

(2005) 08 DEL CK 0053
In the Delhi High Court
Case No : Writ Petition (C) 705 of 2003

Karan Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-08-2005

Acts Referred:

Border Security Force Act, 1968 — Section 117, 117(2)

Citation : (2005) 124 DLT 163 : (2005) 84 DRJ 574

Hon'ble Judges : Mukul Mudgal, J;H.R. Malhotra, J

Bench : Division Bench

Advocate : P. Narsimhan Adv, for the Appellant; Rophit Priyadarshani and R.V. Sinha, for the Respondent

Judgement

Mukul Mudgal, J.—Issue Rule. With the consent of the learned counsel for the parties, the writ petition is taken up for final hearing.

2. The petitioner by this writ petition challenges the dismissal order passed by the Commandant 195 BN BSF dated 21st September, 1999. The order was challenged in this Court and it appears that Civil Writ Petition No. 2413/2001 was withdrawn by the petitioner and thereafter on 3rd December, 2001 the petitioner filed an appeal before the appellate authority for his reinstatement in the service. On 1st February, 2002 the petitioner not having received any reply from the respondent in respect of the appeal preferred by him again approached this Court by way of W.P. No. 2875/2002 and on 20th August, 2002 this Court directed the respondent in W.P. No. 2875/2002 to expeditiously dispose of the petitioner's appeal within eight weeks. Pursuant to the directions of this Court on 3rd October, 2002 the impugned order was passed u/s 117(2) of the Board Security Force Act (hereinafter refer to as the Act). Section 117 of this Act reads as follow:

"117. Remedy against order, finding or sentence of Security Force Court.__(1) Any person subject to this Act who considers himself aggrieved by any order passed by any Security Force Court may present a petition to the officer or

authority empowered to confirm any finding or sentence of such Security Force Court, and the confirming authority may take such steps as may be considered necessary to satisfy itself as to the correctness, legality or propriety of the order passed or as to the regularity or any proceeding to which the order relates.

(2) Any person subject to this Act who considers himself aggrieved by a finding or sentence of any Security Force Court which has been confirmed, may present a petition to the Central Government, the Director-General, or any prescribed officer superior in command to the one who confirmed such finding or sentence, and the Central Government, the Director-General, or the prescribed officer, as the case may be, may pass such order thereon as it or he thinks fit."

3. The following impugned order was passed on 3rd October, 2002.:-

"No. 6/110/2002/CLO (D&L) /BSF/7878-82 Government of India, Ministry of Home Affairs, Directorate General Border Security Force (Disc.& Lit Branch)

10 CGO complex,

Lodhi Road,

New Delhi-3.

03 October 2002. To

Ex. No. 89499349

Constable Karan Singh

S/O Shri Surjan Singh

Vill. & PO "IGRAH,

Distt.- Jind (Haryana)

Sub: Statutory petition against conviction by summary security force court (SSFC) Trial.

Please refer to your statutory petition dated nil addressed to the Director General, Border Security Force, against your conviction by Summary Security Force Court (SSFC) trial held on 21-09-1999.

The issues raised in your petition have been considered very carefully in the light of relevant records, legal provisions and evidence in SSFC trial proceedings. After a detailed consideration and careful scrutiny of all facts and circumstances of the case, the Director General has rejected your petition being devoid of merit.

Sd/-

(B.P. Vashist)

Chief Law Officer (D&L)

Dy. Inspector General"

4. It is surprisingly and indeed regrettable that in spite of the fact that the order dated 21st September, 1999 was challenged by the appellant on 3rd December, 2001 and only at the intervention of this Court in W.P. No. 2875/2002, the petitioner's statutory appeal was taken up yet it was disposed of in a cursory and casual manner. However, the disposal is mindless and illusory. In the impugned order, not a single word has been stated in reference to the specific grievance raised by the petitioner in his appeal. This Court had occasion to deal with such cases in *Balraj Singh v. UOI* and *Anr.* reported in W.P(C) No. 12867/2005 where while dismissing the statutory appeal an almost identical stereotyped order was passed by the BSF's statutory authority u/s 117(2) of the BSF Act.

5. The impugned order dated 21st September, 1999 has been passed without application of mind and none of the pleas raised by the petitioner have been dealt with by the Director General who has dismissed the appeal by resort to generalizations. The order dated 21st September, 1999 is set aside. The respondent is directed to pass a reasoned order dealing with the grievance raised in the appeal filed by the petitioner not later than 30th September, 2005. It will be open to the petitioner if aggrieved by the reasoned order pursuant to this judgment to challenge such order in accordance with law. The present petition has been occasioned by the non application of mind in respect of statutory appeal to the Director General BSF u/s 117 of the Act. Accordingly the petitioner shall be entitled to the costs quantified at Rs. 5000-/ to be paid not later than 30th September, 2005. The petition stands disposed of accordingly.