

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 25583 of 2022

Santosh Sardar
Vs.
Union of India & Ors.

For the writ petitioner	:-	Mr. Ujjal Ray, Adv. Mr. Binit Kumar, Adv.
For the Union of India	:-	Mr. Ajit Kumar Chaubey, Adv.
Heard on	:-	18.03.2026
Judgment on	:-	01.04.2026

Amrita Sinha, J.:-

1. The petitioner was serving in the Border Security Force (BSF) as Constable (general duty). He joined service on 28th February, 1989. At the time of document and character verification from the office of the District Magistrate, North 24 Parganas, Barasat, the authority was informed that no such person can be traced. A criminal case was registered against him in year 2002 u/ss. 458/420 IPC. The petitioner was arrested on 11th March, 2002 and released on bail on 26th April, 2002.
2. A Petty Security Force Court proceeding was initiated against him in the year 2021 on five charges. He was found guilty in respect of two of them and was dismissed from service on 15th May, 2021. Appeal

preferred against the order of dismissal was rejected by the Inspector General on 20th July, 2021 and post confirmation appeal before the Director General also stood rejected on 4th December, 2021.

3. The petitioner is aggrieved by the same and prays for a direction upon the authority to set aside the entire proceeding as the same is contrary to the Border Security Force Act, 1968 hereinafter referred to as 'the Act' for the sake of brevity.
4. The primary ground for challenge of the proceeding is the lackadaisical attitude of the authority in initiating the proceeding long after the petitioner joined service. The cause of action for issuing the charge sheet arose at the time of entry of the petitioner in the Force in the year 1989; whereas the proceeding which led to his dismissal was initiated only in the year 2001 and the order of dismissal passed in the year 2021. By the said time the petitioner had already served the Force for nearly 32 years and is at the verge of his superannuation in the year 2027.
5. It has been contended that had the authority detected the guilt of the petitioner at the very initial stage, he could have found some other job to sustain his life and living. He has a son who is suffering from thalassemia and a huge amount of money is required for his treatment on regular basis.
6. It has been submitted that the allegation against the petitioner regarding forgery of mark sheet could not be conclusively established

at the time of enquiry as the headmaster of the school, at the time of cross-examination, was unable to prove his own identity of being the headmaster of the school. Contention of the petitioner is that if the person deposing against him does not have the right or authority to depose, then the evidence given by such person cannot be relied upon.

7. It has been argued that as the person deposing as headmaster did not have any knowledge of the facts and circumstances of the case, his evidence cannot be taken into consideration.
8. It has been argued that the punishment imposed upon the petitioner after blemish free service in the Force for more than three decades, is harshly disproportionate.
9. Prayer has been made to set aside the entire proceeding resulting in the impugned punishment, or if punishment is at all to be imposed, then a minor punishment may be considered for imposition.
10. In support of the prayer made herein above, learned advocate for the petitioner relies on the order dated 10th October, 2024 passed by the Hon'ble High Court of Judicature for Rajasthan at Jodhpur in S.B. Civil Writ Petition No. 17863/2022 (***Prithvi Raj vs. The State of Rajasthan & Ors.***) wherein, on similar facts, the Court was pleased to opine that the punishment of removal from service after thirty-eight years of service on allegation of submitting forged mark sheet at the time of entry in service is excessive and not commensurate with the misconduct committed by the charged officer.

11. The submission and prayer of the petitioner is opposed by the learned advocate representing the respondents. The report on affidavit filed by the Deputy Inspector General, Sector Headquarter, Border Security Force has been relied upon.
12. The report mentions that the petitioner was enrolled in BSF as Constable (general duty) on 28th December, 1989. After completion of his basic training, he was posted to 63Bn BSF where he served from October, 1990 to June, 1995. He was thereafter posted to Water Wing BSF, Srinagar from June, 1995 to March, 1998. Thereafter he was posted to Water Wing, Madhopur.
13. The documents relied upon by the petitioner at the time of entry in service were forwarded for verification to the competent authorities. In 1992 an information was received from the District Magistrate, North 24-Parganas, Barasat mentioning that after proper verification, it has been established that the petitioner was not a student of the school mentioned in the certificate relied upon by him. The certificate was again sent to the authority for re-verification.
14. When the petitioner was posted in Madhopur, during scrutiny of his service records, it was revealed that the character and antecedents of the petitioner had not been verified. The credentials of the petitioner were again sent to the District Magistrate, North 24-Parganas for verification. The Deputy Inspector General of Police (IB), West Bengal, by memo dated 15th November, 2000, requested Water Wing,

Madhopur to forward photocopy of the admit card, mark sheet and the school certificate of the petitioner for necessary examination.

15. The petitioner was asked to produce his original documents but he did not submit the same on time. The petitioner, on 23rd April, 2001, addressed a letter to the Commandant HQ Water Wing, Madhopur stating that he completed his education from Deoganga, district North 24-Parganas and requested the authority to verify the same.
16. On the basis of such request the authority again approached the District Magistrate, North 24-Parganas for verification of the character and antecedents of the petitioner at the address mentioned by him. Photocopy of the Madhyamik admit card, mark sheet and the school certificates submitted by the petitioner were forwarded for verification. By a communication dated 18th September, 2001, the District Magistrate, North 24-Parganas intimated that, no such person could be traced out and he was not a student of the school as mentioned in the attestation form.
17. The petitioner was arrested by the police in March, 2002 for producing false admit card and mark sheet at the time of enrolment in BSF and a criminal case under Sections 468/420 IPC was registered against him. On account of his arrest the petitioner was placed under suspension on 12th April, 2002 and he re-joined duty on 3rd June, 2002 after overstaying his leave for 28 days.

18. The authority in July, 2002 again approached the Secretary (Examination) of the West Bengal Board of Secondary Education for verification of the educational documents of the petitioner but no fruitful result was obtained. The petitioner was found to have committed offence under Section 23 of the Border Security Force Act, 1968 for providing false answer on enrolment and disciplinary proceeding was initiated against him.
19. During Record of Evidence (ROE) the petitioner admitted that in 1986 he appeared in the secondary examination but he failed in the same. As he belonged to a very poor family and his father was not alive, he solely had to take the responsibility of the entire family including his widow mother, wife, brother and two sisters. He was not in a position to re-appear in the matriculation examination. The petitioner submitted that he may be awarded any punishment except dismissal from service as he had crossed the age to get any job.
20. Relying upon Section 80 of the Act, a prayer was made by the authority before the Criminal Court where the criminal case against the petitioner was pending to try the said case before the Security Force Court (SFC). Challenging the steps taken to transfer the criminal proceeding to SFC, the petitioner approached the High Court of Punjab and Haryana by filing Civil Writ Petition No. 9768 of 2003 seeking for an order to restrain transfer of the criminal proceeding to SFC. Vide order dated 14th October, 2003, the said writ petition stood dismissed as 'infructuous'.

21. When the process for transfer of the criminal case to SFC was pending before the Sub-Divisional Judicial Magistrate, Barasat, the petitioner filed an application under Article 227 of the Constitution of India before this Court being CRR 468 of 2005 on 18th February, 2005. The Hon'ble Court vide order dated 21st February, 2005 was pleased to stay all further proceeding pending in the learned Trial Court till disposal of the Criminal Revision Application.
22. The learned Sub-Divisional Judicial Magistrate, Barasat, on perusal of the stay order passed by the Hon'ble High Court, rejected the prayer for transfer of the criminal case by passing order on 20th March, 2005.
23. The petitioner tendered application seeking voluntary retirement on three occasions with effect from 31st January, 2013, 30th June, 2015 and 31st January, 2019 but due to the pendency of the criminal/disciplinary proceeding against him, his application was not accepted.
24. Vide order dated 18th September, 2019, CRR 468 of 2005 with CRAN 5557 of 2017 stood dismissed directing the authority to proceed with the disciplinary proceeding. After dismissal of CRR 468 of 2005 an application under Section 80 of the BSF Act was again filed before the learned Court at Barasat and the said application stood allowed. The original educational certificates were received by the authority from the Trial Court in September, 2020.

25. Though initially ROE was conducted in respect of only one charge under Section 23 of the Act, but as before the learned Criminal Court, Barasat charge sheet was filed against the petitioner under Sections 463/468/471/420 IPC, as such, fresh disciplinary proceeding had to be initiated against the petitioner. The petitioner was tried by a Petty Security Force Court (PSFC) with effect from 30th April, 2021 to 15th May, 2021 in respect of five charges, out of which. two charges stood proved, and he was sentenced to be dismissed from service and to suffer imprisonment for fifteen months.
26. The pre-confirmation petition filed by the petitioner stood rejected and the confirming authority affirmed the findings and sentence of the disciplinary authority but the sequence of the sentence stood changed. The petitioner was sentenced to suffer rigorous imprisonment for fifteen months and to be dismissed from service. The petitioner was dismissed from service with effect from 15th May, 2021 and taken into custody on 4th August, 2021.
27. According to the respondents the sentence imposed upon him is just and proper. Prayer has been made to dismiss the writ petition.
28. I have heard and considered the rival submissions made on behalf of both the parties.
29. On perusal of the documents annexed to the writ petition it appears that the petitioner was provided sufficient opportunities to disprove the allegations levelled against him which he failed to do. On the

contrary, he admitted his guilt and accepted that he failed in the secondary examination and was not in a position to re-appear in the said examination. Being aware of the fact that he was ineligible to get into service, the petitioner fraudulently forged his mark sheet and produced the same at the time of credential verification.

30. As the documents relied upon by the petitioner were not found in the records of the authority, the petitioner was asked to provide originals of the same. On further verification of his educational certificates, the documents relied upon by him could not be traced out. It is only then that the authority came to a conclusive finding that the concerned documents were forged ones.
31. The submission of the petitioner that the evidence of the headmaster cannot be relied upon cannot come to his aid. According to the law of evidence, facts admitted need not be proved. Here, the petitioner himself accepted and admitted that the documents relied upon by him were not genuine. The investigating agency verified the documents from its source, i.e. the West Bengal Board of Secondary Education and was unable to find out the document relied upon by the petitioner, leading to the conclusive finding that the same was a forged one. As the statutory authority opined against the document relied upon by the petitioner, the evidence of the headmaster will not make much of a difference.

32. As after repeated verification processes the certificates relied upon by the petitioner were not found to be genuine, accordingly, there is hardly any scope to revisit the evidence relying on which decision was taken by the disciplinary authority to dismiss the petitioner from service and further undergo imprisonment.
33. The submission of the petitioner that, had the verification process been conducted in proper time, then the proceeding could have been concluded earlier during his initial service career and he could have got the time and would have been within the age to look for a different job to maintain his life and livelihood, is not convincing enough to interfere with the sentence imposed upon him.
34. It is common practice in service jurisprudence that, any time after appointment, if it is detected that the document relied upon by the candidate is false, fake or forged, then his service becomes liable to be terminated. In the case at hand, the certificate of the Board examination relied upon by the petitioner, has been proved to be a fraudulent one. Under such circumstances, the authority did not have any other option but to dismiss him from service, particularly in view of the fact that, the petitioner does not possess the minimum educational qualification to get the job. The employer cannot retain an employee if he does not possess the basic qualification to get the job.
35. The petitioner was well aware of the fact that he practiced fraud from the very moment he applied for getting the job by disclosing his

educational qualification as Madhyamik which he actually never passed. Without the minimum qualification, the petitioner was ineligible to even apply for the job, far less, being selected for the same.

36. The recruiting authority has every right to initiate disciplinary proceeding against an employee, at any point of his service career, the moment it is detected that fraud was practiced at the time of entry in service. Here, the verification process was initiated in the year 1992 but due to several litigations pending before various fora, the same stood finally concluded in July, 2002 and thereafter the disciplinary proceeding was initiated which concluded on 15th May, 2021.
37. It cannot be said with conviction that the delay in concluding the process of verification and thereafter the trial was solely attributable to the respondent authority. In fact, the petitioner approached the High Court of Punjab and Haryana, the learned Trial Court, Barasat and also before the High Court, Calcutta by filing Criminal Revision Application and the said litigations consumed a considerable period of time. Due to pendency of the disciplinary proceeding, repeated requests made by the petitioner seeking voluntary retirement also could not be accepted.
38. Submission of the petitioner that the punishment imposed is grossly disproportionate, also does not appear to be proper. The authority could have taken a stricter stand by taking a decision to recover the

salary paid to the petitioner as long as he was in service, which he is not entitled to, being ineligible for the same. The authority has dismissed him from service along with imprisonment for fifteen months which means that he would not be entitled to receive any further amount after his dismissal. Had the salary received by the petitioner for the entire period he was in service been directed to be recovered, the same would have been a harsher punishment than that imposed upon him.

39. The Hon'ble Supreme Court in ***Bank of India & Ors. vs. Abhinash D. Mandivikar & Ors.*** reported in ***AIR 2005 SC 3395*** held that fraud vitiates the most solemn proceeding in any civilised system of jurisprudence. Fraud is proved when it is shown that a false representation has been made knowingly or without belief in its truth.
40. The Hon'ble Supreme Court in ***Supdt. of Post Office & Ors. vs. R. Valasine Babu*** reported in ***AIR 2007 SC 1126*** held that if the employee played fraud in obtaining appointment, he should not be allowed to get the benefits thereof as the foundation of appointment collapses.
41. Prithvi Raj (supra) did not deal with the issue of fraud being played at the time of securing appointment. In my considered opinion, fraud is the deciding factor in the instant case. Had the petitioner got the basic qualification to get the job, then he could have prayed for his retention

in service. In this case, the petitioner is ineligible to remain in service and the only option is to dismiss him. The employer cannot permit an ineligible person to remain in service after his ineligibility stands confirmed.

42. Once the employer has taken a decision to impose some punishment after considering the gravity of the case, it is not proper for the Court to interfere with the same lightly. The power of judicial review cannot be stretched to such extent to always show sympathy to an errant employee by modifying the punishment imposed by the employer. If such a view is taken by the Court, then there is every possibility that the employer will be demoralized and it may not be possible for the employer to maintain honesty, sincerity and discipline at the place of work.
43. In ***Gridko Limited & Anr. Vs. Sadananda Dolui & Ors.*** AIR **2012 SC 729** the Supreme Court held that the power of judicial review cannot be extended if the action of the authority is not shown to be vitiated by the infirmities of illegality, perversity, unreasonable, unfair or irrational and so long as the action is not demonstrably in outrageous deviance of logic. The Writ Court would do well to respect the decision under challenge.
44. The petitioner has miserably failed to demonstrate that the action of the authority is in any manner illegal, perverse, unreasonable, illogical, unfair or there has been violation of the principles of natural

justice. In the absence of any of the above, it is not proper for the Court to interfere with the impugned sentence.

45. In view of the discussions made herein above, the Court is not inclined to entertain the writ petition and allow the prayer of the petitioner.
46. The writ petition fails and is hereby dismissed.
47. No costs.
48. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)