

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

(Appellate Side)

**Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ**

**W.P.A 18958 of 2017**

Reserved on : 07.08.2023

Pronounced on: 08.12.2023

Md. Asif Baba @ Md. Asif

...Petitioner

-Vs-

Union of India & Ors.

...Respondents

Present:-

Mr. Pratik Majumder

Mr. Snehasish Dey

... for the Petitioner

Mr. Pramod Kumar Drolia

Mr. Santosh Kumar Pandey

...for the Respondents.

**Rajarshi Bharadwaj, J:**

1. The instant writ application arises out of charge-sheet dated 07.02.2007, order dated 16.03.2007 of Summary Security Force Court hereinafter referred as SSFC, findings of the SSFC on 17.03.2007 issued by Commandant, 193BN, Border Security Force, Kalyani, Nadia herein respondent No. 6 and ensuing order dated 16.07.2007 issued by Deputy Commandant (Administration) for Deputy Inspector General, BSF, Kolkata herein respondent No. 4 against one Md Asif Baba @ Md Asif herein the writ petitioner by which punishment of dismissal from service was awarded.

2. Before considering the submissions made by learned counsel appearing on behalf of the respective parties, the facts of the case are that on 06.02.2007 an amount of Rs.1,42,500/- was recovered from one waterproof hood kept inside the personal bed hold of the petitioner, a constable (enrolment no. 97115006) of Border Security Force (BSF) was posted in 193 Battalion at BOP Jayantipur, West Bengal, during a search made in the residential premises. On inquiry, the writ petitioner did not provide any information of the source from where he retrieved such sum of money.

3. Subsequently, a charge sheet dated 07.02.2007 for committing offence punishable under Section 13(e) of Prevention of Corruption Act 1988 was issued by respondent No. 6. Pending disciplinary proceedings, the petitioner was put under close arrest.

4. Thereafter, as per Rule 51 of the Border Security Rules 1969, an assembly of SSFC was formed that composed of respondent No.6 as presiding officer, persons in attendance, stenographer and one Shri Ravindra Pal Singh nominated as "friend of the accused" by the writ petitioner. The petitioner, served with an order bearing no. Estt/SSFC/(MA)/193/07/4121-75 on 16.03.2007 communicating disciplinary proceedings to be held against him was tried by SSFC on 17.03.2007 under Section 46 of the Border Security Force Act 1968, for committing a civil offence of being a public servant in possession of pecuniary resources disproportionate to his known sources of income for which he could not satisfactorily account for. The petitioner was found guilty and was awarded the sentence "*to be dismissed from service*" vide order No. Estt/MA/SSFC/07/420515 dated 17.03.2007.

5. Aggrieved by the purported order of dismissal from service, the petitioner preferred an appeal before the Deputy Inspector General, BSF herein respondent No. 3 whereby his prayer for re-instatement was rejected by respondent No. 4 vide order No. Disc/29/S-Petition/2007/13122-23 dated 16.07.2007. Thus, aggrieved by the preceding orders of the respondent authority, the present writ application lies.

6. The Learned Counsel for the writ petitioner submits that the allegations of committing an offence under Section 13 (e) of Prevention of Corruption Act 1988 are untenable and unconvincing. The conclusion as to guilt of the petitioner has been reached without ascertaining whether the assets found in possession matched or exceeded his income. The petitioner was wrongfully arrested in a mechanical manner in the absence of any past record of violent disposition and tampering evidence.

7. The Learned Counsel for the writ petitioner further submits that the purported sentence by the SSFC is harsh and improper because the offence of corruption is punishable with imprisonment for a term which may extend to ten years or such less punishment as mentioned and such punishment to be awarded by Security Force Court, as per Section 31 (b) of the Border Security Force Act 1968. In the instant case, the petitioner was awarded sentence of dismissal from service under Section 48 of the Border Security Force Act 1968 thus deviating from prescribed rules of procedure.

8. The disciplinary proceeding against the petitioner was presided over by respondent No. 6 at whose stance the raid was made on the residential quarter of the petitioner, alleged amount was recovered, the purported charge-sheet as well as the order of arrest were issued. By presiding over the inquiry proceedings and subsequent order/findings made by him, respondent No.6 has thereby violated the settled principle of law that no person can judge a case in which they have an interest and justice must not only be done, it must be seen to be done.

9. The Learned Counsel for the respondents takes objection to maintainability of the writ petition on the ground that at the time of inspection the writ petitioner failed to adduce any evidence to explain the recovery of an amount of Rs.1,42,500/- from the hood of water proof belonging to him despite providing full and fair chance to defend his case. When the seizure memo was prepared, the writ petitioner declined to make any statement and subsequently respondent No. 6 rightfully proceeded to issue charge-sheet and

thereafter institute disciplinary proceedings against him under Rule 45 of Border Security Rules 1969. During trial, the writ petitioner was provided opportunity to bring his witnesses, documents and evidence to substantiate his defence which he failed to do so thereby proving his misconduct and dereliction of duty.

**10.** The Learned Counsel for the respondents further submits that the charge of recovery of illegal money disproportionate to the known sources of income against the petitioner has not been summarily dealt with but instead a special procedure has been followed by convening the assembly of SSFC in accordance with Rule 47 of Border Security Rules 1969.

**11.** The SSFC was convened by respondent No.6 upon reference to respondent No. 3, the competent authority as per Section 74(2) of the BSF Act 1968. Further, respondent No. 3 authorized respondent No. 6 to convene SSFC for trial of the petitioner. The petitioner was correctly tried by the SSFC in pursuance Rule 45 of Border Security Force Rules 1968. The order of dismissal of service passed by the SSFC is a recognized form of punishment by duly complying with the procedures provided under Rule 45, 133 to 161 of the BSF Rules, 1969.

**12.** Having heard the Learned Counsel for the parties and on perusal of records, this Court finds that proceeding conducted by the Security Force Court, its findings and sentence as well as the impugned order of the appellate authorities are reasonable. The petitioner has been unsuccessful in rebutting the charges levelled against him as he neither produced any document estimating his income and assets nor brought any reliable witness in his favour who were present at the time the money was allegedly recovered. There has been no conclusive confirmation on part of the defense witness produced during the disciplinary proceedings that the petitioner is not guilty of misconduct under Section 13(e) of Prevention of Corruption Act 1988. The writ petitioner's guilty intention has been proved beyond reasonable doubt from

statements of prosecution witnesses, his unequivocal plea of guilt to the charges levelled against him and refusing to cross-examine prosecution witnesses during the disciplinary proceedings. The petitioner has failed to prove his innocence as well as rebut the charges levelled against him and is rightly found to be guilty of recovery of illegal money disproportionate to the known sources of income under Section 13(e) of Prevention of Corruption Act 1988 by the respondent authority. Thereby the sentence of dismissal from service issued by respondent authority against the writ petitioner is accurate and lawful. No case of breach of natural justice against the petitioner is made out since the impugned disciplinary proceeding conducted by the respondent authority has followed the procedures contained in the Border Security Force Act 1968 and Rules.

**13.** In such view, the writ application being WPA 18958 of 2017 lacks merit and the same is dismissed accordingly.

**14.** There shall, however, be no order as to costs.

**15.** Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

**(RAJARSHI BHARADWAJ, J)**

**Kolkata**

08.12.2023

PA (BS)