 inspected the spot and found hoof marks crossing the international border from Indian Territory to Bangladesh. On questioning the appellant, he admitted that cattle crossed while he was on duty and according to the prosecution witnesses, Rs. 10,000/- was taken from the appellant. He admitted that he received the said amount from the smuggler. P.W. 2, P.W. 3, P.W.4 and P.W. 5 deposed to this effect. From the records, it is seen that the appellant declined to cross-examine P.W. 2, P.W. 3 and P.W. 4. He cross-examined P.W. 1 and P.W. 5. The appellant did not put any question to P.W. 5 about his deposition of taking Rs. 10,000/- from him and his confession and sought for pardon. If really appellant has not confessed and sought for pardon, he could have atleast put suggestion to P.W. 2, P.W. 3, P.W. 4 and P.W. 5 about denying the said evidence. The appellant has not filed any objection either before the Summary Security Force Court or to the Appellate Authority that he declined to cross-examine the witness is erroneous but he was not given any opportunity to cross-examine the

witnesses. The witnesses examined by prosecution categorically deposed about the act of the appellant which culminated in framing of charges against the appellant. The respondents have let in sufficient evidence to prove the charges independent of statement made by the appellant.

The contention of the appellant that non-examination of the informant is fatal, is not applicable for the facts of the present case. The authorities have received only information about crossing of cattle in the international border and on inspecting the spot, found the crossing of cattle. The persons who inspected the spot were examined and respondents proved the charges leveled against the appellant. The appellant also admitted crossing of cattles from Indian territory, therefore, non-examination of informant is not fatal.

The respondents have independently proved the charges by examining the witnesses. Hence, Section 58 of the Evidence Act and judgments relied on by the learned counsel for the appellant do not advance the case of the appellant in the facts and circumstances of the case.

Judicial Review of the finding of fact by the High Court is not in the nature of appeal. The Court cannot re-appreciate the facts as if an Appellate Authority. The power of Judicial Review by High Court is limited. The Court can interfere with orders passed in domestic enquiry or Tribunal only when such orders suffer from errors on the face of the order or illegal or arbitrary or perverse. The Court cannot interfere with the order when alternate view is also possible on same facts. The above principles are well settled as per the Judicial pronouncements of the Hon'ble Apex Court as well as various

High Courts. This principles were reiterated by the Hon'ble Apex Court in the judgment in the case of ***Muzaffar Husain vs. State of U.P. reported in 2022 SCC Online SC 567***. In paragraph 8 of the said judgment, it has been held as follows:

“8. It is trite to say that the power of judicial review conferred on the constitutional Court is not that of an appellate authority but is confined only to the decision-making process. Interference with the decision of departmental authorities is permissible only if the proceedings were conducted in violation of the principles of natural justice or in contravention of statutory regulations regulating such proceedings or if the decision on the face of it is found to be arbitrary or capricious. The Courts would and should not act as an appellate Court and reassess the evidence led in the domestic enquiry, nor should interfere on the ground that another view is possible on the material on record. If the inquiry has been fairly and properly conducted, and the findings are based on evidence, the adequacy of the evidence or reliability of evidence would not be a ground to interfere with the findings recorded in the departmental enquiries.”

We have considered all the materials placed before us in its entirety and we are of the opinion that there is no violation of the principles of natural justice, perversity and arbitrariness or illegality in the orders passed by the respondents. The learned Judge has considered all the materials placed before him and dismissed the writ petition by giving cogent and valid reasons. There is no reason to interfere with the said order.

In view of the same, the appeal fails and is accordingly dismissed.

(V.M. Velumani, J.)

(Rai Chattopadhyay, J.)