

(1998) 05 DEL CK 0089

In the Delhi High Court

Case No : Civil Writ petition No. 2861 of 1997

Chanderpal Singh

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 15-05-1998

Acts Referred:

Border Security Force Act, 1968 — Section 117(2), 48

Citation : (1999) 48 DRJ 566

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : R.P. Sharma, for the Appellant; Anjana Gosain and Sanjay Abhot, for the Respondent

Final Decision : Allowed

Judgement

Dr. M.K. Sharaia, J.—The petitioner herein was Charge-sheeted u/s 19(a) of Border Security Force Act for having absented from active duties without leave. Record of evidence was prepared on the basis of which trial by Summary Security Force Court was ordered by the Commandant against the petitioner. After the trial, the Summary Security Force Court convicted and sentenced the petitioner to the punishment of dismissal.

2. Being aggrieved by the aforesaid order of conviction and sentence, the petitioner filed a statutory petition before the Director General, BSF. The Director General, BSF converted the sentence of dismissal passed against the petitioner to that of removal from service. Being aggrieved by the aforesaid order, the petitioner has preferred the present writ petition.

3. Counsel appearing for the petitioner states that the punishment of removal is not envisaged under the provisions of BSF Act and the Rules framed there under and, Therefore, the Director General had no power and jurisdiction to impose a punishment on the petitioner which is not envisaged under the provisions of Section 19(a) of the BSF Act. His further submission is that the Director General

was satisfied that the sentence of dismissal should not have been imposed on the petitioner and, Therefore, he should have imposed a punishment below that of the dismissal as envisaged under the provisions of Section 19(a) of the BSF Act.

4. Counsel for the petitioner further submits that the punishment imposed by the disciplinary authority is disproportions of the offence alleged against the petitioner.

5. The respondents have contested the writ petition by filing a counter affidavit contending, inter alia, that the appellate authority u/s 117(2) of the BSF Act may pass such orders thereon as he deems fit. Relying on the said provision, counsel appearing for the respondents states that the power of the appellate authority under" the aforesaid section is not limited merely to remit and commute the sentence, but, also to impose any punishment that it deems fit including the punishment of removal.

6. Counsel for the respondents further states that the sentence awarded to the petitioner was not disproportionate to the offence for which he was charged inasmuch as the offence for which the petitioner was found guilty was of a grave and serious nature.

I have considered the rival submission of the counsel appearing for the parties.

7. It is indeed true that the appellate authority has been vested with the power u/s 117(2) of the BSF Act to pass such orders on the appeal petition as he deems fit and proper. That, however, does not mean that the appellate authority can exercise certain powers which are not vested on him under the Statute, Section 48 of the BSF Act specifically refers to the power and the nature of sentence that could be imposed upon a person found guilty and removal is not one of the punishments as envisaged under the provisions of the Act. No direction could be issued by a statutory authority exercising powers under the Statute abridging or running counter to the provisions of the Act. A direction cannot amend or supersede the provisions of the Act. Therefore, in my considered opinion, the appellate authority does not have the power and jurisdiction to impose a punishment in the nature of removal from service which is not envisaged within the ambit of Section 48 of the BSF Act."

8. In that view of the matter, I have no other option but to set aside the order passed by the appellate authority and remit back the matter to the appellate authority to consider the appeal of the petitioner afresh on merits. The same, shall, however, be disposed of, as expeditiously as possible, preferably within a period of six weeks from the date of receipt of a copy of this order. The submission of the learned counsel for the petitioner that the punishment imposed on the petitioner is disproportionate to the offence alleged is also a matter which could be considered by the appellate authority while disposing of the appeal and, Therefore I refrain from entering into the legality or validity of the said submission.

9. With the aforesaid observations and directions, the writ petition stands allowed to the extent indicated above, but, without any cost.