(2015) 01 DEL CK 0215

In the Delhi High Court

Case No : Writ Petition (C) 2663/2012

Harphool Kumawat APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 20-01-2015

Acts Referred:

Border Security Force Act, 1968 — Section 117(2), 46
Constitution of India, 1950 — Article 226

Citation : (2015) 01 DEL CK 0215

Hon'ble Judges : Pratibha Rani, J.;Pradeep Nandrajog, J.

Bench : Division Bench

Advocate : A.K. Gautam, for the Appellant; Anil Soni, CGSC, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Pratibha Rani, J.—The writ petitioner challenges the order dated September 29, 2011 by Summary Security Force Court (hereinafter referred as ''SSFC'') holding the petitioner guilty of the charge framed against him as well the sentence awarded to him to suffer imprisonment for one year in civil jail as well dismissal from service.

2. The statutory petition in terms of Rule 167 of the BSF Act, 1958 filed by the petitioner was also rejected vide order dated April 25, 2012.

3. The petitioner ex-constable Harphool Kumawat was enrolled in BSF on October 14, 2004. After completion of his training on October 15, 2005, he was posted to 52nd Battalion BSF. The petitioner was deployed at Indo Bangladesh Border from December 07, 2010 to February 18, 2011. The petitioner along with certain other unit personnel was allegedly found indulged in crossing of cattle heads through smugglers. Vigilance report disclosed deposit of money in the account of Jitender Kumar Kumawat, who was an acquaintance and neighbour of the petitioner at his native place Sikar, Rajasthan.

4. Commandant BSF directed preparation of record of evidence.

5. Two PWs, namely, SI A.K. Dutta and ASI A.K. Singh were examined in presence of the petitioner giving him an opportunity to cross-examine these witnesses.

6. In compliance of Rule 48(3) of BSF Rules, 1968 opportunity was given to the petitioner, if he desired to make a statement, which shall be recorded in writing and could be used against him in evidence. The accused decided to make statement to the effect that he did not make any transaction during the period January 06, 2011 to January 27, 2011 in favour of Jitender Kumar Kumawat nor any payment has been made to his father by Jitender Kumar Kumawat. He also stated that during this period there was no instance of crossing of the cattle heads.

7. Considering the record of evidence, the Commandant directed that petitioner should be tried at a Summary Security Force Court for which charge-sheet was drawn. The petitioner was charged as under:-

In that he, while deployed at Murshidabad, West Bengal location of Ex-52 Bn BSF during the period from 01/01/2011 to 27/01/2011 had deposited Rs. 1,82,200/- (Rupees one lac eighty- two thousand two hundred) only through civil acquaintances in the bank account of Jitendra Kumar Kumawat bearing Number No. 30237070566 and further handed over to his father namely Sh. Sanwarmal Kumawat, which is disproportionate to his known source of income which he could not satisfactorily account for."

8. At the stage of arraignment, the petitioner pleaded not guilty to the above charge. During trial before SSFC five witnesses were examined out of them PW-1, HC Istakhar and PW-2, ASI C.V. Sabu were from 105 Battalion BSF whereas PW-3 to PW-5 were Managers of SBI, namely, Mr. Paresh Chandar Das Manager SME SBI Berhampore Branch, Mr. Arup Sen, Manager SBI Branch Khagra District-Murshidabad and Mr. Samir Das, Manager SBI Branch Sagarpara District-Murshidabad.

9. PW-1, HC Istakhar, who was performing the duties of the establishment clerk, had produced the relevant record to establish the following facts:

(i) Constable Harphool Kumawat of 52 Bn BSF was attached with 105 Battalion BSF on disciplinary grounds. In compliance to above order CT Harphool Kumawat arrived in 105 Bn BSF at 1700 hrs on February 22, 2011 vide 52 Bn BSF movement order No.Estt/0118/52/11/3485-88 dtd February 22, 2011. (Exhibit-K and L)

(ii) The DIG, BSF, Berhampur forwarded the vigilance case report of depositing the excess money in SBI in respect of Constable Harphool Kumawat as reflected in Exhibit M. The letters sent by DIG, BSF Berhampur to Managers, SBI Khagra West Bengal, SBI Berhampore West Bengal and SBI Sagarpara West Bengal to confirm the transactions were produced by him as Exhibit N, O and P. A response received from the Managers, SBI Khagra West Bengal, SBI Berhampore West Bengal and SBI Sagarpara West Bengal were produced as Exhibit Q, R and S.

(iii) The letters addressed to Superintendent of Police, Sikar, Rajasthan sent by 105 Bn BSF to ascertain the relationship between the petitioner Harphool Kumawat and Jitendra Kumar Kumawat holder of account no. 30237070566, in whose account the money was deposited on different dates and also to verify the purpose for which money was sent in his account, details of the money withdrawn and utilized as well whether Jitendra Kumar Kumawat had paid any income tax or gift tax on the said amount. (Exhibit T and U).

(iv) The verification report sent by Superintendent of Police, Sikar, Rajasthan giving details of the facts as verified by the local police vide communication Exhibit V.

10. During cross-examination only two questions were put to the witness as to whether he was having personal knowledge in respect of the money sent which he denied. In reply to the second question about the withdrawal of the money from the account of Jitendra Kumar Kumawat, PW-1 replied that his statement was based on report of SP, Sikar, Rajasthan.

11. PW-2, ASI Sabu C.V. made statement to the effect that on the request of 105 Bn BSF vide its message No.A/7009 dtd July 29, 2011 to 52 Bn BSF, letter dated July 30, 2011 has been received from 52 Bn BSF containing monthwise detail of the gross pay and deductions made from the salary of constable Harphool Kumawat. He had received an amount of Rs. 1,89,117/- (Rupees One Lakh Eighty Nine Thousand One Hundred Seventeen only) after GPF/CPF, CGEIS, private deduction, mess dues and misc recoveries from January 2010 to January 2011. (Exhibit Y and Z)

12. Petitioner preferred not to cross-examine PW-2.

13. On September 27, 2011, SSFC decided to examine Managers from SBI Berhampore Branch, SBI Khagra Branch and SBI Sagarpara Branch of district Murshidabad, West Bengal.

14. PW-3, Mr. Paresh Chandra Das, Manager, SME SBI Berhampore Branch, District Murshidabad West Bengal deposed as under:-

"My office had received an application bearing no. Esstt/105 Bn/Disc 52 Bn/11/358 dtd 18 April 2011 from 105 Bn BSF regarding transaction of Rs. 25,000/- in the account No. 30237070566 held with Jitendra Kumar Kumawat. My office had already submitted the required information vide our L/No. CM/59/9 dtd 26/04/11 in which the details of transaction was confirmed, the bank address of mentioned account No. is SBI Sikar Branch, the address of beneficiary is New Colony (in front of railway station) Palsana, Dataramgarh, Sikar, Ph no. 01576225896 and name of the person who had deposited/sent money is Shri Joy Kumar Mondal and the address of Shri Joy Kumar Mondal was not mentioned in the money deposit voucher." 15. PW-4, Mr. Arup Sen, Manager, SBI Branch

Khagra, District Murshidabad West Bengal deposed as under:-

"My office had received an application bearing no. Esstt/105 Bn/Disc 52 Bn/11/357 dtd 18 April 2011 from 105 Bn BSF where in details regarding transaction of Rs. 25,000/-, Rs. 17,500/- and Rs. 25,000/- in to the bank account No. 30237070566 was required to be confirmed. I had already submitted the required information as asked in above letter vide my L/No. Nil dated 21/04/11. In this letter the details of transactions was confirmed, bank address of account No. as per records is SBI Sikar branch, station road, Sikar, Rajasthan, Pin 332001, address and name of beneficiary is Jitendra Kumar Kumawat, New Colony, in front of railway station, Palsana, Dataramgarh, Sikar, Pin 332402, Rs. 25,000/- was deposited on 20 January 11 by Sukumar Mandal, Rs. 17,500/- was deposited on 27 January 11 by Bakras Sheikh and Rs. 25,000/- was deposited on 27 Jan 11 by Shri Joykumar Mandal. The address of all these three persons is unknown to the bank." 16. PW-5, Mr. Samir Das, Manager, SBI Branch Sagarpara, District Murshidabad West Bengal deposed as under:-

"I was posted as Manager of SBI Branch Sagarpara district Murshidabad, West Bengal w.e.f. 31st Jan 2010 to 17 September 2011. Presently I am posted in SBI branch Katabagan, district Murshidabad. In month of April 2011 SBI Branch Sagarpara received L/No. Estt./105 Bn/Disc-52/11/372 dtd 18 April 2011 regarding transaction of Rs. 25,000/- on dtd 06/01/11, Rs. 14,700/- on dtd 10/01/11, Rs. 25,000/- on dtd 18/01/11 and 25,000/- on dtd 19/01/11 in to the bank account No. 30237070566 was required to be confirmed. As per the record held with the branch the above transactions is confirmed. Bank address of account No. as per the records is SBI Sikar Branch and name of beneficiary is Jitendra Kumar Kumawat. The above amount of Rs. 25,000/- was deposited on 06 January 11 by B Mandal. Remaining amount was deposited in form of "self". The address of all these persons is unknown to the bank." 17. We have given extract of statements of PW-3 to PW-5 to satisfy ourselves about the contention being raised before us by the writ petitioner that it is a case of ''no evidence''.

18. The petitioner has not cross-examined PW-3 and PW-4. PW-5 has been put one question as to whether he knew who had deposited the amount of Rs. 14,700/-, Rs. 25,000/- and Rs. 25,000/- to which he replied in negative.

19. On September 28, 2011 petitioner was given an opportunity to call upon witnesses for his defence for which he sought time till 1000 hrs on September 29, 2011 which was granted. On September 29, 2011 the petitioner submitted a written statement exhibit Z-1 and closed his defence.

20. In the statement exhibit Z-1 by the petitioner he denied having deposited any amount in the account of Jitendra Kumar Kumawat claiming that he did not know who has deposited the amount and for what purpose in the account of Jitendra Kumar Kumawat. He stated that during his duty at BOP Rajanagar and BOP Kakmari from December 07, 2010 to February 18, 2011 he performed his duty diligently with responsibility and during the period of his duty there was no

crossing. He also stated that from BOP he had never gone anywhere except for border duty. Allegations made against him were false and Jitendra Kumar Kumawat had not made any payment to his (petitioner''s) father, Sanwarmal Kumawat.

21. As noted above SSFC held the petitioner guilty and punished him with one year in civil jail as well dismissal from service.

22. During the hearing of the writ petition, learned counsel for the petitioner assailed the order convicting the petitioner without there being any evidence on record to prove that the persons who have deposited the money in the account of Jitendra Kumar Kumawat, were in any way connected with the petitioner or the said money belonged to the petitioner. There is also no evidence that petitioner had any relations or connection with Jitendra Kumar Kumawat or any money being handed over to the father of the petitioner by said Jitendra Kumar Kumawat. Learned counsel for the petitioner further submitted that there is no evidence of the petitioner''s involvement in cattle crossing. Learned counsel for the petitioner has drawn the attention of this Court to Annexure P-6 which is a communication dated June 13, 2011 from SP, Sikar, Rajasthan confirming that the account holder Jitendra Kumar Kumawat is from the village of the petitioner and he had handed over the money to the father of the petitioner. He submitted that this letter cannot be relied upon to hold the petitioner guilty.

23. Learned counsel for the petitioner has submitted that the charge against the petitioner was of having disproportionate assets to the tune of Rs. 1,82,200/- whereas the salary statement of the petitioner proves that during the period January, 2010 to January, 2011, after deductions, the petitioner received Rs. 1,89,117/-. Thus, the charge that petitioner was in possession of assets beyond his known source of income was not established. He further submitted that taking into account the earning of the petitioner during his 6 1/2 years of service, the amount alleged to be disproportionate to his known source of income, could not have been established even assuming though not admitting that the amount of Rs. 1,82,200/-(Rupees One Lakh, Eighty Two Thousand, Two Hundred Only) was deposited by the petitioner in the account of Jitendra Kumar Kumawat. It has been further submitted that this is a case where there was no evidence to establish the charge hence the impugned order being perverse may be quashed. Learned counsel for the petitioner further submitted that no reasoning has been given by SSFC vide holding the petitioner guilty and on this score alone the impugned order may be set aside.

24. The scope of interference by this court into the proceedings arising under the SSFC conducted under the BSF Act is narrow. In the instant case, the finding of guilt and the imposition of punishment is supported by the evidence which was recorded by the SSFC. No violation of any statutory provisions or principles of natural justice has been pointed out on behalf of the petitioner. A reading of BSF Act would show that the SSFC is prohibited only from conducting trial of a person who commits an offence of murder or of culpable homicide not amounting to

murder against, or of rape in relation to, a person not subject to this Act. There is no prohibition for the SSFC to try a person subjected to the BSF Act for other civil offences. Section 46 of the enactment confers jurisdiction on the SSFC to hold the trial of the petitioner for the offence with which he was charged in the instant case.

25. Though it has been vehemently urged before us that there could not have been any charge of having assets disproportionate to the known source of income of the petitioner in view of the salary slip statement, is liable to be discarded for the reason that it is not the case of the petitioner that amount was transferred by him from his salary account to the account of Jitendra Kumar Kumawat. It is also not the case of the petitioner that he received any cash payment amounting to Rs. 1,82,200/-(Rupees One Lakh, Eighty Two Thousand, Two Hundred Only) which he transmitted to the account of Jitendra Kumar Kumawat on different dates as proved from the statement of the three Bank Managers of SBI (PW-3 to PW-5). The question here is not what was the income of the petitioner during that period but about the source of the cash amount of Rs. 1,82,200/- remitted to the account of Jitendra Kumar Kumawat during January 06, 2011 to January 27, 2011. The petitioner did not dispute that he and Jitendra Kumar Kumawat are resident of same village and their respective fathers have worked together abroad. Account number 30237070566 is of Jitendra Kumar Kumawat in which amount was deposited from the place of posting the petitioner, at regular intervals during the period from January 06, 2011 to January 27, 2011 from different branches of SBI by different names and also by ''self''. It could have been only by a person in Murshidabad (W.B.) and known to Jitendra Kumar Kumawat to whom he disclosed his account number.

26. The bank statement of Jitendra Kumar Kumawat in respect of account no. 30237070566 reveals that all the bulk deposit have been made from place of posting of the petitioner i.e. Murshidabad, West Bengal. The details of payment reflects the bank statement of Jitendra Kumar Kumawat during the period from January 06, 2011 to January 27, 2011 are as under:

27. All the above amounts were deposited in cash in different names referred to in the deposit slip without disclosing contact number or address which in itself was sufficient for BSF to infer that A/c number was used to transmit ill-gotten money to Sikar, Rajasthan. It is matter of common knowledge that for depositing the cash only the deposit slip is required to be filled by mentioning the correct account number and the bank does not verify the credential of the depositor.

28. On being given an opportunity to lead defence evidence, it was for the petitioner to lead defence evidence to establish that he had no connection with Jitendra Kumar Kumawat or the amount deposited in his account. The manner in which amount has been deposited from three different branches of SBI in Murshidabad, West Bengal for remitting in the account of Jitendra Kumar Kumawat who is neighbour of the petitioner at his native place, he could have shown his disconnect with the remittance by examining the Jitendra Kumar

Kumawat in his defence. It is not the case of the petitioner that he did not know Jitendra Kumar Kumawat or that Jitendra Kumar Kumawat was having any business transactions in Murshidabad for which he had been receiving payment in his bank account or he himself visited Murshidabad when the amount of Rs. 25,000/- on January 06, 2010 by B.Mandal, Rs. 14,700/- on January 10, 2011 and Rs. 25,000 on January 18, 2011 was deposited by self (Jitendra Kumar Kumawat) in SBI Sagarpara Branch, Murshidabad.

29. In the decision reported as Union of India and Others Vs. Himmat Singh Chahar, , pertaining to a Court Martial proceedings under the Navy Act, 1957, the Hon''ble Supreme Court categorically rejected the concept of the high level of proof required at a criminal trial as being applicable to a trial before a Court Martial.

30. In another decision reported as Lalit Popli Vs. Canara Bank and Others, , the Supreme Court held:

"16. It is fairly well settled that the approach and objective in criminal proceedings and the disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings the preliminary question is whether the employee is guilty of such conduct as would merit action against him, whereas in criminal proceedings the question is whether the offences registered against him are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different. State of Rajasthan Vs. B.K. Meena and others, . In case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of "proof beyond doubt" has no application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct.

17. While exercising jurisdiction under Article 226 of the Constitution the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an Appellate Authority.

18. In B.C. Chaturvedi Vs. Union of India and others, the scope of judicial review was indicated by stating that review by the Court is of decision making process and where the findings of the disciplinary authority are based on some evidence, the Court or the Tribunal cannot re-appreciate the evidence and substitute its own finding.

19. As observed in R.S. Saini Vs. State of Punjab and Others, the scope of interference is rather limited and has to be exercised within the circumscribed limits......"

31. Record of SSFC would evince that except denial, the petitioner failed to prove any evidence in his defence or even to bring on record as to how his neighbour

residing in Sikar, Rajasthan, was getting regular remittance of cash amount from the place of posting of the petitioner. We may note here that issue was not whether the petitioner had personally gone to deposit the cash amount to SBI branches between January 06, 2011 to January 27, 2011 but the documentary evidence establishing that from the place of posting of the petitioner in West Bengal, the amount was regularly remitted in the account of his neighbour at Sikar, Rajasthan and part of amount was withdrawn too. The accusation against the petitioner was that it was ill-gotten money from the smugglers for permitting them to cross the cattle heads could have strong possibility of amount being deposited by the smugglers in the account of Jitendra Kumar Kumawat who was residing in Sikar, Rajasthan for the benefit of the petitioner or his family.

32. We find no merit in the contention raised on behalf of the petitioner that except the letter of SSFC, which is hearsay evidence, there was no material against the petitioner to hold him guilty and punish him with imprisonment and dismissal from service. Learned counsel for the petitioner failed to take note of the fact that three SBI Managers of different branches were examined by SSFC who confirmed the transactions from SBI Berhampore Branch, SBI Khagra Branch and SBI Sagarpara Branch of district Murshidabad, West Bengal and deposit of the amount in account no. 30237070566 which was in the name of Jitendra Kumar Kumawat, resident of same village to which the petitioner belong.

33. We are of the opinion that this is not a case of ''no evidence'' requiring investigation by this Court in its power of judicial review under Article 226 of the Constitution of India.

34. Last submission made on behalf of the petitioner was that reasons have not been given while holding him guilty. This contention is liable to be rejected in view of decision of Hon''ble Supreme Court reported as Union of India (UOI) and Another Vs. Dinesh Kumar, wherein question considered by the Hon''ble Supreme Court was formulated in para no. 5 of the report as under:-

"Whether the Summary Security Force Court (SSFC) is required to give reasons in support of its verdict?

Similarly,

Whether the appellate authority under Section 117(2) is required to give reasons while considering the correctness, legality or propriety of the order passed?"

35. The Hon''ble Supreme Court considered its earlier decision reported as Som Datt Datta Vs. Union of India (UOI) and Others, and the decision by the Constitution Bench reported as S.N. Mukherjee Vs. Union of India, and arrived at the following conclusions:-

"12. On this backdrop, it is clear that the provisions for the SSFC and the appellate authority are pari materia, more particularly in case of Rule 149 and Section 117(2) of the Act, with the provisions which were considered in both the above authorities. Therefore, there cannot be any escape from the conclusion that as held by the Constitution Bench, the reasons would not be required to be given by the SSFC under Rule 149 or by the appellate authority under Section 117(2) of the Act. This position is all the more obtained in case of SSFC, particularly, as the Legislature has chosen not to amend Rule 149, though it has specifically amended Rule 99 w.e.f. 9.7.2003. It was pointed out that inspite of this, some other view was taken by the Delhi High Court in the decision in Nirmal Lakra Vs. Union of India (UOI) and Others, . However, it need not detain us, since Rule 149 did not fall for consideration in that case. Even otherwise, we would be bound by law declared by the Constitution Bench in the decision in S.N. Mukherjee Vs. Union of India (cited supra)." 36. We may record here that since reasons were not required to be given by SSFC, the petitioner cannot challenged the finding of SSFC on this score. We may add that the statutory petition filed by the petitioner has been disposed of by considering the entire material by a reasoned order.

37. Jurisdiction of this Court in judicial review is limited. Disciplinary proceedings being quasi-judicial in nature, charge is not required to be proved like a criminal trial i.e. beyond of reasonable doubts. The Inquiry Officer performs quasi-judicial function and upon analysing the evidence arrive at a conclusion on preponderance of the probability to prove the charge on the basis of material on record. This Court in exercise of its power of judicial review will not take over the function of SSFC as the writ petition is not an appeal against the finding of SSFC nor this Court can exercise its power as an Appellate Authority.

38. For all the foregoing reasons, we find no merit in this writ petition which is hereby dismissed.