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**(2004) 03 DEL CK 0046**  
**In the Delhi High Court**  
**Case No : CW. 7021 of 2002**

Chokha Ram

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

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**Date of Decision :** 05-03-2004

**Acts Referred:**

**Citation :** (2004) 110 DLT 268 : (2004) 73 DRJ 450 : (2004) 3 SLJ 44

**Hon'ble Judges :** B.N. Chaturvedi, J;B.A. Khan, J

**Bench :** Division Bench

**Advocate :** Mohar Singh, for the Appellant; Barkha Babbar, for the Respondent

**Final Decision :** Dismissed

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## Judgement

B.N. Chaturvedi, J.—The petitioner, a constable in Border Security Force(BSF), was on 11th of February, 2002, at about 8.00 p.m. ordered by Assistant Commandant, Shri Rajiv Bhardwaj, Company Commander, to proceed from `D" Coy to BOP Rajatal, A Coy situate at a distance of about 3 kms. Close to the international border. He, however, did not comply with that order. On 12th of February, 2002, Shri S.K.Wadhwa, Commandant, 19 Bn. BSF ordered record of evidence against the petitioner for disobedience to his superior officer's command, which amounted to an offence u/s 21(1) of the BSF Act, 1968. Shri K.S.Rai, second in command, in pursuance thereof, conducted proceedings relating to record of evidence on 13th of February, 2002. In the course of such proceedings, the petitioner after recording of statements of prosecution witness, on being called upon to do so, made a statement admitting that he had not carried out the orders of his Company Commander for his movement from `D" Coy to `A" Coy stating that he would be moving out the next day.

2. Consequent upon record of evidence, by an order dated 20.2.2002, Shri S.K.Wadhwa, Commandant, ordered assembly of Summary Security Force Court(SSFC) on 22nd of February, 2002 at 10.00 a.m. at Headquarters, 19 Bn. BSF, Amritsar (Punjab) for trial of the petitioner for the offence u/s 21(1) of the

BSF Act, 1968 allegedly committed by him. One Shri Yash Paul, Assistant Commandant of 19 Bn. was appointed as friend of the petitioner in the SSFC trial. The trial by SSFC was held on 22nd of February, 2002, at the appointed time and place. On charge-sheet being read over and explained to the petitioner, he pleaded guilty to the charge and on conclusion of trial, a sentence of dismissal from service was passed, which was later counter-signed by the Reviewing Officer on 16th of April, 2002.

3. The petitioner challenges the order dated 22.2.2002 dismissing him from service primarily on the grounds, (a) that material irregularities were committed by SSFC in as much as the proceedings were conducted in breach of Rules 63(1), 142(1) & (2) & 157 of the BSF Rules; (b) that the column specifically provided for recording plea of guilty was left blank and (c) that the proceedings were conducted in his absence.

4. The stand of the respondents on the contrary is that the proceedings by SSFC were held strictly in compliance with relevant rules. It was added that the charge was duly read over and explained to the petitioner and he had pleaded guilty thereto after properly understanding the nature of accusation against him, for which he was put to trial. Stating that it was not for the first time that the petitioner had been tried and convicted by SSFC for committing offences during his service, the respondents detailed three earlier instances when the petitioner was convicted and sentenced. The same are:

BSF Act 1968 Section 19(b) 7 days RI in Force Custody BSF Act 1968 Section 21(2) Convicted by SSFC trial and and 20(c) awarded 90 days RI in Force Custody vide order dated 11.3.98.

BSF Act 1968 Section 22(e) Convicted by SSFC trial and awarded 90 days RI in Force Custody vide order dated 6.11.2000

5. The aforesaid instances were mentioned to point out that the petitioner was an indisciplined soldier, who was in the habit of disobeying the lawful command of his superior officers. In the given case, it was pleaded, the punishment of dismissal from service was most appropriate to maintain discipline in the force and is, Therefore, not liable to be interfered with.

6. In the case on hand, the proceedings in regard to record of evidence were conducted by the officer concerned in the presence of the petitioner in accordance with Rule 48. The petitioner had cross-examined the prosecution witnesses and signed the proceedings in token of the same having been held in his presence. Closure of prosecution evidence was followed by a statement by the petitioner which he made even after being cautioned that he was not bound to make the same and that what ever he stated could be used in evidence against him. In his statement, the petitioner admitted that he was called by the Company Commander at about 2000 hours and directed to proceed to 'A' Coy but he came back to his barrack telling the Company Commander that he would be preceding the next day. The petitioner and a witness to the proceedings sign

the statement to the said effect. After making the statement, as aforesaid, on being asked if he wished to call any witness in his defense or wanted to produce any document in his defense, the petitioner answered in negative.

7. The fact that the petitioner was ordered by his Company Commander to proceed to 'A' Coy on 11th of February, 2002 at about 8.00 p.m. is not being disputed by him in his petition. He has simply come up with a sort of Explanation for not complying with that order on the grounds that no movement order in writing was served on him and that no arms and ammunition were issued to him. Shri Rajiv Bhardwaj, Company Commander, 'D' Coy, in the course of record of evidence, made a categorical statement regarding issue of movement order to the petitioner. The petitioner, however, while cross-examining him, did not question his statement in that regard. Another witness, Head Constable Vinay Chaudhary, (PW-3) also made a statement that in spite of a movement order the petitioner had refused to proceed to 'A' Coy and his entire statement went unchallenged as he was not at all subjected to any cross-examination on behalf of the petitioner.

8. In terms of Section 21 of the Border Security Force Act, 1968, where any person subject to the Act who disobeys in such manner as to show a willful defiance of authority any lawful command given personally by his superior officer, whether orally or in writing or by signal or otherwise, the same constitutes an offence and such a person be liable to be punished with imprisonment as provided therein. Thus, apart from the record of evidence disclosing willful defiance of command, in the form of a written movement order, given by the Company Commander, even defiance of oral command in that regard constituted an offence u/s 21 of the Act. The statement of the petitioner, in the course of proceedings related to record of evidence, carries no mention of non-issue of arms and ammunition being as one of the reasons, apart from non-issue of a written movement order, for not abiding by the movement command issued to him by his Company Commander.

9. In the course of hearing, much emphasis was laid on alleged violation of Rule 63 of the BSF Rules 1969 (for short 'Rules') on the grounds that the copies of proceedings and charge sheet were not supplied to the petitioner 24 hours in advance and the convening order was given during the course of trial only and not served on him in advance.

10. A reference to the original record produced by respondents indicates that the assembly of the SSFC for trial of the petitioner was ordered on 20th of February, 2002 and one Yash Paul, Assistant Commandant, of 19 Bn. BSF, was appointed as friend of accused in the SSFC trial. A copy of this order was directed to be served on the petitioner along with a copy of charge sheet and record of evidence.

11. Rule 51 provides that in case of an enrolled person, on receipt of record of evidence or abstract thereof, the Commandant may, after going through the

record or abstract of evidence, (i) dismiss the charge, or (ii) re-hear the charge and award one of the summary punishments, or (iii) try the accused by a Summary Security Force Court where he is empowered so to do, or (iv) apply to a competent officer or authority to convene a court for the trial of the accused. In the present case, on receipt of record of evidence, the trial by SSFC was held on 22nd of February, 2002 at 10.00 a.m. Culminating into punishment of dismissal of the petitioner from service. In advancing the plea regarding breach of Rule 63, while assailing the punishment of dismissal from service, the petitioner failed to notice that Rules 59 to 64 actually provide for procedure to be followed in connection with convening of a General and Petty Security Force Court and the same have no application to a trial by a Summary Security Force Court. The argument regarding non-supply of copies of charge sheet and record of evidence in terms of Rule 63.(1) is, thus, totally misconceived.

12. Rule 49.(3), of course, lays down that a copy of the abstract of evidence is required to be given to an accused and he is to be given an opportunity to make a statement, if he so desires, after he has been cautioned in the manner laid down in sub-rule (3) of Rule 48. Proviso to sub-Rule (3) of Rule 49 prescribes that the abstract of evidence is to be given in no case less than twenty-four hours before an accused is given the opportunity to make his statement, if he so desires. There is, however, no challenge whatever to the record of evidence proceedings for non-compliance with the aforesaid proviso and Therefore, it is unnecessary to delve deeper in this respect.

13. The order dated 20.02.2002 indicates that a copy of that order along with a copy of charge sheet and record of evidence was directed to be served on the petitioner and there appears no reason justifying a doubt against the order passed in that respect having actually been carried out.

14. The other argument is that the column specifically provided for recording plea of guilty has been left blank and absence of petitioner's signature on the plea of guilty recorded on 22nd of February, 2002 before SSFC indicates that the proceedings were, in fact, conducted in his absence. The argument that plea of guilty has not been recorded in the column specifically provided for the same as a matter of fact runs contrary to record. There was only one charge on which the petitioner was tried by the SSFC. The charge sheet was read over(translated) and explained to the petitioner before he was questioned if he pleaded guilty or not guilty to the charge and in reply, the petitioner pleaded guilty. When there was only one charge to which the petitioner was to plead guilty or not guilty, it was superfluous to mention in the question, if he pleaded guilty or not to the 'First' charge. No prejudice can be held to have been caused on this count as the petitioner had pleaded guilty to the charge after being explained the meaning of the charge and ascertaining that he understood the nature of charge. He was also made aware of the general effect of the plea of guilty in compliance with provisions of Rule 142.(2). No doubt, the plea of guilty before SSFC does not bear the signature of the petitioner, but in view of there being no specific legal

requirement in regard to obtaining signature of the accused, petitioner's plea of guilty cannot be held vitiated for not bearing his signature and it cannot necessarily be inferred that the entire proceedings had been conducted in his absence, moreso when in the course of record of evidence he had already made a statement admitting his guilt which could be used as evidence against him in the SSFC trial.

15. Trial of the petitioner by SSFC was held in the presence of Shri Yash Paul, Assistant Commandant, 19 Bn, appointed as Friend of the petitioner and he was readily available to him for assistance, if he so required. The plea regarding breach of Rule 157 is, in the circumstances, totally unsustainable.

16. To a faint attempt from the side of the petitioner that 'plea of guilty' notwithstanding, the prosecution was otherwise obliged to substantiate the charge by producing all relevant evidence, relying on two decisions of Supreme Court in *Kisan Trimbak Kothula and Others Vs. State of Maharashtra*, & "*Dharmarathmakara Raibahadur Aroot Ramaswamy Mudaliar Educational Institution Vs. The Educational Appellate Tribunal and Another*", the respondents sought to maintain that in view of plea of guilty on the part of petitioner, there was no necessity of examining any witness to prove the charge against the petitioner. The latter was a case where respondent No.2, who was appointed as Lecturer in appellant institution, applied for leave for three years for doing Ph.D, which request was, however, not acceded to. Later on, she applied for extraordinary leave for one year for doing M.Phil. and she gave an affidavit that she would produce proof of registration in M.Phil. course by a particular date, failing which she would join duty by the given date. The respondent No.2 did not get herself registered for M.Phil. rather she got herself registered for Ph.D. Course. The appellant institution on coming to know of this fact, sent a registered letter to respondent No.2 to join duty by a particular date but the respondent No.2 in spite of receipt of letter, did not do so. A notice was sent to her and after considering her reply thereto, her services were terminated. In the facts of that case, the Supreme Court laid down:-

".....Giving of opportunity is a check and balance concept that no one's right be taken away without giving him/her opportunity or without enquiry in a given case or where the statute requires but this cannot be in a case where allegations and charges are admitted and no possible defense is placed before the authority concerned. What enquiry is to be made when one admits violations? Respondent 2 had admitted that she did not join M.Phil. course. It is also an undisputed fact that she did not report for duty even when she had given an undertaking to do so. In a case where the facts are almost admitted, the case reveals itself and is apparent on the face of the record, and in spite of opportunity no worthwhile Explanation is forthcoming; as in the present case it would not be a fit case to interfere with the termination order."

17. In the present case, a bare reading of averments in the petition discloses that the petitioner had failed to carry out lawful command of his superior officer,

any excuse/explanation notwithstanding and pleaded guilty in his statement during the course of record of evidence and also before the SSFC. It was, in the given situation, not incumbent on the part of the authority holding Summary Security Force Court to require the department to produce evidence to prove the charge against the petitioner.

18. The instances of three previous convictions of the petitioner detailed in the counter-affidavit of the respondents clearly bring to the fore that the petitioner was an incorrigible indisciplined soldier, who had the temerity of committing willful defiance of lawful command of his superior officer for which he was appropriately dealt with by awarding him punishment of dismissal from service. No material irregularity in conducting SSFC proceedings being noticeable in the given case, any interference with the impugned order is unwarranted.

19. In the result, we dismiss the petition.