
(2011) 02 UK CK 0045

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 300 of 2005

Ravi Chandra Singh Rana

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 19-02-2011

Acts Referred:

Border Security Force Act, 1968 — Section 19(a), 19(b), 20(a), 26, 40
Constitution of India, 1950 — Article 226

Citation : (2011) 1 UC 488

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Sri Sobhit Saharia, for the Appellant;

Final Decision : Dismissed

Judgement

Hon"ble Sudhanshu Dhulia, J.—The Petitioner was enrolled in the Border Security Forces on 20.7.1989 and after completion of training joined services on 5.5.1990. According to the Petitioner, while he was discharging his duties to the Border Security Forces at Nadia, West Bengal and Bangladesh Border on the intervening night of 30/31 December, 2003, he was charged for certain offences and thereafter his services were dispensed with an arbitrary and illegal manner. The Petitioner also alleges violation of certain rules applicable to his service conditions. Interestingly, the Petitioner has not challenged the order terminating his services nor any order which was passed subsequently in appeal or revision. The only prayer made by the Petitioner is a writ order or direction in the nature of certiorari to quash order dated 6.2.2005 passed by Respondent No. 3 (Annexure No. 5 to the writ petition). The order dated 6.2.2005 for which a certiorari is being sought, is only a letter sent by the Drawing and Disbursing Officer, 195. Battalion, Border Security Forces to the Petitioner stating that certain dues are payable to him, such as, G.P.F., etc. and therefore he should fill certain document and sign them so that final bill may be sent to the B.S.F. Headquarter, New Delhi for payment to him. Evidently, this letter dated 6.2.2005

(for which a certiorari is being sought) has been sent to the Petitioner at his permanent resident at Village Rondali, Post Odada, Tehsil Narendra Nagar, District Tehri Garhwal, Uttarakhand. From the averments made in the writ petition itself, it is clear that the Petitioner was aware that his services already stand terminated by the competent authority. Averments made in para 5 of the writ petition shows it clearly which states as under;

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It is pertinent to mention here that, on the above mentioned four charges the services of the Petitioner are allegedly dispensed with, without any iota of evidence whatsoever, in most arbitrary, illegal and irregular manner.

2. In its counter affidavit filed by the Union of India, it has been stated that while the Petitioner was in service of Border Security Force and posted at Indo-Bangladesh Border at Nadia, West Bengal, he was charged and awarded punishment on various occasions, a reference of which has already been made by them in their counter affidavit.

3. On December 30/31, 2003, the Petitioner was charged for conniving with certain smugglers and granting favours to them and thereafter manhandling a civilian and also without authority of law firing two rounds from his SLR. The precise charges against the Petitioner are as follows:

(Ist Charge) BSF Act SEC 40

In that they, together at area of Naka No. 1 of BOP Sahapur on night intervening 30/31 Dec 2003, at about 1815 hrs while doing patrolling cum ambush duty improperly omitted to exercise due care and caution over their area or responsibility as a result smuggler smuggled 04 bags of Garlic from Bangladesh to India.

(IIInd Charge) BSF Act SEC 40

In that they, together at Naka No. 1 of BOP Sahapur on 30.12.2003 at about 2120 hrs manhandled one civilian namely Jhantu Mondal, S/o Jhorukant Mondal, R/o Vill - Sahapur.

(IIIrd Charge) BSF Act SEC 26)

In that they, together at Naka No. 1 of BOP Sahapur on night intervening 30/31 Dec 2003 at about 2145 hrs found in state of intoxication.

(IV Charge) BSF Act SEC 40

In that he, at BOP Sahapur on 30 Dec 2003, at about 2130 hrs improperly and without authority fired 2nd from SLR of No. 86003672 LNK Harpal Singh Butt No. 47, Body No. EC-2839.

4. Thereafter a disciplinary proceeding commenced. Evidence was recorded and after giving an opportunity of hearing to the Petitioner, the Petitioner was found

guilty of charges and awarded a sentence of dismissal from services with effect from 1.1.2005. This order was promptly challenged by the Petitioner in a statutory appeal addressed to the Director General Border Security Forces, which was made on 5.1.2005. This appeal was examined and also rejected on merits. As already stated above, none of these two orders have been challenged by the Petitioner. Moreover, the Petitioner has also filed his rejoinder affidavit before this Court, where in reply to para 5 of the counter affidavit (on which these averments, as agitated above, have been made by the Respondents) the Petitioner in para 3 of his rejoinder affidavit has admitted the averments made by the Respondents. Paragraph 5 of the counter affidavit reads as follows:

5. That during entire service of the Petitioner in this unit, four punishments were awarded to him for his various indiscipline Acts:

I. 07 days RI in Force custody on 18.05.1993 - u/s 19(b) of BSF Act for overstaying leave granted to him without sufficient cause by 49 days.

II. 28 days RI in Force custody on 08.10.1996, u/s 40 of the BSF Act for disobeying the order of his superior officer and u/s 20(a) for catching hold of his superior officer by neck and threat to kill him by holding knife in his hand.

III. 14 days RI in Force custody on 16.01.1998 u/s 26 of BSF Act for intoxication.

IV. 14 days RI in Force custody on 07.05.1998 u/s 19(a) of BSF Act for absenting himself without leave for 28 days.

5. Precise paragraph 3 of rejoinder affidavit reads as under:

3. That the contents of paras 1,2,3,4 & 5 of the counter affidavit being the matter of record, need no comments.

6. In other words, the Petitioner has admitted the fact that he has been dismissed from services and against this order of dismissal he has filed a statutory appeal which also stood rejected. Since, these orders are not challenged before this Court, there is no occasion for this Court to say anything on the merits of this case. However, it is now apparent as to why these orders have not been challenged and why only order dated 6.2.2005 (Annexure 5 to the writ petition) has only been challenged. The reason is that by order dated 6.2.2005 which only asks the Petitioner to fill up certain documents so that his GPF, etc. was sent to the Petitioner at his Uttarakhand address. In other words, the Petitioner has filed this writ petition in order to show that "part of cause of action" arose in the State of Uttarakhand since he has received letter dated 6.2.2005 in the State of Uttarakhand.

7. It is clear that that the orders by which the Petitioner is actually aggrieved i.e. the order of dismissal dated 1.1.2005 and order dated 16.11.2005 passed in statutory appeal, have been passed by the authorities which are not situated in the territory of the State of Uttarakhand but in the State of West Bengal. No cause of action arose in the State of Uttarakhand, as the entire events i.e. the

events on which the Petitioner was charged, took place out-side the territorial jurisdiction of Uttarakhand and the orders were passed by the authorities outside the State of Uttarakhand.

8. First of all, even assuming for the sake of argument that letter dated 6.2.2005 has been received by the Petitioner in the State of Uttarakhand it will not constitute a part of cause of action, as stated under Article 226 of the Constitution of India. This Court in its earlier decision in Rifleman Narayan Singh v. Union of India and Ors. (Writ Petition (SS) No. 588 of 2006) decided on 7.11.2009 has observed as under:

It is true that after the amendment made in Article 226 of the Constitution, the jurisdiction would depend upon the "cause of action" or "part of cause of action" and not merely on the territorial aspect. However, it is the considered view of this Court merely because the Chief of the Army Staff, has passed the impugned order, which was received in the territory of Uttarakhand by the Petitioner, will not constitute "a cause of action", as stated under Article 226 of the Constitution of India.

9. The Petitioner, therefore, has not approached this Court with clean hands and this petition is liable to be rejected on this ground alone. However, there is another aspect of the matter, which as already referred above is the question of jurisdiction. Since no event has taken place in the territorial jurisdiction of Uttarakhand nor any "cause of action" or "part of cause of action" arises in the territory of Uttarakhand, this writ petition is not liable to be maintainable before this Court, for lack of jurisdiction.

Writ petition is liable to be dismissed and is hereby dismissed.

No order as to costs.