
(2014) 03 MEG CK 0009
In the Meghalaya High Court
Case No : Writ Petition (C) No. 224 of 2011

Shri Dickson Ch. Marak

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-03-2014

Acts Referred:

Border Security Force Act, 1968 — Section 46
Constitution of India, 1950 — Article 13(i)(e), 226
Prevention of Corruption Act, 1988 — Section 13(i)(e), 17

Citation : (2014) 03 MEG CK 0009

Hon'ble Judges : Sudip Ranjan Sen, J

Bench : Single Bench

Advocate : A.H. Hazarika, for the Appellant; R. Debnath, for the Respondent

Final Decision : Allowed

Judgement

S.R. Sen, J.—This instant writ petition is directed against the impugned orders dated 21.03.10 and dated 15.01.10. The petitioner's case in nut shell is that, "this is an application under Article 226 of the Constitution of India for issuance of Writ in the nature of Mandamus and or Certiorari and or any other appropriate Writ, Order or Orders, direction or directions of like nature. The -petitioner had been working as a Constable under the BSF in different parts of India for more than sixteen years since 1993 without any break in service and with full satisfaction of all concerned including superior officer. The petitioner had been rewarded four times for his meritorious service rendered to the Department/BSF and the service conduct sheet, in the service conduct sheet. Shri K.M. Mukhopadhyaya (DC) Deputy Commandant, Drawing and Distribution officer for commandant 126 Bn BSF on 07.09.2009 wrote a letter to the Bank Manager, SBI Gandhi Memorial, Kalyani, (WB) with a request to give complete details of transition made in the Joint Account of the petitioner and his wife Smti. Sellina M. Sangma, bearing S.B. A/c. No. 11308070706 and obtained transaction sheet from the Bank on 07.10.2009. Shri. Sudhir Hooda, Commandant 126 Bn BSF and Shri. Sabu A. Joseph, Deputy Inspector General, Sector HQ BSF, Kolkata, charge-

sheeted against the petitioner, under Section-46 of BSF Act on 19.12.2009. The Petitioner and his wife Smt. Sellina M. Sangma have opened a Joint Account bearing SB A/C. No. 11308070706 at New Tura, Meghalaya and operating the Account jointly for the last few years. After filing the charge-sheet and detail report has been sent to the SSFC (Summary Security Force Court) by the Dc/ ADJT, for Commandant 126 Bn BSF on 06.01.2010. Thereafter, SFC initiated the Court proceeding against the petitioner on 13th and 15th January, 2010 and SSFC proceeding started against the petitioner. The SSFC was presided over by Shri Sudhir Hooda, Commandant, 126 Bn BSF. After the findings of the Court's proceeding and after taking evidence, convicted the petitioner to civil imprisonment at Krishnanagar West Bengal. It is also stated that the Commandant 126 Bn BSF issued another impugned order vide No. ESH/Disc-DCM/126 Bn/BSF/2010/4351-58 dated 21.3.10 and dismissed the petitioner from service with effect from 15.01.10. This petition is filed bona fide for the end of justice".

2. Mr. A.H. Hazarika, the learned counsel appeared for on behalf of the petitioner submits that the petitioner joined service on 11.09.93 and was posted in different part of the country and since 2.11.06 he was posted in Kalyani, West Bengal. The learned counsel further contended that the petitioner had a Joint-Account with his wife bearing SBI A/c. No. 11308070706. But to his utter surprise, without issuing any notice and without any inquiry, a charge-sheet was filed against the petitioner by the Commandant, Shri. Sudhir Hooda charging that the petitioner has committed offences u/s. 13(i)(e) of the Prevention of Corruption Act, 1988. Thereafter, the said Commandant proceeded with the trial being a Presiding Officer and came to a conclusion that the petitioner is found guilty and he has been imprisoned for a period of nine months and also dismissed him from service.

3. The learned counsel also raised question before this Court that, when the case is connected with disproportionate income, the case should have been investigated under Prevention of Corruption Act, 1988. The learned counsel further contended that the person who filed the charge-sheet and the person who tried the case cannot be the same person. Besides, there were no specific evidence that, out of the amount of Rs. 6,12,862/-, how much belongs to the petitioner and how much belongs to the petitioner's wife, hence, prayed before this Court to pass necessary order and also to set aside the impugned orders dated 21.03.10 and dated 15.01.10.

4. On the other hand Mr. R. Debnath, the learned GCG appeared for on behalf of the respondent submitted that the summary trial was conducted by the respondent under Section-46 of the BSF Act, 1968. The learned CGC further contended that the inquiry was also conducted by the Deputy Commandant, BSF, therefore, there is nothing wrong with the impugned orders dated 21.03.10 and dated 15.10.10.

5. After hearing the submissions advanced by the learned counsel for the parties

and after going through the records placed before me, I find that the charge-sheet was filed by the Commandant, Shri. Sudhir Hooda and it is also apparent from the record that the said Commandant was the Presiding Officer in the summary trial. Therefore, in my considered view, it is undisputed that the person who filed the charge-sheet can never be a Judge or Presiding Officer against the same charge and this tantamount to violation of principle of natural justice and free and fair trial. It is also an admitted fact that, the offences as alleged came under the purview of Section-13(i)(e) of the Prevention of Corruption Act, 1988. Section-17 of the said Act made it clear that, who are the persons empowered to investigate the case under the Prevention of Corruption Act or any offences under the said Act, where I find that the BSF personnel has allowed automatically under BSF Act, 1968 to investigate the case under the Prevention of Corruption Act, 1988.

6. Therefore, in my considered view, I find that the entire process from the beginning till the end was not in conformity with the principle of natural justice and not a free and fair trial. Further, I am also of the view that, when the trial was not free and fair and not in consonant with the principle of natural justice, so, such trial and its subsequent findings have no legs to stand on. Hence, the impugned orders dated 21.03.10 and dated 15.10.10 are hereby set aside and the respondent is directed to reinstate the petitioner forthwith and also to clear the arrears and all financial benefits as per the rules. With these observations and directions, this instant petition is allowed and the matter stands disposed of.