

(2000) 09 GAU CK 0009
In the Gauhati High Court
Case No : Writ Petition (C) No. 223 of 2001

Bhanwara Ram

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-09-2000

Acts Referred:

Border Security Force Act, 1968 — Section 113, 114, 115

Border Security Force Rules, 1969 — Rule 160

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 15(2)

Citation : (2001) 3 GLT 237

Hon'ble Judges : B.B. Deb, J

Bench : Single Bench

Advocate : K.N. Bhattacharjee and S. Bhattacharjee, for the Appellant; P.K. Dhar, for the Respondent

Final Decision : Allowed

Judgement

B.B. Deb, J.—By this writ petition under Article 226 of the Constitution of India, the petitioner challenged the order of dismissal bearing No. DIG(S)/Estt/BR-VS/130BN/01/12012-17 dated 10.4.2001 (Annexure-6 to the writ petition), issued by the DIG, BSF, TRA (South) dismissing the petitioner from service.

2. The petitioner being a Constable under 130 Bn BSF was deployed for OP duty at OP No. 6 Kalimandir on 19.11.1998 from 1200 hrs. to 1800 hrs. At that time, the petitioner along with another Constable on duty Shri V. Shankaran stopped a vehicle (Jeep) and searched it on suspicion of having transported smuggle goods towards Dhanpur side. The petitioner chased the vehicle but could not detain it. The petitioner came back with his company while his companion Shri V. Shankaran reported that he recovered Rs. 10,000 from the track through which the civilians escaped. The other constable also told that he found a bundle of Rs. 10,000 might have been fallen from the wearing Lungi of the civilian who fled away. Some time thereafter, one civilian came and made a complaint that the petitioner and the other on duty extracted Rs. 50,000 from the civilian. The

petitioner was put under suspension on 20.11.1998 and on 26.10.1999 the Summary Security Force Court (shortly SSFC) assembled and the charge was read over to the petitioner to which the petitioner pleaded "not guilty". The SSFC examined witnesses whom the petitioner cross-examined and on 30.11.1999 the SSFC announced its finding holding the petitioner "not guilty" and acquitted him from the charge. The respondent No. 5 forwarded the entire proceeding to the DIG, respondent No. 4 who having exercised his power under Rule 160 of "the Border Security Force Rules, 1969" (shortly the Rules) held the petitioner "guilty" of committing robbery by forcibly snatching away Rs. 50,000 from civilian Billai Hussain and imposed the penalty of dismissal from service vide impugned order dated 10.4.2001.

According to the petition, once the petitioner got acquittal by the SSFC, the DIG having no competence passed the impugned order. Only in case of guilty finding followed by imposition of penalty by the SSFC the same requires confirmation/review by the DIG and as such according to the petitioner, the impugned order of dismissal from service is without jurisdiction.

3. On 25.4.2001 notice of motion was issued returnable within a month and it was mentioned that the matter would be decided finally at admission stage.

4. The respondents filed affidavit-in-opposition contending, inter alia, that the decision arrived at by the SSFC is not final but subject to review by the DIG. Result of any proceeding, according to the affidavit-in-opposition, be it finding of guilt or finding of not guilty arrived at by the SSFC, requires confirmation by the DIG and as such all orders passed by the SSFC on an inquiry/trial are subject to review by the DIG and the DIG having exercised his power lawfully passed the impugned order which requires no interference by this court in this writ petition.

5. Heard Mr. K.N Bhattacharjee, learned senior counsel appearing on behalf of the petitioner and Mr. P.K. Dhar, learned senior Central Govt. Standing Counsel appearing on behalf of the respondents and perused, the records.

6. Admittedly, for commission of civil offence as defined u/s 46 of "the Border Security Force Act, 1968" (shortly the Act), the SSFC was assembled to enquire/try the petitioner on the charge framed and after recording the evidence allowing all opportunities, the SSFC vide verdict dated 30.10.1999 declared the petitioner "NOT GUILTY". For convenience sake, the verdict of the SSFC is reproduced below:-

"FINDINGS OF THE COURT WITH RESPECT OF CHARGE

1. I am of the opinion on the evidence before me that both the accused persons No. 940005768 Cosnt. Bhanwara Ram and No. 95009188 Const. V Shankaran are NOT GUILTY of the charge, and ACQUIT them of the same.

2. The verdict is read out and the accused persons are released from open arrest.

Signed at Salbagan HQ 130 Bn BSF on this day 30th October, 1999.

Sd/-

30/10/99 (RAJ SINGH) COMMANDANT 130BN BSF."

7. While the petitioner was expecting to be reinstated having revoked the suspension order, the DIG, respondent No. 4 vide communication No. DIG(S)/Estt/BR-VS/130BN/2K/82-84 dated 26th July, 2000 (Annexure-3) issued a show cause notice calling upon the petitioner to submit his explanation in writing as to why he should not be dismissed from service. The petitioner made his representation promptly justifying his innocence vide Annexure-4 dated 22.8.2000 followed by additional reply dated 10.11.2000 (Annexure-50, but the authority issued the impugned order of dismissal dated 10.4.2001 (Annexure-6).

8. Mr. Bhattacharjee, learned senior counsel appearing on behalf of the petitioner having referred the provision of Chapter VIII under the caption "CONFIRMATION AND REVISION" of the Act submits that u/s 113 of the Act, the finding or sentence of a SSFC which requires confirmation, could be revised by an order of confirming, authority and on such revision, the court, if so directed by the confirming authority, may take additional evidence and u/s 114 of the Act, the finding and sentence of a SSFC shall not require to be confirmed, but may be carried out forthwith if the officer holding the trial is of the rank of the Superintendent of Police or of a rank declared under Clause (a) of Sub-section (5) of Section 74 or as equivalent. In the present case, the trial in the SSFC was held by a Commandant viz. equivalent to the rank of S.P. and as such according to Mr. Bhattacharjee, the finding of "not guilty" arrived at by the Commandant required no confirmation by any authority.

9. On the other hand, Mr. Dhar, learned senior C.G.S.C. appearing on behalf of the respondents having referred Rule 160 of the Rules submits that the proceeding of SSFC must be forwarded to the DIG who could take appropriate action. Mr. Dhar also referred Section 115 of the Act.

10. From the trend of submission of Mr. Dhar, learned senior C.G.S.C., it appears that the DIG issued the impugned order of dismissal having invoked his power u/s 115 of the Act and Rule 160 of the Rules. For convenience sake, the provisions of Section 115 and Rule 160 are reproduced below:-

"115. Transmission of proceedings of a Summary Security Force Courts. - The proceedings of every Summary Security Force Court shall, without delay, be forwarded to the officer not below the rank of Deputy Inspector General within whose command the trial was held, or to the prescribed officer, and such officer, or the Director-General or any officer empowered by him in this behalf may, for reasons based on the merits of the case, but not on merely technical grounds, set aside the proceedings, or reduce the sentence to any other sentence which the court might have passed."

x x x "160. Review of Proceedings. - The proceedings of a Summary Security Force Court shall immediately on promulgation be forwarded through the Chief

Law Officer, or a Law Officer to the Deputy Inspector General under whom the accused may have been serving."

11. On the contrary, Mr. Bhattacharjee, learned senior counsel for the petitioner submits that having exhausted the recording of evidence, the SSFC held the petitioner "not guilty" and recorded its findings as quoted in the preceding paragraph and that was done pursuant to Rule 159 of the Rules, Rule 159 of the Rules postulates that "the sentence of a Summary Security Force Court shall be promulgated, in the manner usual in the service, at the earliest opportunity after it has been pronounced and shall subject to the provisions of the Act be carried out without delay after promulgation." Mr. Bhattacharjee submits that only in case of a sentence imposed by the SSFC, a promulgation is required and the authority could review the order of promulgation under Rule 160 of the Rules. Rule 160 prescribes that the proceedings of a Summary Security Force Court shall be forwarded to the DIG immediately on promulgation and the DIG in exercise of power under Rule 161 of the Rules could either set aside the proceeding or reduce the sentence or commute the punishment awarded to one lower stage in the scale of punishment given in Section 48. So, a combined reading of Rules 159, 160 and 161 of the Rules, it amply reveals that only in case of sentence imposed by the SSFC the same must be promulgated under Rule 159 of the Rules and after promulgation the same should be transmitted to DIG without delay under Rule 160 and on receipt of the proceeding after promulgation, the DIG may review/revise the same under Rule 161 of the Rules either setting aside the said proceeding or reducing or altering the punishment and as such according to Mr. Bhattacharjee, in no case the DIG has any power of review/revision in case the SSFC held any member of the Force to be "not guilty".

12. Mr. Dhar, learned senior C.G.S.C. having referred Section 115 of the Act submits that the proceedings of every SSFC shall have to be forwarded to the officer not below the rank of DIG within whose command the trial was held or to the prescribed officer, and such officer, or the Director General or any officer empowered by him in this behalf may, for reasons based on the merits of the case, but not on merely technical grounds, set aside the proceedings, or reduce the sentence to any other sentence which the court might have passed.

13. From the Scheme if the BSF Act and Rules as mentioned above, it appears that in case where the SSFC holds an incumbent guilty of the charge framed for commission of any civil offence and impose any penalty pursuant thereto, the entire proceeding must be transmitted to the DIG after promulgation of the punishment and in that event the DIG could revise/review the order and passed order either in setting aside the punishment order or reducing or altering the punishment, but there is no provision made expressly or by implication where DIG could exercise his power to review or revision of the order of "not guilty" recorded by the SSFC. There is no provision making to Rule 15(2) of the CCS(CCA) Rules, 1965 and as such in my considered opinion, the impugned order passed by the DIG is dehorse of any provision available in BSF Act and

Rules and as such it cannot be sustained under law.

14. In view of what have been discussed above, the writ petition succeeds and the impugned order bearing No. DIG(S)/Estt/BR-V-S/130BN/01/12012-17 dated 10.4.2001 (Annexure-6 to the writ petition) passed by the DIG, BSF, TRA (South) is hereby quashed and the petitioner is reinstated with all service benefits. No order as to costs.