

(2001) 09 DEL CK 0103
In the Delhi High Court
Case No : C.W. No. 4687 of 2001

Diwan Bhai

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 04-09-2001

Acts Referred:

Border Security Force Act, 1968 — Section 19, 26
Border Security Force Rules, 1969 — Rule 142(2), 158, 45
Constitution of India, 1950 — Article 226

Citation : (2001) 09 DEL CK 0103

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

Bench : Single Bench

Advocate : Anil Gautam, for the Appellant; Suman Bagga, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, J.—The petitioner joined the Border Security Force as a Constable in the year 1990 and was lastly posted in 62 Bn. Border Security Force. On 24.6.1998, the petitioner was detailed for duties for lower camp during 1800 hrs. to 2350 hrs. He was, however, found by the Guard Commander of gate No. 2 in a state of intoxication at about 2115 hrs. with his personal weapon. The gate No. 2 opens towards civilian area, which was declared out of bound area after sun set. In the Border Security Force the persons detailed for duty are not permitted to consume liquor but it was found that the petitioner had consumed liquor and was in a state of intoxication. In view of the aforesaid position, the petitioner was heard on 25.6.98 as per the provisions of Rule 45 of the B.S.F. Rules and recording of evidence was ordered. In the said recording of evidence, the statements of prosecution witnesses were recorded in the presence of the petitioner and the petitioner was given full opportunity to cross-examine the prosecution witnesses and also to make any statement in his defense. The petitioner was also afforded an opportunity to produce any witness in his defense but he declined to do so. However, on being given an opportunity to make a statement, he availed the same.

2. The petitioner was, thereafter, tried by a Summary Security Force Court by his Officiating Commandant on 2.7.1998. The petitioner was charged on two counts - firstly, u/s 19(d) of the BSF Act (for without sufficient cause failing to appear at the time fixed or at the place appointed for duty) and secondly u/s 26 of the BSF Act (for intoxication). During the said trial the petitioner pleaded guilty to both the charges. When asked as to whether he wants to make any statement in mitigation of punishment, the petitioner submitted that he had done a mistake, for which he might be pardoned. During the aforesaid trial, Sh. Swaran Singh, DC 37 Bn. B.S.F. was provided to the petitioner as friend of the accused as per provisions of Rule 158 of the B.S.F. Rules. Keeping in view the totality of the circumstances and the evidence on record and the gravity of offence and the plea of the petitioner, the Summary Security Force Court awarded sentence of dismissal from service to the petitioner.

3. Being aggrieved by the aforesaid order of awarding of sentence, the petitioner submitted a statutory petition to the Director General, B.S.F. The said appeal was considered by the Director General, B.S.F. and on consideration thereof the said appeal was rejected being devoid of merit. Being aggrieved by the said orders, the present petition is preferred in this court.

4. It was submitted by the counsel appearing for the petitioner that the order of sentence passed against the petitioner is arbitrary and without jurisdiction. He submitted that while recording the plea of guilty, the respondents did not comply with the mandatory provisions of Rule 142 (2) of the B.S.F. Rules. He also submitted that no perusal of the records, it would appear that the document in which the said plea of guilt was recorded during the trial, did not contain the signatures of the petitioner and the same was also not recorded by following the procedure laid down for the purpose. In support of his contention, the counsel relied upon the decision of the Gauhati High Court in *SASHIDHARA KURUP v. UNION OF INDIA AND ORS.* reported in 1994 CRL.L.J. 375 and the judgment in *EX.SIGMN. TRILOCHAN BEHERA v. THE C.O.A.S. AND ORS.* in CWP No. 2190/96 disposed of on 6.2.2001. Relying on the said decisions, the counsel submitted that it is well settled that law insists upon literal performance of a procedural requirement and the need for observance of procedural safeguards, particularly, in cases of deprivation of life and property. It was submitted by him that admission would mean an admission of all facts constituting the offence and simply saying that the petitioner is guilty of the charge would not constitute an admission of guilt. His further submission was that the recording of the plea of the petitioner was not done in the words used by the petitioner and, therefore, the same could not have been said to be a plea of guilty of the petitioner.

5. Counsel appearing for the respondents, however, placed before me the records of the entire trial proceedings to bring home the point that the trial was conducted in accordance with the procedure laid down and also to show that the plea of guilt was recorded in accordance with the settled provisions of the extent rules. In support of his submission, the counsel relied upon the decision of this

court in CWP No. 1196/1998 - CONSTABLESHOOR SINGH v. UNION OF INDIA AND ANR. disposed of on 15.12.1999 and the decision in CWP No. 171/2001 - LOKESH KUMAR v. UNION OF INDIA AND ORS. disposed of on 10.1.2001.

6. I have considered the rival submissions of the counsel appearing for the parties in the light of the records placed before me and also in the light of the aforesaid decisions relied upon by the counsel appearing for the parties.

7. On the allegations set out here in above, the petitioner was heard on 25.6.98. The records thereto were placed before me for my perusal and the same would indicate that even at that stage the petitioner placed guilty to both the charges. The statements of the witnesses would also indicate that they all supported the allegations made in the charge sheet. The petitioner was also given an opportunity to produce his witnesses in the said recording of evidence but the records indicate that he declined to do so. However, he made a statement in the said proceedings. In his statement he had stated that on 24.6.98 he was very much worried due to his domestic problem and he was unbalanced and could not come to know what happened after 2115hrs. on 24.6.98. The petitioner was, thereafter, tried by the Summary Security Force Court by his Officiating Commandant on two specific charges, as stated hereinabove. During the aforesaid trial, the petitioner pleaded guilty to both the charges. The aforesaid plea was recorded by the concerned officer with a specific note that the accused having pleaded guilty on both the charges, the court explained to him the meaning of charges to which he had pleaded guilty and also ascertained that the accused understood the nature of charges to which he had pleaded guilty. The court also informed the petitioner of the general effect of the plea and the difference in procedure which would be followed consequent to the said plea. It was also recorded that the court having satisfied itself that the petitioner understood the charges and the effect of his plea of guilty, accepted the same and accordingly his plea of guilty was recorded. It is thus apparent that the procedure prescribed under Rule 142 (2) of the BSF Rules, on which reliance was placed, are fully complied with and there can be no grievance in the present case in that regard.

8. The petitioner pleaded guilty in the proceedings under rule 45 of the B.S.F. Rules as also in the trial by the Summary Security Force Court. He had categorically stated that due to some domestic problem he was unbalanced on 24.6.98 and could not come to know what happened after 2115hrs. on 24.6.98. This statement clearly proves and establishes the state in which the petitioner was at the said point of time and, Therefore, the charge alleged against the petitioner about his state of intoxication stands proved. In that view of the matter, the decisions relied upon by the counsel appearing for the petitioner are distinguishable on facts and they are not applicable to the facts and circumstances of the present case. The facts of the case in hand are similar to that of the decision rendered by this court in the case of Const. Shoor Singh (supra). In the said case also like it is done in the present case it was contended

by the counsel appearing for the petitioner that the petitioner did not plead guilty .In view of the records of the proceedings of the Summary Security Force Court, the court found that the petitioner therein had pleaded guilty and accordingly, the plea made on his behalf was not accepted that he had not pleaded guilty. It was also held that all the pleas raised are disputed questions of facts which cannot be decided in a proceeding under Article 226 of the Constitution of India. In the present petition also ,the petitioner has not specifically challenged the validity of the Summary Security Force Court proceedings. Therefore, merely contending that the documents wherein the plea of guilty of the petitioner is recorded did not contain his signature, would not in any manner affect the order passed against the petitioner. The pleas raised are all disputed questions of fact which cannot be decided in a proceeding under Article 226 of the Constitution of India.

9. I find no merit in this petition and the same is dismissed. However, there will be no order as to costs.