

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

MAT 1623 of 2024

With

IA No.: CAN 1 of 2024

With

IA No.: CAN 2 of 2024

Md. Asif Baba @ Md. Asif

Vs.

Union of India and Ors.

For the appellant

: Mr. Pratik Majumdar, Advocate

Mr. Snehasish Dey, Advocate

For the respondents

: Mr. Pramod Kumar Drolia, Advocate

Mr. Santosh Kumar Pandey, Advocate

Heard & Judgment on

: September 4, 2024

DEBANGSU BASAK, J.:-

1. Appeal is directed against the judgment and order dated December 8, 2023 passed in W.P.A. 18958 of 2017.
2. By the impugned judgment and order, the learned Single Judge found the writ petition to be without merit and dismissed the same.

3. IA No.: CAN 1 of 2024 is an application seeking condonation of delay in making and filing the appeal.
4. Department reports delay of 222 days.
5. Considering the averments made in the application for condonation of delay and for the ends of justice, we deem it appropriate to condone the delay in making and filing the appeal.
6. IA No.: CAN 1 of 2024 is disposed of.
7. By consent of the parties, the appeal is taken up for final hearing.
8. Court is informed that all papers used before the learned Single Judge are made available to the Appeal Court by way of IA No.: CAN 2 of 2024.
9. Since the respondents are represented, the notice of appeal is waived.
10. Appellant was a constable and at the material point of time posted in 193 Battalion of Border Security Force. Appellant was deployed on Kalyani in the year 2007. On February 6, 2007, the Commandant of the Battalion received a communication from the officiating company Commander as to the recovery of unaccounted money from the possession of the appellant. After receiving such report, an offence report was prepared under Rule 43 of the Border Security Force Rules, 1969 for commission of an offence under Section 46 of the Border Security Force Act, 1968 read with Section 13(1)(e) of the Prevention of Corruption Act, 1988. Charge sheet as against the appellant was issued. The appellant was tried by the Summary Security Force Court. An order of dismissal was passed as against the appellant which was appealed against. Appellate authority

concurred with the view of the disciplinary authority. Appellant was handed a punishment of dismissal of service.

11. Appellant challenged the order of the disciplinary authority as also the order of the appellate authority by way of a writ petition which gave rise to the impugned judgment and order.
12. Learned Advocate appearing for the appellant submits that, the commandant of the battalion acted as the Investigator, Prosecutor, Judge and also the Executor of the order. He refers to Rule 60 of the Rules of 1969. He submits that, Rule 60 prescribes the disqualification of Officers for serving on the Security Force Court. He refers to Rule 60(iv) thereof.
13. Learned Advocate appearing for the appellant submits that, although, the record of evidence of the proceedings of the Summary Security Force Court suggests that the appellant pleaded guilty, nonetheless, appellant never pleaded guilty. He points out that, opportunity of cross-examining the prosecution witness was denied to the appellant. In any event, he refers to Rules 142 and 143 of the Rules of 1969 and submits that, notwithstanding the appellant pleaded guilty, it was incumbent upon the prosecution to establish the charge beyond reasonable doubt. According to him, prosecution failed to do so. In support of such contention, he relies upon **(2023) 9 Supreme Court Cases 720 (Union of India and Others vs. Jogeshwar Swain)**.
14. Referring to Rule 47 of the Rules of 1969, learned Advocate appearing for the appellant submits that, charge leveled as against the appellant was

under Section 13(1)(e) of the Prevention of Corruption Act and that the same cannot be dealt with summarily. He refers to Section 47 of the Act of 1968 and submits that, Summary Security Force Court is not empowered to deal with such a charge.

15. Learned Advocate appearing for the appellant relying upon **(2017) 14 Supreme Court Cases 422 (Vasant Rao Guhe vs. State of Madhya Pradesh)** submits that, a charge under the Prevention of Corruption Act is required to be established beyond reasonable doubt. In the facts and circumstances of the present case such charge was not established.
16. Learned Advocate appearing for the appellant draws the attention of the Court to the order of dismissal dated March 17, 2007 passed by the Commandant. He contends that, such order does not contain any reason as to why, the appellant was found guilty and the punishment as recorded in such order, was awarded. He submits that, evidence led during the disciplinary proceeding was not discussed. There is no reason ascribed as to how the Commandant passing the impugned order of dismissal from service arrived at the conclusion recorded in such order. He refers to the order of the appellate authority dated July 16, 2007 and submits that, the appellate authority did not care to deal with the grounds of the appeal urged by the appellant. He submits that the order of the appellate authority dated July 16, 2007 is equally uninformed with reasons. Consequently, both are a nullity.

17. Learned Advocate appearing for the respondents submits that, a cash of Rs.1,42,500/- was recovered from the possession of the appellant when the appellant could retain only Rs.500/- maximum with himself. Appellant was unable to explain the sum of Rs.1,42,500/- recovered from his possession.
18. Referring to the Rules of 1969, learned Advocate appearing for the respondents submits that, the Commandant of a battalion does not suffer any disqualification from serving as a member of the Summary Security Force Court. In this regard, he draws the attention of the Court to Section 64 of the Act of 1968. He submits that, there are three kinds of Security Force Courts prescribed. One of them is the Summary Security Force Court. He refers to Section 70 of the Act of 1968 and submits that a Summary Security Force Court may be held by the Commandant of any unit of the force and he alone shall constitute of the Court. He refers to Section 74(2) of the Act of 1968 and submits that, the Officer empowered to convene a Petty Security Force Court for the trial of the offence, gives permission to the Commandant to hold the Summary Security Force Court, in such eventuality, the Commandant of a battalion can hold a Summary Security Force Court. He points out that, in the facts and circumstances of the present case, the requisite permission to try the appellant by way of a Summary Security Force Court was granted on March 12, 2007 by the officiating Deputy Inspector General who constitutes the Petty Security Force Court.

19. Learned Advocate appearing for the respondents refers to the record of proceedings and submits that, four prosecution witnesses were examined. Appellant declined to cross-examine such prosecution witnesses. In fact, appellant declined to sign the statement of the prosecution witnesses. He refers to the order passed by the Summary Security Force Court and submits that, all prosecution witnesses established the charge beyond reasonable doubt as against the appellant. In any event, appellant acknowledged his guilt at the trial. Consequently, he submits that, the Summary Security Force Court rightly proceeded to pass the order of dismissal from service as against the appellant.
20. Relying upon **(1988) 2 SCC 459 (Vidya Parkash vs. Union of India & Ors.)**, learned advocate appearing for the respondents submits that, the Commandant is authorized to undertake a Summary Security Force Court and decide on the charges leveled as against the delinquent. He also refers to an unreported decision of the Supreme Court in **Civil Appeal No. 3001 of 2017 (Union of India vs. Shri Dickson Chand Marak Ex. Const. 930071292)** in support of such contention.
21. At the time of reply, we enquired from the learned advocate appearing for the appellant as to whether the appellant pleaded in the writ petition that he was unemployed since the order of dismissal or not. The response to such query of the Court is in the negative. He, however, points out that in the stay petition, appellant stated that he is not gainfully employed since the dismissal from service.

22. As noted above, appellant while being deployed at the border outpost, Jayantipur on February 6, 2007, at about 09.45 hrs., a sum of Rs.1,42,500/- was recovered from the personal bed hold of the appellant.
23. Appellant could not satisfactorily explain possession of such amount of cash. Consequently, a charge sheet dated February 7, 2007 was issued with regard to such incident. Provisions of Section 46 of the Act of 1968 was invoked as against the appellant. Appellant was charged with possession of pecuniary resources disproportionate to his unknown source of income and committing an offence punishable under Section 13(1)(c) of the Prevention of Corruption Act, 1988.
24. The charge as against the appellant was also triable by the Petty Security Force Court in terms of Section 74 of the Act of 1968. However, the officiating Deputy Inspector General of the Border Security Force who constitute the Petty Security Force Court by a writing dated March 12, 2007 permitted the appellant to be tried by Summary Security Force Court. In our view, the writing dated March 12, 2007 is in compliance with Section 74 (2) of the Act of 1968.
25. Trial of the appellant commenced before the Summary Security Force Court of which the Commandant who issued the charge sheet as against the appellant constituted the Court.
26. The issue as to whether a Commandant who issued the charge sheet against the delinquent can be the Summary Security Force Court or not stands settled in **Shri Dickson Chand Marak** (supra) by the Supreme

Court. The issue as to whether the Commanding Officer suffered from any disability or disqualification from trying the delinquent by a Summary Force Court as he signed and issued the charge sheet against the delinquent was answered in the negative in favour of the Border Security Force and against the delinquent. In other words, Supreme Court held that a Commandant who issued the charge sheet did not suffer from any disqualification from constituting the Summary Security Force Court.

27. In this regard, it would be apposite to refer to Sections 64 and 70 of the Act of 1968 which are as follows:-

“64. Kinds of Security Force Courts.—For the purposes of this Act there shall be three kinds of Security Force Courts, that is to say, ----

- (a) General Security Force Courts;
- (b) Petty Security Force Courts; and
- (c) Summary Security Force Courts

70. Summary Security Force Court.---(1) A Summary Security Force Court may be held by the Commandant of any unit of the Force and he alone shall constitute the Court.
.....”

28. Section 64 prescribes that there will be three kinds of Security Force Court, namely General Security Force Court, Petty Security Force Court and Summary Security Force Court. Section 70 (1) of the Act of 1968 allows the Commandant of any unit of the Force to hold the Summary Security Force Court and that he alone shall constitute such Court.

29. Therefore, the contention of the appellant that Commandant who issued the charge sheet was disqualified to constitute the Summary Security

Force Court cannot be accepted in view of Section 64 and Section 70 of the Act, 1968 and the ratio of the judgment of the Supreme Court rendered in **Shri Dickson Chand Marak** (supra).

30. Other contention of the appellant that Rule 142 and 143 of the Rules of 1968 were not followed in arriving at the conclusion of proof of charge as against the appellant, is kept open in view of the ultimate decision that we will take in this matter. Therefore, we refrain ourselves from speaking on the ratio of **Jogeshwar Swain** (supra) cited in this regard on behalf of the appellant.
31. In view of the our decision with regard to the Commandant being capable of constituting the Summary Security Force Court notwithstanding such Commandant issuing the charge sheet to the delinquent, we do not find any merit in the contention with regard to Rule 46 of the Rules of 1969 as advanced by the appellant. Again in view of the decision that we are rendering in this appeal, we refrain ourselves from dealing with the contentions with regard to Rule 47 of the Rules 1969 as advanced by the respective parties.
32. Consequently, we will not discuss the ratio of **Vasant Rao Guhe** (supra) as cited on behalf of the appellant in this regard.
33. We gave our anxious consideration to the decision taken by the Summary Security Force Court. Although we find that the Summary Security Force Court was acting with appropriate and adequate jurisdiction to try the charge as against the appellant, we find that the order of dismissal dated

March 17, 2007 to be uninformed with reasons. Summary Security Force Court stated the conclusion of the proceeding in the order of dismissal dated March 17, 2007 without providing the reasons why it arrived at such a conclusion. Evidence led during the Summary Security Force Court was not disclosed. The link between the materials placed on record before the Summary Security Force Court and its conclusion as evinced by the order of dismissal dated March 17, 2007 cannot be garnesed from the order of dismissal.

34. Appellant preferred an appeal against the order of dismissal dated March 17, 2007. The appellate authority dismissed such appeal by an order dated July 16, 2007. Again appellate authority did not ascribe any reasons as to why the appeal was not accepted. It informed the conclusion to the appellant without providing any reason or link between the appeal and the final conclusion reached on such appeal of the appellant.
35. It is trite law that any order, be it administrative or judicial, is required to be informed with reasons unless a Statute expressly dispense with the same. Our attention was not drawn to any provision to any Statute permitting the Summary Security Force Court or the Appellate Authority not to ascribe any reason for the decision that they arrived at in the proceedings under the Act of 1968.

36. Order of dismissal and the order of the appellate authority both are uninformed with reasons. They are to be treated as a nullity and consequently liable to be set aside. Therefore, they are set aside.
37. Initiation of the disciplinary proceedings cannot be faulted. Charge as against the appellant requires a decision. Evidence of the Summary Security Force Court was recorded. Therefore, the authorities are at liberty to proceed with the charge as against the appellant from the stage just prior to the order of dismissal issued by the Summary Security Force Court or from any other stage prior thereto as the disciplinary authority may deem fit and properly.
38. Summary Security Force Court is at liberty to deal with the charge leveled as against the appellant in accordance with law being uninfluenced by any of the observations made by us in this appeal. We clarify that none of the observations made by us in this appeal will prejudice any of the parties in the disciplinary proceeding in any manner whatsoever. All observations made by us are for the purpose of deciding the merits of the appeal only.
39. The writ petition itself does not contain any pleading that the appellant was without gainful employment from the date of his dismissal till the date of filing of the writ petition. However, there is a pleading to such effect in the application for stay in the appeal.

40. We are not minded to take into consideration such statement made in the stay application on the ground that the same was not taken at the first instance by the appellant while filing the writ petition.
41. In such circumstances, we are not in a position to direct payment of back wages to the appellant by reason of our setting aside of the order of dismissal as upheld by the appellate authority. Back wages is not automatic with an order of reinstatement. Direction for grant of back wages is dependent on several conditions and the same are required to be fulfilled by the appellant.
42. With the above observations, **M.A.T. 1623 of 2024** along with the connected applications being **CAN 1 of 2024** and **CAN 2 of 2024** are **disposed of** without any order as to costs.

(Debangsu Basak, J.)

43. I agree.

(Md. Shabbar Rashidi, J.)

(AD /S.D.)