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(2020) 07 DEL CK 0117

In the Delhi High Court

Case No : Civil Writ Petition No. 4373 Of 2020

Kabindra Kumar Pandey APPELLANT

Vs

Union Of India & Ors RESPONDENT

Date of Decision : 21-07-2020

Acts Referred:

Border Security Force Rules, 1969 — Rule 45
Border Security Force Act, 1968 — Section 22, 46, 48(1)(c)
Prevention Of Corruption Act, 1988 — Section 13(1)(e), 13(2)

Citation : (2020) 07 DEL CK 0117

Hon'ble Judges : Rajiv Sahai Endlaw, J;Asha Menon, J

Bench : Division Bench

Advocate : Saahila Lamba, Nidhi Raman

Final Decision : Dismissed

Judgement

Asha Menon, J

C.M. Appl.15746/2020 (for exemption from filing duly affirmed affidavits and depositing court fees)

1. Allowed, subject to just exceptions and as per the extant rules.

2. The application is disposed of.

W.P. (C) 4373/2020

3. This petition challenges the decision dated 12th February, 2020 taken by the LO Gde-I/Commandant for IG BSF, Tripura whereby, the petition

filed by the present petitioner for setting aside the sentence of dismissal from service was rejected.

4. The brief facts, as are relevant for the disposal of the present petition, are that the petitioner was at the relevant time posted as Constable with the

Border Security Force (BSF) at the Border Outpost Shrimantapur, Guwahati. On

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27th February, 2016, a Board of Officers detailed by the DIG, SHQ

Gokulnagar, conducted a surprise check of the troops of 145 Battalion deployed at Border Outpost Shrimantapur, Guwahati during which cash

amounting to Rs.24,600/- was found in the possession of the petitioner. Further inquiry revealed that during the months of January and February, 2016,

the petitioner had transferred to his father, Sh. Birender Pandey and brother, Sh.Dharmendra Pandey, Rs.1 lakh each through SBI Sonamura Branch,

Distt. Sepahijala, Tripura.

5. Consequently, a Staff Court of Inquiry (SCOI) was held in the matter and the petitioner was served with a charge-sheet. On the basis of the

findings of the SCOI, disciplinary proceedings were initiated against the petitioner under the provisions of the Border Security Force Act, 1968 (BSF

Act) and the Border Security Force Rules, 1969 (BSF Rules), particularly under Rule 45 of the BSF Rules, on four charges. The first three charges

were under Section 46 of the BSF Act for committing civil offences, i.e., â??to show criminal misconduct for having been a public servant in

possession of pecuniary resources disproportionate to his known source of income for which he cannot satisfactory account for an offence specified

in Section 13(1)(e) of the Prevention of Corruption Act, 1988, punishable under Section 13(2) of the said Actâ? and the fourth charge was under

Section 22 of the BSF Act for â??neglecting to obey local orderâ??.

6. As per procedure, witnesses were examined and the record of the evidence (ROE) prepared on the basis of which the Commandant decided to

dispose of the mater by holding Summary Security Force Court (SSFC) on the aforesaid four charges. At the conclusion of the trial by the SSFC, he

found the petitioner guilty of the second, third and fourth charge and not guilty for the first charge and recommended that he be dismissed from

service. For convenience, the four charges are reproduced hereinbelow:

â??The particulars of the first charge averred that the accused/petitioner while deployed at BOP Srimantapur, â??Câ?? Coy, 145 Bn BSF

on 27th Febâ?? 2016 was found in possession of Rupees 24,600/- (Rupees Twenty four thousand six hundred), which is disproportionate

to his know source of income for which he could not satisfactorily account for.

The particulars of the second charge averred that the accused/petitioner while deployed at BOP Srimantapur, â??Câ?? Coy, 145 Bn BSF

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during the month of January and February 2016 remitted the following amounts in favour of his father namely Shri Birender Pandey in his

Bank Account No. 10266710582 at SBI Tribeni BPTS Township, Hoogly through SBI Sonamura Branch, Distt-Sepahijala, Tripura, which is

disproportionate to his known source of income for which he could not satisfactorily account for:-Rs. 20,000/- on 20.01.2016

Rs. 10,000/- on 22.01.2016

Rs. 25,000/- on 02.02.2016

Rs. 25,000/- on 03.02.2016

Rs. 10,000/- on 09.02.2016

Rs. 5,000/- on 11.02.2016

Rs. 5,000/- on 15.02.2016

Total Rs. 1,00,000/- (Rupees One Lakh)

The particulars of the third charge averred that the accused/petitioner while deployed at BOP Srimantapur, â??Câ?? Coy, 145 Bn BSF

during the month of February 2016 remitted the following amounts in favour of his brother namely Shri Dharmendra Pandey in his Bank

Account No. 30675401274 at SBI Pulgate, Pune through SBI Sonampura Branch, Distt-Sepahijala, Tripura, which is disproportionate to

his known source of income for which he could not satisfactorily account for:-

Rs. 20,000/- on 03.02.2016

Rs. 25,000/- on 09.02.2016

Rs. 10,000/- on 11.02.2016

Rs. 20,000/- on 15.02.2016

Rs .25,000/- on 23.02.2016

Total Rs. 1,00,000/- (Rupees One Lakh)

The particulars of the fourth charge averred that the accused/petitioner while deployed at BOP Srimanatapur of 145 Bn BSF, on

27.02.2016 found in a possession of Rupees 24,600/- (Rupees Twenty four thousand six hundred) during surprise checking by a BOO

detailed by DIG, SHQ BSF Gokulnagar in contravention to the Frontier Headquarter Border Security Force, Tripura Signal No. O/4553

dated 24.03.2011 which prescribes that no individual deployed on border is

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allowed to retain more than Rs.500/- at any given time in his

possession.â??

7. On review of the SSFC trial proceedings, the DIG, SHQ, BSF Gokulnagar set aside the findings on the fourth charge while upholding the findings of

the SSFC on the other charges, but preferred to uphold the sentence of dismissal from service. Being aggrieved thereby, the petitioner submitted a

Statutory Petition dated nil to the office of the Inspector General, FTR HQ, BSF Salbagan, Tripura, which was rejected by the impugned order dated

12th February, 2020.

8. In the grounds taken in the present petition as also argued by Ms. Saahila Lamba, learned counsel for the petitioner, it is contended that throughout

the trial and review proceedings, the petitionerâ??s defence had been ignored. It is claimed that after rendering ten years of service, it cannot be said

that transfer of Rs.2 lakhs by the petitioner to his father and his brother was disproportionate to his known sources of income to justify an inference

that the petitioner had indulged in corrupt practices. Learned counsel also argued that no criminal proceedings had been initiated against the petitioner

for alleged involvement in smuggling. Further, in view of the fact that two charges had been dropped against the petitioner, the punishment of dismissal

from service was disproportionate to the accusation.

9. We have heard the learned counsel for the petitioner and have perused the documents annexed to the petition and find no merit in the submissions

made by the learned counsel for the petitioner. While disposing of the Statutory Petition, placed as Annexure P-5 to the petition, the defence taken by

the petitioner has been discussed and duly considered and the claim of the petitioner that he had withdrawn money from his account prior to his

transfer to another station, was found lacking in credibility and was rejected. We do not find any reason to interfere with this appreciation of evidence.

10. As recorded in the impugned order, the monthly salary of the petitioner was Rs.24,975/-. It is the claim of the petitioner that during the months of

May, 2015 to July, 2015, the petitioner had withdrawn Rs.40,000/- each five times from his salary account, which totalled Rs.2 lakhs. This was the

money he had transferred into his fatherâ??s and brotherâ??s accounts during the months of January and February, 2016. It does not stand to

reason that a person under transfer would have withdrawn money in the months

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of May to July, 2015, kept it with himself and then brought it to his

new station, which he is stated to have joined on 7th January, 2016, and continued to keep the said sum of Rs.2 lakhs in his possession in cash till he

transferred them in different tranches between 20th January, 2016 and 23rd February, 2016 into the accounts of his father and brother.

11. During the course of arguments, the learned counsel for the petitioner confirmed that the family of the petitioner comprised of his wife and three

children, apart from himself. Given the fact that his monthly salary of Rs.24,975/- would ordinarily have been used to take care of the financial needs

of his family, the petitioner has not been able to show how he was able to accumulate a sum of Rs.2 lakhs, allegedly by July, 2015, leaving with him

sufficient liquidity to transfer Rs.2 lakhs to his father and brother about six months thereafter. The entire defence set up by the petitioner is far from

convincing and was rightly rejected at all stages.

12. With regard to the plea that considering that two charges had been rejected, the dismissal from service was too harsh, suffice it to quote from the

impugned order as follows:

â??The petitioner has stated that during his service period, he performed his duties with honesty and loyalty. He followed all the orders,

SOPs and instruction briefed during roll calls. Considering his clean record of service, a lenient view may be taken to reinstate him in

service.

Per contra, it is relevant to say that the petitioner while deployed at Border Out Post in a highly smuggling prone area was found in

possession of the pecuniary resources disproportionate to his known source of income, for which, he has been tried by a competent court

within the ambit of BSF Act & Rules after following prescribed procedures and after having been found guilty, awarded the sentence.

Having examined all relevant records related to this case, it is evident that the petitioner got indulged in corrupt practices ignoring the

mandate of border duties, for which, he has been dealt with due process of law. The charges of corruption instituted against him have been

proved beyond reasonable doubt. The minimum prescribed punishment for an offence u/s 13(1) (e) punishable u/s 13(2) of the Prevention of

Corruption Act 1988 is to suffer imprisonment for a term of four years. Petitioner

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has been awarded the sentence of dismissal from service

in terms of section 48(1) (c), which is a much lenient punishment than the prescribed one. Needless to add, a soldier like petitioner deployed

on border duty is not only a serious threat to the Nationâ??s Security but also brings bad name for a disciplined Force, as such, retention

of such person in service is uncalled for. Therefore, no scope is available for intervention in the sentence.â?? (emphasis added)

13. We need not add to these reasons which speak loud and clear and we find absolutely no reason to differ from them.

14. In the circumstances, we find no merit in the present petition, which is accordingly dismissed.

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