

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
CIVIL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ajay Kumar Gupta

M.A.T. 160 of 2023
with
CAN 1 of 2023

Union of India & Ors.
-Vs-
Jayanta Kumar Pathak

For the Appellants : Mr.Sudipto Kumar Mazumdar, ld. DSGI
Mr. Ajoy Kumar Singhanian
Mr. Saptak Sarkar
Mr. Sourav Kar

For the respondent : Mr. Bikramaditya Ghosh
Mr. Supriya Singh

Heard on : 16.05.2024, 21.05.2024 & 22.05.2024

Judgment on : 22.05.2024

Joymalya Bagchi, J.:-

1. This is a second round of litigation between the parties.
2. Respondent/writ petitioner was posted as officiating commandant of 34th Battalion, SSB, Alipurduar between 8th February, 2017 to 23rd April, 2017. A compliant was made by constable G.D. Shyam Nandan Singh of the said battalion to the headquarters SSB, New

Delhi alleging respondent/writ petitioner had received undue favours from suppliers. Letter was forwarded to Front Headquarters, Siliguri and a discreet enquiry was initiated. During the discreet enquiry an anonymous letter was received and forwarded to the Front Headquarters with recommendation of Chief Vigilance Officer. Sri A. K. Pandey, Inquiry Officer conducted the court of enquiry and submitted a report of 7th December, 2017. The report was forwarded to the Assistant Director Vigilance FHQ, SSB.

3. In the meantime, respondent/writ petitioner had been posted at 35th Battalion, SSB, Patna. Accordingly, court of enquiry report was forwarded to the Inspector General, Front Headquarters, SSB, Patna. After examining the matter and obtaining approval of the Inspector General, Deputy Inspector General SHQ, SSB, Gaya directed disciplinary action against the accused as per Rule 46 of The Sashastra Seema Bal Rules, 2009 ('SSB Rules' for short).

4. The case was remanded for preparation of record of evidence and Sri Sanjay Kumar Gupta, second-In-Commandant, 35th Battalion, SSB, Dumka was nominated as Recording Officer. While preparing the record of evidence Recording Officer adopted the evidence recorded in the Court of Enquiry as per proviso to Rule 51(2) of SSB Rules. Questionnaires submitted by the respondent/writ petitioner were sent to the witnesses concerned but the questionnaires remained unserved/unanswered. The certified records along with the unanswered questionnaires were supplied to the respondent/writ petitioner for his

response. Statement of the respondent/writ petitioner was duly recorded. In his statement respondent/writ petitioner did not raise any protest with regard to adoption of the evidence recorded in Court of Enquiry.

5. After completion of proceeding, Record of Evidence ('ROE' for short) was placed before the Commandant, 35th Battalion, SSB who applied to Inspector General, FTR, HQR, SSB, Patna for convening Force Court for trial of the respondent/ writ petitioner on the basis of draft charge under section 49 of The Sashatra Seema Bal Act ('SSB Act' for short) read with section 13(1)(d)/(2) of the Prevention of Corruption Act ('PC Act' for short).

6. As most of the witnesses are civilians and belong to Coochbehar, West Bengal and the incident relates the affairs of 34th SSB Battalion, Alipurduar, by order dated 16th January, 2020 respondent/writ petitioner was attached to 17th Battalion, SSB, Falakata for trial.

7. Thereafter, on 19th January, 2020 Inspector General FTR, HQR, SSB, Siliguri, in consultation with the Additional Judge, Attorney General convened a General Force Court on amended charges i.e. Section 34B of the SSB Act.

8. General Force Court assembled on 27th January, 2020 and was adjourned till 3rd February, 2020. On 3rd February, 2020 respondent/writ petitioner sought for adjournment on the ground of ill health.

9. In the meantime respondent/writ petitioner approached this Court in WPA 232 of 2020 challenging the court of enquiry, ROE proceedings, reframing of charges and convening of the General Force Court on reframed charges. Initially, General Force Court proceedings were stayed by the First Court. Thereafter, the interim order was modified and the General Force Court was permitted to be convened and completed but no final order was to be passed without the leave of the Court. During pendency of the aforesaid writ petition, another writ petition being WPA 232 of 2022 challenging the General Force Court proceeding was filed. Subsequent writ petition was disposed of observing that the General Force Court should be convened and concluded in accordance with law in light of the order passed by this Court but no final order was to be passed without the leave of the Court.

10. Thereafter, the present writ proceeding was taken up for hearing. During hearing the Hon'ble Single Bench was informed that the General Force Court has concluded but the final order had not been promulgated. In light of the subsequent developments, Hon'ble Single Bench by order dated 04.08.2022 disposed of the matter by permitting the respondent/writ petitioner to raise all points both in fact and in law (including jurisdictional issues) while assailing the order of General Force Court.

11. This order came to be challenged in MAT 75 of 2022. A co-ordinate Bench set aside the aforesaid order and remanded the matter for consideration on the point of jurisdiction. Hon'ble Division Bench

further held the final order of General Force Court shall be promulgated and/or published and/or given effect to without leave of the Single Bench. Upon remand by the learned Single Judge by the impugned order quashed the entire proceeding on the sole ground that no opportunity to cross-examine witnesses as per Rule 175(8)(a) of SSB Rules had been granted to the respondent/writ petitioner.

Arguments at the Bar:-

12. Mr. Ghosh for the respondent/writ petitioner submits there are several illegalities in convening the court of enquiry, ROE proceeding, reframing of charges and convening the General Force Court. Firstly, COI proceeding was initiated on the basis of an anonymous letter in violation of Central Vigilance Commission Guidelines. It was commenced by one Mr. H. R. Barot, the then Commandant of 34th Battalion, SSB, Alipurduar who had issued work orders to the suppliers. He is an interested party. Conclusion of COI proceeding is cryptic and unreasoned. During ROE proceeding respondent/writ petitioner was not given opportunity to cross-examine witnesses. Initial recommendation for convening General Force Court on draft charges was issued by Inspector General, HQR, SSB, Patna. Thereafter, Inspector General, FTR, HQR, SSB, Siliguri could not have reframed charges and commenced the General Force Court. These jurisdictional defects render the General Force Court proceeding void *ab initio*.

13. In rebuttal, Deputy Solicitor General contends court of enquiry proceeding was lawfully convened after receipt of complaints of

misconduct by the respondent/writ petitioner. It was commenced with approval of Central Vigilance Officer. During court of enquiry respondent/writ petitioner cross-examined witnesses. On the basis of court of enquiry records, ROE proceeding was convened. Respondent/writ petitioner participated in the ROE proceedings and the evidence recorded in the court of enquiry proceeding was adopted as the questionnaires remained unanswered. In his statement before the recording officer respondent/writ petitioner did not raise objection that questionnaires submitted by him had not been answered. Nor did he insist witnesses examined during course of inquiry be summoned for further cross-examination. Only after the General Force Court proceeding was convened did the respondent/writ petitioner belatedly raise the issue of denial of cross-examination during ROE proceeding. With regard to reframing charges Mr. Mazumder, learned Counsel submits the superior officer i.e. the Inspector General, FTR, HQR, SSB, Siliguri, had power to reframe the charges and convene the security force proceedings under the proviso to Rule 62(2) of SSB Rules. During pendency of the proceeding, as per court order General Force Court proceeded and the respondent/writ petitioner and his lawyer participated in the proceeding. He cross-examined witnesses and had all opportunity to defend himself. There is no procedural unfairness or breach of principles of natural justice in the earlier proceeding.

Analysis and findings:-

14. In view of the rival submissions of the parties this Court proceeds to examine whether convening of General Force Court on reframed charges suffer from jurisdictional defect.

a) Court of Enquiry Proceedings:-

15. Mr. Ghosh contends court of inquiry was initiated on the basis of anonymous letter which is not permissible as per CVC Regulations. He also contends the Commandant of the battalion who convened the proceeding had issued work orders to suppliers and was vitally interested to fully implicate his client. This Court finds little substance in the submissions. As per records, one constable, G.D. Shyam Nandan of 34th Battalion had lodged a complaint against the respondent/writ petitioner at Force Headquarter, SSB, New Delhi. This complaint was referred to the Frontier Headquarter, Siliguri for inquiry. Thereafter, an anonymous complaint was received and as per recommendation of Chief Vigilance Officer, Headquarter, New Delhi the anonymous letter was also forwarded for discreet enquiry. In view of the aforesaid records it is clear that court of enquiry was neither convened unilaterally by Mr. H. R. Barot, the Commandant or on the strength of an anonymous letter. The anonymous letter was preceded by a complaint lodged by constable Shyam Nandan Singh of 34th Battalion. Subsequent anonymous letter was forwarded on the recommendation of the Chief Vigilance Officer, FTR, HQR, New Delhi. Thus, convening of court of enquiry was as per relevant Rules and does not smack of *mala fides*. Moreover,

respondent/writ petitioner participated in the court of enquiry without demur. He cross-examined witnesses during enquiry. In conclusion of enquiry, Inquiry Officer opined conduct of the respondent/writ petitioner was blameworthy and required stern disciplinary action. Court of enquiry is a fact finding body. As per Rule 177 of SSB Rules, court of enquiry proceeding is to be submitted by the inquiry officer to the authority concerned who ordered the court of enquiry. This was duly complied in the present case.

16. In this backdrop contention of Mr. Ghosh, learned Counsel that opinion of inquiry officer was cryptic is of little relevance. Subsequent steps on the court of enquiry proceeding is to be taken by the authority concerned before whom the proceeding is presented and not by the inquiry officer.

b) ROE Proceeding:-

17. On the basis of the court of enquiry report Frontier, FQR, SSB, Patna, convened ROE proceeding. Mr. Ghosh contends ROE proceeding was conducted to the contrary to Rule 51(2) read with 175(8)(b) of SSB Rules. Abstract of evidence shows respondent/writ petitioner was not given opportunity to cross-examine witnesses and questionnaires sent by him to the witnesses remained unserved/ unanswerd. This is a serious infraction which goes to the root of the proceeding and has prejudiced the respondent/writ petitioner.

18. From the aforesaid submission it appears principal challenge to the ROE proceeding is denial of opportunity to cross-examine

witnesses. To appreciate the right of the accused to cross-examine witnesses in ROE proceeding it may be profitable to refer the following rules:

“51(2). The witnesses shall give their evidence in the presence of the accused and the accused shall have right to cross-examine all witnesses who give evidence against him:

Provided that where statement of any witness at a court of inquiry is available, examination of such a witness may be dispensed with and the original copy of the said statement may be taken on record and a copy thereof shall be given to the accused and he shall have the right to cross-examine if he was not afforded an opportunity to cross-examine the witness at the Court of Inquiry.”

(emphasis supplied)

“175. Procedure of Courts of Inquiry:-

(8)(a) Save in the case of a prisoner of war who is still absent whenever the subject-matter of inquiry is the conduct or character of a particular person, such person may be associated throughout with the inquiry and be given full opportunity of making any statement, or giving any evidence, he may wish to make or give and of cross-examination any witness whose evidence in his opinion, affects his character or reputation.

(b) In other cases, before giving opinion against any person subject to the Act, the Court shall afford that person an opportunity to know all that has been stated against him, cross-examine any witnesses who have given evidence against him, and make a statement and call witnesses in his defence.”

19. Rule 51(2) of the SSB Rules states witnesses shall give evidence in presence of the accused and the accused shall have a right to cross-examine. First proviso to the said Rule carves an exception. It provides where statements of a witnesses is available in the court of enquiry the examination of such witness may be dispensed with and the original copy of his statement may be taken on record subject to the accused cross-examining him provided he had not been given an opportunity to

cross-examine the witnesses at the court of enquiry. Right to cross-examine the witnesses as envisaged in Rule 175(8)(b) is to be read harmoniously with the Rule 51(2) of the SSB Rules. A harmonious construction of the two provisions make it amply clear when a witness is examined in ROE proceeding the accused must be given an opportunity of hearing but if the evidence of the said witnesses was recorded in the course of court of enquiry and the accused had an opportunity to cross-examine him during court of enquiry, his evidence may be read into the ROE proceeding and further opportunity of cross-examination need not be extended to the accused. During court of enquiry respondent/writ petitioner had cross-examined the witnesses. Abstract of ROE proceedings shows the statements of the said witnesses in the court of enquiry were adopted. Under such circumstances, in view of the first proviso to Rule 51(2) the respondent/writ petitioner was not required to be given another opportunity to cross-examine. Nevertheless by way of abundant caution he was permitted to send questionnaires to the said witnesses for response but the questionnaires remained unanswered. When evidence of witnesses duly cross-examined in court of enquiry is made a part of the ROE records respondent/writ petitioner does not have a right to demand further cross-examination. Under such circumstances, failure to obtain response from these witnesses on the questionnaires submitted by the petitioner during the ROE proceeding does not tantamount to procedural unfairness or breach of natural justice.

20. Accordingly, we are of the view the ROE proceeding were conducted in a fair and impartial manner and the learned Single Judge erred in coming to a finding that the petitioner was denied a right of cross-examination therein.

c) Reframing of charges and convening of General Force Court on the reframed charges:-

21. Mr. Ghosh strenuously argued initially the General Force Court was convened by the Inspector General, FTR, HQR, SSB, Patna on draft charges under Section 49 of the SSB Act read with Section 13(1)(d)/(2) of PC Act. Thereafter, the Inspector General, FTR, HQR, SSB, Falakata illegally reframed the charges as Section 34 of SSB Act and convened the General Force Court.

22. Perusal of the records would show commandant, 35th Battalion, SSB, Dumka applied for a Genral Force Court for trial of the respondent/writ petitioner. Thereupon, Inspector General SSB Frontier Patna opined a General Force Court be convened on the draft charges. In the meantime for administrative reasons the respondent/writ petitioner was attached to Frontier headquarter, Siliguri for trial, vide order dated 8th January, 2020. Thereupon, Inspector General, FTR, HQR, SSB, Siliguri, amended the charges and convened the General Force Court. Mr. Mazumder, learned Counsel submits second proviso to Rule 62(2)(b) gives ample power to superior officer i.e. Inspector General to reframe the charges.

23. Rule 62 reads as follows :

“62. Action by a Superior Authority on receiving an application for convening a Court –

(1) As soon as a superior officer receives an application for convening a court, he shall scrutinise the charge and the evidence against the accused, where necessary, in consultation with the Judge Attorney-General or an officer detailed for the purpose, by the Judge Attorney-General and he, —

(i) shall direct the Commanding Officer to dismiss the charge where the evidence against the accused is insufficient and further evidence is not likely to be available and may direct him to do so if he considers it inadvisable to proceed with the trial; or

(ii) may return the case to the Commanding Officer for being tried by a Summary Force Court or being dealt with summarily if he considers that the same can be adequately so tried or dealt with; or

(iii) may dispose of the case administratively and if he is not competent to do so, may forward the case to higher authority with his recommendation; or

(iv) may return the case for recording further evidence, if he considers the evidence recorded insufficient but considers that further evidence may be available.

(2) (a) In any other case he may either himself convene a Court or if he considers that a higher type of Court should be convened, and he is not empowered to convene such a Court, forward the case to a higher authority with recommendation that, such Court may be convened.

(b) The higher authority on receiving the case may exercise any of the powers given in sub-rule (1):

Provided that a superior officer or higher authority before convening a General Force Court or a Petty Force Court shall take the advice of the Judge Attorney-General or an officer detailed for the purpose of the Judge Attorney General:

Provided further that the superior authority or higher authority while convening a Court may reframe the charge-sheet on which the accused is to be tried.”

24. A plain reading of the aforesaid Rule shows that a superior officer on receipt of application for convening a court after scrutinizing

the charge and evidence against the accused in consultation with Judge, Attorney General or his representative may convene a General Force Court. The superior officer also has ample power to reframe the charges. Mr. Ghosh, learned Counsel contends the application for convening General Force Court was made to I.G., SSB Frontier Patna and the said superior officer had recommended for convening a General Force Court on the draft charges i.e. Section 49 of SSB Act read with Section 13(1)(b)/(2) of the PC Act. Thereafter Inspector General, FTR, HQR, Siliguri, did not have jurisdiction to reframe the charge and convene General Force Court on reframed charges. This Court is unable to accede to Mr. Ghosh's contentions for the following reasons.

25. Firstly on 6th January, 2020 the respondent/writ petitioner had been attached to Frontier Siliguri for convening the General Force Court. Once attachment order was passed, Inspector General Frontier Headquarter, SSB, Siliguri, was the superior officer who had jurisdiction under the second proviso to Rule 62(2)(b) to reframe the charges. Consultative opinion of Judge, Attorney General also shows that he had endorsed the convening of General Force Court after reframing of charges if necessary. Accordingly, the General Force Court was convened on the recommendation of reframed charges as per decision of Inspector General FTR, HQR, SSB, Siliguri. There is no jurisdictional error in exercising such power. This Court is also unimpressed by the submission that attachment of the respondent/writ petitioner to the Frontier Siliguri was mala fide. In the pleadings appellants/respondents

have disclosed the reasons for such attachment viz. availability of local witnesses at Coochbehar and commission of the offence while the respondent/writ petitioner was attached to 34th Battalion at Alipurduar within the jurisdiction of Frontier Siliguri.

Conclusion:-

26. For these reasons I do not find any jurisdictional error in convening the General Force Court on reframed charges as per order of the Inspector General, FTR, HQR, SSB, Siliguri.

27. In the light of the aforesaid discussion I set aside the impugned order.

28. Before parting with this Court notes final order of the General Force Court has been appealed by the respondent/writ petitioner before the appellate authority. Dismissal of the appeal shall not stand in the way of the respondent/writ petitioner to pursue the appeal before the appellate authority in accordance with law.

29. Appeal being MAT 160 of 2023 is accordingly allowed. Connected application being CAN 1 of 2023 is also disposed of.

30. There shall be no order as to costs.

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)