

(2019) 08 CAL CK 0075

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 45 (W) Of 2016

Rajendra Prasad Tiwari

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 26-08-2019

Acts Referred:

Border Security Force Act, 1968 — Section 98

Border Security Force Rules, 1969 — Rule 48, 48(3), 48(4), 48(7)

Citation : (2019) 08 CAL CK 0075

Hon'ble Judges : Amrita Sinha, J

Bench : Single Bench

Advocate : D. K. Sengupta, Jaya Datta, S. Saha, B. Jha, S. Ghosh

Final Decision : Dismissed

Judgement

Amrita Sinha, J

The petitioner was a member of the Border Security Force (BSF). He joined the Force on 5th April, 1987 in the post of Constable. The petitioner was promoted to the post of Head Constable on 31st December, 2007.

A complaint was lodged against him on 28th September, 2014. In response to the said complaint the petitioner was summoned to appear before the Summary Trial Court on 4th October, 2014. The Summary Trial Court awarded the punishment by reducing the rank of the petitioner from Head Constable to Constable by an order dated 5th October, 2014. The petitioner being aggrieved with the said order preferred appeal before the appellate authority. By an order dated 19th October, 2015 the appeal preferred by the petitioner stood dismissed. Being aggrieved the petitioner has filed the instant writ petition.

The petitioner submits that the summary proceeding was conducted in a very hasty manner. He was not given proper opportunity to represent his case. The Summary Court wrongly appreciated the evidence and punished the petitioner simply relying upon the verbal evidence of the complainant.

It has been contended that the past conduct of the petitioner was taken into account for imposition of the punishment. As the petitioner had already suffered the punishment in respect of his past offences, accordingly the same ought not to be taken into consideration for imposition of punishment in the instant case as the same will amount to double jeopardy. The petitioner has prayed for quashing the impugned order dated 19th October, 2015 passed by the appellate authority and to allow the petitioner to serve as Head Constable.

The learned advocate appearing on behalf of the respondents submits that the petitioner was given proper opportunity to defend himself. The principle of natural justice was duly complied. There is a very limited scope of judicial review. The High Court cannot sit in appeal over the punishment that has been imposed against the member of the Force.

After hearing the submissions made on behalf of both the parties it appears that upon receipt of the complaint against the petitioner the respondents have recorded the evidence of the petitioner as per Rule 48 of the Border Security Force Rules, 1969. The evidence of the witnesses was also recorded. The petitioner had the opportunity to cross-examine the witnesses. As many as five witnesses deposed against the petitioner. The petitioner cross-examined only one witness and declined to cross-examine the rest. The signature of the petitioner was recorded after taking the evidence of each witness. The statements of the witnesses had been read over and explained to the petitioner in Hindi and the petitioner put his signature after recording of each evidence.

After the witnesses have been examined the petitioner was given an opportunity to make his statement in accordance with Rule 48(3) of the said Rules.

The petitioner categorically denied making any such statement. The petitioner was given opportunity to produce witnesses in his support in accordance with Rule 48(4) of the said Rules. The petitioner refused to call any witness in his defence. The certificate was signed by the officer recording the evidence according to Rule 48(7).

By an order dated 5th October, 2014 the petitioner was imposed the punishment of reduction of rank from Head Constable of Constable. The petitioner was given an opportunity to prefer appeal before the higher authority if he felt aggrieved by the said order. The petitioner accordingly preferred appeal against the said order. The appellate authority considered the appeal of the petitioner and affirmed the order that was passed by the Security Force Court.

The appellate authority took into consideration the fact that the petitioner was earlier punished on five occasions for indiscipline. The grievance of the petitioner is that the punishment imposed on earlier occasion has already been served by him and accordingly the same ought not to be taken into consideration for imposing the punishment in the present case. The said submission of the petitioner does not have any merits, as, according to Section 98 of the BSF Act, 1968 the evidence of previous convictions and the general character of the

member can be taken into consideration by the Security Force Court for the purpose of imposition of punishment.

It is settled law that High Court cannot act as the appellate authority of the order passed by the disciplinary authority, nor can it re-appreciate the evidence. Nothing apart from the decision making process is open for review.

It appears that the authorities have conducted the trial strictly in accordance with the Border Security Force Act, 1968 and the corresponding Rules of 1969. The evidences of the petitioner as well as the other witnesses were duly recorded. Principles of natural justice have been complied. There is no infraction in the decision making process. The punishment imposed neither appear to be disproportionate nor does it shock the conscience of the Court. There is very limited scope of judicial review. There is no reason to interfere with the order impugned in the instant case.

The writ petition fails and is liable to be dismissed.

W.P. No. 45 (W) of 2016 is dismissed.

Urgent certified photocopy of this judgement, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.