



CWP-13023-1998 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-13023-1998 (O&M)
Date of Decision: 15.05.2024

Constable Joginder Singh

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Ramesh Hooda, Advocate for the petitioner
Mr. Arvind Seth, Senior Panel Counsel,
for Union of India-respondents

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of orders dated 25.09.1997 (Annexure P-4), 09.12.1997 (Annexure P-5) and 21.01.1998 (Annexure P-6) whereby he was awarded punishment of reduction of rank and his petition as well as revision was dismissed.
2. The petitioner joined Border Security Force (for short 'BSF') as Constable on 08.01.1982. In 1992, he was promoted to the rank of Naik. He proceeded on leave from 19.05.1997 to 16.07.1997. During the said period, his son fell ill. He did not get salary of the aforesaid period. He, on 01.06.1997, approached higher authorities for the release of his salary. Some altercation took place between him and senior officials. The second-in-



command issued charge sheet alleging commission of offence punishable under Section 20(b) and 19(c) of the Border Security Force Act, 1968 (for short '**1968 Act**'). In the charge sheet, it was alleged that petitioner has misbehaved with Company Commandant and he failed to re-join duty after leave period. An enquiry was conducted. The record of evidence was prepared and Summary Security Force Court decided to award him punishment of dismissal from service. The order of Summary Security Force Court was placed before confirming authority in terms of Section 114 read with Section 115 of 1968 Act. The confirming authority vide order dated 25.09.1997 (Annexure P-4) ordered to substitute the proposed sentence by reduction in rank. Meaning thereby, the confirming authority substituted sentence of 'dismissal' from service by sentence to 'reduction in rank'. The petitioner preferred petition before higher authority which came to be dismissed vide order dated 09.12.1997 (Annexure P-5). The petitioner further unsuccessfully preferred revision. The revision was dismissed on the ground of maintainability.

3. Mr. Ramesh Hooda, Advocate submits that impugned orders are bad in the eye of law on account of the following reasons:-

- i.) The petitioner had remedy to file revision in terms of Section 118 of 1968 Act and respondent has wrongly rejected his revision on the ground of maintainability;
- ii.) The appellate authority had passed appellate order without granting opportunity of hearing; and



iii.) The confirming authority did not pass speaking order;

4. *Per contra*, Mr. Arvind Seth, Advocate submits that petitioner was a habitual offender. The impugned punishment was not first punishment whereas on five earlier occasions, he was subjected to punishment. The respondent is a disciplined Armed Force. The petitioner is not disputing factual position. The respondent taking lenient view has awarded minimum punishment. The appellate authority was not required to grant opportunity of hearing, thus, there was no violation of principles of natural justice.

5. I have heard the arguments of learned counsels for both sides and perused the record with their able assistance.

6. The conceded position emerging from the record is that the petitioner joined BSF in January' 1982. He was promoted in 1992. He proceeded on leave from May' 1997 to July' 1997. He, on account of misbehavior with Company Commandant, was issued charge sheet. Summary Security Forces Court was constituted which conducted the trial. The petitioner was found guilty and punishment of dismissal from service was determined. The proposed sentence came up for consideration before confirming authority which substituted punishment of 'dismissal' to 'reduction in rank'. The petitioner, during 1982 to 1997, apart from impugned punishment was subjected to punishment on five occasions. He, against the order of punishment, preferred petition before competent authority in terms of Section 117(2) of 1968 Act. The competent authority rejected the said petition. He filed further petition before the Government, which was dismissed on the ground of maintainability.



7. From the pleadings and arguments of both sides, the following questions arise for the consideration of this Court:

- i.) Whether petitioner after rejection of petition under Section 117(2) of 1968 Act had remedy to file petition under Section 118 of 1968 Act?
- ii.) Whether the authority while passing order under Section 117(2) of 1968 Act was bound to grant opportunity of hearing?
- iii.) Whether authorities have passed non-speaking orders?

Q.No. 1 Whether petitioner after rejection of petition under Section 117(2) of 1968 Act had remedy to file petition under Section 118 of 1968 Act?

8. As per Section 64 of 1968 Act, there are three types of Security Force Courts i.e. General Security Force Courts, Petty Security Force Courts and Summary Security Force Courts. The jurisdiction of each Court depends upon the gravity of offence. In case of Summary Security Force Courts, the proceedings are conducted by Commandant of the Unit. The Commandant of the unit may be holding rank of Deputy Superintendent of Police or Superintendent of Police. Sections 114 and 115 of the 1968 Act provide that findings and sentence of Summary Security Force Courts shall be subject to confirmation by competent authority. Sub-Section (2) of Section 114 provides that if the officer holding trial is of the rank of Superintendent of Police or of a rank declared under clause (a) of Sub-Section (5) of Section 74 or of a lower



rank and has held such rank for less than five years, he shall not carry into effect any sentence unless he has received approval of an officer not below the rank of Deputy Inspector General. Sections 114 and 115 of the 1968 Act are reproduced as below:-

“114. Finding and sentence of a Summary Security Force Court.—

(1) Save as otherwise provided in sub-section (2), the finding and sentence of a Summary Security Force Court shall not require to be confirmed, but may be carried out forthwith.

(2) If the officer holding the trial is of the rank of Superintendent of Police or of a rank declared under clause (a) of sub-section (5) of section 74 as equivalent thereto or of a lower rank and has held such rank for less than five years, he shall not, except on active duty, carry into effect any sentence, until it has received the approval of an officer not below the rank of Deputy Inspector-General.

115. Transmission of proceedings of Summary Security Force Courts.—*The proceedings of every Summary Security Force Court shall, without delay, be forwarded to the officer not below the rank of Deputy Inspector-General within whose command the trial was held, or to the prescribed officer, and such officer, or the Director-General or any officer empowered by him in this behalf may, for reasons based on the merits of the case, but not on merely technical grounds, set aside the proceedings, or reduce the sentence to any other sentence which the court might have passed.”*

9. Section 117 of 1968 Act provides that any person feeling aggrieved from the order passed by Security Force Court may present petition to an officer or authority empowered to confirm any finding or sentence of such Security Force Court. Sub-Section (1) of Section 117 permits representation before confirmation of findings of Security Force Court



whereas Sub-Section (2) permits post confirmation of findings of Security Force Court. Section 117 of the 1968 Act is reproduced as below:-

117. Remedy against order, finding or sentence of Security Force Court.—(1) Any person subject to this Act who considers himself aggrieved by any order passed by any Security Force Court may present a petition to the officer or authority empowered to confirm any finding or sentence of such Security Force Court, and the confirming authority may take such steps as may be considered necessary to satisfy itself as to the correctness, legality or propriety of the order passed or as to the regularity of any proceeding to which the order relates.

(2) Any person subject to this Act who considers himself aggrieved by a finding or sentence of any Security Force Court which has been confirmed, may present a petition to the Central Government, the Director-General, or any prescribed officer superior in command to the one who confirmed such finding or sentence, and the Central Government, the Director-General, or the prescribed officer, as the case may be, may pass such order thereon as it or he thinks fit.”

10. Section 118 provides that Central Government or the Director General or any authorized officer may annul the proceedings of any Security Force Court. Section 118 of the 1968 Act is reproduced as below:-

“118. Annulment of proceedings.—The Central Government, the Director-General, or any prescribed officer may annul the proceedings of any Security Force Court on the ground that they are illegal or unjust.”

11. The petitioner claims that he was having remedy to file petition before authority higher in rank than the confirming authority under Section 117(2) and further petition under Section 118 of the 1968 Act. The



interpretation advanced by petitioner does not seem to be correct. Section 117(2) creates a right to prefer petition and Section 118 empowers authorities to pass an order on the petition filed under Section 117(2). In true sense, Section 118 is continuation of Section 117(2) and it is not creating an independent right. The respondent has rightly concluded that petitioner had remedy to prefer petition before authority holding rank higher than confirming authority and he has already availed the said remedy. There is no further remedy to file petition. The contention of petitioner that Section 118 creates an independent right of appeal/review/revision cannot be countenanced and accordingly rejected.

Q.No.2 Whether the authority while passing order under Section 117(2) of 1968 Act was bound to grant opportunity of hearing?

12. The petitioner has further claimed that he was not granted opportunity of personal hearing before passing appellate order. It is conceded fact that neither 1968 Act nor rules made thereunder enjoin the appellate authority to grant opportunity of personal hearing.

13. A two Judge Bench of Supreme Court in ***Oriental Bank of Commerce and another v. R.K. Uppal, (2011) 8 SCC 695*** has held that requirement of natural justice would depend upon circumstances of the case, nature of enquiry, rules under which appellate authority was acting and subject matter that was being dealt with. In case regulations do not expressly provide for personal hearing to a delinquent at an appellate stage, such requirement cannot be impliedly inferred. The relevant extracts of the judgment are reproduced as below:-



“23. A right of appeal is not an inherent right. None of the facets of natural justice requires that there should be a right of appeal from any decision. The extent of power of an appellate forum and the mode and manner of its exercise can always be provided in the provision that creates such a right. Insofar as the provision of appeal in Regulation 17 of the 1982 Regulations is concerned, it must be stated that the said provision affords to an employee right of appeal against an order imposing upon him any of the penalties specified in Regulation 4 or against the order of suspension referred to in Regulation 12. It provides for limitation within which the appeal is to be preferred. As per the said provision, the appeal must be addressed to the appellate authority and submitted to the authority whose order is appealed against. The authority whose order is appealed against is required to forward the appeal together with its comments and also the record of the case to the appellate authority. The appellate authority then proceeds with the consideration of the appeal and considers whether the findings are justified; whether the penalty is excessive or inadequate and passes appropriate order confirming, enhancing, reducing or setting aside the penalty or remitting the case to the authority that imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.

24. The appeal provision in Regulation 17 of the 1982 Regulations does not expressly provide for personal hearing to the appellant. Is the right of personal hearing to the appellant implicit in the provision? We think not. In our considered view, in the absence of personal hearing to the appellant, it cannot be said that the very right of appeal is defeated. One situation is, however, different. Where the appellate authority proposes to enhance the penalty, obviously, the appellate authority must issue notice to the delinquent asking him to show cause why penalty that has been awarded to him must not be enhanced and give him personal hearing. It is so because the appellate



authority seeks to inflict such punishment for the first time which was not given by the disciplinary/punishing authority. Although there are no positive words in Regulation 17, requiring that the appellant shall be heard before the enhancement of the penalty, the fairness and natural justice require him to be heard.

25. It is true that in Ganesh Santa Ram Sirur [(2005) 1 SCC 13 : 2006 SCC (L&S) 537] , this Court did not accept the contention of the delinquent relating to non-grant of personal hearing to him by the appellate authority before the enhancement of the punishment. But it was so in the peculiar fact situation of the case. First, this Court observed that Charge 5 of granting loan to the spouse under Seevy Scheme in violation of Rule 34(3) of the State Bank of India (Supervising Staff) Service Rules was found by the appellate authority more serious and grave in nature. Secondly, and more importantly, the Court noticed that the delinquent in his appeal before the appellate authority admitted that he had committed misconduct of disbursing the loan to his wife in a Scheme which was meant for educated unemployed youth. To our mind, thus, there is no inconsistency in the judgment of this Court in Ganesh Santa Ram Sirur [(2005) 1 SCC 13 : 2006 SCC (L&S) 537] and our statement above that where the appellate authority proposes to enhance the penalty, the appellate authority must issue notice to the delinquent and give him personal hearing.

26. However, personal hearing may not be required where the appellate authority, on consideration of the entire material placed before it, confirms, reduces or sets aside the order appealed against. Regulation 17 of the 1982 Regulations does not require that in all situations personal hearing must be afforded to the delinquent by the appellate authority. The view taken by the Full Bench of Punjab and Haryana High Court in Ram Niwas Bansal [(1998) 4 SLR 711 (P&H)] is too expansive and wide and cannot be held to be laying down



correct law particularly in the light of the judgment of this Court in Mahendra Kumar Singhal [1994 Supp (2) SCC 463 : 1994 SCC (L&S) 1017 : (1994) 27 ATC 832] . We answer this question accordingly.”

14. A two Judge Bench of Supreme Court in ***Union of India v. Ex-Constable Amrik Singh, 1991 (1) SCC 654*** had occasion to consider question of principles of natural justice in case of petition under Section 117(2) of 1968 Act. The Court has categorically held that there is no requirement to grant opportunity of hearing while passing order under Section 117(2) of the 1968 Act. The relevant extracts of the aforesaid judgment are reproduced as below:-

“7. From the above discussion it emerges that in cases of special enactments like Army Act, all the principles of natural justice cannot be imported. The same ratio applies to a petition under Section 117(2) of the Act also. We may also point out here that Chapter XIII consisting of Rules 167 to 169 of the BSF Rules deals with petitions filed under Section 117 of the Act. Even in them there is nothing to indicate that a hearing has to be given before disposal of a petition.

8. As noted above, under Section 117(2) the respondent is only entitled to file a petition but the disposal of such a petition does not attract principles of natural justice. The respondent has been tried by observing the due process of law and the verdict of the Security Force Court was confirmed and it is only a post-confirmation petition that was filed under Section 117(2) of the Act and the authority which disposed of the same is not a court and every order passed administratively cannot be subjected to the rigours of principles of natural justice.”

15. From the perusal of above-quoted judgments, it is evident beyond the pale of doubt that authority while considering petition under Section 117(2) of 1968 Act was not bound to grant opportunity of hearing. There is no

absolute bar to grant opportunity of hearing, however, an applicant cannot claim it as a matter of right.

16. In the case in hand, the petitioner was not granted opportunity of hearing. In the wake of afore-cited judgments, this Court does not find substance in the argument of petitioner that impugned order is bad on account of denial of opportunity of personal hearing.

Q.No.3 Whether authorities have passed non-speaking order?

17. Another conundrum which needs to be answered is whether impugned orders are non-speaking, thus, violative of principles of natural justice and fair play.

Concededly, the petitioner joined respondent-Force on 08.01.1982 and, before awarding impugned sentence, was awarded following punishments:-

i)	u/s 19(b) of 1968 Act (overstaying from leave)	17 days RI on 06.05.1985
ii)	u/s 26 of 1968 Act (intoxication)	Reprimanded on 20.10.1995
iii)	u/s 40 of 1968 Act (An act prejudicial to good order and discipline of the Force)	Severely reprimanded on 04.11.1995
iv)	u/s 40 of 1968 Act (An act prejudicial to good order and discipline of the Force)	Severely reprimanded on 12.01.1996

v)	u/s 40 of 1968 Act (An act prejudicial to good order and discipline of the Force)	Severely reprimanded on 15.05.1997
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The above noted record discloses that three times petitioner was punished on account of acts prejudicial to good order and discipline of the Force. The petitioner was subjected to proceedings by Summary Security Force Court. The said Court as per 1968 Act is presided by Commandant of the Unit who has to follow the procedure prescribed under the Act read with Rules. He has to prepare record of evidence. On the basis of record of evidence, the quantum of sentence is determined. He cannot execute the sentence unless and until it is confirmed by prescribed authority. The determination of quantum of sentence is one aspect whereas recording of evidence is another. From the perusal of record, it comes out that Summary Security Force Court duly recorded evidence and prepared its report. Quantum of sentence was determined on the basis of evidence on record. The petitioner, on five earlier occasions, was subjected to punishment under 1968 Act. The Security Force Court determined quantum of sentence. The Court was of the opinion that petitioner should be dismissed from service. The matter was put up before confirming authority which taking a lenient view substituted the sentence from ‘dismissal’ to ‘reduction in rank’. The petitioner could claim violation of principles of natural justice or procedure contemplated by 1968 Act read with Rules, had evidence not been recorded. The petitioner cannot be heard to say that while determining quantum of sentence speaking order was not passed. It is apt to notice that petitioner was found guilty of commission of

offence punishable under Section 20(b) of the 1968 Act. The maximum sentence prescribed for the commission of alleged offence was 14 years imprisonment. The respondents considering the gravity of offence reduced the sentence from maximum 14 years imprisonment to reduction in rank which in the sequence contemplated under Section 48, falls at Serial No.5 i.e. clause (e). The petitioner is not disputing the fact that on five earlier occasions he was subjected to punishment. The respondent is an Armed Force where discipline is of paramount consideration. In view of recording of evidence and compliance of procedure under 1968 Act and Rules made thereunder, it cannot be concluded that respondent has not passed speaking order.

18. In the wake of above discussion and findings, this Court is of the considered opinion that present petition deserves to be dismissed and accordingly dismissed.

19. Pending application(s), if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

15.05.2024
Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No