

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 Gaurang Kanth

M.A.T. 85 of 2024
with
CAN 1 of 2024

Rajeev Kumar Hembram
-Vs-
Union of India & Ors.

For the Appellant : Mr. Jagriti Mishra, Adv.,
Mr. Santosh Kr. Dhar, Adv.,
Mr. Ashit Kr. Das, Adv.,
Ms. Ananya Bhattacharya, Adv.,
Ms. Mriknmayee Das, Adv.

For the Union of India : Mr. Sudipto Kumar Mazumdar, DSGI,
Mr. Ajoy Kumar Singhania, Adv.

Heard on : 22.01.2025, 27.01.2025 & 29.01.2025

Judgment on : 29.01.2025

Joymalya Bagchi, J. :-

1. Appeal is directed against judgment and order dated 30.01.2024 passed by the Hon'ble Single Judge dismissing the prayer to set aside the order of the appellate authority dated 01.01.2021 upholding the decision and finding of the Summary Force Court (for short SFC) wherein the appellant was found guilty under Sections 43 and 44(c) of the Sashastra

Seema Bal, 2007 (hereinafter referred to as the Act) and awarded punishment of dismissal of service under Section 51(1)(c) of the Act.

Factual matrix:-

2. The factual matrix giving rise to the appeal are as follows:-
3. On 13.07.2018 appellant was performing sentry duty at RP Gate I between 6.00 hours to 9.00 hours. At 8.55 hours he was seen using his mobile phone and duty JCO, ASI G. D. Partha Bhattachharjee seized the said phone as the appellant was using it during duty hours in contravention of the extant orders and directions. At that stage, there was an altercation and appellant cocked his rifle.
4. In view of the aforesaid accusation, appellant was placed on suspension. A court of enquiry was ordered by the Commandant vide convening order dated 17.07.2018 to investigate into the circumstances under which the appellant had cocked his service rifle while performing sentry duty. Pursuant to the court of enquiry, Commandant vide order dated 03.10.2018 directed record of evidence (ROE) in accordance with relevant rules.
5. After perusing the ROE and giving an opportunity of hearing to the appellant, the Commandant referred the case for SFC under Rule 135 of the said Act. In the SFC, appellant was charged under Section 22 of the Act which reads as follows:-

“While No.12066889 CT(GD) Rajeev Kumar Hembrom of 41st Bn. SSB, Ranidanga while performing sentry duty at RP Gate -1 on 13/07/2018, cocked his personal rifle after his mobile was seized by duty JCO ASI(GD) Partha Bhattacharjee as the said CT/GD was found using the same during duty hour.”

6. SFC found the appellant guilty of the aforesaid charge and sentenced him to suffer imprisonment for 40 days in force custody vide order dated 11.02.2019. The order was duly promulgated and appellant served the aforesaid sentence.

7. On 14.02.2020, the Deputy Inspector General upon analysis of the evidence on record annulled the SFC proceeding holding the same as illegal on the premise that the punishment awarded was not commensurate with the gravity of the offence and the evidence on record.

8. In view of the aforesaid annulment, the Commandant obtained legal opinion from the Deputy Judge, Attorney General and the latter opined “*Bn to take action as per direction of DIG, SHJQ Ranidanga and must complete proceeding immediately.*”

9. Pursuant thereto, by order dated 04.05.2020 the Commandant cancelled the punishment for imprisonment in force custody for 40 days awarded to the appellant and directed the said period shall be treated as duty for all purposes. Thereafter, by a convening order dated 06.06.2020 another SFC was convened to try the appellant for the charges under Sections 44(c) and 43 of the Act which read as follows:-

“Regt. No. 120666889, UIN – 15020804 CT (GD) Rajeev Kumar Hembrom of 41st Bn. SSB, Ranidanga while performing sentry duty at RP Gate No.1 on 13.07.2018 from 0600 Hrs to 0900 Hrs and 0855 Hrs he tried to commit suicide by cocking his personal rifle INSAS Butt No. 421 bearing No. 18002242 when his mobile was seized by ASI (GD) Partha Bhattacharjee, Duty SO as he was using mobile during duty hour.”

“On 13.07.2018, Regt. No. 120666889, UIN – 15020804 CT(GD) Rajeev Kumar Hembrom of 41st Bn SSB, Ranidanga was detailed for sentry duty at RP Gate No.1 from 0600 Hrs to 0900 Hrs and he found using the mobile phone while

checking of duty by ASI (GD) Partha Bhattacharjee, Duty SO of the day during duty hour even after issuing guidelines/instructions by the senior officer in this regard time and again.”

10. SFC vide an order dated 23.06.2020 found the appellant guilty on the aforesaid charges and sentenced him to dismissal from service. The sentence was duly promulgated. Appellant challenged the sentence before the appellate authority which confirmed the findings and the sentence awarded to the appellant.

11. This came to be assailed before the Hon'ble Single Judge under Article 226 of the Constitution of India. By the impugned order, Hon'ble Judge dismissed the writ petition resulting in the present appeal.

Arguments at the Bar:-

12. Mr. Mishra assails the proceeding on the following grounds:-

13. Firstly, referring to Section 87 of the Act read with Rule 155, he contends that the appellant could not have been tried by SFC afresh on same facts;

14. Secondly, he contends that the powers of the DIG in respect of SFC proceedings are delineated in Section 130 read with Rule 162 of the said Act and he had no authority to annul the earlier proceeding as illegal.

15. In response Deputy Solicitor General submits as per Rule 185 the DIG is a prescribed officer under Section 132 of the Act and was empowered to annul the proceeding on the ground that the earlier SFC proceeding was against the evidence on record and sentence was not commensurate to the gravity of the offence. He further contends that the annulment order had not been challenged in the present proceeding.

16. As convening of the fresh SFC was on new and distinct charges, the same would not amount to a trial of the same offence violating Section 87 of the Act.

17. In response Mr. Mishra argues DIG is not a prescribed officer under Rule 185 of the said Act and could not have exercised powers under Section 132 of the said Act. In the absence of legal authority clothing the officer concerned to annul the proceeding, the fresh proceeding which was initiated on the basis of an annulment order by an unauthorized officer was patently without jurisdiction.

Issues for decision:-

18. An analysis of the aforesaid facts in the backdrop of the arguments advanced gives rise to the following issues:-

- i) Whether the initiation of the fresh SFC on charges under Section 44(c) and 43 of the said Act would constitute trial of the charged officer for the same offence violating Section 87 of the said Act read with Rule 155 of the relevant rules;
- ii) Whether the annulment order passed by the DIG concerned is without authority of law rendering the entire SFC proceeding and the punishment awarded as illegal;

Issue (i):-

19. Section 87 of the said Act reads as follows:-

“87. (1) When any person, subject to this Act has been acquitted or convicted of an offence by a Force Court or by a criminal court or has been dealt with under section 56 or section 58, he shall not be liable to be tried again for the same offence by a Force Court or dealt with under the said sections.

(2) When any person, subject to this Act, has been acquitted or convicted of an offence by a Force Court or has been dealt with under section 56 or section 58, he shall not be liable to be tried again by a criminal court for the same offence or on the same facts.” (Emphasis supplied)

20. Section 87 of the Act puts a bar on a new trial of a person for “the same offence” when he has already been tried and convicted/acquitted by a Force Court or a Criminal Court. In the initial SFC the appellant had been charged under Section 22 of the Act whereas in the subsequent SFC, he had been charged under Sections 44(c) and 43 of the said Act. Section 22 of the Act reads as follows:-

“22. Any person subject to this Act who commits any of the following offences, namely :-

(a) uses criminal force to or assaults his superior officer; or

(b) uses threatening language to such officer; or

(c) uses insubordinate language to such officer,

Shall, on conviction by a Force Court –

(i) If such officer is at the time in the execution of his office or, if the offence is committed on active duty, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

(ii) In other cases, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned :

Provided that in the case of an offence specified in clause (c) the imprisonment shall not exceed five years.” (Emphasis supplied)

21. Whereas Section 44(c) of the Act makes an attempt to commit suicide punishable in the event the delinquent does any act towards the commission of suicide.

22. Section 43 of the Act makes an act or omission on the part of the delinquent which is prejudicial to good order and discipline of the force punishable in law.

23. Plain reading of the ingredients of the aforesaid offences i.e. offences under Section 22 for which the appellant was tried in the first SFC and the offences under Sections 44(c) and 43 of the Act for which the appellant was tried and punished in the subsequent SFC show that they are clearly different and distinct from one another and does not attract the bar of double jeopardy engrafted in Section 87 of the Act.

24. Mr. Mishra also referred to Rules 153 and 115 of the relevant rules to buttress his argument that a second trial is not permissible. Rules 153 and 155 relate to a completely different fact situation. Rule 155 prescribes if charges are contained in multiple charge sheets, the SFC shall try the accused on each charge sheet separately and give separate finding on each charge sheet but as per Rule 153 one sentence is to be awarded in respect of all the offences. The Rules relate to the procedure of conducting trial in SFC where multiple charge sheets are filed. In the instant case, there was no amendment of charge in the initial SFC nor multiple charge sheets had been filed. After the promulgation of the finding and sentence in the initial SFC, the same was annulled due to inadequacy of sentence vis-a-vis gravity of the offence and a fresh SFC was reconvened.

25. As discussed earlier, the convening of the fresh SFC was on charges which are different and distinct from the charge on which the earlier SFC had been convened. In this background convening of the subsequent SFC in our considered view does not violate the provision of Section 87 of the said Act nor does it attract the Rules 153 or 155 of the said Act as argued by Mr. Mishra.

Issue (ii):-

26. This brings us to the second issue.

Did the annulment order by the DIG suffer from jurisdictional defect?

27. Mr. Mazumdar would argue that the order had not been assailed. On the contrary Mr. Mishra strenuously contends that the order was *dehors* the scheme of the Act and the entire proceeding was initiated on the dictation of a superior officer who had no power to annul the earlier proceeding.

28. In support of his submission Mr. Mishra refers to the powers of the DIG adumbrated in Sections 129, 130 and 142 of the Act read with Rules 161 and 162 of the relevant Rules to emphasis the DIG does not have authority to annul the proceeding for initiation of fresh SFC.

29. Section 129 of the Act, inter alia, empowers the officer not below the rank of Additional Deputy Inspector General, Director General or his nominee or a prescribed officer to set aside the proceedings or reduce the sentence.

30. Section 130 empowers the superior officer to record a new finding, commute the sentence or pass a new sentence on the existing or new finding if he finds the findings of the Force Court is invalid or cannot be supported by evidence. But the new sentence cannot be higher in the scale of prescribed sentences than what was already awarded.

31. Section 142 empowers the superior officer to remit, mitigate, commute the sentence or release on parole if the person accepts the

sentence and is pardoned on such terms and conditions as the officer deems fit and proper.

32. Rules 161 and 162 state the proceeding of SFC upon promulgation shall be forwarded by Judge Attorney General to Deputy Inspector General who may set aside proceeding or reduce the sentence if he finds grave irregularity in the proceeding causing grave injustice to the accused or in the alternative he shall countersign the proceeding.

33. A combined reading of the aforesaid provisions would show they do not deal with a case where the superior officer is of the view finding and sentence awarded by SFC is inadequate *qua* the gravity of offence.

34. Such power is traceable of Section 132 of the Act which reads as follows:-

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

35. Rule 185 clarifies the prescribed officer under Section 132 as follows:-

*“185. **Prescribed officer under Section 132-** The prescribed officer for the purpose of section 132 shall be the officer commanding a frontier, sector or training institution in respect of proceedings confirmed by him or by a person under his command.”*

36. Mr. Mishra would argue that the DIG concerned is not a prescribed officer to annul the proceeding. His action is *de hors* the statutory provisions and would amount to dictation unauthorized in law.

37. Mr. Mazumdar argues that the annulment order had not been challenged by the appellant. In the event the annulment order was the foundational fact pursuant to which the subsequent SFC had been

convened, authority of the officer concerned issuing the order amounts to a jurisdictional issue and can be assailed by the appellant while challenging the order of punishment itself.

38. For this reason, we have delved into relevant authorization issued by the department with regard to the power and function of the officers in Sector Headquarters. Office Memorandum vide No. 1/54/SSB/Pers-V/Auth/2021/1201-11 dated 17.03.2022 placed before us encloses authorization of officers holding different posts in Sector Headquarters. As per the authorization hierarchy of officers posted in the Sector Headquarter shows the DIG as the head of a Sector Headquarter.

39. In such view of the matter, there cannot be any cavil to the proposition that the DIG is a prescribed officer commanding the Sector Headquarter empowered to exercise authority under Section 132 of the said Act.

40. In the factual matrix, the DIG concerned had gone through the evidence on record and arrived at a finding that the earlier security force proceeding was against the evidence on record and the sentence imposed was not commensurate to the gravity of the offence. Accordingly, he annulled the said proceeding.

41. Pursuant thereto commanding officer upon obtaining legal opinion from Deputy Judge, Attorney General and recalled the earlier punishment of imprisonment in force custody of 40 days and directed the period would be treated as of service and initiated a fresh proceeding on separate and distinct charges for which the appellant was found guilty.

42. The procedure adopted in our considered opinion is in consonance with the statutory provisions and the Rules. It is also apposite to note that the appellant had accepted the annulment order including the effacement of his earlier punishments and participated in the subsequent proceeding.

43. Given this situation, we hold annulment order was in accordance with law and the appellant had acquiesced to it by accepting the setting aside of his earlier punishment and initiation of fresh SFC on distinct and different charges.

44. In light of the aforesaid submission, we are of the opinion the impugned judgment and order does not call for interference.

45. Accordingly, the appeal and the connected application are dismissed.

46. There shall be no order as to costs.

47. Photostat certified copy of this order, if applied for, be given the appearing parties on usual undertaking.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

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