
(2002) 09 DEL CK 0264

In the Delhi High Court

Case No : Civil Writ Petition No. 2709 of 1997

Mahavir Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-09-2002

Acts Referred:

Border Security Force Rules, 1969 — Rule 63, 63(2), 63(3), 63(4)
Constitution of India, 1950 — Article 21, 226, 226(1), 226(2)

Citation : (2002) 09 DEL CK 0264

Hon'ble Judges : Dalveer Bhandari, J

Bench : Single Bench

Advocate : R.P. Sharma, for the Appellant; Jyoti Singh, for the Respondent

Final Decision : Allowed

Judgement

Dalveer Bhandari, J.—The petitioner is aggrieved by the order passed by respondent No.2, Director General of Border Security Force (for short "BSF"), dismissing the statutory petition filed by the petitioner against his conviction and sentence passed by the Summary Security Force Court (for short "SSFC") under the Border Security Force Act, 1968.

2. Brief facts which are necessary to dispose of this petition are recapitulated as under.

3. The petitioner was enrolled in the BSF as Constable/Radio Operator on 9.3.1989. Thereafter, he was promoted on 15.9.1990 as Naik/Operator.

4. On 6.10.1995 at 1 p.m. he requested his immediate superior Sub Inspector (S.I.) Suresh Chand to forward his application to the higher authorities for sanction. He refused to do so. It is alleged that the petitioner was quite upset with the reply of S.I. Suresh Chand and he caught him by his neck and pushed him in the presence of other personnel. This of course is denied by the petitioner.

5. Sub Inspector Suresh Chand proceeded for border on 7.10.1995. He came

back on 9.10.1995 and was summoned by his superior Assistant Commandant M.A. Sayeed and he asked him to give a written complaint regarding the incident. The Summary Security Force Court trial was held and the petitioner was asked to nominate a suitable officer as his friend to assist him at the trial. He forwarded the name of Shri Ramanand, Assistant Commandant, but the officer was on leave. The petitioner was asked to nominate another person on 20.3.1996. On the same day, he nominated S.I. D.K. Joon as a friend of the petitioner and after some time the trial of the Summary Security Force Court started. The entire trial was concluded in one sitting and the petitioner was found guilty. He was convicted and dismissed from service.

6. Against the dismissal, the petitioner filed a statutory complaint which was dismissed by the Director General, BSF. The petitioner aggrieved by that order has preferred this writ petition on several grounds.

7. The petitioner has prayed that the order of respondent No.2 rejecting his statutory petition challenging the validity of the impugned trial, conviction and sentence be quashed and the petitioner be given all consequential benefits. According to the petitioner the trial court proceedings are also liable to be quashed being biased and prejudiced.

8. Show cause notice was issued and in response to that a counter affidavit was filed by Shri K.S. Walia, Deputy Inspector General, BSF. He mentioned about the antecedents of the petitioner. According to him the petitioner was not a disciplined official and was reprimanded and punished on earlier occasions also. In the counter affidavit it is not denied that though the incident took place on 6.10.1995 but the complaint was only filed on 9.10.1995.

9. It is also not denied that the respondents had earlier nominated M.A. Sayeed as a friend of the petitioner to help him in the trial. According to the petitioner the complaint was lodged at the behest of M.A. Sayeed and according to the petitioner he was unkindly disposed towards him. On petitioner's objection M.A. Sayeed was changed and the petitioner gave the name of Ramanand, Assistant Commandant, but he was on leave. The petitioner was asked to nominate another officer. On 20.3.1996 the respondents nominated S.I. D.K. Joon as a friend of the petitioner. After some time trial of Summary Security Force Court began and was concluded on the same date. The petitioner was found guilty of the charges and was convicted and dismissed from service.

10. It has also been submitted on behalf of the petitioner that there has not been accurate recording of the proceedings in the trial. It has also come in the evidence that the complaint was lodged at the behest of Assistant Commandant M.A. Sayeed.

11. The learned counsel for the petitioner has drawn my attention to two most significant aspects of this case -

(1) When the incident admittedly had taken place on 6.10.1995 then why was

the complaint not filed on 6.10.1995 itself or immediately thereafter? Delay of three days in filing the complaint is quite significant and material in this case, particularly, when it has come on the record of evidence and proceedings that the complaint was lodged on the direction of M.A. Sayeed, Assistant Commandant.

(2) Whether there has been any compliance of the principles of natural justice in the instant case? On 20.3.1996 the petitioner was asked to nominate his friend to help him at the trial. When he objected to the appointment of M.A. Sayeed as his friend, then S.I. D.K. Joon was nominated as his friend and after some time on the same day the trial began and got concluded on the same day.

12. The learned counsel for the petitioner submitted that the petitioner had very little time to prepare his defense with S.I. D.K. Joon. The petitioner's mental make up must be comprehended in proper perspective. He was in custody of the respondent at the relevant time. It is urged on behalf of the petitioner that he himself is not a highly educated or a learned person. He is a soldier of an average intelligence. Neither he can be expected to explain his case and prepare entire defense of the case in such a short period nor S.I. D.K. Joon is expected to fully comprehend the case of the petitioner and properly defend him in such a short period. In all fairness and in consonance with Rule 63 of the B.S.F. Rules, 1969 and with the principles of natural justice, the petitioner ought to have been given some reasonable time so that he could understand and comprehend the case of the petitioner and prepare his defense with the help of his friend, S.I. D.K. Joon for the trial. Rule 63 of B.S.F. Rules, 1969 reads as under:

63 Preparation of defense by the accused:

(1) An accused, who has been remanded for trial, shall be afforded proper opportunity for preparing his defense and shall be allowed proper communication with his defending officer or counsel and with his witnesses.

(2) A defending officer shall be appointed to defend an accused who has been remanded for trial unless the accused states in writing that he does not wish such an appointment to be made.

(3) If the prosecution is to be undertaken by a legally qualified officer or by a counsel the accused shall be notified of this fact in sufficient time to enable him, if he so desires, to make arrangements for a legally qualified officer or counsel to defend him.

(4) As soon as practicable after a decision has been taken to place the accused on trial and in any case, not less than four days before his trial he shall be given:

(a) a copy of the charge-sheet;

(b) an unexpurgated copy of the record or abstract of evidence showing the passages (if any), which have been expurgated in the copy sent to the senior member;

(c) notice of any additional evidence which the prosecution intends to adduce; and

(d) if the accused so desires, a list of the ranks, names and units of the members who are to form the Court and of any waiting members.

(5) When an accused is given a copy of the charge sheet and of the record or abstract of evidence in accordance with this rule, he shall:

(a) have the charge explained to him; and

(b) be informed that, upon his making a written request to his Commandant not less than twenty four hours before his trial requiring the attendance at his trial of a witness (other than a witness for the prosecution) whom he desires to call in his defense (such witness to be named by him), reasonable steps will be taken in accordance with these rules to procure the attendance of any such witness at his trial.

(6) The provisions of sub-rules (2) and (3) shall not apply in relation to a trial before a Summary Security Force Court and in relation to such a trial the period of four days referred to in sub-rule (4) shall be construed as twenty four hours.

13. The learned counsel for the petitioner submitted that the entire trial was initiated and concluded on the same date or perhaps in one sitting. In a given case the trial may start and conclude on the same date, but in the facts and the circumstances of this case, when the friend of the accused was appointed on 20.3.1996 and the trial started and concluded on 20.3.1996, then lurking suspicion that the petitioner did not have fair trial acquires greater credibility. Whether the petitioner has been treated fairly or had a fair trial according to the legislative intention articulated in Rule 63 of the B.S. F Rules, 1969 and also in consonance with the principles of natural justice.

14. The respondents had produced the proceedings of the Summary Security Force Court. I have carefully perused the proceedings of the Summary Security Force Court and heard the learned counsel for the parties at length.

15. The learned counsel for the respondents has submitted that in view of the judgment of this Court in Sukhwinder Singh vs. Union of India 1996 IV AD (Del) 673 this writ petition is not maintainable. In that judgment learned Single Judge mentioned that since everything in the matter took place in the territories of the State of Jammu & Kashmir, this Court has no jurisdiction to entertain the petition. The earlier judgment of this Court in Girwar vs. Union of India and others 1982(2) AISLJI 56 delivered by Hon"ble Mr. Justice B.N. Kirpal was not brought to the notice of his Lordship. In the said judgment his Lordship observed that "Under Article 226(1) this Court has jurisdiction to issue a writ against the Union of India. Prior to the insertion of sub-Article (2) it was only the Punjab High Court, at that time, which had the jurisdiction to issue writs to Union of India as had been held by the Supreme court in the case of Election Commission, India Vs. Saka Venkata Subba Rao and, and K.S. Rashid and Son Vs. The Income

Tax Investigation Commission etc., ". The Court also observed that "at that time some of the High Courts were of the opinion that where the cause of action arose writ petition could be filed in those High Courts also. This view was not approved by the Supreme Court. Subsequently Article 226 was amended and sub-Article (2) was inserted. In the statement of objects and reasons as well as in the notes on clauses it was stated that the amendment was being made so that when any relief is sought against any Government the High Court within whose jurisdiction the cause of action arose may also have jurisdiction to issue appropriate directions, writs or orders. It is for this reason that in sub-Article (2) the word used is "also" which clearly shows that the jurisdiction conferred by sub-Article (2) in addition to the jurisdiction conferred on the Courts under Article 226(1). In other words, with regard to writ petitions against the Union of India it is not only the High Court within whose jurisdiction the cause of action arose which would have jurisdiction to entertain the petition but this Court would also have jurisdiction to entertain such a petition under Article 226(1). The jurisdiction of this Court is not ousted by reason of the insertion of sub-Article (2) of Article 226."

16. Similar view has also been taken by the Division Bench of the Calcutta High Court in the matter of Ananta Kumar Dutta Vs. Land Revenue Officer II Estates Acquisition Branch, Nadia, . The Court observed that "Before we part with this case, we may dispose of the objection taken on behalf of the respondent No.3 as to the jurisdiction of this Court to entertain the writ petition. It is found by the learned Judge that this Court has jurisdiction to entertain and hear the writ petition. It is true that no part of the cause of action has arisen within the territorial jurisdiction of this Court but, as the learned Judge points out, as all the respondents are within the State of West Bengal, the writ petition is quite maintainable in this Court."

17. In the present writ petition all the respondents are within the territorial jurisdiction of this Court. Apart from this in view of the language of Article 226 of the Constitution and the settled position of law, I am of the considered view that the writ petition filed by the petitioner is maintainable.

18. The learned counsel for the respondents submitted that even on merit the petitioner has no case which warrants interference by this Court under Article 226 of the Constitution. It was also urged that against conviction petitioner's statutory appeal was also rejected and looking to the gravity of the offence no interference is called for.

19. It has been now well settled that army personnel are not denuded of their fundamental rights even while they are in service except in extremely exceptional circumstances. The principles of natural justice are equally applicable to them because they do not cease to be the citizens of India.

20. Both these facts cast serious doubt on the veracity and credibility of the incident and the fairness of the trial. When on 20.3.1996 D.K. Joon was

appointed as the friend of the accused, then in all fairness reasonable time ought to have been given to him to prepare the case and help the petitioner in the true sense. The trial of Summary Security Force Court is not merely an empty formality to accomplish a particular result. Fairness and impartiality are absolutely imperative for any trial. The fact that the trial had begun on 20.3.1996 and was concluded on the same date in the facts and circumstances of this case clearly gives the impression that the fairness and impartiality in the conduct of the trial was missing and the petitioner was denied a fair trial. In conclusion it can be safely said that the petitioner has been denied a fair trial in this case, which is the basic requirement of Article 21 of the Constitution.

21. In this view of the matter, this petition is allowed and the order passed by respondent No.2 rejecting the petitioner's statutory complaint is accordingly set aside. The proceedings of the Summary Security Force Court, the conviction and sentence awarded to the petitioner are set aside. The petitioner is consequently entitled to reinstatement in service with all consequential benefits.

22. This petition is accordingly allowed and disposed of.