
(2009) 02 CAL CK 0077
In the Calcutta High Court
Case No : Writ Petition No. 23140 (W) of 2008

Mojafar Ali Mondal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 18-02-2009

Acts Referred:

Border Security Force Act, 1968 — Section 30(a), 40

Citation : (2009) 02 CAL CK 0077

Hon'ble Judges : Dipankar Datta, J

Bench : Single Bench

Advocate : M.K. Das and Mr. S. Das, for the Appellant; Gopa Roy, for the Respondent

Final Decision : Dismissed

Judgement

Dipankar Datta, J.—The petitioner was a member of the Border Security Force (hereafter the Force). He was tried by a Summary Security Force Court (hereafter the Court) pursuant to an order dated 20.11.2007 of the Commandant, 41 Bn. of the Force. The proceedings culminated in an order dismissing him from service. On a statutory petition dated 4.12.2007 filed by the petitioner challenging the order of dismissal from service, the impugned order was upheld and the petition rejected by an order passed by the Director General of the Force. The question that falls for determination on this petition is whether the order of dismissal from service passed against the petitioner on the basis of admission of the charges by him requires interdiction by this Court in exercise of writ powers.

2. The basic facts are not in dispute. On the basis of a report that the petitioner had committed offences under sections 30(a) and 40 of the Border-Security Force Act, 1968 (hereafter the Act), the charges against him were heard by the Commandant who directed for preparation of Record of Evidence (hereafter ROE) in terms of Rule 45 (2)(iii) of the Border Security Force Rules, 1999 (hereafter the Rules) read with Rule 48 thereof. The ROE having been prepared, charge-

sheet dated 18.11.2007 was issued against him containing three charges. The first charge related to unauthorized wearing of rank of a Sub-inspector of the Force by the petitioner on 23.08.2006 while returning from leave. The other charges related to his stealing Rs.2500/- and Rs.1600/- from two of his colleagues on 14.10.2006 and on 04.08.2006 respectively.

3. By an order dated 20.11.2007 issued by the Commandant, it was directed that the petitioner would be tried by the Court with effect from 21.11.2007 and he was placed under open arrest till conclusion of trial under Rule 38 of the Rules. In course of proceedings of the Court, the petitioner had pleaded guilty to the charges levelled against him. On such plea of the petitioner, the Court recorded as follows:

"The accused persons having pleaded guilty to the charges, the Court read and explains to the accused the meaning of that charge to which he has pleaded guilty and ascertains that the accused understands the nature of the charge to which he has pleaded guilty. The Court also informs the accused the general effect of that plea and the difference in procedure which will be followed consequent to the said plea. The Court satisfies itself that the accused understands the charge and the effect of that plea and the difference in procedure which will be followed consequent to the said plea. The Court satisfies itself that the accused understands the charge and the effect of his plea of guilty to the charge particularly the difference in procedure.

The provisions of BSF Rule 142 (2) are complied with".

4. The proceedings initiated against the petitioner culminating in the order dismissing him from service have been questioned by Mr. Das, learned senior counsel appearing for the petitioner firstly on the ground that provisions contained in Rule 143 of the Rules have not been followed. To buttress his contention, he relied on the decision reported in Cal LT 1999(2) HC 107 : Randhir Singh v. Union of India and submitted that even after the petitioner had purportedly admitted the charges evidence was required to be recorded in such manner as is recorded when a charge-sheeted member of the Force takes a plea of "not guilty":- No evidence having been recorded in terms of Rule 143(2) of the Rules, the same had the effect of vitiating the entire proceedings and, therefore, the final order of penalty dismissing the petitioner from service is non-est.

5. Secondly, he contended that since the petitioner had allegedly committed an offence while on leave, he ought not to have been tried by the Court in accordance with provisions contained in Rule 42 of the Rules.

6. Further, he contended that the plea taken by the petitioner that he was guilty of the charges was not a voluntary act on his part upon understanding the charges levelled but was occasioned because of an impression given to him that if he admitted the charges, he could get a reprieve. On such count too, the order of penalty is vitiated since in the process an admission was extracted from the petitioner not giving him the slightest hint that the same would form the basis of

termination of his service.

7. Next, it was urged by him that the petitioner did not have adequate and reasonable opportunity to defend himself in the proceedings and hence interference of this Court for rendering justice to the petitioner is warranted.

8. Lastly, it was submitted that the punishment inflicted is disproportionate.

9. In support of his submissions Mr. Das relied on the decisions reported in AIR 2003 SC 1974 : Shiv Parshad Pandey v. CBI, through Director, New Delhi, AIR 1987 SC 24 : Ran Singh Vs. State of Haryana and Others, .

10. Having considered the submissions made by Mr. Das, this Court finds no reason to interfere.

11. Since it has been contended that the proceedings stood vitiated for non-compliance of provisions contained in section 143(2) of the Rules, it would be worthwhile to note what it lays down. It reads thus:

"143(2) (a) After the record of the plea of "Guilty" on a charge (if the trial does not proceed on any other charges) the Court shall read the record or abstract of evidence and annex it to the proceedings, or if there is no such record, or abstract shall take and record sufficient evidence to enable it to determine the sentence, and the reviewing officer to know all the circumstances connected with the offence.

(b) The evidence shall be taken in the like manner as is directed by these rules in the case of a plea of "Not Guilty".

12. It is evident from a bare perusal thereof that after an accused pleads guilty on a charge the concerned Court is obliged to read the record or abstract of evidence and annex it to the proceedings. However, if there is no such record or abstract, the Court shall take and record sufficient evidence. The alternative duty which the Court is required to discharge is intended to achieve twin purposes viz. (i) to enable it to determine the sentence and (ii) to enable the Reviewing Officer to know all the circumstances connected with the offence.

13. In the present case, prior to commencement of trial before the Court, ROE was prepared in terms of provisions contained in Rules 45 and 48 of the Rules as would be evident from the order dated 20.11.2007 directing that the petitioner would be tried by the Court. It would also appear from the Court proceedings, being annexure "P-3" to the petition, that the ROE was read, translated and explained and on being marked "K" by the Court was signed, and thereafter the same was attached to the proceedings. Thereupon, questions were put to the accused for determining the quantum of punishment since he had been found guilty of the charges.

14. On a statutory petition filed by the petitioner, dated 4.12.2007, the entire proceedings were considered by the Director General of the Force. Upon threadbare consideration of the materials that surfaced during ROE proceedings

and the Court proceedings, the Director General rejected the petition being devoid of merit.

15. On a wholesome appreciation of the materials placed before this Court, there appears to be no scope to hold that Rule 143(2) of the Rules was not complied with.

16. The decision in Randhir Singh (supra) has been looked into. There the learned Judge interfered with the proceedings since on facts it was found that provisions contained in Rule 143(2) of the Rules had not been complied with. That is not the case here. This Court, however, would hasten to observe that if at all the decision in Randhir Singh (supra) purports to lay down a law that evidence has to be recorded even after an accused has taken the plea of guilty though ROE or abstract of evidence has been prepared in terms of Rules 48 and 49 respectively of the said Rules, that is not the correct exposition of law and this Court would respectfully disagree with such view on the authority of the Apex Court's decision in Chairman & Managing Director, Chairman and MD V.S.P. and Others Vs. Goparaju Sri Prabhakara Hari Babu, . Once the accused in disciplinary proceedings conducted by the department admits the charge levelled against him in unambiguous terms or does not say that any admission made by him earlier ought not to be acted upon, the enquiry may be closed and there is no requirement to prove the charges.

17. It was also contended that since the petitioner had committed misconduct while on leave, the case ought not to be tried by the Court. Though the offence comprising Charge I was committed by the petitioner while he was on leave, Charges II and III leveled against the petitioner relate to commission of offence while on duty and, therefore, the argument advanced has no merit.

18. The third point raised by Mr. Das is equally without merit. A vague allegation has been made in paragraph 10 of the petition that in course of proceedings on 21.11.2007 "he was given the idea that if he acknowledges the charges he would be pardoned". It has not been stated as to who gave the petitioner the said idea. In the absence of material particulars, this Court is not inclined to give any credence to such allegation. The petitioner had not annexed the statutory petition dated 4.12.2007 filed by him before the Director General to the petition. This Court looked into a copy of the petition, on the same being produced by learned counsel for the respondents, for finding whether such point was taken there or not or whether it is for the first time in the petition that such point has been raised. The petitioner took no such plea and this Court cannot but conclude that the plea has been raised as an after-thought.

19. Also, it appears that the petitioner was allowed the assistance of a sub-Inspector of the Force who participated in the Court proceedings as "friend of the accused". It is therefore difficult to hold that the petitioner had no reasonable opportunity to defend himself.

20. The last point that the punishment inflicted is disproportionate has been

urged to be rejected. The petitioner was a member of a disciplined force. The charges as framed and admitted by him shows that he had conducted himself in such manner that is unbecoming of a member of a disciplined force. There is no room for people like the petitioner to continue as a member of the Force.

21. The other decisions cited by Mr. Das have been looked into.

In *Ran Singh (supra)*, the Supreme Court interfered with the order of harsher punishment since on plea bargaining a lesser punishment had been awarded to the petitioner by no less than an officer of the rank of the General Manager. The fact situation in the present case is entirely different since there is no material on record to suggest that the petitioner had been encouraged to make a bargain plea.

In *Ravindra Kumar (supra)*, the issue was absolutely different. Whether termination effected by the employer was punitive or innocuous was the issue. The ratio laid down therein is of no assistance to the petitioner.

22. The decision in *Shiv Parshad Pandey (supra)* to the extent relied on does not advance the case of the petitioner. What would be the effective date of commencement of trial is the point that was under consideration. A finding was recorded that the trial had commenced without complying with the necessary requirements. That is not the case here. The Rules were duly followed and therefore the decision is also not of any help to the petitioner.

23. All the contentions raised on behalf of the petitioner fail. The writ petition being devoid of merit stands dismissed without any order as to costs.

Urgent photostat certified copy of this judgment, if applied for, be furnished to the applicant within 4 days from date of putting in requisites therefor.