

(2010) 07 BOM CK 0068

In the Bombay High Court

Case No : Writ Petition No. 4127 of 2002

Shri Kantilal Bhanudas Dukare

APPELLANT

Vs

The Officiating Commandant, 2IC, 102 BN, Border Security Force, The D.I.G./P.S.O., Boarder Security Force, The I.G., Border Security Force and The Union of India (UOI)

RESPONDENT

Date of Decision : 16-07-2010

Acts Referred:

Border Security Force Act, 1968 — Section 40, 46

Constitution of India, 1950 — Article 226

Prevention of Corruption Act, 1988 — Section 7

Citation : (2010) 6 SLR 295

Hon'ble Judges : R.M. Savant, J;P.B. Majmudar, J

Bench : Division Bench

Advocate : P.B. Shah, for the Appellant; A.D. Kango and D.A. Dubey, for the Respondent

Judgement

R.M. Savant, J.—The above Petition, filed under Article 226 of the Constitution of India takes exception to the order dated 20/09/2000 passed by the Appellate Authority upholding the order of dismissal passed by the Summary Security Force Court (for brevities sake referred to as "the Summary Court").

2. The facts necessary to be cited for adjudication of the above Petition can be stated thus:

The Petitioner at the relevant time was a constable in the Border Security Force and posted at Churiantpur which is a border post on the Indo-Bangladesh Border. The Petitioner at the relevant time i.e. on 07/07/2000 was on duty at Gate No. 4. It was noticed by the Commandant who was the superior head of the Petitioner that the Petitioner had allowed 8 cattle head to pass by accepting illegal gratification from one Allauddin who was said to be a cattle smuggler from India. The Petitioner was accordingly charge sheeted under the provisions of Sections 40 and 46 of the Border Security Force Act 1968. The charges levelled against

the Petitioner are as under:

1st Charge BSF Act, Section 40

AN OMISSION PRE JUDICIAL TO GOOD ORDER AND DISCIPLINE OF THE FORCE

in that he,

on 07.07.2000 at about 1000 Hrs while on Op duty at Gate No. 4 of Churiantpur BOP shown negligence to discharge his duty and improperly and without authority allowed to cross 08 cattle heads towards Bangladesh.

2nd Charge BSC Act, Section 46

COMMITTING A CIVIL OFFENCE THAT IS TO SAY BEING A PUBLIC SERVANT, ACCEPTING ILLEGAL GRATIFICATION OTHER THAN LEGAL REMUNERATION FOR FORBEARING TO DO AN ACT, PUNISHABLE u/s 7 OF THE PREVENTION OF CORRUPTION ACT 1988

in that he,

on 07.07.2000 at about 1000 hrs, while on OP duty at Gate No. 4 of Churiantpur BOP directly accepted Rs. 400/- from a cattle smuggler namely Allauddin a gratification other than legal remuneration as a motive or reward for forbearing to an official act, to wit, gave exit clearance of 08 cattle heads towards Bangladesh.

3. An inquiry was conducted under the provisions of the Border Security Force Act by the Summary Court. Witnesses were examined on behalf of the Department i.e. BSF and after following procedure i.e. by allowing the Petitioner to cross examine the said witnesses and after giving opportunity to him to represent against the punishment and ultimately the Summary Court held all the charges as proved against the Petitioner and it was held that the Petitioner was liable to be dismissed from service.

4. The said finding of the Summary Court was confirmed by the Deputy Inspector General, Sector Head Quarters, BSF, Malda. Against the said order of punishment dated 20/09/2000, which was confirmed by the Deputy General Inspector, BSF, Malda, the Petitioner filed an appeal before the Inspector General, BSF, West Bengal, which appeal came to be rejected by the Deputy Inspector of Police, Head Quarters, BSF, SB. The Appellate Authority has recorded that after a detailed consideration and careful scrutiny of the facts and circumstances of the case, the Inspector General, BSF South, Bengal has rejected the petition of the Petitioner against the proposed penalty and the Appellate Authority did not find any reason to interfere with the said punishment order. It appears that the Petitioner had also filed Petitions dated 12.12.2000 and 19.12.2000 addressed to the DIG BSF Malda against conviction by the Summary Court, which Petitions also were rejected on the ground that the Petitioner's case has been closed and the Petitioner was informed that no further correspondence would be entertained.

5. We have heard the learned Counsel for the Petitioner Shri P.B. Shah and the learned Counsel appearing for the Respondents Mr. Kango assisted by learned Counsel Mr. Dubey. The principal contention advanced on behalf of the Petitioner was that there was hardly any evidence on record to bring home the two charges levelled against the Petitioner. It was contended on behalf of the Petitioner that a perusal of the order passed by the Summary Court would disclose that the evidence on record has also not even been discussed. Similarly the Appellate Authority has brushed aside the appeal filed by the Petitioner by merely stating that the order passed by the Deputy Inspector General requires no interference.

6. On the other hand it is sought to be submitted on behalf of the Respondents that the charges levelled against the Petitioner were very serious inasmuch as the Petitioner had allowed smuggling of 8 cattle heads to Bangladesh from India through one Allaudin who was a cattle smuggler. It was further submitted on behalf of the Respondents that the material on record was enough to hold the Petitioner guilty and the Petitioner being a part of a disciplined force was required to adhere to a high degree of probity which was lacking in the instant case.

7. Having heard the learned Counsel for the parties, in the context of the challenge raised in the instant Petition, we have perused the order passed by the Summary Court. The said order in our view is very cryptic inasmuch as the Summary Court after reproducing the evidence that was recorded before it has thereafter merely concluded by recording in three lines under the heading "Findings of the Court" that on the basis of the evidence before it, the Petitioner is guilty of both charges." In our view, the least that is expected in such matters where the consequences are either dismissal or removal from service is that the Summary Court discusses the evidence on record on the basis of which it has reached conclusion that the charges are brought home. Merely reproducing the evidence in the enquiry and thereafter abruptly recording the findings, in our view, is not sufficient as the same would not indicate as to what was the evidence which weighed with the Summary Court in arriving at the conclusion that the charges are held to be proved against the delinquent.

8. Though the Petitioner had filed appeal against the order dated 20/09/2000, the Appellate Authority has very brusquely disposed of the appeal by observing that there was no reason for the Appellate Authority to interfere with the decision arrived at by the Summary Court as endorsed by the Inspector General. The Appellate Authority in our view also ought to have recorded the reasons why the findings against the Petitioner are justified.

9. Normally since the order passed by the Summary Court does not satisfy the requirements, we would have had to relegate the matter to the Summary Court. However, one fact cannot be lost sight of is that the above Petition has been admitted in the year 2002 and is pending for hearing and final disposal since then. In view of the said fact, we deem it fit to only set aside the order passed by the Appellate Authority and remit back the matter to the Appellate Authority for a de novo consideration. The Appellate Authority will be well advised to

discuss the evidence on record and thereafter arrive at its conclusion whether the charges are held to be proved against the Petitioner and whether the order passed by the Summary Court deserves confirmation. Since the issue is pending from the year 2002, on such remand we direct the Appellate Authority to pass the order within period of three months from the appearance of the Petitioner before it. The Petitioner would be entitled to rely upon such material as he deems fit in support of his case that the charges are not proved or for award of lesser punishment. The learned Counsel for the Petitioner is agreeable to such a course of action being followed in view of the time which has already been elapsed.

10. The Petitioner to appear before the Appellate Authority i.e. The Office of the DIG, Sector, Head Quarter, Border Security Force, at Malda, Post Office Narayanpur, Dist. Malda (West Bengal) Kolkatta Pin Code No. 732141, on 16th of August 2010 at 11.00 a.m. at The Appellate Authority thereafter to fix a schedule as per its convenience and dispose of the appeal within a period of three months from 16th August 2010. Rule is accordingly made absolute to the aforesaid extent.