



2024:DHC:8055-DB



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

Date of decision: 16th October, 2024

+ W.P.(C) 2699/2023 & CM APPL. 10416/2023

KUMAR SANJAY JHA

.....Petitioner

Through: Mr. Manu Yadav, Advocate.

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Mr. Ripudaman Bhardwaj,
CGSC with Mr. Kushagra
Kumar, Mr. Abhinav Bhardwaj,
Advocates along with Mr. M.
Raja Khan, Comdt. Law, Mr.
Hemendra Singh, DC/Law and
Mr. Neeraj Singh, AC/Law for
UOI.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed by the petitioner challenging the Order dated 06.01.2023 passed by the respondent no.2, whereby the General Security Force Court (in short, 'GSFC') was directed to reconsider its findings on '*Second, Fourth, Fifth, and Sixth*' charges in the chargesheet against the petitioner, while also reconsidering the sentence that has been awarded to the petitioner on the '*First*' and '*Third*' charge.

2. The learned counsel for the petitioner submits that the petitioner had submitted a 'Pre-Confirmation Petition' in terms of Section 117



(1) of the Border Security Force Act, 1968 (in short, 'BSF Act') read with Rule 167 (1) of the BSF Rules, 1969 (in short, 'BSF Rules') to the Confirming Authority, however, without considering the 'Pre-Confirmation Petition', the Confirming Authority passed the Impugned Order in violation of the mandate of Rule 167(1) of the BSF Rules.

3. On the other hand, the learned counsel for the respondents submits that the issue raised in the petition is no longer *res integra* and has been decided by this Court in the following two judgments:

i. ***Naik Gian Chand vs. Union of India & Others***: 1983 SCC OnLine Del 78;

ii. ***Brig. R.P. Singh VSM vs. Union of India & Others***: 2004 SCC OnLine Del 796.

4. The learned counsel for the respondents submits that post the Report of the GSFC on revision, the petitioner would have a right to submit a 'Pre-Confirmation Petition' in case he is aggrieved by the findings of the GSFC Court in revision.

5. In rejoinder, the learned counsel for the petitioner submits that the judgments in ***Naik Gian Chand (supra)*** and ***Brig. R.P. Singh (supra)*** would not be applicable to the present case inasmuch as the Court in these two judgments was considering the Army Act, 1950 and the Rules framed thereunder. He submits that there is no provision *para-materia* to Rule 167(1) of the BSF Rules in the Army Act. He also draws our attention to the judgment of this Court in ***Kiran Kumar vs. Union of India & Others***: 2023 SCC OnLine Del 198.

6. We have considered the submissions made by the learned



counsel for the parties.

7. In ***Naik Gian Chand (supra)***, this Court, while considering Section 160 of the Army Act, 1950 has held as under:

“ 29. Shri Nayar next contended that the petitioner had liked a pre-confirmation petition under Section 164(1) but the same was not considered prior to confirmation of the sentence and the finding. We do not find any merit in this contention. In paragraph 17 of the affidavit in reply of Major B.K. Nagpal, it has been categorically stated that the pre-confirmation petition was considered and the authority found no merit therein. No rejoinder has been filed controverting this averment. We see no reason to disbelieve the affidavit filed on behalf of the respondents in this behalf. There is also no merit in the contention that on 30th September, 1980 the Officiating General Officer Commanding, 18 Infantry Division could not order the revision of the sentence without waiting for the result of the confirming authority on the aforesaid pre-confirmation petition. The power under Section 160 is to be exercised before the confirmation of the sentence. This can only be exercised by the confirming authority asking for revision of the finding and/or sentence to be gone into by the General Court Martial before the pre-confirmation petition is considered and decided upon. The occasion for considering the pre-confirmation petition will arise only after the General Court Martial has forwarded its report on re-consideration of the matter. If the pre-confirmation petition has first to be decided, as has been contended by the petitioner, there would never be any occasion for the confirming authority to exercise its powers under Section 160.”

(Emphasis supplied)

8. In ***Brig. R.P. Singh (supra)***, this Court reiterated as under:

“ 40. So far as the submission with regard to the consideration of the pre-confirmation petition of the petitioner is concerned, we find force in the respondents submission which is based on the right of an officer under Section 164 of the Army Act. It has been contended before us by Learned Additional Solicitor General that, upon consideration of the matter, the confirming authority did not agree with the order of sentence awarded by the General Court Martial. Accordingly, the confirming authority had directed the General Court Martial to



reassemble on the question of sentence. A person aggrieved by any order passed by a General Court martial has a right under Section 164(1) to present a petition against such order to an officer or an authority empowered to confirm any finding or sentence of the Court Martial prior to its confirmation. The confirming authority is required to take all necessary steps to satisfy itself to the correctness, legality or the propriety of the order passed or as to the legality of any proceedings to which the order relates. Therefore, upon the directions for revision being made in the order dated 15th December, 2003, the original sentence of the General Court Martial ceased to exist and as such the pre-confirmation petition which was filed by the petitioner on 5th August, 2003 was of no consequence.

(Emphasis supplied)

9. It has, therefore, been held by this Court that where the Confirming Authority exercises its powers to remit the matter for revision to the General Court Martial/in the present case, the GSFC, there is no requirement in law to first consider the 'Pre-Confirmation Petition' that has been submitted by the officer concerned against the original report of the GSFC. This Court, in fact, emphasised that if the 'Pre-Confirmation Petition' has to be decided first, as has been contended by the petitioner, there would never be any occasion for the Confirming Authority to exercise its powers under Section 160 of the Army Act, which is *para-materia* to the Section 113 of the BSF Act.

10. The submission of the petitioner that the above judgments would not be applicable to the BSF due to Rule 167(1) of the BSF Rules, does not impress us. Section 160 of the Army Act, 1950 reads as under:

"160. Revision of finding or sentence - (1) Any finding or sentence of a Court-Martial which requires confirmation may be once revised by order of the confirming authority and on



such revision, the court, if so directed by the confirming authority, may take additional evidence.

(2) The court, on revision, shall consist of the same officers as were present when the original decision was passed, unless any of those officers are unavoidably absent.

(3) In case of such unavoidable absence the cause thereof shall be duly certified in the proceedings and the court shall proceed with the revision provided that, if a General Court-Martial, it still consists of five officers or, if a summary general or district Court-Martial of three officers.”

11. The *para-materia* provision is found in the BSF Act in the form of Section 113 of the BSF Act which reads as under:

“113. Revision of finding or sentence. -

(1) Any finding or sentence of a Security Force Court which requires confirmation may be once revised by order of the confirming authority and on such revision, the court, if so directed by the confirming authority, may take additional evidence.

(2) The court, on revision, shall consist of the same officers as were present when the original decision was passed, unless any of those officers are unavoidably absent.

(3) In case of such unavoidable absence the cause thereof shall be duly certified in the proceedings, and the court shall proceed with the revision, provided that, if a General Security Force Court, it still consists of five officers, or, if a Petty Security Force Court, of three officers.”

12. Under Section 164 of the Army Act, the remedy is provided to an aggrieved officer to present a petition to the Confirming Authority before the finding of the Court Martial is considered by such Authority. A similar remedy is provided in terms of Section 117 of the BSF Act which reads as under:

“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.”

13. Rule 167 of the BSF Rules provides for and reiterates the remedy to the officer to submit a ‘Pre-Confirmation Petition’ to the Confirming Authority as mentioned in Section 117 of the BSF Act. It does not create a new right in favour of the officer but merely reiterates the manner in which ‘Pre-Confirmation Petition’ is to be made. Rule 167 of the BSF Rules is reproduced hereinunder:

“167. Petitions against finding and sentence of Court

.- (1) A person subject to the Act who has been tried by a Court shall be allowed to put in one petition before confirmation, to the confirming authority and one petition after confirmation to any officer mentioned in section 117.

(2) In the case of a Summary Force Court he shall be allowed to put in one petition only to any of the officers mentioned in section 117.”

14. Therefore, the submission of the petitioner that Rule 167(1) of the BSF Rules creates a distinct or independent right in an officer to submit a ‘Pre-Confirmation Petition’ which would stand violated where the Confirming Authority chooses to exercise its powers under Section 113 of the BSF Act, does not deserve acceptance, especially in view of the judgments of this Court in *Naik Gian Chand (supra)* and



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Brig. R.P. Singh (supra).

15. In ***Kiran Kumar (supra)***, the Court had found that the ‘pre-confirmation petition’ filed by the petitioner therein post the Revisional Order had not been considered by the Confirming Authority. It was in those facts, that the court set aside the order passed by the Confirming Authority and directed the Authority to first decide the pre-confirmation petition filed by the petitioner post the Revisional Order. The said judgment, therefore, cannot come to the aid of the petitioner in the present facts.

16. Having found no infirmity in the Impugned Order, we may only reiterate and clarify that it is the own case of the respondents, and rightly so, that on any report being submitted to the GSFC pursuant to the Impugned Order dated 06.01.2023, it shall be open to the petitioner to submit a ‘Pre-Confirmation Petition’ in accordance with law on all aspects of which he may be aggrieved of, not only in respect of the original report but also of the report submitted on such revision.

17. Keeping in view the above, we find no merit in the present petition and accordingly, the same, along with the pending application, is dismissed.

NAVIN CHAWLA, J

SHALINDER KAUR, J

OCTOBER 16, 2024/ab/KM/DG

Click here to check corrigendum, if any