

(1986) 09 GAU CK 0009

In the Gauhati High Court

Case No : Second Appeal No. 50 of 1978 (Re. No. AS 21 of 1979)

Union of India & 2 Others.

APPELLANT

Vs

Mrinal Kanti Bhowmik

RESPONDENT

Date of Decision : 20-09-1986

Acts Referred:

Border Security Force Act, 1968 — Section 4, 4
Civil Procedure Code, 1908 — Section 11
Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 311, 311

Citation : (1987) 1 GLR 293

Hon'ble Judges : S.N.Phukan, J

Bench : Single Bench

Advocate : S.Deb, B.Das, Advocates appearing for Parties

Judgement

1. This appeal is directed against the judgment and decree dated 14.6.78 passed by the learned Additional District Judge, Tripura, Agartala, in Title Appeal No. 20/77/(T.A. 27/77) affirming the judgment and decree of the learned Sadar Munsiff Agartala, in suit No. T. S. 113 of 1973.

2. The plaintiff/respondent was appointed on 3.5.1971 by the Deputy Inspector General, Border Security Force, Tripura, Agartala, as L.D. Clerk (A.S.T) in the said force. The plaintiff/respondent was charged on three counts under section 40 of the Border Security Force Act, 1968 for short, "the Act" and he was tried by summary Security Force Court, shortly; SSFC" held by the Commandant of 91 Battalion of the Border Security Force, hereinafter referred to as BSF. He was acquitted of two charges but convicted of one charge and sentenced to dismissal from service. The plaintiff/respondent has alleged that no opportunity was given to him during enquiry, that the provisions of the Act and the Rules framed there under were not allowed and the charges were malicious, false and baseless. It has also been alleged that as the plaintiff/respondent refused to associate himself with corruption indulged in by an officer namely, Shri D. S. Dhillon, Assistant Commandant under whom he was serving, the above false charges

were levelled against him. Hence the suit was filed which was duly contested by the Union of India and other defendants and denied the allegations made by the plaintiff/ respondent and also stated that the Civil Court has no jurisdiction to sit in judgment over the decisions of the Armed Forces Tribunal, constituted under the Act. As the plaintiff; respondent alleged that he was dismissed from service by an authority subordinate to the appointing authority, the defendants pleaded that the plaintiff/respondent being a member of an Armed Force of the Union the provisions of Article 311 of the Constitution are not applicable. Both the trial Court and the learned lower appellate court after considering the facts and the law gave a declaration that the order of dismissal of the plaintiff dated 23.1.74 was illegal and accordingly it was set aside and hence this appeal.

3. The first point to be considered is whether the personnel appointed under the Act are members of the Armed Force of the Union or not. The long title of the Act runs as follows :

"An Act to provide for the constitution and regulation of an Armed Force of the Union for ensuring the security of the borders of India and for matters connected therewith."

subsection (1) of section 4 provides that there shall be an armed¹ force of the Union called the Border Security Force for ensuring the security of the borders of India. Entry 2 of List I of the Seventh Schedule of the Constitution runs as follows :

"Naval, military and air forces; any other armed forces of the Union."

so the expression "any other armed forces of the Union" occurring in the said Entry includes armed forces other than three commonly known armed forces in the country namely, Nava military and Air Forces. Therefore, the Union of India can raise any other armed forces in addition to the above three armed forces. From the long title of the Act and also from section 4 of the Act I can safely hold that BSF is an armed force under the Union.

4. In Akhilesh Prasad vs. Union Territory of Mizoram, AIR 1931 SC 805, their Lordships considered whether Central Reserve Police is an armed force or not. After considering the said

No. 2 of List 1 of the Seventh Schedule and section 3 of this Central Reserve Police Force Act. Their Lordships held that "the CRPF is an armed force of the Central Government which is the same thing as saying that it is a part of the "Armed Forces of the Union"." In view of the above decision of the Apex Court, BSF is an Armed Force of the Union.

5. There is no dispute at the bar that the provisions of article 311 of the Constitution apply to a member who holds a civil post under the union or a State and that the provisions are not applicable to the members of Armed Forces as the expression "civil post" means an office on the civil side of administration which is different from a post under the Defence Force i.e. Armed Forces of the

Union. In view of the above legal position, I am of the view (hat the plaintiff/respondent is not entitled to the protection available under Article 311 of the Constitution. (See AIR 1976 SC 2433).

6. The next question which falls for determination by me is whether the Civil Court can sit over the judgment of a Tribunal constituted under the Act. Section 9 of the Code of Civil Procedure, 1908 gives jurisdiction to the Civil court to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

7. The Act does not expressly prohibit the jurisdiction of the Civil Court. In *Dhulabhai vs. State of Madhya Pradesh & Another*, AIR 1969 SC 78, the principles regarding exclusion of jurisdiction of civil court were down and one principle is that where a statute gives a finality as to the order of the special tribunals the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil court would normally do in a suit.

8. Chapter III of the Act lays down the offences; Chapter IV provides for punishments, Chapter V deals with arrest and proceedings before trial, Chapter VI lays down different kinds of Security Force Courts for dealing with the offences committed by a member of the force. Chapter VII lays down the procedure of such courts and Chapter VIII deals with confirmation or rendering of sentence of the Security Force Court. In the case in hand, I am not concerned with Chapter IX which provides for execution of sentence, pardons, remissions etc.

9. According to section 64 of Act there are three kinds of Security Force Courts namely; (a) General Security Force Courts, (b) Petty Security Force Courts and (c) Summary Security Force Courts. Since the petitioner/plaintiff was found guilty by the Summary Security Force Court, I shall deal with the procedure etc. of the said court. According to section 70 of the Act, the commandant of any unit of the Force may hold a SSFC and he alone shall constitute the Court and the proceedings shall be attended throughout by two other persons who shall be officers or subordinate officers or one of either and who shall not as such be sworn or affirmed. Section 74 empowers the SSFC to try any offence punishable under this Act and try any person except an officer or/a subordinate officer. The plaintiff/respondent is not an officer or a subordinate officer and as such the SSFC has power to try him. Section 48 of the Act lays down the Punishment which may be awarded by the Security Force Court including SSFC and such punishments are imprisonment for life, dismissal from the Force, reduction in rank, forfeiture of seniority, fine etc. So under the Act the Security Force Court can also dismiss a person from the service as a punishment.

10. The plaintiff/respondent was duly tried by the court of SSFC and found him guilty under one charge out of three and imposed the punishment of dismissal. The plaintiff/respondent was charged under three counts, which falls under section 40 of the Act for acts prejudicial to good order and discipline of the Force. The SSFC after trial found the plaintiff/respondent guilty and imposed the

punishment of dismissal from service. The SSFC could have also imposed imprisonment for a specified period or fine. From the provisions of the Act it is clear that the trial by the Security Force Court which includes SSFC is a Criminal trial. Under section 114 of the Act, the finding and sentence of a SSFC shall not require to be confirmed but if the officer holding the trial is of the rank of the Superintendent of police or of a rank declared under clause (a) of subsection (5) of section 74 or equivalent thereto or of a lower rank and has held such rank for less than five years, he shall not except on active duty, carry into effect any sentence until it has received the approval of an officer not below the rank of Deputy Inspector General. Subsection (4) of section 74 empowers the SSFC to pass any sentence which may be passed under this Act except the sentence of death or of imprisonment for a term exceeding the limit specified in subsection (5). According to subsection (5) the limit referred in subsection (4) extends to one year if the officer holding the court has held either the post of Superintendent of police or a post declared equivalent thereto for a period of not less than three years and in any other case three months.

11. Be that as it may, in the present case there is no dispute that the punishment of dismissal from service was duly approved by the Deputy Inspector General of police. Section 115 provides for transmission of proceedings of SSFC to the Deputy Inspector General of Police. Rule 161 of the Rules framed under the Act, inter alia, provides that where the proceedings of a Summary Security Force Act have been forwarded to the Deputy Inspector General and if he is satisfied that injustice has been done to the accused person by reason of any grave irregularity in the proceedings or otherwise, he may set aside the proceedings of the Court; or reduce the sentence or commute the punishment awarded to one lower in the scale of punishment given in section 48, where no such action is taken the Deputy Inspector General shall countersign the proceedings and return it to the unit of accused for promulgation.

12. It was urged that the Deputy Inspector General of Police without applying his mind countersigned the present proceeding. I am of the opinion that this is not the proper form to raise such an objection. Section 117(1) enables a person subjected to the Act, who is aggrieved by any order passed by any Security Force Court to present a petition to the officer or authority empowered to confirm any finding or sentence of such Court. Subsection (2) of the said section also enables a person to present a petition to the Central Government, the Director General of the Force or any prescribed officer superior in command who confirmed such sentence or finding. If the plaintiff/respondent was aggrieved by the finding and sentence imposed by the SSFC or he was of the opinion that the Deputy Inspector General did not apply his mind before confirmation, the plaintiff/respondent should have availed of the remedies available under section 117 of the Act and these points cannot be agitated before the civil Court.

13. From the provisions of the Act it is clear that the Act gives a finality to the orders of the Security Force Court and it also provides for remedy to the

aggrieved person to file a petition for revision against the order of such Court. Thus, the Act is comprehensive and exhaustive one and the jurisdiction of the civil Court has been impliedly barred.

14. That apart, section 9 of the Code of Civil Procedure gives jurisdiction to try all suits of a civil nature. In the present proceeding the plaintiff/respondent was tried of a criminal charge by a court duly constituted for trial of such criminal offence. I am, therefore, of the opinion that the suit in question was not of a civil nature and as such both the learned trial court and the learned lower appellate court committed an error of law by holding that the Civil Court has jurisdiction to try the present suit.

15. From the provisions of the Act and Rules framed there under I find that the services of the member of the Force can also be terminated by holding a departmental enquiry. My observations and findings in the present appeal is confined only to cases where a punishment of dismissal from service is awarded by the Security Force Court constituted under the Act. To what extent a civil court can interfere with if the services of the member of a Force is terminated by holding a departmental enquiry and not by way of punishment imposed by the Security Force Act needs no consideration in the present appeal and as such I keep this matter open to be decided when such an occasion arises.

16. For the reasons stated above, I allow the appeal by setting aside the judgment and decree dated 14.6.78 passed by the learned Additional District Judge, Tripura, Agartala, in Title Appeal No. 20 of 1977(T.A. No. 27 of 1977).

17. Considering the facts and circumstances of the case the parties shall bear their own costs.