



WEB COPY

W.P.No.334



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 10.11.2023

DELIVERED ON: 27.11.2023

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.No.33475 of 2007

M.P.No.1 of 2007

A.Jayagopi (88243358)
...Petitioner

vs.

1.Director General,
Border Security Force
(DISC and LIT Branch)
2nd Floor,
Block No.10,
CGO Complex,
Lodhi Road,
New Delhi – 110 003.

2.DIG/Chief Law Officer (D & L),
Director General,
Border Security Force
(DISC and LIT Branch)
2nd Floor,
Block No.10,
CGO Complex,
Lodhi Road,
New Delhi – 110 003.

3.The Inspector General,
BSF, SB FTR HQ,
2B, Lord Sinha Road,
Kolkata – 700 071.

<https://www.mhc.tn.gov.in/judis>



W.P.No.334'



4.Dr.Indrajit,
Commandant,
62, Bn BSF,
Baishaab Nagar,
Malda,
West Bangal.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the order of the 1st respondent signed on his behalf by the 2nd respondent dated 01.11.2006 under ref:No.06/49/2006/BSF/CLO (D&L)/10399/10404, the Government of India, Ministry of Home Affairs, Directorate General, Border Security Force, (DISC & LIT Branch) and to quash the same as illegal and invalid and also to direct the respondents 1 and 2 to consider and recognise the period of 189 days between the 4th respondent's order of dismissal dated 15.05.2006 and the date of the 1st respondent order, signed on his behalf by the 2nd respondent dated 01.11.2006, during which period the petitioner was forced to be at home, as on duty period and to pay the petitioner salary and other emoluments payable during the period 15.05.2006 to 01.11.2006 within a date to be fixed by this Court.

For Petitioner : Mr.Ashok Menon

For Respondents : Dr.D.Simon for R1 to R4
Central Government Standing Counsel



ORDER

WEB COPY The petitioner herein had filed this Writ Petition challenging the order of modifying the punishment imposed against him.

2.Heard Mr.Ashok Menon, learned counsel appearing for the petitioner and Dr.D.Simon, learned Central Government Standing Counsel appearing for the respondents.

3.Mr.Ashok Menon, learned counsel appearing for the petitioner would submit that the petitioner had joined the Border Security Force in 1988 as a Driver and ever since has been serving as a Driver. He had served in various places. He had been promoted as a Head Constable and was thereafter posted to the Battalion in West Bengal at Krishna Nagar Sector. The fourth respondent had engaged himself in illegal activities like smuggling. When the said activities were pointed out to the Commandant, the fourth respondent was very upset and saw that certain false charges were framed against the petitioner and saw himself to be appointed as an Enquiry Officer. The petitioner had objected to the fourth respondent being the Enquiry Officer and had sent letters to the Union Home Minister and to the first respondent. But, however, the same was not acceded to. The fourth respondent conducted an enquiry upon which the third respondent



W.P.No.334

WEB COPY

appeal to the first respondent. Even though when the appeal was pending before the first respondent, the second respondent had passed the order on behalf of the first respondent. Considering the period of services and also various remarks that had been credited to the petitioner and also taking into the assessment of character by the Commandant, the first respondent to offer an opportunity to serve the force had modified the punishment of dismissal by forfeiture of five years service for the purpose of promotion and forfeiture of five years past service for the purpose of pension.

4.He would submit that the first respondent herein had not applied his mind on the merits of the appeal filed by the petitioner. The petitioner had alleged bias in the enquiry. That apart, he would also submit that the charges framed against the petitioner were all false. He would submit that the first respondent ought to have entertained the contentions raised by the petitioner and also ought to have given a finding on those aspects. Had the first respondent applied his mind properly, the petitioner would have been exonerated. However, he would submit that the petitioner after having been reinstated into service had served the force and found that the atmosphere was not contingent and also opted for a voluntary retirement and had been permitted to retire from service. He would submit that if this Writ Petition is allowed, the petitioner would be entitled to notional promotion if any and for a higher pension.



W.P.No.334

WEB COPY

5. Countering his arguments, Dr.D.Simon, learned Central Government Standing Counsel appearing for the respondents would submit that the petitioner had involved himself in very many serious charges. The petitioner had been directed to be kept under force custody for the punishment that the petitioner had suffered. While executing the order of force custody which had been imposed upon as a punishment, the petitioner had absolutely misbehaved himself and not only with the Superiors but also with the peers and threatened the people who were in charge of. Therefore, five charges have been framed against the petitioner. All the five charges according to the learned Central Government Standing Counsel were proved by the witnesses that were examined. He had also produced the proceedings of the Enquiry Officer for this Court to appreciate the veracity of the allegations. He would submit that even though the Disciplinary Authority had imposed an order of dismissal, the Appellate Authority taken into consideration the past conduct and services of the petitioner had modified the order of punishment to that offer forfeiture of five years service for the purpose of promotion and forfeiture of five years past service for the purpose of pension. Further, he would submit that a lenient view had been taken by the Appellate Authority and therefore, there is no necessity to be interfered with.



WEB COPY

W.P.No.334



6.I have considered the submission made by the learned counsel appearing on either side and perused the materials placed on record.

7.The Appellate Authority had modified the order of dismissal passed by the Disciplinary Authority. However, while dealing with the appeal, the Appellate Authority had not considered the grounds of appeal as raised by the petitioner, but had only taken into account the past conduct/services of the petitioner in modifying the punishment. That apart, the Appellate Authority had not even attempted to appreciate the grounds raised by the petitioner in his appeal, which prompts me to look into the Enquiry Proceedings which had been placed before me by the respondents to analyse the grounds raised by the petitioner.

8.The first witness was never cross-examined and as it is recorded by the Enquiry Officer as follows:

Cross examination by accused

*The accused asked the copy of statement which was refused to him. Hence accused refused to cross examine.
Provision of BSF Rule 90 have been complied.*

P.W.2- Cross examination by accused

I do not know why you came from Imphal to Pingla



WEB COPY

W.P.No.334



You were marched one time at Pingla on 17 April 06. I do not know the reason that why you went 2nd time in the office of Commandant.

I do not know that you said to meet reporter. The accused was brought from outside of Tac HQ at Pingla.

I do not know exact time of announcing punishment by the Commandant.

On that day i.e., 17/04/06, three persons were punished.

There was not separate room at Tac HQ Pingla and all three accused personnel were kept in one room. The accused declared himself "Main Azad Huu".

Armed guard was kept on accused. HC Balwan was guard Comdr. After that HC Deepak Giri was guard Comdr. I do not remember date when HC Deepak Giri was guard Comdr.

The accused was kept in separate room at Pingla and CT Shankar Ganesh was on guard. The accused was taken in vehicle of Tac HQ to new location at Dingha.

CT Karni Singh and Swpr Indra Kumar were in the same vehicle

There was QRT in bus in which accused was travelling. HC Deshraj was one of guard. The witness was also travelling in same vehicle.

On 18th April on marching at Digha, the accused was kept with HC Joshi.

I told the accused on 18th April 06 at Digha that accused is not allowed to attend roll call.

No GD entry was made when accused left Tac HQ to Bank



W.P.No.334

on 19 April 06 at Digha.

Guard Comdr reported that Gopi has gone to prepare the bank draft.

On 19/04/06, the accused after return from bank, was moving in camp, was not put in cell. The accused was present in roll call on 19/04/06.

While accused stopped the vehicle of Adjutant, the accused did not abuse, but, asked to write point.

At that time the accused did not say “BSF officer leach hai jawan ka khoon choosta hai”.

OC PS Digha provided light vehicle to carry the accused.

It is not known what translation in between SP and accused occurred.

Police did not allow the said vehicle at Howrah and took to PS Buz Buz.

While said vehicle crossed the Howrah bridge, accused asked to take family, but, was not allowed due to no space in the vehicle.

There was one bulb and one tube light at ground floor and one bulb and tube light were at 1st floor.

There was no any light outside of the building, i.e., ground where civil vehicles were parked.

The accused was carrying wooden chair while he was chasing Shri Ashish Behera, DC.

The accused did not go outside to bring chair from shops.

The accused took one round behind Shri Ashish Behera, DC.

I do not know whether accused hit the chair to Shri Ashish



W.P.No.334

Behera, DC. While copies of orders were given to accused, the accused was asked to sit down and accused sat on plastic chair. There were other school furnitures like wooden chair were there also.

The accused shouted that wrong orders were given by getting signature.

It is in-correct to suggest that CT Hari Nandan was with the witness, HC Deepak Giri was at gate of school/Tac HQ.

I did not hear the word “Uski Gand koi nahi mar raha hai” while accused told to Shri Ashish Behera that his family was at station since last two days.

Guard and witness did not carry the weapon while accused was taken to railway station on 24/04/06.

It is correct that weapon of someone was picked by accused, but, the accused was overpowered by others on 24/04/06 at Girls School Buz Buz.

The room was at first floor where troops were staying.

I do not know the detail of weapon which was picked up by accused on 24/04/06 because troops were mixed with Coy and Tac HQ.

Accused do not desire to read over the statement.

The provision of rule 89 & 90 is complied with.

P.W.3- Cross examination by accused

On 18/04/06 at Pingla while HQ was moving, HC Balwan Singh handed over two prisoners namely CT Karani Singh and Swpr Indira Kumar.



WEB COPY

W.P.No.334



At the time of move on 18/04/06 at Pingla, BRO was issued and one plus three armed guard was was detailed and I was guard Comdr. The accused was not handed by HC Balwan Singh, but, there was name of accused in the list of prisoners.

On 17/04/06 I was not guard comdr for the accused at Pingla while punishment was given to accused.

On 18/04/06 I was travelling in Bus of B Coy in which accused was not present and two prisoners namely CT Karani Singh and Swpr Indra Kumar were present.

It is correct HC(G) Joshi provided room on reaching at Digha on 18/04/06.

HC M A Khan told me to keep prisoners CT Karani Singh and Swpr Indra Kumar in room No.13.

Shri Ashish Behera, DC gave direction let the accused stay where he suits, but, guard will keep watch on him.

I did not tell the accused to attend roll call on 19/04/06.

On 19/04/06 while accused left the room, but, not knowing room number, at about 0815 hrs, one Constable namely N S Nathan without weapon accompanied the accused for outside and time of return not known.

On 19/04/06 after over off roll call, while accused blocked the vehicle of Shri Ashish Behera, DC did not abuse Shri Ashish Behera, DC and other Senior BSF officers.

The accused did not try to beat Shri Ashish Behera, DC on 19/04/06 while accused blocked the vehicle.

Questions by the Court

I did not hear any voice “Bachao – Bachao” on 24/04/06



WEB COPY

W.P.No.334



In my presence the accused did not abuse at Pingla.

The accused did not mention any name while abused at Buz Buz Tac HQ like Kutta.

The accused was holding plastic chair while running behind Shri Ashish Behera, DC.

The accused did not hit the chair on Shri Behera, DC, as the accused was overpowered by myself and other guards.

From Digha to Buz Buz, I was not having arms while carrying the accused.

The accused did not ask for liquor enroute.

No question by the Court

Provision of rule 90 is complied.

- Prosecution is closed -

9.A reading of the cross-examinations as extracted supra, would all show that the charges that had been framed against the petitioner are imaginary. It is pertinent to note that a Delinquent Officer is entitled for a copy of the statement made by a witness for him to cross-examine. In the present case, the Enquiry Officer had the audacity to record a statement that in spite of a request to give a copy of the statement, the same had been refused by him, which itself would show that the Enquiry Officer was biased as alleged by the petitioner. From the perusal of the cross-examination of the other witnesses, it could be seen that none of them were aware of such incidents and the cross-examination



W.P.No.334

charges as framed against the petitioner are all false. The Appellate Authority ought to have gone into the Enquiry Proceedings on the various grounds raised by the petitioner, but he had not gone into it. The attitude of the Appellate Authority suggest that he wants to give a quietus to the allegations against the fourth respondent for the best reasons known to him. I am also of the view that by giving a lesser punishment, he had tried to convince the petitioner from proceeding any further.

10. In such a view of the matter, I find that the entire Disciplinary Proceedings is a farce for the reasons best known & I have no hesitation in setting aside the order of punishment impugned in this Writ Petition. Accordingly, the order impugned in this Writ Petition is set aside and the Writ Petition is allowed. Since the punishment has been set aside, the petitioner is entitled to all the attendant benefits and such benefits shall be paid to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

27.11.2023

Index: Yes/No
Speaking order: Yes/No
pam



W.P.No.334

K.KUMARESH BABU, J.

pam

WEB COPY To

- 1.The Director General,
Border Security Force (DISC and LIT Branch)
2nd Floor, Block No.10,
CGO Complex, Lodhi Road,
New Delhi – 110 003.
- 2.The DIG/Chief Law Officer (D & L),
Director General,
Border Security Force (DISC and LIT Branch)
2nd Floor, Block No.10, CGO Complex,
Lodhi Road,
New Delhi – 110 003.
- 3.The Inspector General,
BSF, SB FTR HQ,
2B, Lord Sinha Road,
Kolkata – 700 071.

W.P.No.33475 of 2007

27.11.2023