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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 17.01.2023

+ W.P.(C) 497/2023

KIRAN KUMAR

..... Petitioner

Through: Mr.Abhay K. Bhargava &
Mr.Satyaarth B. Sinha, Advs.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Ms.Pratima N. Lakra, CGSC with
Mr.Chandan Prajapati, Mr.Apoorv
Shamra & Ms.Avshreya Pratap Singh,
Advocates.
Sh.Hemendra Singh, Dy. Comdt.
(LAW)

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. Present petition has been filed seeking directions to the respondents to adjudicate the statutory petition dated 20.12.2022 filed by the petitioner under Section 117(1) of the BSF Act read with Rule 167 of the BSF Rules and confirm the sentence in a time bound manner.
2. The brief facts of the case are that the petitioner joined the BSF on 01.06.2002 on the rank of Constable. A complaint was filed against the

petitioner on 26.11.2019 by the prosecutrix for illegal blackmailing and false promise of marriage wherein the General Security Force Court trial proceedings were conducted under Sections 376/468 IPC and the petitioner, vide order dated 29.06.2022, was found guilty and was imprisoned for a period of two years with dismissal from service.

3. Thereafter, on 20.08.2022, petitioner preferred a pre-confirmation statutory petition under Section 117 (1) of the BSF Act, read with Rule 167 of the BSF Rules. Since it was not decided, a writ petition was filed by the petitioner for time bound adjudication. The same was disposed of with the direction to adjudicate the statutory petition within six weeks. The petitioner was tried for revision trial before the GSFC and the GSFC enhanced the sentence to 10 years from 2 years with dismissal from service vide its order dated 28.11.2022.

4. Being aggrieved, petitioner preferred another statutory petition dated 20.12.2022 under Section 117 (1) of the BSF Act, 1968 read with Rule 167 of the BSF Rules, 1969, however, the said petition has not been decided till date.

5. Notice issued.

6. Ms.Pratima N. Lakra, learned Central Government Standing Counsel, on advance notice, submits that the sentence of the petitioner has been confirmed vide order dated 29.12.2022.

7. Against order dated 28.11.2022 enhancing the sentence, petitioner filed a statutory petition dated 20.12.2022 which has not been considered as per the provisions mentioned above, but the sentence has been enhanced by the GSFC and confirmed by a competent authority without considering the petition filed by the petitioner under Section 117(1) of the BSF Act read

with Rule 167 of the BSF Act.

8. We are of the considered opinion that once the sentence is enhanced, the right of the petitioner accrued to make a pre-confirmation petition which he accordingly made on 20.12.2022. Though as per the submission of counsel for the respondents, competent authority has confirmed the sentence vide order dated 29.12.2022 after considering the statutory petition dated 20.12.2022 filed by the petitioner, but the record evinces that the pre-confirmation statutory petition dated 20.12.2022 filed after the Revisional Order dated 28.11.2022, has not been considered.

9. In view of above, we hereby set aside order dated 29.12.2022 by giving direction to the respondents to first decide the pre-confirmation petition dated 20.12.2022 within six weeks as per law.

10. Needless to say that if the petitioner is still aggrieved by the order passed by the respondents, he may challenge the same before the appropriate forum as per law.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

JANUARY 17, 2023/ab