

(2015) 02 DEL CK 0035
In the Delhi High Court
Case No : Writ Petition(C) 4576/2014

Satnarain Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 25-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Prevention of Corruption Act, 1988 — Section 13(1) (e), 13(2)

Citation : (2015) 02 DEL CK 0035

Hon'ble Judges : Pratibha Rani, J.;Pradeep Nandrajog, J.

Bench : Division Bench

Advocate : Surender Singh Hooda, for the Appellant; J.S. Bhasin, Rashmi Priya and Nishant Solanki, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Pratibha Rani, J.—The petitioner is impugning the order dated March 28, 2013 passed by the Disciplinary Authority imposing the penalty of dismissal from service as well the order dated May 16, 2014 whereby the statutory petition filed by the petitioner was rejected.

2. The petitioner Satnarain was enrolled in BSF as Constable on January 20, 2008 and posted in 52 Battalion, BSF on January 06, 2009. During February 2011 the petitioner was deployed at Indo-Bangladesh Border at BOP Rajanagar of "A" Coy of 52 Battalion BSF when certain cases against unit personnel were noticed that they were indulged in crossing of cattle herds through smugglers. Vigilance Inquiry revealed deposit of Rs. 68500/- between February 17, 2011 to February 21, 2011 from SBI, Sagarpara Branch and SBI, Khagra Branch, West Bengal i.e. from the place the petitioner was deployed at that time, to saving account No.30026832947, SBI Mundka, Delhi (Code No.6814) .

3. The petitioner Ex-Constable Satnarain Singh of 52 Battalion BSF was attached with 91 Battalion BSF vide order No.Pers./31-E/Disc/52 Bn/2011/1452-60 dated March 17, 2011 on disciplinary grounds.

4. Commandant BSF directed preparation of record of evidence. On considering the ROE the petitioner was directed to be tried at Summary Security Force Court. Chargesheet was drawn and petitioner was charged as under :-

5. As at the stage of arraignment the petitioner pleaded not guilty to the charge, during trial following witnesses were examined:-

(i) SI (Min) G.Mortuza PW-1

(ii) Inspector Ram Mani Mishra PW-2

(iii) Mr.Tridib Kumar Bagchi, Branch Manager, SBI Sagarpara, Distt. Murshidabad (WB) PW-3

(iv) Mr.Dinesh Ratna Prodhan, Branch Manager, SBI Khagra, Distt. Murshidabad (WB) PW-4

(v) Mr.Om Prakash PW-5

(vi) Mr.Sunil Kumar Singh PW-6

6. Except Sh.Om Prakash PW-5, none of the above witnesses was cross examined by the petitioner. The petitioner has also preferred not to make any statement or examine any witness in his defence.

7. After considering the oral as well as documentary evidence, Summary Security Force Court held the petitioner guilty and punished him to pay a fine of Rs. 68,000/- and imposed the penalty of dismissal from service.

8. Statutory petition filed by the petitioner was duly considered by the respondent and was rejected vide a reasoned order dated May 16, 2014 observing that the petitioner had been found guilty of the charge after due appraisal of the evidence and after affording him opportunity to defence himself.

9. On behalf of petitioner, apart from oral submissions written submissions have also been filed. Mr.Surender Singh Hooda, Advocate for the petitioner has submitted that there is absolutely no evidence against the petitioner which called for his conviction visited by penalty of dismissal. While drawing the attention of the Court to the statement of Sh.Om Prakash PW-5, learned counsel for the petitioner has submitted that this witness was wholly unreliable as in his initial version as recorded in the report of DCP (District West) , he named one person D.Biswas to whom he paid Rs. 68,500/- after withdrawing from his account but subsequently when inquiry was conducted through DCP (Outer District) , he named Sh.Sunil Kumar, brother of the petitioner to be the person to whom money was given. Learned counsel for the petitioner further submitted that in this case no recovery has been effected from the petitioner or his brother. The charge against the petitioner was to be in possession of pecuniary resources disproportionate to his known source of income which is punishable under Section 13(1) (e) read with Section 13(2) of Prevention of Corruption Act. Learned counsel for the petitioner has relied upon decision of Supreme Court in

The Seksaria Cotton Mills Ltd. Vs. The State of Bombay, to make us understand what physical possession may mean and how it is generally described. He urged that neither the petitioner nor his brother were found in physical possession of Rs. 68,500/- the ill gotten money, the conviction of the petitioner could not have been based only on the statement of Sh.Om Prakash PW-5 who has admittedly changed his version about the name of beneficiary of amount deposited in his account and that of the person to whom he had handed over an amount of Rs. 68,500/- after withdrawing from his account No.30026832947 who was earlier named as D.Biswas and later on Sh.Sunil Kumar, brother of the petitioner.

10. Per contra learned counsel for the respondents has submitted that there was sufficient material to establish the connection between the petitioner through his brother Sh.Sunil Kumar and the account holder of Bank Account No.30026832947 wherein cash deposits were made on three different dates. Learned counsel for the respondents has also drawn the attention of this Court to the statement made by Sh.Om Prakash before Summary Security Force Court explaining the circumstances under which he made a false statement at the instance of Sh.Sunil Kumar, brother of the petitioner and also to save himself on apprehension of being involved in any criminal/unwanted activity. Learned counsel for the respondents has further submitted that even Sh.Sunil Kumar, brother of the petitioner has been examined by Summary Security Force Court as PW-6 and from the testimony of bank officials i.e. PW-3 and PW-4 the factum of cash deposits being made from West Bengal to the account of Sh.Om Prakash at Delhi and withdrawal of the amount by Sh.Om Prakash for handing over the same to relation of the petitioner was fully established, hence the writ petition may be dismissed.

11. Since the contention of the petitioner is that it is a case based on "no evidence", in order to satisfy ourselves and to deal with the contention we deem it necessary to record the gist of statement of above witnesses.

12. SI(Min) G.Mortuza PW-1 produced the service record of the petitioner and stated that the petitioner was enrolled in BSF as Constable on January 20, 2008. After completion of his basic training he was posted in 52 Battalion BSF on January 06, 2009. He produced the leave record Exhibit- K, K1 to K10 of the petitioner describing the nature and duration of the leave availed. He stated that in view of the vigilance case in respect of deposit of excess money in SBI saving accounts by HC Deep Chand, Ct.Satnarain and Ct.Harphul Kumawat of 52 Battalion BSF and they being involved in crossing of cattle herds through smugglers and depositing the money in the saving accounts of their relatives which was disproportionate to their known source of income, the matter was taken up with Ftr. HQ BSF SB vide HQ L/No.Pers/376 dated March 03, 2011 for their attachment. The petitioner was attached with 91 Battalion BSF.

13. SI(Min) G.Mortuza PW-1 also placed on record the communication No.Estt./91 Bn/52(03) /BSF/2011/119 dated October 27, 2011 addressed to DCP, District West Delhi to provide the requisite information and the reply

received thereof which are Exhibit-N, N1 and O.

14. SI(Min) G.Mortuza PW-1 also stated about the second request being made to DCP, District Outer, Delhi vide communication No.Estt./91 Bn/52(03) / BSF/2012/229 dated February 18, 2012 Exhibit-P to further investigate the facts and inform about the outcome. The response received thereof vide letter No.1188/SO/Aman Vihar dated April 18, 2012 alongwith statement of Sh.Om Prakash were produced by him and exhibited as Q and Q1. He also produced letter No.Estt./52(3) /91 Bn/2011/422 dated June 06, 2011 Exhibit-R addressed to Manager, SBI, Berhampore Branch, West Bengal to provide the necessary details in respect of Account No.30026832947 maintained by Mr.Om Prakash and reply thereof received from SBI, Berhampore Branch, West Bengal vide letter No.SBI/BHP/2011/D/26 dated June 08, 2011 (four pages) Exhibit-S, S1, S2, S3.

15. Inspector Ram Mani Mishra PW-2 stated that the area of responsibility of BOP Rajanagar and its outpost Bamnabad is approximately 9.7 kms and this complete area of responsibility is unfenced and riverine. The area of responsibility of BOP Rajanagar reckoned the most sensitive BOP of Sector HQ Berhampore and invariably notorious for the cattle smuggling, phensidyle smuggling, motor parts smuggling and other contraband items. He also stated that as per SOP dated July 27, 2007 circulated by Ftr. HQ South Bengal containing instructions that troops deployed in the International Border of Indo-Bangladesh are not permitted to keep money more than Rs. 500/-. In case of any emergent requirement the troops deployed in the Indo-Bangladesh Border would inform BOP/Coy Comdr. For transaction of money to their home town and entry to this effect would be made in the relevant register maintained at BOP and it should be duly signed by the respective Coy Commanders. He has also proved the certified copy of the salary statement of the petitioner for the month of January, February and March, 2011 which shows that for the month of January and March, 2011 Rs. 14393/- for each month were deposited in his account and for the month of February, 2011, the deposit towards his emoluments was Rs. 13743/-.

16. Inspector Ram Mani Mishra PW-2 also produced the Naka/Ambush register of the BOP Rajanagar, 52 Bn BSF w.e.f December 07, 2010 which contained the record of duties performed by the petitioner at the international border in the area of BOP Rajanagar. Perusal of the relevant entries Exhibit-W, W1, W2, W3 and W4 pertaining to the petitioner reveal that he has performed duty on 9th , 12th , 14th , 15th and 17th February, 2011.

17. Sh.Tridib Kumar Bagchi PW-3, Branch Manager, SBI Sagarpara Branch and Sh.Dinesh Ratna Prodhan PW-4, Branch Manager, SBI Khagra Branch, Distt.- Murshidabad, West Bengal produced the computerised transaction inquiry statements as also cash deposit vouchers (Exhibit-X, X- 1, Y, Y-1, Z, Z-1 and AA) respectively in respect of Bank Account No.30026832947 of SBI Mundka Branch, Delhi which was maintained by Sh.Om Prakash, S/o Sh.Kaddi Ram, R/o A-112, Gourishankar Enclave First, Prem Nagar-III, Nangloi, Delhi. Perusal of inquiry statement Exhibit-X and X-1 reveals that a sum of Rs. 25,000/- and Rs. 18,500/-

have been deposited in the said account on February 17, 2011 and February 21, 2011 respectively and as per the cash deposit vouchers Exhibit-Y and Y-1 the name of the depositor is Biswajit Mondal. Further as per inquiry statement Exhibit-Z and Z-1, a sum of Rs. 25,000/- has been deposited in the said account on February 18, 2011 and name of the depositor as mentioned in cash deposit voucher Exhibit-AA is Sukumar Mondal.

18. Mr.Om Prakash PW-5 is account holder of account No. 30026832947 wherein on three different dates i.e. on February 17, 2011, February 18, 2011 and February 21, 2011 cash of Rs. 25,000/-, Rs. 18,500/- and Rs. 25,000/- respectively were deposited. Mr.Om Prakash PW-5 has stated that he was enrolled in Army in the year 1980 and took voluntary retirement in the year 2000. He was re-employed as Senior Armed Guard in G4S Secure Solutions (India) Pvt. Ltd. He has stated that Sh.Sunil Kumar, who was also working as Security Guard for the same company, requested him to provide his bank account number to facilitate transfer of some amount from a person who had borrowed the money. In good faith, he provided his account number to Sh.Sunil Kumar, brother of petitioner Satnarain. Relevant part of his statement read as under:-

"Mr.Sunil Kumar R/o Rohtak (Haryana) told me that he wanted to get transfer a money to my SBI account to some borrower because he do not have bank account in SBI bank and further requested me to give account number so that the same could be conveyed to that borrower so he could deposit the money in my account. In good faith I considered his request and agreed for this transaction and gave my account number 30026832947 to Mr.Sunil Kumar brother of Satnarain. Accordingly, Constable Satnarain deposited Rs. 68,500/- in three instalment on 17-18-21 February, 2011 in my account. Later on I have withdrawn this amount Rs. 68,500/- and handed over to Mr.Sunil Kumar brother of Constable Satnarain."

19. PW-5 Sh.Om Prakash has been cross examined at length by the petitioner. He was questioned as to whether he had taken any receipt from Sh.Sunil Kumar to which he replied in negative. He has also stated that as Sh.Sunil Kumar came to know about the letter being sent by BSF to Delhi Police for investigating the matter for purpose of disciplinary proceedings contemplated against his brother Satnarain, Sh.Sunil Kumar tried hard to know which police station was asked to conduct the inquiry. Further Sh.Sunil Kumar also asked him to make false statement before the police which he did but when the matter was reinvestigated, he disclosed the true facts as well the name of the person i.e. Sunil Kumar to whom the account number was given and that the amount so deposited in his account was withdrawn and handed over by him to Sh.Sunil Kumar, brother of the petitioner. During cross examination the petitioner failed to put even the suggestion to PW-5 that he (petitioner Satnarain) did not deposit an amount of Rs. 68,500/- in the account of PW-5 or that after withdrawal the said amount was not handed over to his brother Sunil Kumar.

20. Sh.Sunil Kumar PW-6, brother of the petitioner was also examined during

tried before Summary Security Force Court. During his statement Sh.Sunil Kumar has admitted that he was appointed for the post of Guard on temporary basis on April 18, 2006 in G4S Secure Solutions (India) Ltd. and that while he was performing his duties at Vodafone Godown, he met Sh.Om Prakash, Senior Armed Guard of G4S Secure Solutions (India) Ltd. However, when he denied having ever asked Sh.Om Prakash PW-5 to provide his account number for any bank transaction or receiving the amount deposited in that account from Sh.Om Prakash, the Summary Security Force Court drew attention of Sh.Sunil Kumar PW-6 to the letter Exhibit-AB written by Sh.Sunil Kumar to 91 Battalion, BSF, Roshanbagh- Lalbagh, Distt. Murshidabad, West Bengal wherein he specifically mentioned that neither he nor his brother Ct.Satnarain or any of his family member know Mr.Om Prakash or have ever seen his face. Seeing self destructive statement in his deposition before Summary Security Force Court wherein he admitted having acquaintance with Sh.Om Prakash and his total denial in the letter Exhibit-AB and finding no escape route, he tried to get out of the situation by saying that he was not highly educated.

21. It is well settled that in judicial review of the decision of the Summary Security Force Court, the grounds on which the decision of Summary Security Force Court can be interfered with are illegality, irrationality and procedural impropriety. Whether the case of the petitioner falls in any of the above category has to be established by the petitioner. Mere assertion to the fact that he has been held guilty and visited with the penalty of dismissal from service by Summary Security Force Court despite there being no evidence, was required to be established from the record. The petitioner has failed to bring on record any mala fide being attributed to the Disciplinary Authority or the Appellate Authority or denial of fair and reasonable opportunity to defend himself. The submissions of learned counsel for the petitioner that physical possession of the amount alleged to be disproportionate to the known sources of income has not been established by the respondents is liable to be rejected as in a case of conviction of the petitioner for being found in possession of assets disproportionate to his known sources of income, the respondent was required to bring on record the remission of cash deposits from the place of posting of the petitioner to the account of a person who could withdraw and hand over the money to the relation of the petitioner. There was no necessity or legal requirement for the respondents to physically recover a sum of Rs. 68,500/- from the petitioner or his brother to establish its case.

22. In the decision reported as Union of India and Others Vs. Himmat Singh Chahar, , pertaining to a Court Martial proceedings under the Navy Act, 1957, the Supreme Court categorically rejected the concept of the high level of proof required at a criminal trial as being applicable to a trial before a Court Martial.

23. Summary Security Force Court has returned the finding holding the petitioner guilty on appraisal of oral and documentary evidence which conclusively established the following facts:-

- (i) During the period February, 2011 the petitioner Satnarain was posted at Indo-Bangladesh Border at BOP Rajanagar of "A" Coy of 52 Battalion BSF.
- (ii) As per SOP dated July 27, 2007 Exhibit- T and T1, troops deployed in International Border of Indo-Bangladesh were not permitted to keep money more than Rs. 500/- and in case of any urgency to withdraw the amount, the same was required to be intimated to BOP/Coy Commander.
- (iii) The petitioner was on border post duty at Indo-Bangladesh Border on 9th , 12th , 14th , 15th and 17th February, 2011.
- (iv) On February 17, 2011 a sum of Rs. 25,000/- and on February 21, 2011 a sum of Rs. 18500/- from SBI Sagarpara Branch, West Bengal and on February 18, 2011 a sum of Rs. 25,000/- from SBI Khagra Branch, West Bengal were remitted to account No.30026832947, SBI Mundka, Delhi (Code No.6814) .
- (v) The Bank statement of Account No.30026832947, SBI Mundka, Delhi (Code No.6814) reveals that the said account was maintained by Sh.Om Prakash PW-5 and a sum of Rs. 25,000/- and Rs. 18,500/- were deposited in the said account on February 17, 2011 and February 21, 2011 respectively from SBI Sagarpara Branch, West Bengal and a sum of Rs. 25,000/- has been deposited on February 18, 2011 from SBI Khagra Branch, West Bengal, which fall in the same area where petitioner Satnarain was deployed. A sum of Rs. 68,500/- has been withdrawn from that account on February 22, 2011 itself. The balance in the account on February 17, 2011 was only Rs. 1,100/- which has been shown as Rs. 26,100/- after receiving Rs. 25,000/- cash deposit from SBI Sagarpara Branch, West Bengal. Again on February 22, 2011 after withdrawal of Rs. 68,500/-, the balance was Rs. 1,063/- as Rs. 50/- has been debited on February 18, 2011 and Rs. 37/- has been debited on February 21, 2011 towards inter-city charges.
- (vi) The salary statement of the petitioner shows that for the month of January and March, 2011 Rs. 14393/- for each month and for the month of February, 2011 Rs. 13743/- were deposited towards his emoluments in his salary account.
- (vii) The petitioner has not withdrawn the amount from his salary account and intimated the authorities as required under SOP dated July 27, 2007.
- (viii) Sh.Om Prakash is an ex-serviceman who apart from running a grocery shop, was also working as Security Guard during night hours for G4S Secure Solution (India) Pvt. Ltd.
- (ix) The other three Security Guards were also deployed by GS4 Secure Solutions (India) Pvt. Ltd. for day and night duties and one of them was Sh.Sunil Kumar and salary of employees of G4S Secure Solutions (Pvt.) Ltd. was generally deposited in City Bank, Axis Bank, ING Bank and Allahabad Bank.
- (x) Sh.Sunil Kumar PW-6 is the real brother of the petitioner and known of Sh.Om Prakash PW-5, who was holder of account No.30026832947, SBI Mundka Branch, Delhi (Code No.6814) .

(xi) Sh.Sunil Kumar requested Sh.Om Prakash PW-5 to provide his SBI account number to facilitate transfer of some amount from a person who had borrowed money from him which he provided to Sh.Sunil Kumar PW-6 in good faith.

(xii) Initially when communication was addressed to DCP (West District) by BSF Authorities, while Sh.Om Prakash introduced D.Biswas, a fictitious person to whom he has handed over the amount after withdrawal but when matter was reinvestigated by DCP (Outer District) through SHO, Aman Vihar, beans were spilled when he revealed the name of the person who has deposited the amount of Rs. 68,500/- in three instalments in his account i.e. petitioner Satnarain and beneficiary of the amount i.e. Sh.Sunil Kumar, real brother of the petitioner as well the fact that Sh.Sunil Kumar PW-6 persuaded him not to disclose the true facts earlier.

(xiii) Letter Exhibit-AB written by Sh.Sunil Kumar, brother of the petitioner to 91 Battalion, BSF, Roshanbagh-Lalbagh, Distt. Murshidabad, West Bengal in response to their letter No.Estt./SSFC/91 Bn/2013/2919 dated March 11, 2013, claiming that neither he nor his brother Satnarain or any other family member has any connection with Sh.Om Prakash, holder of account No.30026832947, SBI Mundka Branch, Delhi. Thus, the claim of Sh.Sunil Kumar in the letter Exhibit-AB of not knowing Sh.Om Prakash even by face was falsified when he appeared as PW-6 and admitted that he knew Sh.Om Prakash as both of them were working as Security Guard in G4S Secure Solutions (India) Pvt. Ltd.

24. It is worth noting that contents of letter Exhibit-AB have not been denied by Sh.Sunil Kumar PW-6 which are in contradiction to his deposition before Summary Security Force Court. The explanation given by him that he was not well education so as to explain the contradiction is far from satisfactory. We feel that knowing a person or not knowing a person does not require any educational qualification. The petitioner was a Constable in BSF performing the duties of guarding the international border of the country and his brother Sh.Sunil Kumar was also working as Security Guard in a Company namely G4S Secure Solutions (India) Pvt. Ltd. The letter Exhibit-AB written by Sh.Sunil Kumar being an admitted document which might have been written by him under instructions or in consultation with his brother i.e. the petitioner, is sufficient to conclude that level of understanding of PW-6 was that of a mature person who was not only managing and manipulating the situation but also looking for some escape route for his brother by hook or crook and persuaded Sh.Om Prakash PW-5 to make a false statement when the matter was inquired into by the official of Delhi Police, West District.

25. Once the nexus between the petitioner and his brother to receive the ill gotten money was established before Summary Security Force Court bringing on record that account of Sh.Om Prakash was used only as a channel to receive the ill-gotten money without Sh.Sunil Kumar PW-6 directly coming into the picture as a beneficiary, the only conclusion that could be arrived at was "guilty".

26. We have already noted that except Sh.Om Prakash PW-5, none of the prosecution witnesses has been cross examined by the petitioner during his trial before Summary Security Force Court. Thus, we find that Summary Security Force Court has held the petitioner guilty on the basis of material which would have been sufficient to prove the guilt of the petitioner even during trial before a Criminal Court. None of the grounds raised by the petitioner will entail the interference by this Court in exercise of writ jurisdiction under Article 226 of the Constitution of India. Even on the question of proportionality of the penalty, though not argued before us, we have no hesitation to say that the petitioner was deployed at Indo- Bangladesh border in a sensitive area and was expected to maintain utmost integrity and dedication in discharge of his duties. Joining hands with the smugglers and finding convenient channels to remit the ill-gotten money from the place of posting so as to be received by his family/close relations reside rather speaks of the well planned manner in which the petitioner was executing his plans. Such type of persons do not deserve to be member of the Security Forces, hence on this aspect also, the petitioner does not deserve any kind of relief from this Court.

27. The writ petition is without any merits and therefore is dismissed.

28. No costs.