
(1986) 11 GAU CK 0005
In the Gauhati High Court
Case No : Civil Rule No. 1319 of 1982

Nirmal Chandra Das

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 24-11-1986

Acts Referred:

Border Security Force Act, 1968 — Section 117, 117

Citation : (1987) 1 GLR 332

Hon'ble Judges : J.M.Srivastava, J and K.N.Saikia, J

Bench : Division Bench

Advocate : S.N.Chetia, P.Roy, Chand Mohammad , Advocates appearing for Parties

Judgement

Saikia, J.—The petitioner, a constable of 81 Bn. of Border Security Force seeks a writ of Certiorari quashing the impugned order of the Summary Security Force Court dismissing him from his service and the order of the Deputy Inspector General, Border Security Force, Headquarter Tripura rejecting the appeal there from and also the order of the Director General rejecting his. petition.

2. The petitioner was recruited as constable in the Border Security Force, briefly "the B. S. F," on 27.7.75 and at the relevant time the petitioner was posted to 81 Bn. B.S.F. at Salbegan and attached to "E" Company under Platoon No. 14. On a complaint of SubInspector J. K. Warhade of "E" Company, the Commandant, 81 Bn. put the petitioner under open arrest on 19.5.82 for committing an offence under section 20 of the Border Security Force Act, 1968, briefly "the Act" and issued a charge sheet on 19.5.82 charging him under section 20(a) of the Act for using criminal force to his Superior Officer, in that the petitioner while at Katigora on 7.5.82 beat up No. 800020976 SI J. K. Warhade of his Company (Annexure I to the petition). The petitioner states that Shri K. B. Gurung, Assistant Commandant recorded the evidence of the prosecution and defence witnesses including the petitioner and copies of the deposition were furnished to him, and that the Commandant tried the petitioner constituting the Summary Security

Force Court, briefly "the S.S.F. Court" and passed the impugned order of dismissal (Annexure 2 to the petition). The petitioner submitted a petition (Annexure 3 to the petition) under section 117 of the Act to the Deputy Inspector General who rejected the petition vide Annexure 4. Thereafter, the petitioner moved the Director General by a petition dated 14.8.82 which was also rejected vide Annexure 5.

3. Mr. P. Roy, the learned counsel for the petitioner assails the orders on several grounds, namely, that the Commandant had no jurisdiction to dismiss the petitioner; that the dismissal is violative of section 74 of the Act, that the trial was void being violative of the principles of natural justice as well as Rules 133, 138 and 145 of the Rules; that the sentence was not confirmed by competent authority; that the Deputy Inspector General did not apply his mind and did not give any reason while rejecting the petition against the order of dismissal; and that the Director General also did not apply his mind and give any reason for dismissing his petition, wherefore the orders are liable to be set aside.

4. Mr. S. N. Chetia, the learned Additional Senior Central Government Standing Counsel, refutes say submitting that the trial was held strictly in accordance with the prescribed procedure and observing the principle of natural justice; that the S. S. P. Court did not lack jurisdiction; 2nd that the order of dismissal is wholly in accordance with law. Mr. Chetia, however, has no answer to the submission that the Deputy Inspector General as well as the Director General did not give reasons for rejecting the petitions and the orders ex facie did not show any application of mind.

5. We find force in the last two submissions of Mr. Roy, as we find that the Deputy Inspector General did not indicate application of his mind and did not give reasons while rejecting the petition against the order of dismissal; and that the Director General also did not indicate application of his mind and give reason for dismissing the petition.

6. We have perused the petition under section 117 of the Act (Annexure 3 to the petition) and we find that all the other submissions of Mr. Roy have been urged in that petition, and we do not consider it proper to express our opinion on these submissions inasmuch as we are inclined to remand the petitions for fresh disposal.

7. The duty to provide official information and to give reasons for decisions is cast on the administrative authority to enable the Court to ascertain the facts on which administrative decisions were based. It is more so on the part of the tribunals and authorities constituted by statute to decide appeals to give reasons for their decision. The enlargement of judicial review of administrative action results in increasing readiness of the Courts to draw adverse inference from failure by administrative authorities to give reasons for their decisions and there has been the trend of increasing judicial scrutiny of the factual basis of administrative decisions. Judicial self-restraint requires the Courts to disclaim the

power to review any exercise of discretion where there is a policy element involved, and resist the temptation to pass judgment on issues of policy. It is true that there is no general rule of law that reasons must be given for all administrative decisions. In appropriate situation, however, there is an implied duty to state the reasons or grounds for a decision. A person charged with an offence must be adequately informed of the case he is to meet. Reasonable opportunity must be given to defend himself. If a right of representation or appeal is provided, he has to be allowed to exercise the right of appeal. The appellate authority has to act in accordance with law and reasons given must not disclose any error of law, and the reasons are to be given intelligibly and adequately to meet substance of the arguments advanced before it. Of course, failure to give reasons or to give adequate reasons is not in itself an error of law entitling the Court to set the decision aside, and if good and bad reasons for a decision are given, the decision should stand provided that the reasons are independent and severable. But where no reasons are given it is not possible for the Court to ascertain the justification of the order, or even to see whether it is arbitrary, perverse or otherwise invalid. Where the statute itself prescribes the procedure and the points to be considered, failure to do so renders the order liable to be set aside.

8. The petitioner was tried and sentenced by the S.S.F. Court. Under section 115 of the Act, the proceedings of every Summary Security Force Court shall, without delay, be forwarded to the officer not below the rank of Deputy Inspector General within whose command the trial was held, or to the prescribed officer, and such officer, or the Director General or any officer empowered by him in this behalf may, for reasons based on the merits of the case, but not on merely technical grounds, set aside the proceedings, or reduce the sentence to any other sentence which the Court might have passed. Section 116 of the Act provides for alteration of sentence or sentence in certain cases. Section 117 deals with remedy against order, sentence or sentence of Security Force Court and provides :

(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 of 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.

9. The petitioner submitted his petition under section 117 of the Act to the Deputy Inspector General who could, therefore, take such steps as might be

considered necessary to satisfy himself as to the correctness or legality or propriety of the order passed or as to the regularity of the proceeding to which the order related. Under subsection (2) of Section 117 of the Act, the petitioner, if aggrieved, could present the petition to the Director General which he did. Under section 118, the Central Government, the Director General, or any prescribed officer could annul the proceedings on the ground that it was illegal or unjust. It was therefore incumbent on the part of the Deputy Inspector General to have applied his mind and consider the grounds urged in the petition in accordance with law. There is no indication in the impugned orders of the Deputy Inspector General and the Director General rejecting the petition against the order of dismissal that the Deputy Inspector General was satisfied as to the correctness, legality or propriety of the order of dismissal or as to the regularity of the proceeding to which the order related. Same is the case with the order of the Director General rejecting the petition.

10. In *R.P. Bhatt vs. Union of India*, AIR 1986, SC 1040: 1986 Lab. I. C. 790, it has been held that the word "considered" in Rule 27 (2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1955 casts a duty on the appellate authority to consider the relevant factors set forth in clauses (a), (b) and (c) thereof and as there was no indication in the impugned order dismissing the appeal that the appellate authority was satisfied as to whether the procedural laid down in the Rules had been complied with and if not, whether such noncompliance had resulted in violation of any of the provisions of the Constitution or in failure of justice and also there was no finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record, it was held that there was noncompliance with the requirements of Rule 27 (2) and the impugned order was accordingly set aside. Applying the same ratio to the instant case, we set aside the impugned orders of the Deputy Inspector General and the Director General and remit the petition to the Deputy Inspector General for consideration and disposal afresh in accordance with law as expeditiously as possible, preferably within 2 months from the receipt of this order. It will be open to the petitioner to file petition to the Director General under section 118 of the Act, if the order of dismissal is confirmed by the Deputy Inspector General. This application is accordingly allowed and the rule made absolute to the extent indicated above. We, however, make no order as to costs. Send down the records forthwith.