

(2020) 12 DEL CK 0002

In the Delhi High Court

Case No : Civil Writ Petition No. 6226 Of 2020

Sunil Kumar Yadav

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 02-12-2020

Acts Referred:

Constitution Of India, 1950 — Article 226
Sashastra Seema Bal Rules, 2007 — Rule 9(5)
Sashastra Seema Bal Act, 2007 — Section 43, 49, 83, 169
Prevention Of Corruption Act, 1988 — Section 15, 39(1)(c)
Indian Penal Code, 1860 — Section 34
Code Of Criminal Procedure, 1973 — Section 102, 132(2)(d)

Citation : (2020) 12 DEL CK 0002

Hon'ble Judges : Rajiv Sahai Endlaw, J;Asha Menon, J

Bench : Division Bench

Advocate : Himanshu Gautam, Lokesh Sharma, Vikrant N. Goyal

Final Decision : Dismissed

Judgement

Asha Menon, J

1. The petitioner has filed this petition under Article 226 of the Constitution of India against his dismissal from the Sashastra Seema Bal (SSB) with the

following prayers:

i. issue a writ of Certiorari quashing and setting aside the respondents impugned order dated 24.04.2018, 11.09.2018, 20.09.2018 and

25.06.2019 vide which they have inflicted the penalty of dismissal from service with one year of rigorous imprisonment on the petitioner;

ii. issue a writ of Mandamus directing the respondents to reinstate the petitioner in service from the date he has been dismissed from service

along with full consequential benefits;

iii. pass such other order as this court may deem fit and proper in the facts and circumstances of the present case.â??

2. The facts as are relevant for the disposal of the case can be briefly stated. The petitioner joined the services of the SSB as a Constable on 29th

July, 2011 and during the course of his service was last posted with the 27th Battalion SSB Narkatiaganj and was attached to the Office of the Area

Organiser, Narkatiaganj Area, SSB for official duties.

3. On 25th November, 2014, he claims to have received input from his source about the smuggling of gold from Muzaffarpur to Delhi in Saptakranti

Express train by certain persons. According to him, he immediately conveyed this information to his superior officers Sh. S.K.Sharma, Sub-Area

Organiser and Sh.Alok Pandey, Sub-Area Organiser (SAO). They duly authorised him to proceed to the Narkatiaganj Railway Station along with

CT/GD Satyendra Kumar, to conduct the operation against the alleged smugglers. It is the case of the petitioner that he, with much effort, was able to

apprehend a smuggler and the apprehension was duly notified to the superior officers. By this time, however, the Saptakranti Express had already

reached Bagaha Railway Station which was almost 50 kms away from Narkatiaganj where the petitioner and Constable Satyendra Kumar, along with

the smuggler de-boarded the train. He also recovered 3 pieces of gold weighing almost half kg from the smuggler.

4. According to the petitioner, pursuant to his information of apprehension of the smuggler and recovery, the SAOs came to the Bagaha Railway

Station in a government vehicle and all of them proceeded towards Narkatiaganj. However, he noticed on the way, that they seemed to have

proceeded towards Siswa Bazaar where the vehicle was parked and Sh.Alok Pandey and Sh.S.K.Sharma seemed to be waiting for some 3rd person

along with the smuggler. Somehow the smuggler escaped from the custody of the SAOs. Thereupon, the petitioner was asked to deposit the

recovered gold with the nearest SSB unit at Tuthibari and they themselves hurriedly left the place on account of the escape of the smuggler, without

recording the recovery.

5. The petitioner claims that while he was on his way to the Tuthibari SSB unit he was intercepted by the local police at the chowk and after being

detained all night, was handed over to the Customs Authorities because he was

unwilling to hand over the seized gold to the local police. Subsequently, he was penalized by the Customs Authorities with a fine of Rs. 1 lakh on 29th December, 2015. As the petitioner was also arrested under the Customs Act on 26th November, 2014, though subsequently let off on bail on 28th November, 2014, the SSB constituted a Court of Inquiry (COI) on 28th November, 2014 against the petitioner and the others who were accused in the matter and where their statements were also recorded.

6. On the basis of the COI, which framed charges against the petitioner, a General Force Court (GFC) was also convened on 2nd November, 2017.

On 24th April, 2018, on conclusion of the GFC, the petitioner was found guilty of the two charges framed against him and it recommended that he be

sentenced to undergo two years rigorous imprisonment and be also dismissed from service. A pre-confirmation petition under Section 169 of SSB Act,

2007 dated 26th April, 2018 was filed by him before the Additional Director-General, SSB requesting them to exonerate him. However the

Confirming Authority rejected the petition and confirmed the finding of guilt, but reduced the sentence to rigorous imprisonment for one year with

dismissal from service. The sentence was promulgated as per Rules on 20th September, 2018 whereafter the petitioner, on 23rd April, 2019 filed the

statutory post-confirmation petition before the DG, SSB, against the finding of guilt and sentence, which was also dismissed on 25th June, 2019.

7. The two charges against the petitioner were as below:

a. Under Section 49 SSB Act, 2007 for committing a civil offence that is to say being a public servant, attempting to commit offence

mentioned under Section 39 (1) (C) of Prevention of Corruption (PC) Act, thereby dishonestly misappropriating the property under their control

punishable under section 15 of the PC Act, 1988 read with Section 34 IPC and

b. Under Section 43 of the SSB Act, 2007 for an act prejudicial to good order and discipline of the force.

8. In the present petition, the petitioner has sought the application of the Doctrine of Equality in his favour. It is claimed by the petitioner that

despite clear evidence coming on record indicating the active and complete participation of the officers Sh.S.K.Sharma and Sh.Alok Pandey, SAOs in

the incident, charges of commission of offences were framed against the petitioner, whereas no action was ever initiated against the two officers and

the petitioner has been made the scapegoat for everything. The petitioner claims that he had followed the instructions of his superiors as per the mandate of Rule 9(5) of the SSB Rules, 2009, for which he cannot be punished. Several other grounds have also been urged, such as that: the charge was itself faulty as the power of seizure of goods and preparation of seizure memo under Section 102 of the Code of Criminal Procedure vested not in Constables but in police officers not below the rank of Officer-in-Charge of the police station and therefore the petitioner cannot be held guilty of not preparing the seizure memo since he could not have prepared the seizure memo; that the petitioner had proceeded to the Tuthibari SSB unit to deposit the gold pieces seized from the smuggler in accordance with the orders of the SAO Sh.S.K.Sharma, who was his superior officer and therefore, his apprehension by the local police and the prosecution by the Customs Authorities was illegal and in violation of Section 132(2)(d) Cr.P.C. as he was only discharging his duties; and that, after such prosecution, the GFC was in the face of and against the provisions of Section 87 of the SSB Act, 2007, which barred a second trial for the same offence. He also claimed that the punishment imposed was disproportionate to the gravity of the offence.

9. During arguments however, the learned counsel for the petitioner, Shri Himanshu Gautam, laid emphasis on equality in treatment and proportionality of the sentence. It was his contention that though the SAOs were found to have had a significant role in the entire episode as was evident from Annexure P-9, being the summing up by the Judge Attorney, neither of them has been issued any show cause notice nor have disciplinary proceedings been initiated against them. Rather they have been promoted. It is the contention of the learned counsel that when in the same incident persons who had great degree of involvement had been let off without a scratch, there was no justification in holding the petitioner guilty and imposing such harsh punishment of one year's rigorous imprisonment and dismissal from service. The petitioner, it may be noted, has already undergone the sentence.

Hence counsel prayed that the dismissal be set aside.

10. The learned counsel for the respondents Sh.Vikrant N. Goyal, appearing on advance notice, however submitted that the petitioner was involved in the incident where he was found to be in possession of three gold pieces weighing half kilo and had not reported the matter to the superior officers

when he recovered the same from an alleged smuggler. Further, he was apprehended while he was proceeding with his brother to his home instead of depositing the recovered gold with the SSB unit or the police or the Customs, whose offices were all located in the vicinity. He also failed to report the incident of alleged escape/corruption on the part of the SAOs to any superior officer immediately after the SAOs had left, even going by his version that they were seeking illegal gratification from the smuggler and had allowed him to escape. His actions being so serious, the punishment was properly imposed on him as such a person would always be a risk to the Force. With regard to the officers who were involved in the incident, the counsel for the respondents informed that they had been proceeded against, but since they were now on deputation with the IB, the inquiry was being conducted by the IB and would reach its logical conclusion.

11. Having heard both sides and having perused the record, including the email sent to us by the learned counsel for the respondents of clear copies of the inquiry proceedings, we find the contentions of the petitioner to be without force. It may be noted that there has been no explanation forthcoming of the cause of delay in approaching the court only on 26th August 2020, after the dismissal of the statutory post-confirmation petition on 26th June 2019. No questions have been raised about the conduct of the COI or of any procedural irregularities or illegalities in the conduct of the trial by the GFC. The assessment of the factual matrix and evaluation of evidence by the COI and GFC has not been questioned. Rather, it is on that basis that the petitioner has aired his grievance of differential treatment.

12. There can be no quarrel with the proposition that sentence must be proportionate to the role of an accused. The courts have also recognised the Doctrine of Equality as applying to all who are placed equally, even among those who are found guilty of having committed offences. In the case decided by the Supreme Court annexed to the e-paper book as Annexure P-11, *Rajendra Yadav v. State of M.P. and others*, (2013) 3 SCC 73, the comparison was between two convicted persons. Here the facts are different. The COI and GFC have been concluded qua the petitioner, whereas proceedings are pending against the SAOs. There can be no parity claimed for and at various stages of disciplinary proceedings. As per the statement made by learned counsel for the respondents, it is not as if no action has been

initiated against Sh.S.K.Sharma and Sh.Alok Pandey. What happens to them on conclusion of inquiries against them, cannot dictate what punishment would be appropriate for the role of the petitioner in the incident. The Doctrine of Equality has no application to the facts of this case and the plea is rejected. It may also be stated that the summation by the Judge Attorney is only for the purposes of the GFC and cannot substitute for the findings recorded after due trial and inquiry. The reliance of the learned counsel on the summation to seek exoneration of the petitioner is misplaced.

13. The next question is whether the punishment meted out to the petitioner is per se disproportionate. The Supreme Court had dealt with the question of proportionality of punishment in *Om Kumar v. Union of India* (2001) 2 SCC 386, *Union of India v. G. Ganayutham* (1997) 7 SCC 463 and *Union of India v. Dwarka Prasad Tiwari* (2006) 10 SCC 388. Quoting with approval its previous decision in *Dwarka Prasad Tiwari* (supra), the Supreme Court reiterated that the Court would interfere with the punishment imposed pursuant to disciplinary proceedings only if it was so disproportionate that it shocked the conscience of the court. The observations are reproduced below for ready reference:

25. In *Dwarka Prasad Tiwari*, it has been held that unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/tribunal, there is no scope for interference. When a member of the disciplined force deviates to such an extent from the discipline and behaves in an untoward manner which is not conceived of, it is difficult to hold that the punishment of dismissal as has been imposed is disproportionate and shocking to the judicial conscience.

14. What is worthy of note in the case at hand are the several significant admissions made by the petitioner. The petitioner claims that it was he who had received the information of smuggling of gold by a passenger travelling by Saptakranti Express. Admittedly, he had gone along with Constable Satyendra Kumar for the recovery of the gold. Admittedly, he apprehended the smuggler, took his search and recovered the 3 pieces of gold from the possession of the smuggler. Subsequently, he was the one who was found in possession of the very same pieces of gold by the local police at Tuthibari chowk. The COI and the GFC had found that the petitioner was on the way to his

home and was ahead of Tuthibari when he was apprehended. That would also indicate that the petitioner instead of following the instructions of his superiors (as per his case) to deposit the gold at Tuthibari, had gone further ahead of Tuthibari with the smuggled gold towards his own village, which casts doubt on the integrity of the petitioner himself. All these facts were fully and conclusively established by the witnesses during the COI and GFC.

15. In the background of these facts, the sentence of one year's rigorous imprisonment and dismissal from service as imposed on the petitioner do not seem disproportionate at all. Neither does it shock the conscience of the court as being unjust. The petitioner was a member of a disciplined Force and responsible for the security of the country, including economic security. He did not consider it inappropriate to keep smuggled gold in his possession, about the seizure of which no record was also prepared. Absolute honesty and integrity is expected of all government employees and no slip can ever be brooked. Such employees wanting in integrity cannot but be dismissed as their retention in service would send wrong signals and would be counter-productive.

16. There is no merit in the present petition which is accordingly dismissed.