

(2023) 06 J&K CK 0020

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 1859 Of 2003

Mohd. Maqbool Hussain

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 08-06-2023

Acts Referred:

Border Security Force Rules, 1969 — Rule 8(3), 142(2)
Border Security Force Act, 1968 — Section 19(a), 19(b), 45

Citation : (2023) 06 J&K CK 0020

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Surinder Kour, Michael Singh Dogra, Vikas Sharma

Final Decision : Dismissed

Judgement

Sanjeev Kumar, J

1. The petitioner was enlisted in Border Security Force [“BSF”] as Cook vide 105 Bn BSF order No.Estt./105/Rectt/99/1657-62 dated 01.02.1999. The petitioner was later converted into Sweeper from Cook on his request vide 105 Bn BSF order dated 31.05.2000. While the petitioner was posted to 28 Bn BSF, he applied for and was granted 15 days casual leave w.e.f. 04.09.2001 to 20.09.2001 but he reported back in the Unit on 08.10.2001 after overstaying more than 18 days. The petitioner again proceeded on 10 days earned leave w.e.f. 29.10.2001 to 07.11.2001 and was directed to rejoin duty on 07.11.2001. The petitioner, however, did not rejoin duty and overstayed the sanctioned leave. The petitioner was time and again communicated to rejoin his duty but he did not respond. On completion of 30 days of his overstay, one man court of inquiry was ordered vide order No.11217-19 dated 07.12.2001 to ascertain the circumstances under which the petitioner had overstayed his leave. After completion of COI, a show cause notice was issued and the petitioner was provided an opportunity to join back but he did not join back his duty within the stipulated time but reported in the Unit on 03.02.2002 at his own after

overstaying leave of more than 88 days. The petitioner was heard by the Commandant on his reporting back under BSF Rules. Being not satisfied with the explanation tendered by the petitioner, Commandant ordered Record of Evidence vide order No.1571-72 dated 08.02.2002. After going through the Record of Evidence, the petitioner was put on trial before the Summary Security Force Court ["SSFC"], which was convened on 05.03.2002. The petitioner pleaded guilty and was sentenced "to be dismissed from service" w.e.f. 05.03.2002. It is this order of the respondents which is called in question by the petitioner in this petition.

2. The impugned order is assailed by the petitioner on numerous grounds. The grounds which were pressed into service by the learned senior counsel while arguing the matter on behalf of the petitioner may be summarized as under:-

i) That trial of the petitioner has been conducted in violation of the relevant provisions of the Border Security Force Act, 1968 and the Rules framed thereunder;

ii) That the petitioner has been convicted based on "plea of guilty" made by the petitioner whereas the fact remains that the petitioner never made any such plea nor did he sign any paper in acknowledgement thereof;

iii) The petitioner's dismissal from service is strikingly disproportionate to the established conduct;

iii) That the petitioner had tendered sufficient explanation to demonstrate the cause, which prevented him from joining back the duty immediately on the expiry of sanctioned leave.

3. On being put on notice, the respondents have filed their objections. It is submitted by the respondents that the entire laid down procedure was strictly followed and the petitioner was given adequate opportunity of being heard at all stages. It is submitted that the petitioner has a track record of remaining unauthorizedly absent from duty and has been reprimanded on many occasions. It is submitted that the petitioner was earlier convicted under Section 19(a) of BSF Act and was sentenced to 28 days rigorous imprisonment in force custody on 21.09.1999. He was again convicted for commission of offence under Section 19(b) of BSF Act and was sentenced to 07 days rigorous imprisonment in force custody on 17.07.2000. Again the petitioner was convicted under Section 19(b) of the BSF Act and sentenced to 14 days rigorous imprisonment in force custody on 20.10.2000. It is, thus, submitted that the petitioner is an incorrigible violator of the provisions of BSF Act and the Rules framed thereunder and overstaying leave and absenting without leave with impunity is virtually his habit.

4. Having heard learned counsel for the parties and perused the material on record, I am of the considered opinion that having regard to the past consistent bad conduct of the petitioner, punishment of "dismissal from service" awarded to the petitioner is befitting and cannot be said to be strikingly disproportionate to

the established misconduct.

5. I have gone through the original record produced by the learned counsel for the respondents and find that a good care has been taken by the respondents to adhere to the procedural and substantive provisions of the BSF Act and the Rules framed thereunder. The petitioner was charged under Section 19(b) of the BSF Act i.e. overstaying leave without sufficient cause. He was heard by the Commandant under Section 45 of the Act and the proceedings conducted by the Commandant reveal that the petitioner explained overstaying of leave by 88 days by stating that he had been threatened by militants not to join duties of BSF. He was specifically put a question as to whether he reported the matter to the concerned police station or nearest BSF camp, to which the petitioner did not reply. Having found the explanation tendered by the petitioner totally unsatisfactory, the Record of Evidence was ordered by the Commandant. Dy. Commandant of the Unit conducted the Record of Evidence. The Dy. Commandant recorded statements of couple of witnesses and gave due opportunity to cross-examine the same to the petitioner. The petitioner, however, declined to cross-examine any of the witness. Finally statement of the accused-petitioner after administering caution upon him under Rule 48(3) of the BSF Rules was recorded on 09.02.2002.

6. From a reading of the evidence, it is evident that the petitioner took two fold defence to justify overstaying of leave. He submitted that on 06.11.2001 when he went to the local market in Rajouri, an unknown person handed over a letter to him which the petitioner found to be a threatening letter by H.M. outfit. He further submitted that when he returned to his home in the evening, six armed militants entered his room and started beating him with sticks and rifle butts. They also warned him to leave BSF service and join militancy. He submitted that the militants continued beating him till he got unconscious. The militants also burnt his nail. Nowhere in his statement made during Record of Evidence, he has submitted even once that with regard to this incident he ever lodged report with the police or informed the nearest BSF camp. There is nothing in his statement made before the Dy. Commandant, who conducted ROE, which would show that due to alleged beating administered to him by the militants the petitioner was injured and remained under medical treatment anywhere.

7. The Dy. Commandant submitted the ROE to the Commandant, who, on perusal thereof, rightly came to the conclusion that the petitioner was liable to be tried by SSFC. Accordingly, SSFC was convened by the Commandant, 28th Bn, BSF vide his order dated 02.03.2002. The SSFC held its proceedings on 05.03.2002. On the written request of the petitioner, Sh. R.K.Joshi, Assistant Commandant (Tech) was nominated as friend of the accused-petitioner to assist him during his trial before the SSFC. The petitioner was medically examined and was found mentally and physically fit to undergo SSFC trial. Accordingly, the trial commenced, the petitioner pleaded guilty to the charge in the presence of his friend Sh. R.K.Joshi, Assistant Commandant. The Commandant has appended

requisite note making it clear that provisions of BSF Rule 142(2) are complied with in letter and spirit. The note indicates that not only the charge was read over and explained to the petitioner but he was also made to understand the nature of charge to which he pleaded guilty. The petitioner was also informed about the general affect of the plea of guilty and the difference in procedure which would be followed consequent upon such plea. It is only after recording its satisfaction the plea of guilty made by the petitioner was recorded. It is true that the petitioner has not signed the plea of guilty nor do I find signatures of the next friend of the petitioner, who was present during trial. However, having regard to the stand of the petitioner taken before the Commandant hearing charge under Section 45 of the BSF Act and the one taken during ROE before the Dy. Commandant, it is abundantly clear that the cause shown by the petitioner for overstaying the leave is only his ipse dixit. The plea of the petitioner that he was handed over a letter from HM outfit by an unknown civilian and that he was beaten by six armed militants and threatened not to join BSF, on the face of it, is not believable.

8. Indisputably, the petitioner has not lodged any complaint or FIR with the district administration of Rajouri or Police Station concerned. He has not even informed his employer or the nearest BSF Camp. The incident of six armed militants having entered the house of the petitioner and administering him beating was not something so small and inconsequential as could have been brushed aside by the petitioner. It was a matter concerning security of the entire area and the petitioner being a member of Border Security Force had the onerous duty of informing the police and nearest BSF post so that the militants, who allegedly attacked the petitioner could be nabbed. He kept silent and did not lodge any complaint or FIR. This itself speaks volume about the type of person the petitioner is. Though, no explanation is given by the petitioner that due to the beatings administered by the militants, he could not move from his place and assumed his duties, yet learned Senior Counsel appearing for the petitioner tried to supply this new twist to the story concocted by the petitioner and served through his petition.

9. On being asked by this Court as to whether the petitioner has any medical record in his possession to show that the petitioner was injured and remained under medical treatment in any hospital or other institution, there was no reply with the learned senior counsel. As a matter of fact, there could not have any reply, for, the petitioner has not, at any stage, set up this as a cause which prevented him from joining back his duties after expiry of leave. Viewed, thus, even if this Court were to agree with the learned senior counsel that the plea of guilty was not recorded following the due process of law, yet we find that the explanation tendered by the petitioner and the evidence produced by him before the authorities, even if taken to be correct and a gospel truth on its face value, does not constitute sufficient cause for overstaying the leave.

10. As is rightly pointed out by the learned counsel for the respondents that this

is not for the first time that the petitioner has overstayed his leave but he has been consistently remaining unauthorisedly absent from duty and has been reprimanded and punished three times earlier also.

11. On the conspectus of facts and circumstances and having gone through the original record produced by the respondents, I do not find any substantive or procedural irregularity committed by the respondents in awarding the punishment of "dismissal from service" to the petitioner.

12. In view of the above, the petition lacks merit, hence dismissed along with connected application, if any.