

10th June, 2026
(D/L No.16)
Ct. No.4
(SKB)

F.M.A.64 of 2020

Rajendra Prasad Tiwari
Versus
Union of India and others

Mr. Mir Anowar

... for the appellant.

1. Heard the learned advocate for the appellant.
There is none to represent the respondent/Union of India.
2. The present appeal arises out of a judgment dated 26.08.2019 passed by the learned Single Judge rejecting the writ petition filed by the present appellant.
3. The writ petitioner/appellant, a Head Constable, was assigned duty at Point Number 13 of Border Out Post, Sidhai on the fateful day. The constable who was assigned duty at the said Post made a complaint that the writ petitioner/appellant allowed safe passage of five ladies across the border to the bordering country along with some cumin seeds and goats. The complainant, P.W.1 tried to intervene. The villagers quarreled with him and facilitated the passage of the five females. Despite such occurrence, the present petitioner/appellant, a Head Constable took no steps to aid and assist

the constable in preventing such illegal cross over from the border.

4. As a result of the allegations, the authorities initiated a Summery Security Force Court (in short 'SSFC') under the provisions of the Border Security Force Act and Rules. The complainant deposed as P.W.1. One constable who was posted at the adjacent point (Point Number 12) also deposed along with P.W.3, 4 and 5, other constables posted at the adjacent Border Out Post, either at Point No.12 or Point No.14.
5. The SSFC allowed the petitioner/appellant an opportunity to cross-examine the P.W.s. The appellant did not cross-examine the witnesses, other than P.W.1, complainant, who stood by his statement supporting the allegations being enquired into by the SSFC.
6. At the end of the SSFC on 30.09.2014, the authorities ensured compliance with the requirement of Rule 48(3) of the Border Security Force Rules, 1969. They informed the petitioner/appellant that he could make a statement. They also put a specific question to the petitioner/appellant whether he wishes to call any witness. The petitioner chose not to make any statement. In response to the query,

whether he wanted to call any witnesses, he answered in the negative.

7. Based on the SSFC proceeding, the Office of the Commandant found the appellant/petitioner to be liable for an act prejudicial to both order and discipline of the Force. The appellant was directed to be reduced to the rank of a Constable from the rank of Head Constable.
8. Perusal of the record reveals that the proceeding was conducted in accordance with the procedural prescription contained in the BSF Act and Rules. The opportunity as contemplated under the provisions was granted to the petitioner/appellant. The examination of witnesses was done in his presence, which is apparent from the signature of the petitioner/appellant in the proceeding. His refusal to cross-examine the witnesses other than P.W.1 is also apparent from the proceeding. The cross-examination of P.W.1 thus, also does not enure to the petitioner's benefit. Petitioner chose not to make his written statement and he did not to call any witnesses in his defence.
9. We find that the procedural prescription for conducting SSFC contained in Rule 48 of the BSF Rules was complied with.

10. The order of punishment dated 05.10.2014 allowed an opportunity to the petitioner/appellant to represent before the Inspector General within three months, if he felt aggrieved by the punishment order, which opportunity also the petitioner/appellant has availed. The representation dated 12.11.2014 was rejected by the appellate authority by an order dated 19.10.2015.

11. It is also not in dispute that prior to the present SSFC, the petitioner/appellant was held guilty and liable for five acts of indiscipline. This fact is also relevant in view of the provisions contained in Section 98 of the ***Border Security Force Act, 1968*** as the provision contemplates an enquiry into the record to ascertain the general character of the member of the Force. The punishment was awarded therefore, observing the procedural prescription in the statute; and also taking into consideration relevant material placed before the SSFC.

12. In such circumstance, considering the limited scope of judicial review in such matters, where the court is primarily concerned with the decision making process and not the decision itself, the learned Single Judge by a judgment dated 26.08.2019 dismissed the writ petition.

13. The learned advocate for the writ petitioner/appellant submits that the Prodhan of the concerned Gram Panchayat had given a letter to the Commanding Officer of the Battalion that no such occurrence, as alleged against the petitioner took place at Point Number 13. The same should have been taken into consideration.

14. We find no force in such submission. Firstly, we have found that the order of punishment is founded on relevant material being the depositions in the SSFC, conducted in accordance with the prescribed procedure leaving no scope for interference with the finding. We also observe that despite an opportunity granted to the petitioner/appellant to call any witnesses, he chose not to do so, which is apparent from the proceeding dated 30.09.2014. Therefore, it does not lie in the mouth of the petitioner/appellant to submit that the letter should have been considered by the Authority.

15. The law is now well settled as regards interference with finding in a departmental/disciplinary proceeding. The scope of interference is very narrow. The petitioner/appellant has not made out any allegation of proved *mala fide*, violation of

procedure, or that the findings are baseless or admitting extraneous material. Under the circumstances, there is no scope for interference with the findings of the SSFC.

16. Our observation is fortified by decision of the Apex Court. The limited scope of judicial review with respect to findings in a departmental proceeding have been succinctly stated by the Apex Court in the case of ***Union of India and Others vs. P. Gunasekaran*** reported in ***(2015) 2 SCC 610***.

17. We, therefore, find no infirmity in the decision of the learned Single Judge in the judgment under appeal.

18. At this juncture, the learned advocate for the writ petitioner/appellant submits that about more than 7 years after the punishment dated 05.10.2014, the petitioner/appellant was again promoted in the rank of Head Constable on 09.11.2021. It is submitted that he may be permitted to make a representation for benefits of the higher rank of Head Constable for the interregnum.

19. We find such submission to be unsustainable. Any benefit for the rank of Head Constable prior to issuance of the promotion order dated 09.11.2021, could be claimed only if

the earlier punishment order dated 05.10.2014 was interfered with, and set aside. The same having not been interfered with, there is no scope for claiming any such benefit.

20. The order of the learned Single Judge Bench requires no interference. The appeal is, therefore, devoid of merit and dismissed.

21. The connected application is, accordingly, disposed of.

(Madhuresh Prasad, J.)

(Prasenjit Biswas, J.)