

(2009) 10 DEL CK 0050
In the Delhi High Court
Case No : Writ Petition (C) 5989 of 2008

Bhagirath Choudhary

APPELLANT

Vs

Border Security Force

RESPONDENT

Date of Decision : 28-10-2009

Acts Referred:

Border Security Force Act, 1968 — Section 40, 48, 48(1), 50
Border Security Force Rules, 1969 — Rule 45, 59

Citation : (2009) 10 DEL CK 0050

Hon'ble Judges : Suresh Kait, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Sanjeev Kumar, for the Appellant; Yadunath Singh, Dy.
Commandant, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Rule DB.

2. Rejoinder affidavit stated to have been filed by the petitioner yesterday is not on record, but copy thereof has been handed over by learned Counsel in the court. The same has been considered.

3. Heard for disposal.

4. The petitioner was employed as a Constable under BSF on 22.02.1971 and earned promotion to the post of Lance Naik. He earned further promotions and ultimately became a Sub-Inspector.

5. During his service under BSF, he was awarded three punishments on 30.05.1980, 06.01.1989 and 25.07.1994. Pursuant to the first punishment he was imprisoned for 10 days. The second punishment was a severe reprimand and the last punishment was a reprimand.

6. A fourth incident took place on 29.12.2005, at about 19.30 Hrs., when the petitioner was performing duty of a Platoon Commander at BSF Fence, Gate No.

16, at the Indo-Bangladesh Border. The Commandant noted hoof marks of cattle. It was detected that a large number of cattles were permitted to illegally cross-over from India to Bangladesh.

7. As per record of the respondents produced in court today for our perusal, when confronted with the tainted evidence at the site, the petitioner made a confessional statement admitting that he permitted 130 cattle to cross-over from India to Bangladesh.

8. Instances of smuggling at the Indo-Bangladesh Border, having assumed alarming proportions, the Commandant reported the matter to the higher authorities and under Rule 45(b) of the BSF Rules, 1969 a preliminary hearing was conducted in which evidence was recorded and reduced in the form of a summary of record of evidence.

9. The said proceedings indicted the petitioner, resulting in action being initiated under Rule 59 of the BSF Rules, 1969 i.e. the petitioner was directed to be tried by a General Security Force Court.

10. In the proceedings conducted before the General Security Force Court, the procedure of law was followed, a charge was served upon the petitioner and he was granted full opportunity to participate in the proceedings.

11. We note that in the writ petition no prayer is made pertaining to any alleged taint in the proceedings conducted by the General Security Force Court.

12. The findings resulted in the guilt of the petitioner being established.

13. BSF examined 10 witnesses. The petitioner did not lead any evidence in defence.

14. An order dated 22.01.2008 was passed awarding six months? RI to the petitioner as also his being dismissed from service.

15. Statutory remedies were availed by the petitioner with reference to the order dated 22.01.2008 which resulted in the authorities rejecting the petitions filed by the petitioner and hence the instant writ petition.

16. A single point has been urged at the hearing of the writ petition; being that, the order dated 22.01.2008 being a composite order of imposing six months? RI and punishment of dismissal from service is contrary to law.

17. Section 40 of the BSF Act, 1968 reads as under:

40. Any person subject to this Act who is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and discipline of the Force shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

18. Section 48 of the BSF Act, 1968 reads as under:

48. (1) Punishments may be inflicted in respect of offences committed by persons subject to this Act and convicted by Security Force Courts according to the scale following, that is to say:

- a) death;
- b) imprisonment which may be for the term of life or any other lesser term but excluding imprisonment for a term not exceeding three months in Force custody,
- c) dismissal from the service;
- d) imprisonment for a term not exceeding three months in Force custody;
- e) reduction to the ranks or to a lower rank or grade or place in this list of their rank in the case of a under-officer;
- f) forfeiture of seniority of rank and forfeiture of all or any part of the service for the purpose of promotion;
- g) forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose;
- h) fine, in respect of civil offences;
- i) severe reprimand or reprimand except in the case of persons below the rank of an under officer;
- j) forfeiture of pay and allowances for a period not exceeding three months for an offence committed on active duty;
- k) forfeiture in the case of person sentenced to dismissal from the service of all arrears of pay and allowances and other public money due to him at the time of such dismissal;
- l) stoppage of pay and allowance until any proved loss or damage occasioned by the offence for which he is convicted is made good.

(2) Each of the punishments specified in Sub-section (1) shall be deemed to be inferior in degree to every punishment preceding it in the above scale.

19. Suffice would it be to note that u/s 48(1)(c) of the Act punishment which may be inflicted in respect of an offence committed by a person subject to the Act upon being convicted at a General Security Force Court includes the penalty of dismissal from service.

20. Section 50 of the BSF Act, 1968 reads as under:

A sentence of a Security Force Court may award in addition to, or without any one other punishment, the punishment specified in Clause (c) of Sub-section (1) of Section 48, and any one or more of the punishments specified in Clauses (e) to (1)(both inclusive) of that sub-section.

21. It is apparent that by virtue of Section 50 of the Act, a sentence of a Security Force Court may award, in addition to, the punishment contemplated in Clause (c) of Sub-section (1) of Section 48, and anyone or more of the punishments specified under the law.

22. Thus, we find no infirmity in the ion of the respondent.

23. Before parting we once again note that no challenge has been made to the manner in which proceedings were conducted before the General Security Force Court and the verdict of the guilt returned at the said proceedings.

24. The writ petition is dismissed.

25. No costs.

26. Original record which has been produced for our perusal has been returned.