

(2007) 08 KL CK 0021
In the High Court Of Kerala
Case No : W.A. No. 1203 of 2002

Darwin, M.S.

APPELLANT

Vs

Satbir Singh and Others

RESPONDENT

Date of Decision : 03-08-2007

Acts Referred:

Border Security Force Act, 1968 — Section 115, 117(2), 19, 62
Constitution of India, 1950 — Article 14, 16, 21, 226

Citation : (2007) 08 KL CK 0021

Hon'ble Judges : V.K.Mohan, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : T.A. Rajagopalan, for the Appellant; P.S. Sreedharan Pillai, S.C.G.S.C., John Varghese and P. Parameswaran Nair, Asst. S.Gs., for the Respondent

Judgement

K.S. Radhakrishnan, J.—The Writ Petition was preferred seeking a writ of certiorari to quash Ext. P-4 order dated 28th September, 2001 issued by the 6th Respondent and also Ext. P-1 S.S.F.C. judgment dated 18-11-1999 and for a direction to the 8th Respondent not to arrest the Petitioner pending the final disposal of the O.P. and for a declaration that the entire proceedings initiated against the Petitioner leading to Ext. P-1 judgment of the S.S.F.C. and the subsequent solitary confinement of the Petitioner as illegal and violative of Articles 14, 16 and 21 of the Constitution of India, Petitioner has also sought for a direction to pay the salary and allowances and other service benefits applicable to the Petitioner with interest from 16-11-1999 onwards and also for consequential relief"s.

2. Ext. P-1 is the judgment dated 18-11-1999 by the Summary Security Force Court imposed the punishment of rigorous imprisonment for 6 months and also ordered dismissal from service. Later the said order was modified by the Reviewing Officer u/s 115 of the B.S.F. Act commuting the sentence imposed on the Petitioner to suffer 3 months rigorous imprisonment in force custody. Pre trial detention period was also directed to be taken into consideration while

commuting the sentence. Petitioner had undergone the punishment and was later released from the unit of Quarter Guard on 15-2-2000 with a direction to rejoin duty after obtaining his uniform and identity card from the concerned company. Ext. R-1(a) is the letter by which he was called upon to join duty. Petitioner did not join duty and hence a court of inquiry was convened as per the provision of Section 62 of B.S.F. Act and on completion of inquiry, issued an apprehension roll to arrest the Petitioner. Petitioner then approached this Court and filed O.P. 11704/2000 challenging the punishment imposed. O.P. was later dismissed holding that this Court has no jurisdiction to try the issues. Petitioner later approached the Rajasthan High Court. Rajasthan High Court noticed that the Petitioner had not availed of the statutory remedy of appeal u/s 117(2) of the Border Security Force Act, 1968. Consequently Petitioner filed a statutory appeal which was rejected by the appellate authority vide Ext. P-4 order dated 28th September, 2001 stating as follows:

The issues raised in your petition have been considered very carefully in the light of relevant legal provisions and the evidence in S.S.F.C. proceedings. After a detailed consideration and careful scrutiny of all facts and circumstances of the case, your petition has been rejected by the DG BSF being devoid of merit.

3. Counsel for the Petitioner submitted that the appellate authority has not considered any of the grievances raised by the Petitioner nor was he given any opportunity of being heard, hence there was clear violation of the principles of natural justice. Learned Counsel also submitted that since the Petitioner did not join duty at the same unit, he would be harassed. The Counsel also submitted that the Appellant may be permitted to join duty in some other unit under a different commandant.

4. The Petitioner was convicted and sentenced by a properly constituted forum for trying the offence under the B.S.F. Act and this Court under Article 226 of the Constitution of India is not justified in examining the correctness or otherwise of the order. The contention of the Petitioner that he was not heard while Ext. P-4 order was passed is also not sustainable. The Supreme Court in *Union of India v. Amrik Singh* (1991) Cr.L.J. 664 has examined the scope of Section 117(2). u/s 117(2) the member of security force proceeded against is only entitled to file a petition but the disposal of such a petition does not attract principles of natural justice. The member was tried by observing the due process of law and the verdict of the Security Force Court was confirmed and it is only a post-confirmation petition that was filed u/s 117(2) and the authority which disposed of the same was not a Court and every order passed administratively cannot be subjected to the rigours of principles of natural justice. We therefore find no illegality in Ext. P-4 order.

5. In the circumstances, the prayer of the Appellant for quashing Ext. P-1 and Ext. P-4 orders cannot be sustained. In the counter-affidavit filed by the Respondents it is specifically stated that the Petitioner is not joining duty in spite of repeated letters. Since he did not join duty, show cause notice, Ext. R-1(b),

was issued to him to show cause why he shall not be dismissed from service. No reply was received from the Petitioner. Since he did not join duty, and since he is a deserted personnel and that he has committed an offence u/s 19(a) of the B.S.F. Act, further follow up action is being taken by the authorities. We are sure, once the Petitioner reports for duty, his request for posting in another area be sympathetically considered since the punishment imposed on him was later commuted to 3 months. We make it clear that we leave the entire matter to the authority to consider and we are not giving any positive direction for compliance.

With the above observation, the Writ Appeal is disposed of.