
(2012) 06 MP CK 0009

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4364 of 2003

Ram Gopal Tiwari

APPELLANT

Vs

Director and Another

RESPONDENT

Date of Decision : 27-06-2012

Acts Referred:

Border Security Force Act, 1968 — Section 117, 117(2), 12, 48, 53
Constitution of India, 1950 — Article 226

Citation : (2012) 3 MPLJ 699

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : Ashish Pathak, for the Appellant; Kanak Gaharwar, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Trivedi, J.—By this petition under Article 226 of the Constitution of India the petitioner has called in question the order dated 18-4-2001 (Annexure-P-1) by which he was dismissed from service after summary trial held by Summary Security Force Court. The petitioner who was employed as Constable in the Border Security Force on 15th December 1981, at the relevant time was posted in Jammu and Kashmir in 120 Battalion "B" company R. S. Pura Jammu. He was issued a charge-sheet on 5-11-2000 making allegations to the effect that the petitioner on 3-11-2000, while was on sentry duty assaulted senior officer Subedar Mehngaram. It was alleged that the petitioner was found under the influence of intoxication on 2-11-2000. Thereafter, the statement of witnesses were recorded in the inquiry in the presence of the petitioner and since such witnesses have deposed categorically against the petitioner, a report was submitted before the competent authority. The competent authority i.e. the Commandant passed an order on 16th April, 2001 directing that the trial be conducted against the petitioner before the Summary Security Force Court and for the said purposes the date was fixed on 18th April, 2001. By letter of the even date the petitioner was informed that he could engaged a defence counsel

as per the list or if no such request is made, a friend of the accused will be arranged by the department. On the same date a friend of the accused was appointed. The medical report obtained was produced before the Summary Security Force Court. The proceedings were done and as the petitioner was found guilty of the misconduct, the order was passed on 18-4-2001 itself imposing the punishment of dismissal from service with immediate effect. It is contended that the provisions of Act known as the Border Security Force Act, 1968 (hereinafter referred to as Act) and the Rules known as Border Security Force Rules, 1969 (hereinafter referred to as Rules) were not followed in appropriate manner in as much as proper opportunity of defence was not given to the petitioner and as such the order impugned is bad in law. It is contended that right to cross examine the witnesses was not afforded to the petitioner. The statement of witnesses recorded were not translated in the language understood by the petitioner, the medical report was not proved, the doctor who has medically examined the petitioner was not examined and as such no finding could have been given with respect to the guilt of the petitioner. Since this has not been done the order impugned is bad in law and is liable to be quashed. Refuting such allegation a return in detail has been filed by the respondents raising a preliminary objection with respect to availability of alternative remedy of filing representation before the Central Government. It is contended that u/s 117(2) of the Act no such representation was filed nor the petition was presented to the Central Government by the petitioner. It is contended that since statutory remedy was available which was not resorted to by the petitioner, the Writ Petition was not maintainable. On merits also it is contended that the petitioner was also present when the statement of witnesses were recorded. Abusive language used by the petitioner addressing the senior officer was duly proved and thus the allegations with respect to first misconduct was proved. As far as the other misconduct is concerned, since the medical report was positive, it is contended that such allegation was also found proved. It is contended that the petitioner being a member of the disciplinary force was responsible to maintain the high discipline and dignity but since it was not maintained by the petitioner in appropriate manner, ultimately the Summary Security Force Court has found misconduct of the petitioner proved and has proposed to impose the punishment of dismissal from service. The statement of witnesses were translated and explained to petitioner in the enquiry before the enquiry officer, but he did not wish to cross examine the witnesses. His statement was recorded and no objection was raised by him with respect to procedure adopted in enquiry. Apart from the aforesaid, it is contended that the previous service record of the petitioner was also not satisfactory inasmuch as he was awarded punishment on six occasions out of which on three occasions he was found under the influence of intoxication. This being so, it is submitted that the petition is liable to be dismissed.

2. An application I. A. No. 500-W/2004 has also been filed by the respondents raising the objection of territorial jurisdiction of this Court. The said application

was considered by this Court on 19-2-2004 and it was directed that same will be considered at the time of final hearing of the Writ Petition.

3. It would be necessary to decide such a preliminary objection raised by respondents with respect to territorial jurisdiction of this Court. The Apex Court placing reliance in the case of *Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another*, in paragraph 9 and 20 has held that the territorial jurisdiction of the High Court would depend on availability of cause of action. It is to be seen that if a part of cause of action is available within the territorial jurisdiction of any High Court that High Court would be entitled to invoke its extra ordinary jurisdiction under Article 226 of the Constitution of India. This particular aspect is to be examined in the light of various decisions rendered by the Apex Court as also by this Court in similar circumstances. Learned counsel appearing for the petitioner has vehemently contended that the law is well settled long back by a Full Bench decision of this Court rendered in case of *K.P. Govil Vs. Jawaharlal Nehru Krishi Vishwa Vidyalaya, Jabalpur and Another*, . It is contended that the cause of action would arise at a place where the order is made and also at the place where its consequences fall on the person concerned. This Court in case of *Mahadev Sailor Vs. Bharat Petroleum Corporation Ltd.*, has held that since the order of termination was communicated within the territorial jurisdiction of this Court, the part of cause of action was available within the territorial jurisdiction of this Court and therefore the Writ Petition was maintainable before this Court. It is further contended by learned counsel appearing for the petitioner that the Chief of Army staff is the highest authority of the army as the Director General of BSF in the present case and if it is held by the Apex Court that the Chief of Army Staff can be sued at any place. The same analogy would be applicable in case of Director General of BSF as is held by the Apex Court in the case of *Dinesh Chandra Gahtori v. Chief of Army Staff* . Drawing attention of this Court to the decision rendered in the case of *Ram Narain Singh Vs. Chief of Army Staff and Others*, , learned counsel for the petitioner has contended that since the order of termination was communicated to the petitioner at his residence within the State of Madhya Pradesh, as also within the territorial jurisdiction of this Court, the High Court would have jurisdiction to entertain the Writ Petition. Lastly it is contended that in the case of *Shubhkaran Vs. State of Madhya Pradesh*, the Division Bench of this Court has held that the Writ Petition before this Court would be maintainable. Thus, it is contended that the objection raised by the respondents by making an application aforesaid is liable to be discarded and ignored and IA is liable to be rejected.

4. For the purposes of considering these objections, it would be necessary to examine the scheme of the Act and the rules made thereunder. The Border Security Force Act, 1968 has been made with a purpose to constitute and regulate armed force of the union for ensuring the security of the borders of India and the for the matters connected therewith. The Act itself prescribes constitution of the force and condition of service of members of the force. Chapter III of the Act prescribed the offences and penalties thereof. A procedure

is also prescribed for imposition of such punishment as is enumerated in chapter IV of the Act. Apart from the punishment prescribed in section 48 of Chapter IV, minor punishment are prescribed in section 53, Specific provisions are made in chapter VI of the Act for the constitution of Security Force Courts. There are three types of such Courts namely General Security Force Court, Petty Security Force Court and Summary Security Force Court. The power of the Courts have also been prescribed and a procedure is laid down in chapter VII of the Act which is to be followed by the Security Force Court. Section 87 of the Act prescribes general rule as to the evidence, which is to be applied in all proceedings before Security Force Court. The order of punishment can be passed by the Courts. Section 117 of the Act prescribed remedy against order, finding or sentence of Security Force Court which read thus :--

117. Remedy against order, finding or sentence of Security Force Court. -- (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 proceedings 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.

5. Sub-section (2) of section 117 specifically prescribes that if any person is aggrieved by an order passed by the Security Force Court, may present a petition to the Central Government, or to the Director General or to any prescribed officer superior in command to the one who confirmed such finding or sentence. This being a statutory provision, the remedy of making petition is available. This has seriously been objected by the respondents that the petitioner has not resorted to such remedy and therefore his petition was not maintainable before this Court. Ordinarily on such an objection, the petition could have been disposed of with a liberty to the petitioner to approach the said authority by making a petition as prescribed. However, looking to the long pendency of the petition before this Court it is not deemed necessary that the petition may be dismissed.

6. The other objection raised by the respondents is with respect to the territorial jurisdiction of this Court. It is contended that the cause of action had arisen at the place where the Battalion in which the petitioner was employed at the relevant time was stationed. Since the cause of action had accrued out of the territorial jurisdiction of this Court, this petition would not be maintainable. As has been pointed out hereinabove, learned counsel for the petitioner has relied

on several decisions contending that part of cause of action had accrued within the territorial jurisdiction of this Court, therefore as per the law laid down the petition would be maintainable before this Court. The document Annexure-P-1 is examined in terms of the provisions of the Act. Section 12 of the Act prescribes that a certificate of termination of service is required to be issued and furnished by the officer under whose command the delinquent was subjected at the relevant time. It is not in dispute that the petitioner was present before the Summary Security Force Court when the matter was referred before the said Court on 18-4-2001. It is also not in dispute that the petitioner was heard by the said Court, therefore the proceedings were done on 18-4-2001 itself as was directed by Commanding Officer, as is clearly mentioned in the order dated 16-4-2001. Thus the order impugned was issued on the same date when the proceedings of Summary Security Force Court were held at the place where the 120 Battalion of BSF was stationed at the relevant time. This order was well within the knowledge of the petitioner. However, only the order in shape of certificate of discharge was sent for communication to the petitioner at his residential address and therefore it could not be said that the effect of the order was given at Rewa or at the place where the petitioner was residing at Rewa District within the territorial jurisdiction of this Court. He was already removed from service at the place where the Battalion at the relevant time was posted and therefore the effect of order was given at the place where the Battalion was at the relevant time stationed. Since the part of cause of action was also not available within the territorial jurisdiction of this Court, it cannot be said that such a Writ Petition could be filed before this Court. Secondly the petitioner has not made any petition under the provisions of sub-section (2) of section 117 of the Act before the Director General of BSF and no such order is passed on the said petition by the said Director General of BSF. Atleast nothing has been said in this respect in the petition nor any such order of the Director General of BSF is under challenge in this Writ petition, therefore the submission made by learned counsel for the petitioner that the Director General of BSF can be sued anywhere cannot be accepted. Infact the cause of action for such a challenge is not available on account of lapses on the part of the petitioner by not filing the statutory petition as prescribed u/s 117 of the Act. This being so, the law laid down by this Court, in the cases relied by learned counsel for the petitioner would not be attracted and the petition cannot be treated as maintainable before this Court. In the considered opinion of this Court since such writ petition is not maintainable, it would be futile to examine the submissions made by learned counsel for the petitioner on merits. Even otherwise looking to the scheme of the Act, if for the repeated misconduct the petitioner was dismissed from service simply instead of sentencing him for such misconduct as per the provisions of the Act, he should not be aggrieved. However, it will be open to the petitioner to approach the Director General of BSF by making a petition against the order impugned. No limitation for the said purposes is provided under the Act for filing of such petition and therefore if such a petition is filed, it would be necessary on the part of the Director General of BSF to decide the same on merits. The

petition being not maintainable before this Court is dismissed accordingly. However, there shall be no order as to costs.