

**(2008) 05 DEL CK 0195**

**In the Delhi High Court**

**Case No :** Writ Petition (C) No. 5714 of 2007

Mahender Singh (Ex. Const)

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

**Date of Decision :** 12-05-2008

**Acts Referred:**

Border Security Force Act, 1968 — Section 117

Border Security Force Rules, 1969 — Rule 142, 142(2)

**Citation :** (2008) 104 DRJ 749 : (2008) ILR Delhi 11 Supp

**Hon'ble Judges :** Sanjay Kishan Kaul, J; Mool Chand Garg, J

**Bench :** Division Bench

**Advocate :** Bishram Singh, for the Appellant; Barkha Babbar, for the Respondent

## Judgement

Sanjay Kishan Kaul, J.—Rule D.B.

2. At request of learned Counsel for the parties, the petition is taken up for final disposal.

3. The petitioner was enrolled as a Constable in BSF on 1.10.1992. When the petitioner was deputed on duty on 25.10.1992, an incident took place resulting in a charge sheet against the petitioner dated 8.12.2003. A record of evidence was prepared wherein the petitioner denied the allegations and claimed that it was SI Chattar Singh and HC Bala Ram who had abused the petitioner and assaulted him. On a fresh charge sheet dated 30.5.2004, Summary Court Force proceedings were held. On 7.6.2004, the petitioner is alleged to have pleaded "guilt" to the first three out of the four charges while pleading "not guilty" to the fourth charge.

4. The evidence was recorded on the fourth charge and the petitioner was held guilty of all the four charges and imposed with a sentence of dismissal from service. The DIG, BSF, however, while upholding the conviction on the first three charges set aside the conviction on the fourth charge being against the weight of evidence but did not interfere with the sentence.

5. The petitioner aggrieved by the said order filed a statutory petition before the DG, BSF which was rejected by an order dated 16th/17th December, 2004. The petitioner then filed a review petition which was rejected on 1.3.2006.

6. The petitioner thereafter approached this Court by W.P.(C) No. 8100/2006. The said writ petition was partly allowed by the orders of the Division Bench dated 6.3.2007 whereby the two orders dated 16th/17th December, 2004 and 1.3.2006 were set aside and the Director General, BSF was asked to consider afresh the statutory petition filed by the petitioner in terms of Section 117 of the BSF Act, 1968 (hereinafter referred to as the "said Act") and pass appropriate orders, The Director General, BSF was also directed to examine the question of proportionality of sentence.

7. The Director General, BSF, thereafter passed an order dated 10.5.2007 wherein he has found that there was sufficient evidence on record to sustain the findings of the Court on all the three charges and there was no infirmity or illegality in the trial proceedings. The petitioner has thereafter filed the present petition.

8. The proceedings of the SSFC has been produced before us. The proceedings show that the petitioner initially in his written statement and the ROE claimed that he was not guilty of any of the charges. The proceedings of the SSFC, however, record the plea of "guilty". Thereafter, six witnesses were examined to prove the fourth charge where the plea of "not guilty" had been entered by the petitioner. It is thereafter that further proceedings of the plea of "guilt" with respect to first, second and third charge has been recorded and it is noted that before recording the finding, the Court has explained to the petitioner the meaning of pleading guilty and that he understands the nature of the charges. The tenor of what is recorded is almost verbatim of what is required as per Rule 142 of the Border Security Force Rules, 1969 (hereinafter referred to as the "said Rules"). Rule 142 reads as under:

142. General plea of "Guilty" or "Not Guilty".--(1) the accused person's plea of "Guilty" or "Not Guilty" (or if he refuses to plead or does not plead intelligibly either one or the other), a plea of "Not Guilty" shall be recorded on each charge.

(2) If an accused person pleads "Guilty", that plea shall be recorded as the finding of the Court; but before it is recorded, the Court shall ascertain that the accused understands the nature of the charge to which he has pleaded guilty and shall inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty, and of the difference in procedure which will be made by the plea of guilty and shall advise him to withdraw that plea if it appears from the record or abstract of evidence (if any) or otherwise that the accused ought to plead not guilty.

(3) Where an accused person pleads guilty to the first two or more charges laid in the alternative, the Court may after Sub-rule (2) has been complied with and before the accused is arraigned on the alternative charge or charges, withdraw

such alternative charge or charges as follow the charge to which the accused has pleaded guilty without requiring the accused to plea thereto, and a record to that effect shall be made in the proceedings of the Court.

(emphasis supplied)

9. Learned Counsel for the petitioner has pointed out that as per Sub-rule (2) of Rule 142 of the said Rules, the plea of "guilt" shall be recorded but "before it is recorded", the accused is to be put to the necessary notice. It is thus pleaded that, firstly, the plea of "guilty" on part of the petitioner is wholly improbable in view of the earlier proceedings in ROE and his written statement and secondly no such caution as envisaged under Sub-rule (2) of Rule 142 of the said Rules was addressed to the petitioner and it is only after recording of evidence on the fourth charge that such a caution is claimed to have been extended. It is also noticed that there is no signature of the petitioner accepting the plea of "guilt" nor is the caution in the own handwriting of the person holding the SFC.

10. Learned Counsel for the respondents submits that the signatures of the petitioner are not necessary in view of the Division Bench judgment of this Court in Chokha Ram Vs. Union of India (UOI) and Another, and that there is no circular, unlike the Army, which requires the plea of "guilty" or "not guilty" to be recorded in the own handwriting of the SFC after extending the caution.

11. On hearing learned Counsel for the parties, we are of the considered opinion that the mandate of Sub-rule (2) of Rules 142 of the said Rules has not been satisfied in the present case. The caution should have been extended to the petitioner at the threshold itself before recording the plea of "guilty" of the petitioner and not in the form of a formality post-facto after recording, if any, the evidence in respect of the fourth charge where the petitioner pleaded "not guilty". The stand of the petitioner in the ROE as well his written statement also appear to belie with the stand of the respondents that the petitioner pleaded "guilty" to the first three charges.

12. We may also note that it is desirable that the Director General, JBSF, on a parity of the guidelines of the Army should issue instructions in respect of the manner of recording the plea of "guilty" because of the serious consequences which arise in such cases as also the environment in which the personnel are tried. The object is to ensure that both in letter and spirit, the mandate of the Rule is complied with and the accused person is fully conscious of the consequences of pleading guilty.

13. We are thus of the view that the plea of "guilt" as recorded in respect of the first three charges cannot be sustained and so far as the fourth charge is concerned, it has been found in favour of the petitioner.

14. The result of the aforesaid is that the impugned order dated 10.5.2007 is quashed and the plea of the petitioner should be entered as "not guilty" insofar as the first three charges are concerned. The respondents would be at liberty to

hold proceedings in respect of trying the first three charges in accordance with law. In view of the order dismissing the petitioner from service being set aside, the petitioner would be entitled to the consequential benefits.

15. The petition is allowed in the aforesaid terms leaving the parties to bear their own costs.