



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

% Judgment reserved on: 24.08.2023
Judgment delivered on: 14.12.2023

+ W.P.(C) 11248/2023

DEEPAK Petitioner

versus

DIRECTOR GENERAL OF BORDER SECURITY FORCE
AND ORS Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Rakesh Kumar with Mr. Pawan Kumar and Mr. Kumar Gautam, Advocates

For the Respondents: Ms. Jatinder Kaur, SPC for UOI

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J.

1. Petitioner seeks quashing of order dated 11.08.2022 passed by Summary Security Force Court (SSFC) whereby he has been directed to be dismissed from service. He also challenges order dated 30.06.2023 passed by Director General, Border Security Force (BSF) whereby his appeal has been dismissed.

2. As per the facts mentioned in the Writ Petition, petitioner joined BSF in the year 2008 and served at different places as constable. At the relevant time i.e. in the year 2022, he was posted at



Border Outpost (BOP), Mohanpur with its Headquarters at Haringhat Farm, Nadia District, West Bengal. As a Nursing Assistant, his duty was to take care of the patients coming to the hospital. One lady constable made allegations of sexual harassment against him. Such allegations resulted in his suspension. Later on, he was tried by SSFC, presided over by his Commandant.

3. SSFC held him guilty and awarded him with sentence of dismissal from service.

4. Petitioner challenged the aforesaid order by filing an appeal before the Director General, BSF but it also did not find any favour.

5. It will be pertinent to mention here that the aforesaid appeal had been filed by the petitioner on 26.10.2022 but since he did not get any response about the outcome thereof, he filed a Writ Petition before the High Court of Calcutta. Vide order dated 27.04.2023 passed by High Court of Calcutta in W.P.A. No. 144 of 2023, respondents were directed to decide the statutory appeal within two months. As noted above, such statutory appeal was dismissed on 30.06.2023.

6. The impugned order of dismissal has been challenged, *inter alia*, on the following grounds:-

- i. *There is gross violation of principles of natural justice and there are procedural flaws which renders the whole process of trial unsustainable in law;*



- ii. *The original written complaint, which was foundation of the case of prosecution and which resulted in eventual dismissal of petitioner from service, was never placed before SSFC.*
- iii. *His Commandant acted in dual capacity. He served him with charge-sheet and also conducted SSFC trial which is in violation of principle of natural justice as he should not have conducted the trial, being personally interested in the case.*
- iv. *SSFC simply held the petitioner guilty but did not assign any reason whatsoever. Thus, the order of dismissal is cryptic and without any reason and, therefore, is liable to be set aside.*
- v. *Petitioner has been falsely implicated and charges do not stand proved.*

7. All such contentions have been refuted by respondents.

8. It has been argued by the respondents that the complainant has, in no uncertain terms, raised accusing finger towards the petitioner and the evidence led before SSFC proves commission of offence under Section 354A IPC, a civil offence under Section 46 of Border Security Force Act, 1968. It is also contended that though SSFC trial was with respect to the allegations of sexual harassment made by one particular lady constable, fact remains that besides her, one other lady



constable also entered into witness box and deposed that even she was sexually harassed in similar manner. It is also contended that there are no procedural infirmities and no violation of any principle of natural justice and, therefore, petition is liable to be dismissed. It is also supplemented that in the entire writ petition, petitioner has not whispered even a single word regarding his alleged act of sexual harassment which rather indicates that he does not dispute his complicity at all.

9. Before touching the aspect evidence led before SSFC, we need to remind ourselves that this Court cannot act as appellate court and reassess and reappraise the evidence. However, indubitably, if we come across any instance suggesting violation of principles of natural justice or gross violation of the laid down procedure or denial of fair trial, the intervention can be made exercising power under Article 226 of the Constitution of India. The aspect of fair trial enshrined under Article 21 of Constitution of India also implies adherence to relevant statutory provisions including those contained under Indian Evidence Act. A Co-ordinate Bench of this Court in *Balwinder Singh Vs. Union of India & Ors. (2010) 172 DLT 200 (DB)*, while making reference to the judgment given by Division Bench of Guwahati High Court, observed as under:-

“So far as the rights of members of security forces as the Border Security Force and the permissibility and scope of challenge to the proceedings of the security force courts by way of proceedings under Article 226 are concerned, the Division Bench of the Guwahati High Court had occasion to consider the same in the pronouncement reported at MANU/GH/0170/2007 : (2007) 1 GLT



903 Director General, Border Security Force vs. Iboton Singh (KL). In para 14 & 15, it was held as follows:-

“14. While considering the scope of judicial review by the High Court in matters of the proceedings of a trial by a SFC, what is also pertinent to note is that Article 33 of the Constitution has conferred, on Parliament, the power to abridge the fundamental rights of not only armed forces, but also of the forces entrusted with the maintenance of public order. This, however, does not mean that merely because of the fact that a person belongs to an armed force or a force entrusted with the maintenance of public order, he is denuded of the constitutional guarantees given to him by Article 21 of the Constitution, which ensures to every person a fair trial in accordance with law. Viewed from this angle, it is clear that when the procedures prescribed are followed as a mere formality by a SFC and not in substance or in its true spirit, the accused may, in an appropriate case, be held to have been denied a fair trial and such a proceeding may warrant interference by the High Court in exercise of its extra-ordinary jurisdiction under Article 226. The procedure prescribed adopted for trial by a SFC has to be tested on the touchstone of Article 21 and if the procedural safeguards given to a person from the Border Security Force, under the BSF Act and/or the BSF Rules, are violated, violation thereof would, in substance, be denial of the right to a fair trial. A person, even when he comes from the BSF, is as much a citizen as any other citizen of India and he is entitled to all such protections as have been given to him by making various laws in conformity with the provisions of Article 21. The Constitution-makers were conscious of the fact that no more restriction should be placed than what are necessary and indispensable for ensuring maintenance of discipline and proper discharge" of duties by the armed forces and the forces entrusted-with the maintenance of public order. Hence, when an Indian citizen, being a member of any such forces, is tried under its own established mechanism, such as, SFC, on a charge of having committed the civil offence of 'murder' punishable under Section 320 IPC, it is the duty of the High Court to examine, when such a person approaches the High Court with an application under Article 226, to determine if, while holding the trial, the provisions of the BSF Act and the Rules made thereunder, which provide protection to the accused, have been adhered to or not and whether, for the purpose of reaching its findings, the SFC



has kept itself informed of all the relevant provisions of the Evidence Act and the Indian Penal Code.

15. It is for the reasons indicated above that in *Union of India v. LT Ballam Singh* reported in MANU/SC/0360/2002 : 2002(81)ECC236, the Apex Court has pointed out that even an army personnel is entitled to the protection, which the Narcotic Drugs and Psychotropic Substances Act (in short, 'the NDPS Act') gives to any other person. In other words, the protection available, in the form of Sections 42 and 50 of the NDPS Act, shall be applicable to the case of even an army personnel, for, there is nothing, in the law, that the protection, given in the NDPS Act, are not applicable to the members of the armed forces. Logically, therefore, when the Evidence Act is applicable to the proceedings of a trial by a SFC, it is but natural to interfere, and, in fact, we have no hesitation in holding, that if the provisions of the Evidence Act are ignored or are not taken into account by a SGFC and/or when the provisions of the Indian Penal Code are not properly applied, such noncompliance may, in an appropriate case, compel the writ Court to interfere, in exercise of its powers under Article 266, with the findings, which may have been reached by either ignoring, or in ignorance of, the relevant provisions of law, particularly, when such non-compliance results in gross miscarriage of justice. This apart, and as already indicated above, the procedural safeguards, which the BSF Act and the Rules themselves provide, cannot be ignored, for, ignoring them may amount to, in a given case, denial of a fair procedure to a person accused of having committed offence under the Indian Penal Code."

(emphasis supplied)

10. Thus, though this Court cannot act as appellate authority, it can certainly examine the matter from the aforesaid limited angle and can also satisfy itself whether the offence stood made out or not.



11. Let us now see the charges for which the petitioner was put to SSFC trial. These are contained in charge-sheet dated 08.08.2022 which read as under:-

*1st CHARGE BSF COMMITTING A CIVIL OFFENCE U/S 354A
ACT 1968 U/S-46 IPC THAT IS TO SAY, SEXUAL HARASSMENT
OF WOMEN AT WORK PLACE*

*in that he,
On 25/02/2022 at about 2200 hrs while enroute
from Dak Bangla Govt. Hospital, North 24
Parganas (WB) to BOP Hakimpur forcefully
tried to massage abdomen of No. 170901204
Constable (GD/Mahila) Ms. A of 'C' Coy inside
the Ambulance thereby doing physical contact
and advances involving unwelcome and explicit
sexual overtures.*

*2nd CHARGE BSF COMMITTING A CIVIL OFFENCE U/S 354A
ACT 1968 U/S-46 IPC THAT IS TO SAY, SEXUAL HARASSMENT
OF WOMEN AT WORKPLACE*

*in that he,
On 01/03/2022 in the afternoon, called No.
170901204 Constable (GD/Mahila) Ms. A took
her to a Medical Store located at Dak Bangla,
North 24 Parganas (WB), closed the door and
tried to touch her private part repeatedly in
absence of doctor that is to say a demand or
request for sexual favours.*

*3rd CHARGE BSF COMMITTING A CIVIL OFFENCE U/S 354A
ACT 1968 U/S-46 IPC THAT IS TO SAY, SEXUAL HARASSMENT
OF WOMEN AT WORKPLACE*

*in that he,
On 01/03/2022 (AN) made sexually coloured
remarks to No. 170901204 Constable
(GD/Mahila) Ms. A, after touching her private
parts that "your infection will be cured by
touching of my point/penis".*



12. Since trial was in relation to offence related to sexual assault, in order to protect and withhold the identity of the complainant/victim, she has been referred to 'Ms. A' in the above charge-sheet and would be referred to, in similar manner, in the later part of the judgment as well.

13. The proceedings of SSFC commenced on 08.08.2022. It was presided over by Sh. Narayan Chand, Commandant, 112 Battalion, BSF. Inspector/RO Prasenjit Sarkar and SI/RO S.V. Panicker attended the trial as per the procedure of SSFC and Sh. Manish Karki, Assistant Commandant acted as friend of petitioner/accused as per his wish and desire.

14. Charges were read over to the petitioner who pleaded not guilty. He was also asked whether he had any objection of conducting of SSFC trial by Sh. Narayan Chand to which he answered in negative.

15. Prosecution examined following witnesses:-

- i. PW1 Ms. A (complainant)
- ii. PW2 Ms. B (name withheld for the same reason)
- iii. PW3 Ms. Shalini Tirkey, Mahila Constable, 112 BN, BSF
- iv. PW4 Mr. Karamjit Singh, Head Constable/Driver 112 BN, BSF
- v. PW5 Mr. Lakshman Rao, Head Constable, 112 BN, BSF
- vi. PW6 Mr. Pyare Ram, Head Constable, 112 BN, BSF



16. As per charge-sheet, the incidents of sexual assault took place on 25.02.2022 and 01.03.2022. Ms. A has given vivid description about the act and conduct of the petitioner for both the above dates.

17. It will be now appropriate to note as to what she deposed during the trial.

18. Ms. A joined BSF as Constable in the year 2017 and was on duty at Hakimpur on 25.02.2022. She complained of stomach ache for which her Post Commander directed her to be taken to mini hospital located near Border Outpost (BOP). Thereafter, petitioner came there in an ambulance to take her to hospital. Since Ms. A had, on earlier occasions also, gone to hospital with the same constable/Nursing Assistant (petitioner herein), she accompanied him for check-up at government hospital in Dakbangla. Ambulance reached near Dakbangla Government Hospital at around 2100 hours. Doctor checked her up and gave her injection and some medicines. She was kept under supervision for some time and when she started feeling better, she left the hospital around 2200 hours in the same ambulance. Petitioner was sitting in the ambulance with driver. After 200-300 mts. i.e. hardly 2-3 minutes away from the hospital, petitioner asked the driver to stop the ambulance at a relatively dark place. He got down and came towards rear and opened the door. He told her that one more injection was to be given to her in waist region. She, however, replied that the doctor had already given her two injections and there was no requirement of another injection. However, petitioner insisted claiming that he had been advised in this



regard by the doctor. She, initially, resisted but on repeated asking of the petitioner, she asked her to give injection on her wrist. While injecting the same, petitioner told her that she did not use to get her feet massaged, which was required because her pulse rate was high. She answered that she would go back to the company and would do the massage herself. Petitioner, however, untied her shoes and started massaging her feet claiming that if she had pain in the stomach, he would massage thereto and then he tried to touch her belly region. She then told him that she would report about him to his seniors. Thereafter, petitioner did not do anything and sat in the front with the driver and asked him to drive the ambulance. They then reached BOP. According to her, on 27.02.2022 also, she went to same hospital for ultrasound accompanied by the petitioner and two other personnel but that day everything remained normal.

19. As regards incident dated 01.03.2022, Ms. A claimed that she along with petitioner went to Moonlight Hospital, Basirhat to meet gynecologist. There were three persons in the ambulance i.e. she herself, petitioner and the driver. The doctor checked her up at the hospital at about 1400 hours and prescribed some medicines and advised her to take medicines from medical store. They left the hospital and the ambulance was stopped at a medical store in front of government hospital. Petitioner got down from the ambulance and went towards medical store. They called her up and told that there was a gynecologist doctor there as well. She initially resisted but on repeated persuasion of the petitioner, she got down from the



ambulance and went inside the medical store to meet the doctor. When she went inside the chamber of the doctor, there was no doctor present. As per further deposition, after she entered the chamber of the doctor, petitioner bolted the door from inside and claimed that doctor was not available but he would do her check-up. He forcibly made her lie on the check-up table and opened his pants and tried to touch her private parts, without her consent. He was also holding her both hands and when she asked him to release her hands, petitioner told her that if she puts his penis in, all her infection would be cured. She again claimed that she would make a complaint against him to his seniors, upon which he claimed that she could, at best, tell the same to Commanding Officer. Thereafter, she came out of the chamber by pushing him. Petitioner also came out of the chamber 15-20 minutes later and they all sat in the ambulance and reached BOP at about 1645 hours. According to Ms. A, at about 1800 hours, petitioner called her up and told her that one another lady constable Ms. B also had infection and he treated her in the similar manner. He claimed that said lady constable had relationship with him 4-5 times. He even asked her to confirm the same from Ms. B. She then confided in another lady constable present in the BOP Arshikari who saw her crying and who told that petitioner had done the same to another lady constable in the past as well. As per her further deposition, she then met other lady constable Ms. B who, initially, refused to confide in her but when she narrated as to what had happened to her, she became emotional and revealed that petitioner had done the same thing to her as well. Thereafter, Ms. A reported the matter to her seniors by



sending a letter. She deposed that petitioner was suspended and thereafter his wife also called her up and told her that her husband had accepted his mistake and requested her to forgive him. His wife also messaged her on WhatsApp and the screenshots of WhatsApp messages have also been proved.

20. She has, thus, very clearly, narrated about the manner in which she was sexually assaulted by the petitioner.

21. Though the charges were framed limited to the sexual assault meted out to Ms. A, Ms. B also entered into witness box and deposed candidly.

22. We have seen the testimony of PW2 Ms. B which also indicates that petitioner had committed sexual harassment upon her by touching her private parts. Unfortunately, she did not make any formal complaint against him as she felt that there was no proper mechanism of redressal thereof and any such victim rather used to earn disrepute by making complaints. Fact remains that she also gathered courage and came in open and deposed against the petitioner during the instant proceedings of SSFC trial. She corroborated the version of Ms. A as well.

23. This Court would also not mince any words in commenting that both the witnesses were questioned and cross-examined by the petitioner but he could not elicit anything from them which may even remotely indicate any element of falsehood. There is no question or



suggestion that no such incident had ever happened or that he had been falsely implicated.

24. Prosecution also examined HC Karamjit Singh, driver of the ambulance. As regards incident dated 25.02.2022, he did depose that the ambulance was stopped as per direction of Nursing Assistant who went to the rear of the ambulance to give injection to Ms. A. He also deposed that Ms. A refused to take injection claiming that two injections had already given to her at the hospital but petitioner still insisted and administered the injection. As regards incident dated 01.03.2022, he claimed that ambulance was stopped in front of Dakbangla Government Hospital at the behest of petitioner. He also claimed that after a while, petitioner called the lady constable inside to see the doctor and who came back after 15-20 minutes. Fact remains that he is not in a position to comment about the actual incident but his version seems to be in synchronization with the version of Ms. A. He did admit in his cross-examination that Ms. A neither cried nor tried to tell anything to him and he also claimed that he did not notice anything unusual from her behavior but nothing would turn on the same as testimony of Ms. A is very specific and categoric and she has narrated about the act and conduct of petitioner which clearly makes out it to be a case under Section 354A IPC. It becomes very much evident that petitioner had committed physical contacts and advances involving unwelcome and explicit sexual overtures, thereby committing offence of sexual harassment.



25. Petitioner examined his wife in his defence. According to us, it proved to be somewhat counter-productive for him for two reasons. Firstly, WhatsApp chat between her and the complainant goes on to show that she kept on apologizing for the act and conduct of her husband. This fact goes against the petitioner. Secondly and more importantly, she is not aware about anything as in her deposition during SSFC trial, she rather claimed that her husband had not told her anything. Thus, she seems to have appeared in the defence of her husband merely to somehow save him from the prosecution. Be that as it may, fact remains that her evidence does not create any element of doubt in the truthfulness of the case of the prosecution.

26. We may reiterate that petitioner herein has not whispered even a single word with respect to the incident in question as such. There is no question or suggestion to the complainant suggesting any animosity between the two. He has not bothered to clarify as to why she would frame him or falsely implicate him.

27. The record brought by the respondents would also indicate that after the complaint of sexual harassment was received from Ms. A, matter was immediately referred to Complaint Committee constituted under *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* and such Committee also examined all the concerned witnesses and recommended strict disciplinary action against petitioner herein. It also recommended that the other lady constable i.e. Ms. B may also be counseled as she had



not made any complaint about the sexual harassment meted out to her by the petitioner.

28. On the basis of such recommendations, SSFC trial was conducted.

29. Offence in question falls within Section 46 of BSF Act 1968 and, therefore, once it was decided to convene Summary Security Force Court, the charge-sheet was sent for seeking concurrence of DIG, Sector Calcutta in compliance of Section 74 (2) of BSF Act. Such concurrence was received and it was thereafter only that the petitioner was charge-sheeted.

30. Petitioner cannot raise any grievance as to why he was tried by the same Commandant. Since proceedings were initiated as per the procedure prescribed for Summary Security Force Court, the Commandant of said Battalion was fully empowered and authorized to serve the charge-sheet and also, if required, to preside over the trial. Merely because the charge-sheet had been signed by the Commandant would not make him an interested party. Said Commandant, even otherwise, is not a witness to the alleged incidents. During SSFC trial, petitioner was also specifically asked whether he had any objection to trial by said Commandant. At that time also, he did not raise any grievance. Moreover, petitioner has failed to elucidate as to on what basis his Commandant could be said to be personally interested in the matter.



31. According to petitioner, the impugned order of SSFC needs to be set aside as it is bereft of any reason. It has been argued that after concluding evidence, SSFC gave mere one line finding which reads as under:-

“I am of the opinion on the evidence before me that the accused No. 080050353 CT/GD Deepak of 112 BN BSF is guilty of all the 03 charges”.

32. It is argued that SSFC did not try to evaluate the evidence and it did not consider the case in its entirety and, therefore, on this short point, the findings need to be set aside. He has contended that being non-speaking order, it becomes *non-est* order.

33. We have gone through the verdict given by SSFC. Undoubtedly, there is only recording of finding and no reasons have been given but in terms of statutory provisions, it is quite evident that there is no illegality in the same. Rules 148 & 149 of BSF Rules 1969 read as under:-

148. Verdict – The Court shall after the evidence for prosecution and defence has been heard, give its opinion as to whether the accused is guilty or not guilty of the charge or charges.

149. Finding – (1) The finding on every charge upon which the accused is arraigned shall be recorded and except as mentioned in these rules shall be recorded simply as a finding of “Guilty” or of “Not Guilty”.

(2) When the Court is of opinion as regards any charge that the facts proved do not disclose the offence charged or any offence of which he might under the Act legally be found guilty on the charge as laid, the Court shall find the accused “Not Guilty” of that charge.

(3) When the Court is opinion as regards any charge that the facts found to be proved in evidence differ materially from the facts



alleged in the statement of particulars in the charge, but are nevertheless sufficient to prove the offence stated in the charge, and that the difference is not so material as to have prejudiced the accused in his defence, it may, instead of a finding of "Not Guilty" record a special finding.

(4) The special finding may find the accused guilty on a charge subject to the statement of exceptions or variations specified therein.

(5) The Court shall not find the accused guilty on more than one or two or more charges laid in the alternative, even if conviction upon one charge necessarily connotes guilt upon the alternative charge or charges.

34. Obviously, in the case in hand, the Commandant did not find it to be a case requiring him of giving any 'special finding'.

35. The aspect regarding assigning reasons by SSFC in support of its verdict came up for consideration before the Supreme Court in *Union of India Vs. Dinesh Kumar: (2010) 3 SCC 161* and it was observed that SSFC was not required to give any reason under Rule 149 of BSF Rules. It also noticed that though Rule 99 of BSF Rules had been amended which required General Security Force Court (GSFC) to provide reasons but there was no corresponding amendment in Rule 149 of BSF Rules which was applicable in the case of SSFC. We may also note that the aforesaid legal position was reiterated by Supreme Court in *Union of India Vs. Mudrika Singh: 2021 SCC OnLine SC 1173*.

36. Petitioner seems to have taken hyper technical objection that the original complaint made by the complainant was not exhibited during SSFC trial. This pales into insignificance, particularly on account of the trustworthy deposition of the complainant. Moreover,



Supreme Court in *Mudrika Singh (supra)* has observed that such proceedings inquiring into sexual misconduct cannot be invalidated on hyper technical interpretation of Service Rules and Statutory Regulations and directed the Courts to interpret the same in a manner that meted out procedural and substantive justice to all the parties.

37. In view of our foregoing discussion, we do not find any procedural irregularity or any infraction, warranting our interference. There is nothing suggesting false implication either.

38. Consequently, the petition is dismissed.

MANOJ JAIN, J

SANJEEV SACHDEVA, J

DECEMBER 14, 2023/dr

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