

13.08.2024
D.L.2
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 18547 of 2024

Arun Kumar
Vs.
Union of India & Ors.

Mr. Srijib Chakraborty,
Mr. Pankaj Agarwal,
Ms. Champa Pal

....for the petitioner.

Mr. Pralay Bhattacharya

....for the respondents.

Supplementary affidavit filed on behalf of the petitioner disclosing the documents received by the petitioner subsequent to filing of the writ petition is taken on record.

The petitioner is a Commandant in Border Security Force (in short, BSF). The petitioner was served with an order dated 17th November, 2021 for conducting Staff Court of Inquiry (in short, SCOI) by the Commandant (Administration) for DIG SHQ Kolkata wherein the petitioner was then posted. In terms of such order to hold SCOI, a hearing of the charges under Rule 45B of the Border Security Force Rules, 1969 (hereinafter referred to as the 1969 Rules) took place. Pursuant to such hearing, an order was passed on 24th February, 2023 holding that the petitioner has committed an offence under Section

30(f) of the Border Security Force Act, 1968 (hereinafter referred to as the 1968 Act). The order also directed for Recording Of Evidence (in short, ROE) in compliance of Rule 48(3) of the 1969 Rules. After ROE, the matter was sent to the concerned DIG in view of the provisions of Rule 51A of the 1969 Rules. DIG on perusing the evidence recommended the matter to be placed before the superior officer. The IG, BSF, Tripura Frontier, being the Superior Officer, on perusing the ROE and the recommendation from the DIG had decided to dispose of the case by holding General Security Force Court (in short GSFC) trial. This was communicated by an order dated 7th November, 2023.

The petitioner has challenged the said order dated 7th November, 2023, inter alia, on the ground that the IG, BSF, Tripura Frontier had exceeded his jurisdiction and could not have directed GSFC trial when the matter was decided to be dealt with in the administrative side by the DIG for which the recommendation was made. Moreover, when the money on account of overdrawal of transport allowance being the sole charge had been recovered with interest from the petitioner and as such the said charge also is not in subsistence. It is case of the petitioner that the petitioner could not have been

given two punishments for one offence, if any. After having recovered the money, the petitioner cannot be placed for GSFC trial. The order of recovery in itself signifies that the authorities did not intend to proceed against the petitioner but wanted to deal with the petitioner in respect of the offence charged in the administrative side. The recommendation of the DIG emboldens such view. The petitioner has cited a single bench judgment of this Court passed on 19th September, 2014 in WP 26896 (W) of 2014 (Dr. Ram Krishna Pathak vs. Union of India & Ors.).

The respondents on the other hand say that the petitioner is an officer in BSF. The petitioner has committed grave offence while being an officer in a disciplined force. The petitioner, therefor, has been rightly proceeded with. Once a disciplinary proceeding has been initiated the same should not be interfered with but should be allowed to be brought to a logical conclusion. The writ petition, therefor, should be dismissed.

Although, the petitioner has not ventilated his grievances against the recommendation made by the DIG, but on a perusal of the same, which appears at page 32 of the writ petition, it is clear that after holding that the case may be closed and Officer be warned to be more careful in future by the Special

DG, BSF Eastern Command, Kolkata, the recommendation was made. The recommendation was done by invoking the power under Rule 51A (3) (iii) of the 1969 Rules.

The DIG was free to form an opinion but could not have indicated by the senior officer as to the mode in which the matter has to be decided while recommending it to the superior authority. By doing so, the concerned DIG had also exceeded his jurisdiction vested in him under Rule 51A (3)(iii) of the 1969 Rules by not leaving the matter for being independently decided by the superior authority after considering the ROE. The action of the DIG can be compared to the fault that may be committed by an Inquiry Officer while preparing his inquiry report to be placed before the disciplinary authority to give his own views on the evidence recorded as an enquiry report in such a case cannot be sustained. In this context one can refer to the judgment of the Hon'ble Supreme Court reported in **1963 SCC OnLine SC 16 (Union of India v. H.C. Goel)**. The recommendation with the direction how the matter is to be dealt with cannot also be sustained.

The I.G., BSF, Tripura Frontier, being the Superior Officer was within his jurisdiction to form an opinion after perusing the ROE which may have been

different from the view expressed by the DIG, but he also exceeded his jurisdiction by directing GSFC trial instead of remanding matter back to the DIG holding that the recommendation was itself vitiated because of the underlying direction given in the recommendation to the superior officer. The IG BSF Tripura Frontier, however, did not choose this path. IG BSF Tripura Frontier also ignored the purpose for which the papers were sent to him by the DIG. The papers were sent with a clear view to deal with the petitioner in the administrative side. The order dated 7th November, 2023 is also in violation of the provisions of Rule 176A (3) of the BSF Rules, 1969.

The recommendation dated 20th March, 2023 made by the DIG, which appears at page 32 of the writ petition (Annexure – P/6) and the order of the IG, BSF, Tripura Frontier communicated by DIG/PSO, HQrs, Tripura Ftr, BSF by a Memo dated 7th November, 2023, appearing at page 34 of the writ petition being Annexure-P/7, are set aside and/or quashed.

Any subsequent steps taken in terms of the decision of the IG, BSF, Tripura Frontier is also vitiated and are automatically set aside.

This Court, however, does not intend to interfere with the decision taken by the BSF

Authorities in holding SCOI and the recording of evidence pursuant thereto. The proceedings so initiated to be brought to a logical conclusion.

The authorities, therefor, will be free to proceed against the petitioner from the stage of ROE afresh by following the principle of natural justice and adhering to the statutory provisions without being anyway influenced by the recommendation or the order passed pursuant thereto, which are being set aside and /or quashed.

The writ petition, therefor, is disposed of with the directions as aforesaid.

Since I have only dealt with the matter so far as the legal aspect is concerned, I do not call for affidavit.

Since I have not called for affidavit, the allegations contained in the writ petition are deemed to have not been admitted by the respondents.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Arindam Mukherjee, J.)