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In the Delhi High Court

Case No : W.P.(C) No. 3847 of 2006

Ex. Head Constable Moti Singh — APPELLANT

Vs

UOI — RESPONDENT

Date of Decision : 15-03-2017

Acts Referred:

Border Security Force Act, 1968 — Section 64
Prevention of Corruption Act, 1988 — Section 13 (1)(E)

Citation : (2017) 4 ADDelhi 145

Hon'ble Judges : Ms. Indira Banerjee and Mr. Anil Kumar Chawla, JJ.

Bench : Division Bench

Advocate : Mr. M.G. Kapoor, Advocate, for the Petitioner; Mr. Vivek Goyal, CGSC, for the UOI

Final Decision : Allowed

Judgement

Indira Banerjee, J.—The short question involved in this writ petition is whether the Summary Security Force Court constituted under Section 64 of the Border Security Force Act 1968, was justified in imposing on the petitioner the sentence of rigorous imprisonment for 6 months in civil prison and dismissal from service for alleged possession of money disproportionate to his known sources of income. The sentence has been commuted to dismissal from service.

2. The petitioner was enrolled as a constable in the Border Security Force on 26.08.1987. In November 2002, while the petitioner was posted in the 62nd Battalion, BSF, the petitioner was deployed at the Bangladesh border at the Bohraghat Border Out Post (BOP).

3. On the presumption that the petitioner had pecuniary resources disproportionate to his known sources of income, as he had sent a bank draft dated 20.11.2002 for a sum Rs. 40,000/- to his wife, Summary Court proceedings were initiated against him. As per the orders of the Commandant 42nd Battalion BSF, evidence was taken and the Record of Evidence prepared.

4. The evidence was recorded between 30th June 2004, and 11th July, 2004, after which the petitioner was attached to the 63rd Battalion for disciplinary proceedings. The commandant 63rd Battalion BSF charged the petitioner with possession of pecuniary resources disproportionate to the known sources of his income, which he could not satisfactorily account for in terms of Section 13 (1) (E) of the Prevention of Corruption Act, 1988.

5. According to the petitioner, on 15th January 2005, the petitioner was handed over a copy of the charge-sheet and on the same day, in the evening, a copy of the Record of Evidence. It is alleged that the petitioner was told by the commandant that he would be let off leniently, if he pleaded guilty.

6. On 07.01.2002, the Summary Security Force Court imposed on the petitioner the sentence "to suffer rigourous imprisonment for 6 months in civil prison and to be dismissed from service. The sentence was passed on the basis that the petitioner had pleaded guilty. On 17th March 2005, the DIG, Station headquarters, ASF, Berhampore commuted the punishment to dismissal from service. The sentence was repromulgated. However the petitioner had, in the meanwhile already undergone rigorous imprisonment for over 2 months.

7. On or about 12.05.2005, the petitioner made a statutory petition to the respondent No. 2 under Section 117 of the Border Security Force Act. The statutory petition was rejected by an order dated 26th October 2005.

8. In this writ petition the petitioner has challenged the sentence of the Summary Court as revised by the DIG Station headquarters as also the order dated 26.10.2005 of the Director-General Border Security Force rejecting the statutory petition filed by the petitioner.

9. From the Record of Evidence it appears that about four witnesses were examined. One J. R. Guleria of 62nd Battalion deposed that as per the service records of the petitioner, the petitioner was posted in "E" COY in 2002. He was at the Chandinichak Border Out Post (BOP) from 15.07.2002 till 20.08.2002, thereafter at the BOP Noorpur from 22nd of August 2002 till 30 of September 2002, and thereafter at BOP Bohraghat from 12.10.2002 to 31.03.2002 for 6 months.

10. It further transpired in evidence that the name of the petitioner''s wife was Bima Devi and her home address was Village and Post office Thedi, Tehsil Fathapur, Shekhawati, Police Station Ramgarh, Distt: Sikar, Rajasthan-331024.

11. The unit headquarters had received the details of bank drafts No. 487544 dated 20.11.2002 for an amount of Rs. 40,000/- issued by State bank of India, Jangipur, in favour of Bima Devi, Account No.16697 at the State Bank of Bikaner and Jaipur Fathapur. The other witnesses also gave evidence with regard to the Bank Draft.

12. J.R. Guleria further deposed that a Court of Inquiry had been ordered and the Court of Inquiry confirmed that the petitioner got the Bank Draft prepared.

The evidence of J.R. Guleria was supported by others.

13. One Om Prakash who had been performing the duty of unit accountant deposed that the petitioner had drawn pay and allowances amounting to Rs.59,062/- from January to December, 2002. He also gave evidence with regard to the Bank Draft. He stated that a letter had been received from the concerned bank confirming that the Bank Draft had been encashed and the proceeds thereof credited to the joint account of the petitioner and his wife Bima Devi.

14. Ex facie, there is no evidence at all in this case, to support the charge against the petitioner of being in possession of pecuniary resources, disproportionate to the known sources of his income. The petitioner drew salary and allowances amounting to over Rs.53,000/- during the period from January to November, 2002.

15. From the record of evidence, it is apparent that the petitioner sent a draft of Rs.40,000/- to his wife Smt. Bima Devi. Nothing more emerges from the Record of Evidence. It is nobody''s case that the petitioner routinely sent high value drafts to his wife. It cannot be disputed that the petitioner earned salary and allowances of Rs.53,000/- odd between January and November 2002. Sending a single draft of Rs.40,000/- to the petitioner''s wife, does not establish the charge of possession of pecuniary assets disproportionate to the known sources of the petitioner''s income.

16. It is the case of the prosecution that the petitioner drew Rs.59062/- from January to December, 2002. Exhibit-A showed that the petitioner drew Rs.59158/- from January to December 2002. The petitioner thus drew Rs.53,904/- from January, 2002 to November, 2002. No evidence was adduced that the petitioner spent more than Rs.13,904/- from January, 2002 to November, 2002.

17. The authorities concerned did not consider what could have been the expenses of the petitioner during the period in question, when expenses of Border security personnel deployed in border areas at out posts, on uniforms, food and lodging are subsidised and/or borne by the Border Security Force. Accordingly to the petitioner he had to pay mess bill of Rs.560/- per month and had no expenses except on soap, hair oil, shaving cream, etc. Expenditure of Rs. 1,000/- per month in the year 2002, which is about Rs.450/- over and above mess expenses, appears to be reasonable.

18. The authorities have apparently not applied their mind to the evidence on record in the context of the charges against the petitioner. There was no allegation against the petitioner of any illegal favour shown to anyone or of any illegal act done for anyone. The Summary Court proceeded on the basis that the petitioner had pleaded guilty, and sentenced him by a cryptic non-speaking stereo typed order.

19. In Ram Paul v. Union of India and Another being WP(C) No. 2287/2001, a

Division Bench of this Court passed a judgment and order dated 26.07.2004, holding that there should not have been any conviction on the charges of accepting illegal gratification from smugglers for allowing them to smuggle 50/60 bags of sugar to Bangladesh, since there was no evidence to make out the charge, even though, the accused had allegedly pleaded guilty, as in this case. This Court also found that the cryptic rejection of the statutory appeal was illegal.

20. Unlike Ram Paul''s case (supra) where the petitioner had been accused of accepting illegal gratification from smugglers for allowing them to smuggle, in this case there is neither any allegation, nor any material against the petitioner of illegal gratification or of connivance in illegally allowing cross border movement of persons or goods.

21. Mr. Kapur submits that the petitioner did not plead guilty to the charge of possession of disproportionate pecuniary resources, but he only admitted to having sent a bank draft, and that too on the assurance that he would be let off leniently if he made an admission.

22. Even assuming that the petitioner pleaded guilty, though it is seriously disputed that the petitioner pleaded guilty to the offence of possession of disproportionate pecuniary resources, only pleading guilty could not lead to a conviction, as held by the Division Bench in Ram Paul (supra). The impugned sentence is totally perverse, based on no materials, contrary to the weight of the evidence on record, arbitrary unreasonable, and conjectural and hence liable to be set aside and quashed. The impugned action being unsustainable in law for the reasons discussed above, it is not necessary for us to examine the other grounds of challenge to the impugned action/dismissal.

23. The writ petition is, therefore allowed. The sentence, as revised, as also the sentence as imposed is set aside. The order dated 26.10.2005 is also set aside. The dismissal of the petitioner being illegal and wrongful, the petitioner shall be reinstated with back-wages.