

(2018) 05 RAJ CK 0208

In the Rajasthan High Court

Case No : Civil Writ Petition No. 6477 of 2018

Indraj Singh @APPELLANT@Hash Union of India

Date of Decision : 31-05-2018

Acts Referred:

Border Security Force Act, 1968 — Section 40, 46
Indian Penal Code, 1860 — Section 354

Citation : (2018) 05 RAJ CK 0208

Hon'ble Judges : DR.PUSHPENDRA SINGH BHATI, J

Bench : Single Bench

Advocate : Arvind Kumar, Sahil Sharma

Final Decision : Disposed Off

Judgement

1. The lawyers are not working due to abstention from work.

2. The petitioner has preferred this writ petition for the following reliefs :-

(a) by an appropriate writ, order or direction, the order dated 15.02.2018 passed by the respondent authority may be quashed and set aside.

(b) by an appropriate writ, order or direction, the respondent Authorities may be directed to remand back the petitioner on his duty.

(c) Any other appropriate order or direction which the Hon'ble Court deems just and proper in the peculiar facts and circumstances of the case may be passed in favour of the petitioner.

(d) Costs of the writ petition may kindly awarded to the petitioner.â??

3. The facts as noticed by this Court are that No.838660127 Ex-Head Constable Indraj Singh of SHQ BSF, Bikaner was tried by General Security

Force Court (GSFC) vide order dated 15.2.2018 (Annex.2) for offence under Sections 40 and 46 of BSF Act, 1968 for an act prejudicial to good order

and discipline of Force and for using criminal force to a woman intending to

outrage her modesty punishable under Section 354 IPC. The petitioner was found guilty in GSFC trial proceedings, which culminated into conviction of the petitioner with punishment of dismissal from service and one year's rigorous imprisonment. The petitioner preferred a statutory petition against GSFC order, which has been dismissed by the competent authority i.e. the Director General, BSF on 25.5.2018.

4. Mr. Sahil Sharma, Deputy Commandant (Law), BSF, Officer Incharge of case is present in Court and has shown order dated 25.5.2018, concluding portion whereof reads as follows :

That, during his 28 years of unblemished service, he has earned 27 rewards. He has completed all the tasks assigned to him with full responsibility which was not taken into consideration and he has been punished. He is having marriageable son and daughter and the responsibility to look after his brother's family also.

The perusal of GSFC trial proceedings reveals that before deciding the quantum of punishment, the Court has on record the previous convictions,

character and rewards etc., of petitioner (Exhibit-V) through a witness. The offence U/s.46 of the BSF Act of which he is convicted

carries punishment upto 07 years imprisonment. However, keeping in view the past record of the petitioner, facts and circumstances of the case,

the Court has taken a lenient view and awarded punishment of 01 year of rigorous imprisonment and dismissal from service only which is lesser than

the maximum punishment awarded to the petitioner is very much commensurate with the gravity of the offence committed by him. Hence, the

contention raised by the petitioner is without any substance.

4. As far as the service profile is concerned, as on 29.11.2017, the date of conviction, the petitioner was 48 years and 15 days old with 24 years, 10

months & 09 days service in BSF. In past, he has been punished summarily once U/s.26 for intoxication and awarded 14 days RI on 25.11.2005.

He has earned 27 rewards (IG-01, DIG-14 & Comdt-12).

5. In view of forgoing and after careful consideration of all the facts and circumstances of the case, DG BSF has rejected the petition submitted by the petitioner being devoid of merit.

5. Mr. Arvind Kumar Chahar (son of the petitioner) is present in Court as the

petitioner is languishing in Central Jail, Bikaner and sought suspension of his father's (petitioner) sentence as he is in custody since 29.11.2017.

6. The Officer Incharge vehemently opposed the relief claimed by the petitioner regarding suspension of sentence by making submission that its a disciplined Force and any kind of leniency towards offenders, specially, convicted under the charge of moral turpitude has to be viewed seriously. He further contended that if such offender is set free, morale of ladies working in BSF will be adversely affected and there will be a major set-back to the drive in the ongoing recruitment process encouraging women to join BSF.

7. This Court has heard both the petitioner's son and the Officer Incharge. However, while making limited adjudication on the issue of suspension of sentence of one year's rigorous imprisonment awarded by Dy. IG, SHO, BSF, Bikaner vide order dated 15.2.2018 (Annex.2), this Court finds that the petitioner is a 48 years old man and has put in 24 years, 10 months and 09 days service in BSF. This Court has also noted that the petitioner earned 27 rewards in his service and once was punished for intoxication on 25.11.2005. Thus, without making any observation on merits of case, while admitting this petition for final hearing, this Court allows the stay petition.

8. The petitioner who is in custody of BSF since 29.11.2017 and then has been sent to Central Jail, Bikaner from 15.2.2018 shall be released from jail concerned forthwith provided he executes two sureties in the sum of Rs.25,000/ each and a personal-bond in the sum of Rs.50,000/- to the satisfaction of Superintendent, Central Jail, Bikaner.

9. This order shall be complied forthwith by the respondents as well as the Superintendent, Central Jail, Bikaner after completion of necessary formalities. It is made clear that this order on suspension of sentence shall not prejudice case on merits on either side.

10. While disposing of stay petition, the order dated 25.5.2018 passed in statutory petition is served on petitioner's son in Court by the Dy.

Commandant (Law), BSF and a copy of order dated 25.5.2018 passed in that petition has been taken on record.