

(2014) 02 DEL CK 0175

In the Delhi High Court

Case No : Writ Petition (C) No. 658 of 2005

Rama Kant Shukla

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 06-02-2014

Acts Referred:

Border Security Force Act, 1968 — Section 117 117(2) 117(2) 14 15
Constitution of India, 1950 — Article 226

Citation : (2014) 02 DEL CK 0175

Hon'ble Judges : Gita Mittal, J;Deepa Sharma, J

Bench : Division Bench

Advocate : R.K. Saini, for the Appellant; B.V. Niren, CGSC for R-1, for the Respondent

Final Decision : Dismissed

Judgement

Deepa Sharma, J.—The petitioner in this case was enrolled as a constable No. 860020697 in Border Security Force (hereinafter referred to as "BSF") on 10.07.1968 and after completion of his training course he was attached with 09 Battalion of BSF Artillery Battalion of 1011 BSF Artillery Regiment. In the year 1990, he had been attached with 09 Battalion, BSF at Bhuj, District Kutch in Gujarat and with effect from 1993 he was doing the duties at Gun area Kanzalwan in Kashtir under 18 Battalion, BSF, Artillery Battalion (Headquarter 1011 BSF Artillery Regiment). On 21.06.1995 in the barrack an incident had taken place at about 9 p.m. in which the delinquent had allegedly committed the offence under Sections 20(a), 20(b) and 20(c) of BSF Act. Accordingly, a charge sheet dated 25.7.1995 had been issued by Deputy Commandant, Officer Commanding, 1011, BSF, Artillery Regiment to the petitioner/delinquent for the following charges:

Charge Sheet

The accused No. 860020697 Const. Rama Kant Shukla of Arty Bat (HQ 1011 BSF Arty Regt), Charged with:

Charge - I

BSF Act 1968,

Section 20(a) Assaulting his superior Officer

In that he, at 2100 hrs on 21/6/95 at Gun Area Kanzalawan, when ordered by No. 66176566 Bimi Achla Ram for guard duty, cocked a loaded rifle and threatened to kill Jawans present in the barrack.

Charge - II

BSF Act, 1968

Section-20(b) Using Threatening Language to His Superior Officer

In that, at 2100 hrs on 21.6.95 at Gun area Kanzalwan, when ordered by No. 661761566 BHM Achla Ram of 18 Bty for guard duty, denied and shouted Meri Duty Kyon Lagate ho. Jab Mere Pair Men Chout Lagi Hui Hai, and Madar Chodo Khare ho Jao, Aaj Tumhe Khatam Kar Deta Hun. Main to Barbad Hua Lekin Tum Sab Lo Mar Kar Hi Dam Lunga.

Charge-III Using Unsubordinate Language to His Superior Officer.

BSF Act-1968

Section 20(c)

In that he at 2100 hrs on 21.6.95 at gun area Kanzaiwan, when ordered by No. 661761566 BHM Achla Ram for guard duty said Madar Chodo Khare ho Jao Aaj Tumhe Khatam Kar Data Hun.

2. Achla Ram No. 661761566 reported the incident to Sub Inspector Rajeev Singh under whose order the rifle of Rama Kant was deposited. The recording of evidence was done by Sh. Jagdish Prasad, the Assistant Commandant of the regiment. The petitioner had fully participated in the recording of evidence. Witnesses were duly cross-examined. The petitioner had not alleged any violation of rules and regulations during recording of evidence. Summary Security Force Court was convened by Officer Commandant of regiment. Thereafter on 23.02.1996 Deputy Commandant Officer Commanding the regiment S.S. Gehlot awarded the punishment of "dismissal from service" and the same had been delivered to the petitioner on 24.2.1996.

3. The petitioner thereafter filed a petition before the Allahabad High Court which was dismissed in limine vide order dated 20.01.2000 solely on the ground of availability of alternate remedy. The petitioner then presented his representation u/s 117 of BSF Act and on 20.2.2000 it was dismissed by Deputy Inspector General. Dismissal order was conveyed to the petitioner on 27.3.2000. The petitioner before this court, by way of this writ petition, has challenged his dismissal from service.

4. The first and foremost ground of challenge is that the Deputy Commandant who was Officer Commanding of his regiment had no power to grant the punishment of dismissal from service and the power vests in a Deputy Inspector General who is the competent authority and this power cannot be delegated. Reliance is placed on Pradyat Kumar Bose vs. The Hon"ble the Chief Justice of Calcutta High Court AIR 1956 SC 85.

5. The respondent has controverted this argument, arguing that under the BSF Act, the Commandant has the power to convene the SSFC and grant punishment of dismissal from service.

6. Before embarking upon the rival contentions, it is essential to bring on record the following relevant sections of BSF Act, 1968:

Section 2. Definitions.-

(1) In this Act, unless the context otherwise requires,-

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(f) "Commandant", when used in any provision of this Act with reference to any unit of the Force, means the officer whose duty it is under the rules to discharge with respect to that unit, the functions of a Commandant in regard to matters of the description referred to in that provision;

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(h) "Deputy-Inspector General" means a Deputy Inspector General of the Force appointed u/s 5;

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(n) "Inspector-General" means the Inspector-General of the Force appointed u/s 5;

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Section 5. Control, direction, etc. (1) The general superintendence, direction and control of the Force shall vest in, and be exercised by, the Central Government and subject thereto and to the provisions of this Act and the rules, the command and supervision of the Force shall vest in an officer to be appointed by the Central Government as the Director-General of the force.

(2) The Director-General shall, in the discharge of his duties under this Act, be assisted by such number of Inspectors-General, Deputy Inspectors-General, Commandants and other officers as may be appointed by the Central Government.

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Section 48. Punishments awardable by Security force Courts -

(1) Punishments may be inflicted in respect of offences committed by persons subject to this Act and convicted by Security Force Courts according to the scale following, that is to say:-

(c) dismissal from the service;

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Section 49. Alternative punishments awardable by Security Force Courts.-Subject to the provisions of this Act, a Security Force Court may, on convicting a person subject to this Act of any of the offences specified in sections 14 to 45 (both inclusive) award either the particular punishment with which the offence is stated in the said sections to be punishable or, in lieu thereof, any one of the punishments lower in the scale set out in section 48 regard being had to the nature and degree of the offence.

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Section 64. Kinds of Security Force Court.-For the purposes of this Act there shall be three kinds of Security Force Courts, that is to say:-

(a) General Security Force Courts;

(b) Petty Security Force Courts; and

(c) Summary Security Force Courts.

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Section 70. Summary Security Force Court.-(1) A Summary Security Force Court may be held by the Commandant of any unit of the Force and he alone shall constitute the Court.

(2) The proceedings shall be attended throughout by two other persons who shall be officers or subordinate officers or one of either, and who shall not as such, be sworn or affirmed.

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74. Power of a Summary Security Force Court.-(1) Subject to the provisions of sub-section (2), a Summary Security Force Court may try any offence punishable under this Act.

(3) A Summary Security Force Court may try any person subject to this Act and under the command of the officer holding the court, except an officer, or a subordinate officer.

7. From Section 70 of BSF Act, 1968, it is apparent that Commandant of a unit can hold a Summary Security Force Court and can try any person under his command (except an officer or a subordinate officer) for any offence punishable under the Act and can also award punishment of dismissal from service u/s 48(1) (c) of the BSF Act.

8. The case of Pradyat Kumar Bose (*supra*) relied upon by the petitioner is not relevant on the facts of the present case and the provisions of law governing the issue. The findings in that case were based on the laws governing the post of the Registrar of High Court of Calcutta, which are entirely different from the provisions of the BSF Act, 1968 and the BSF Rules, 1969.

9. "The Commandant" u/s 2(1)(f) of the BSF Act means an officer discharging the functions of a Commandant in a unit. Undisputedly, the Deputy Commandant was functioning as Officer Commanding of the petitioner's unit and was discharging all the duties of Commandant in respect of that unit. He was, thus empowered under BSF Act to hold the SSFC and award punishment of dismissal from service. In view of the express provisions of the Act, the arguments of the petitioner that the Commandant of the unit had no power to grant the punishment of dismissal, cannot be accepted.

10. In his next argument, the petitioner has raised a plea of bias and malafide and prejudice against his Deputy Commandant and Assistant Commandant. His contention is based on his two representations dated 20.4.1994 and 29.6.1994 to the DIG. Copies of the same are annexed as Annexure P1 and P2 respectively. He has further rested his plea on his contention that an application for the post of Assistant Commandant submitted by him on 16.2.1995 was, malafidely, with a view to frustrate his claim to the post, not forwarded by the Officer Commanding and the Assistant Commandant.

11. The respondent has admitted the making of the two representations dated 20.4.1994 and 29.6.1994 of the petitioner to the DIG but has submitted that the DIG had given an interview to the petitioner on his representations and the representations were thereafter dismissed. An extract of the interview register being the page No. 8 has been placed on our record by the respondent as a token of DIG's remarks.

12. It is further submitted that the petitioner was awarded two days' rigorous imprisonment in force custody on 2.3.1991 for absenting himself without leave and it was not a wrongful confinement. He was never ever on any other occasion confined to a room. So far as the application for the post of Assistant Commandant of the petitioner is concerned, it is pointed out that this was submitted only on 20.2.1995 and on the very next date, i.e. 21.2.1995, it was duly forwarded to the Artillery Head Quarter, New Delhi. There was thus no delay in forwarding the application form of petitioner.

13. The respondents submit that neither Jagdish Prasad, Assistant Commandant nor S.S. Gehlot, Deputy Commandant Artillery had any enmity, bias or prejudice against the petitioner. They had also never abused or beaten the petitioner. He was never forced to perform duty when he was sick. It is contended that it was the petitioner who had not been performing duties properly. This can be judged from his performance during the year 1989 to 1993 & remarks in this regard by his superiors. The list given by the respondent in the counter affidavit in this

regard reads as under:

1989 Supervision ki zarurat hai. Thoda apni duty men dhyan kam deta hai.

1990 As above.

1991 Should be kept under close watch. Seeks soft corner and leave seeker. Habitual of by passing the channel of command.

1992 Professionally poor, requires improvement in his professional knowledge. Seeks leave out of turn at many times in a year. Try to by pass the channel of command. Failed twice in Basic Gunnery Course.

1993 Professionally and physically very weak constable, he always try to avoid active duty on plea of sickness. He is leave seeker and use to take extension of leave on various false grounds of domestic problems. He is not loyal to his superior.

14. The petitioner in his rejoinder has not disputed that his representations dated 20.4.1994 and 29.6.1994 were rejected by DIG after an interview. Both the representations were disposed of on 28.8.1994, almost a year prior to 21.6.1995 the date of alleged incident. He has also not disputed his performance chart (annual remarks endorsed in his service book) during the period 1989-1993 and also the two punishments awarded to him in the year 1993 and 1994 u/s 20(c) and 19(6) of the BSF Act respectively.

15. The question under consideration thus is, whether it can be said under these circumstances that the Commanding Officer and recording Officer had acted with bias and prejudice.

16. The Hon"ble Supreme Court has defined the term "bias" in the case of State of Gujarat and Nar. Vs. Hon"ble Mr. Justice R.A. Mehta (Retd.) and Ors. reported in Civil Appeal Nos. 8814-8815 of 2012 and SLP (C) Nos. 2625-2626 and 2687-2688 of 2012 as under:-

The apprehension of bias must be reasonable, i.e., which a reasonable person would be likely to entertain. Bias is one of the limbs of natural justice. The doctrine of bias emerges from the legal maxim-nemo debet esse judex in causa propria sua. It applies only when the interest attributed to an individual is such, so as to tempt him to make a decision in favour of, or to further, his own cause.

While deciding upon such an issue, the court must examine the facts and circumstances of the case, and examine the matter from the view point of the people at large.

17. Again, the Hon"ble Supreme Court in the case titled as Chandra Kumar Chopra Vs. Union of India (UOI) and Ors. cited in Criminal Appeal No. 665 of 2002 after taking into consideration the law laid down in various authorities including Manak Lal Vs. Dr. Prem Chand, , Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, , A.K. Kraipak

and Others Vs. Union of India (UOI) and Others, , Dr. S.P. Kapoor Vs. State of Himachal Pradesh and Others, , Ranjit Thakur Vs. Union of India (UOI) and Others, , Crawford Bayley and Co. and Others Vs. Union of India (UOI) and Others, , S. Parthasarathi Vs. State of Andhra Pradesh, and Metropolitan Properties Company (F.G.C.) Ltd. Vs. Lannon (1969) 1 QB 577, 599 has summarised as under:-

22. From the aforesaid pronouncement of law, it is discernible that mere suspicion or apprehension is not good enough to entertain a plea of bias. It cannot be a facet of one's imagination. It must be in accord with the prudence of a reasonable man. The circumstances brought on record would show that it can create an impression in the mind of a reasonable man that there is real likelihood of bias. It is not to be forgotten that in a democratic polity, justice in its conceptual eventuality and inherent quintessentiality forms the bedrock of good governance. In a democratic system that is governed by Rule of Law, fairness of action propriety, reasonability, institutional impeccability and non-biased justice delivery system constitute the pillars on which its survival remains in continuum.

18. It is a cardinal principle of law that the person who contends bias against an individual must clearly put forward the cogent facts which constitute the bias. The petitioner's contention of bias is solely based on his above two antedated representations against Commanding Officer and Assistant Commanding Officer (Recording Officer). It is apparent that both the representations of the petitioner stood disposed of long before the date of alleged incident. Even the contents of his representations do not disclose any such facts which can remotely suggest that the Commandant or Assistant Commandant had a biased attitude towards him. The contents of the representations show that petitioner was complaining about the non-issuance of snow shoes and socks to him. He has nowhere stated that at that time he was on duty on snowy area. His representations includes a complaint by the Quarter Master to his Commanding Officer regarding a defective search light which he alleges was false and the Commanding Officer instead of hearing his plea, punished him with pack drill. It also states that he was sent late for his treatment and was given guard duty and was confined to Quarter guard.

19. If we judge the nature of allegations in the representations against the background of the annual remarks endorsed in the service book of petitioner during the year 1989-1993 which includes "Professionally and physically very weak constable, he always try to avoid for active duty on plea of sickness, he is leave seeker and used to take extension for leave on various false grounds of domestic problems, he is not loyal to his superior" of the year 1993; the remarks of previous years in his service book; the fact that he had been given two days rigorous imprisonment in force custody on 2.3.1994; the other facts relating to his punishment twice for offences u/s 20(c) and 19(6) in the year 1993 and 1994, it is apparent that his own conduct was not upto the mark.

20. The second representation dated 29.6.1994 of the petitioner also does not disclose any fact constituting bias against Commanding officer and Assistant

Commandant. It is general in nature wherein he had held the entire battalion would be responsible in the event of any casualty to his life. It seems he perceived threat to his life from each and every member of his regiment. Can it be said that the entire regiment was biased towards him? The answer has to be in the negative.

21. The facts disclosed in two representations do not constitute any bias against the Commanding Officer and the Assistant Commandant. Merely filing of representations (which were subsequently rejected a year prior to the SSFC) is not sufficient to constitute bias on the part of Commanding Officer and Assistant Commandant in the conduct of the SSFC.

22. The contention of the petitioner of alleged malafide on the part of Commanding Officer is based on his allegations that the Commanding Officer forwarded his application form for the post of Assistant Commandant late (last date being 28.2.1995). The petitioner has stated that he submitted his application on 16.2.1995. Whereas the respondent states that it was submitted on 21.2.1995 and forwarded on 22.2.1995. Even otherwise, the application had to travel the normal official route and it cannot be presumed that Commanding Officer had acted in a malafide or biased manner during this journey of the said application. This one incident is also not sufficient to infer bias or malafide on the part of Commanding Officer, specially where the proceedings of SSFC shows that the Commanding officer had acted in just and fair manner & had given full opportunity to the petitioner of hearing and participation in SSFC.

No reason is brought out as to why the respondents would give a wrong date of receipt of the application, even if we were to accept the petitioner's contention that there was delay in forwarding his application.

23. We find that during SSFC, petitioner reported sick, the trial was adjourned for one month on his request. When the petitioner complained of mental depression, the Commanding officer sought opinion from the psychiatrist of the Mental Hospital, Bhuj. It was only when the petitioner was declared mentally and physically fit, that his trial recommenced. This clearly shows that there was no element of bias or malafide on the part of Commanding Officer and Assistant Commandant and they had not acted with prejudice against him.

24. The next argument of petitioner is that despite his letter dated 3.8.1995, requesting the change of the recording officer who was recording evidence prior to the order of SSFC, it was not done, hence the trial is vitiated.

25. The respondents have denied having received any such application from the petitioner for change of recording officer. Even if we presume for the sake of argument that the recording officer was not changed despite petitioner's asking, is this fact sufficient to vitiate the trial? Before reaching any conclusion, it is necessary to understand the role of the recording officer in SSFC. The role of the recording officer is defined by this court in the case of Ct. Narender Kumar vs. Union of India (UOI) and Ors., W.P.(C) No. 2029/1998, relying on the findings of

the Supreme Court in Major G.S. Sodhi Vs. Union of India (UOI), has held as under:

47. As per the scheme of BSF Act, 1968 the Recording Officer is not the authority who is to adjudicate upon the innocence or guilt of an accused person with regard to the offence with which he is charged. The job of the Recording Officer is merely to record the evidence appearing against an accused in a given case based on which the Commandant may dismiss the charges framed against an accused; or rehear the charge and award one of the summary punishments to the accused; or try the accused by a Summary Security Force Court; or apply to a competent authority or officer to convene a court for the trial of the accused. In view of the fact that the Recording Officer is not the adjudicator of the innocence or guilt of the petitioners, the alleged apprehension of bias of Recording Officer Shailesh Kumar has no effect whatsoever on the trial of the petitioners. The derailment of Shailesh Kumar as the Recording Officer is neither an illegality nor is even an irregularity but at best is a mere impropriety on the part of the department which in no way affects the trial of the petitioners.

48. A somewhat similar situation arose before the Supreme Court in the decision reported as Major G.S. Sodhi Vs. Union of India (UOI), . In the said case, the petitioner was convicted by the Court Martial constituted under the Army Act. One of the contentions advanced by the petitioner before the Supreme Court was that the Officer who had ordered preparation of Summary of Evidence was biased against the petitioner. After noting that the said officer had no role to play in the trial of the petitioner and had not returned the finding of guilt of the petitioner, it was held that the allegations of bias levelled against the said officer do not affect the court-martial proceedings.

It therefore is clear that the role of recording officer is very limited.

26. Besides, we notice that the petitioner has nowhere contended that the evidence was not properly recorded by the recording officer or that he was not afforded proper opportunity to cross-examine the witness. From the evidence recorded by Assistant Commandant as recording officer it is apparent that the petitioner had duly cross-examined all the witnesses. He also made his statement which was recorded under BSF Rule 48 (3). The action of the respondents cannot be faulted simply because the petitioner made a request for change of the recording officer. In view of this settled position in law, we hold that the trial was not vitiated on this count.

27. The next contention of the petitioner is that he submitted the report of one Dr. Sanjay on 23.2.1996 who recommended that petitioner was suffering with serious mental disorder, before the SSFC but the court continued its proceedings and therefore the trial is vitiated. The respondent has controverted this fact and has stated that the petitioner had never disclosed to court that he was suffering with any mental disorder. He also did not produce any certificate to this effect before the court. It is brought to our notice that on receipt of information of

illness of the petitioner, he was referred to the CMO, 21st Battalion, BSF who in turn referred him to Psychiatry Specialist, Bhuj for opinion. The trial began only on receipt of the opinion of the psychiatrist of the hospital of mental health, Bhuj-Kutch, to the effect that the petitioner was medically fit to appear before the court.

28. The certificate of Dr. Sanjay Gupta produced by the petitioner did not show that petitioner was suffering from any mental disorder. In the rejoinder, the petitioner has conceded this contention while contending that Dr. Sanjay Gupta certified him as suffering with mental depression and advised him 10 days rest with effect from 20.2.1996. It is therefore apparent that although the petitioner has contended in writ petition that he was certified by Dr. Sanjay Gupta as a man suffering with mental disorder, in rejoinder he has conceded that Dr. Sanjay Gupta had only certified him suffering with mental depression. The medical condition of the petitioner was duly taken into consideration and opinion regarding his fitness including his mental health was sought. It is only after he was certified fit by the competent doctor that the court proceeded with the trial. From the record we find that the trial was initially scheduled to begin on 22.1.96 but was postponed for about one month on intimation of petitioner's illness.

It is thus apparent that respondents had acted in a fair and just manner.

29. The next line of argument of the petitioner is that the order of dismissal by the SSFC and the appellate court u/s 117 (2) is bad in law and violative of principles of natural justice as no reasons have been given by the said authorities, while convicting and punishing the delinquent. Reliance has been placed by the petitioner in support of his contentions in the following judgments Madan Singh vs. Union of India 1984 (3) SLR 424 (P & H), Airport authority of India & Vs. Rajbir Singh LPA 649-50/2005, Mazharul Islam Hashmi Vs. State of U.P. and Another, , Union of India and others Vs. Mohd. Ramzan Khan, . Learned counsel for the petitioner cited Nirmal Chandra Das vs. Union of India (However, he did not supply the citation or copy of this case law. The judgment could not be traced anywhere).

30. It is also argued that while disposing of the petition u/s 117(2) of BSF Act, he was not given any hearing and hence, the orders are liable to be set aside.

31. The contention of the respondent on the other hand is that there is no requirement under provisions of the Border Security Force Act and Rules thereunder for the SSFC to give reasons while giving findings of guilty or not guilty and that reasons are also not required to be given u/s 117(2) of BSF Act, 1968 while disposing the petition of the aggrieved delinquent. No personal hearing is also envisaged in the rules.

32. The sole question before us for consideration is whether under the BSF Act, SSFC is required to give reasons in support of its verdict and whether while disposing of the petition u/s 117(2) of BSF Act, the appropriate authority is required to give personal hearing as well as reasoned findings.

33. Chapter XI of BSF Rules, 1969 lays down the procedure to be followed by SSFC. Rule 149 (1) deals with the findings. The extract of relevant provision is as under:

Rule 149. Finding.- (1) The finding on every charge upon which the accused is arraigned shall be recorded and except as mentioned in these rules shall be recorded simply as a finding of "Guilty" or of "Not Guilty."

The bare reading of the above rule shows that the rule does not require SSFC to give reasoned findings. Rule requires SSFC to just record "guilty" or "not guilty" on every charge.

34. We have given due consideration to the case law relied by the petitioner and the relevant provisions of the BSF Act, 1968 and the BSF Rules, 1969. All issues raised before us have been authoritatively dealt with by Supreme Court. In the case of Union of India and another Vs. Ex Constable Amrik Singh, . In this case the Supreme Court, while dealing with the provisions under the BSF Act, has clearly held as under:

7. From the above discussion it emerges that in cases of special enactments like Army Act, all the principles of natural justice cannot be imported. The same ratio applies to a petition u/s 117(2) of the Act also. We may also point out here that Chapter XIII consisting of Rules 167 to 169 of the BSF Rules deals with petitions filed u/s 117 of the Act. Even in them there is nothing to indicate that a hearing has to be given before disposal of a petition.

8. As noted above, u/s 117(2) the respondent is only entitled to file a petition but the disposal of such a petition does not attract principles of natural justice. The respondent has been tried by observing the due process of law and the verdict of the Security Force Court was confirmed and it is only a post-confirmation petition that was filed u/s 117(2) of the Act and authority which disposed of the same is not a court and every order passed administratively cannot be subjected to the rigours of principles of natural justice.

It therefore is clear from the pronouncement that while disposing of the petition u/s 117(2), the concerned authorities are not required to give a hearing to the petitioner.

35. The same issue had again come up before the Supreme Court in a recent judgment in Union of India (UOI) and Another Vs. Dinesh Kumar, . In that case several appeals had been filed by the Union of India and the main contesting respondent in all those appeals were members of Border Security Force. The respondents had succeeded before the High Court which took the view that the orders passed by SSFC and the appellate authority were bad and illegal as there was no reason given by any of these authorities. On that count, the High Court directed remand in all matters to the appellate authority u/s 117(2) of BSF Act, 1989 for re-writing the order giving reasons in support of the conclusions reached by the same. While dealing with the said issue, the Supreme Court has

taken into consideration its findings in the case in *Som Datt Datta Vs. Union of India (UOI) and Others*, and *S.N. Mukherjee Vs. Union of India*, and held that in view of the scheme of SSFC in the BSF Act, 1968 and the BSF Rules, 1969, it is apparent that the SSFC proceedings simply require the recording of the finding of "guilty" or "not guilty" without giving reasons. Section 149(1) which relates to the SSFC expressly requires the authority not to give reasons. It is noted that though rule 99 (not relating to SSFC but to other courts under BSF Act) was amended making it necessary for courts to give reasons for finding, the statutory provisions relating to the SSFC were not amended. The court has clearly held that reasons are not required to be given by the SSFC under Rule 149 or by the appellate authority while considering an appeal thereafter u/s 117(2) of BSF Rules, 1969. It has been clearly held that Rule 99 of the BSF Rules, 1969 is not applicable to the proceedings of the SSFC and that Rule 149 of Chapter 11 of BSF Rules, which deals with the proceedings before SSFC does not require the SSFC to give reasons to its findings. The SSFC is simply required to give its verdict against the person charged as to whether he is guilty and not guilty of the charges.

36. Applying the principle laid down by the Apex Court in the case of Supreme Court *Dinesh Kumar (supra)*, it is clear that argument of the petitioner has no merit and the case law relied upon by the petitioner is of no help to him.

37. It is further argued by petitioner that he had been falsely implicated; that the incidents had not taken place in the manner narrated by respondents and that he is an innocent man. It is submitted that it was he who had been harassed with the filthy language without any reasonable ground. It is further submitted that on 21.6.1995 he was seriously sick when he was asked to attend a roll call. One Achla Ram came to bed of petitioner along with Budh Ram and one Pratap Singh who was also sitting near the cot of the petitioner. Achla Ram caught the neck of the petitioner, Pratap Singh was holding a stick and Budhram was assisting them in beating the petitioner and he had been falsely implicated in the alleged incident at Gun Area, Kanzalwan and baselessly charged. It is argued that the recording of evidence by Jagdish Prasad, Assistant Commandant is bad in law.

38. The respondent, on the other hand, has submitted that the incident was not concocted and that on 21.6.1995 at about 9 p.m. Head Constable Achla Ram No. 661761566 detained the petitioner on guard duty. The petitioner refused to perform the duty on the lame excuse of suffering from leg injury but actually he was not suffering with any leg injury and was not given any rest by the doctor. He abused and took out his rifle and after having charged the chamber of the rifle, threatened to kill them. Upon that the Battalion Havaldar Major (BHM) ordered that his rifle be snatched which was consequently snatched from the petitioner. The matter was reported to SI Rajiv Singh and the rifle of the petitioner was deposited in the Kote. Thereafter, the duty of the petitioner was assigned to L/NK Buddha Ram.

39. We have gone through the record, the statements of witnesses, who were

duly cross-examined by the petitioner. The petitioner did not lead any evidence. From the record it is apparent that the present case is not a case of no evidence against the petitioner. It is well settled law that this court in exercise of its jurisdiction under Article 226 of Constitution of India cannot sit as an appellate court over the findings of the SSFC. Since, charges stand fully substantiated by the evidence on record, it cannot be said that the petitioner had been found guilty in the absence of any evidence pointing out at his guilt. We find no reasons to interfere with the findings of SSFC and the Appellate Authority. The writ petition is hereby dismissed with no order as to costs.