

(2005) 04 GAU CK 0003
In the Gauhati High Court
Case No : Writ Appeal No. 25 (SH) of 2000

Union of India (UOI) and Others

APPELLANT

Vs

Anil Kumar Bajpai

RESPONDENT

Date of Decision : 28-04-2005

Acts Referred:

Border Security Force Act, 1968 — Section 107, 108, 109, 111, 113
Border Security Force Rules, 1969 — Rule 106, 123, 45B, 45B(1), 48
Constitution of India, 1950 — Article 226

Citation : (2006) GLT 60 Supp

Hon'ble Judges : B. Lamare, J; Anima Hazarika, J

Bench : Division Bench

Advocate : S. Shyam, for the Appellant; S.K. Deb Purkayastha, for the Respondent

Judgement

A. Hazarika, J.—Union of India represented by the Director General, Border Security Force (D.G., BSF in short) and others have preferred the instant writ appeal assailing the legality and validity of the judgment and order dated 10.3.1998 passed by the learned Single Judge in Civil Rule No. 5 (SH) 96 whereby the learned Single Judge allowed the writ petition by setting aside the guilt of the writ Petitioner and subsequent punishment awarded to him vide order dated 30.11.91 and the confirmation order dated 27.2.92 alongwith the order dated 16.10.95. The Court has further directed the Respondents (Union of India and Ors.) to give to the Petitioner his promotional seniority on the post which he had occupied at the time of trial and punishment, with effect from the date when he was actually promoted and not from the date as was ordered by the General Security Force Court (GSFC) sentence dated 30.11.91. The learned Single Judge had further ordered that the Petitioner shall be entitled for his promotional claims on the next higher post or posts on the basis of his original seniority. However, the learned Single Judge has held that those directions are subject to Respondent's right to initiate fresh proceedings for punishing the Petitioner on the charge he was earlier tried subject to permissibility of the same under the

law.

2. In order to understand the rival contentions raised in the writ appeal, it is apposite to state the facts leading to the filing of the writ petition and the relief sought for, challenging the legality of the impugned order imposing punishment of predating of his promotion by 3 years awarded by the GSFC. The writ Petitioner while serving as Assistant Commandant in 27 Bn. BSF during the period from 1981 to June, 1983 was then stationed at Rajouri (J & K). During that period, the Petitioner was looking after the construction, repair and maintenance works of the Battalion as per verbal orders of the Commandant under 2 I/C of the Battalion who was overall in-Charge of construction. While the Petitioner was away to Delhi in connection with an advance training during the period from 27.7.1981 to 28.12.1981, a sum of Rs. 7500/- was placed at the disposal of the, Battalion for providing one M.S. Tank for the ORS Mess by the HQ DIG, BSF, Rajouri. Administrative approval and expenditure sanction for Rs. 7500/- was issued accordingly. Thereafter the quotations were invited and four firms submitted their quotations. The rates of the 1800 M.S. Tank quoted, by three (sic) only as per comparative statement and quotations were as follows:

- 1) M/s. Bee Kay Traders: Rs. 4950/- each
- 2) M/s. Sitaram and Sons: Rs. 4940/- each
- 3) M/s. Arolite Agency: Rs. 5000/- each

3. The authority accepted the rates of M/s. Sitaram & Sons being the lowest tenderer. The Petitioner thereafter signed the supply order on 20.2.82 as per the rates shown in the comparative statement and the approved by the Offg. Commandant. Accordingly the firm supplied the stores including the M.S. Tank which was received on 24.2.82 and surveyed by a committee on 26.2.82 and taken on charge in the ledger against bill No. 424 dated 23.2.82 submitted by the firm for Rs. 6,440.70P in which the price of M.S. Tank was shown at Rs. 4,940/-. The bill with stocks certificate was (sic) to the Commandant by the Petitioner and the same was passed for payment by the Commandant and an advance of Rs. 6200/- was sanctioned by the Offg. Commandant and the amount of advance was received by the Petitioner on 3.3.82 and issued a receipt for Rs. 6,440.70/- dated 3.3.82. An adjustment contingent bill for Rs. 7,262/- against the total advance of Rs. 7500/- drawn including the amount of Rs. 6440.70 paid to M/s. Sitaram & Sons was prepared and after pre-audit by the unit Accountant was passed by the D.D.O. and countersigned by the Commandant on 23.1.83 and the balance of Rs. 238/- returned to BSF HQrs., New Delhi.

4. Thereafter on the basis of internal audit observation on the account of the Battalion for the period from 8/82 to 2/84 regarding overwriting on the rates quoted by the firms as well as in the comparative statement approved by the Commandant resulted in detection of embezzlement of Rs. 3000/-.

5. Against the said embezzlement as aforesaid one man Court of Inquiry, record

of evidences, chargesheet under the BSF Act was drawn against the Petitioner for trial by GSFC after a lapse of more than five years. The GSFC, after completion of the trial, sentenced the Petitioner to take rank and precedence as if his appointment as Deputy Commandant bore date fifth day of June, 1987 instead of 5.6.1984 vide order dated 30.11.91 and the sentence was confirmed by the Additional Director General, TC & N Ftr. BSF on 27.2.92.

6. Before confirmation of the sentence, the Petitioner submitted a pre-confirmation petition u/s 117(1) of the BSF Act, 1968 contending inter alia the defects and procedural irregularities in the trial, more particularly denying of a defending law officer of his choice vide his petition dated 17.12.91 but the same was rejected vide communication dated 10.3.92. The Petitioner thereafter submitted another petition which is called a post-confirmation petition as provided u/s 117(2) of the Act to the Director General, BSF, New Delhi, pointing out that the impugned punishment dated 30.11.91 was wrong, illegal, arbitrary and capricious, against the provisions of law as well as against the principles of natural justice and prayed for setting aside the impugned punishment vide his petition dated 19.10.92 but the same was also rejected by the Director General, BSF vide letter dated 4.5.93 without giving a personal hearing as prayed for.

7. Being aggrieved with the imposition of penalty awarded by GSFC and the confirmation of punishment and the order of the appellate authority, the Petitioner had approached this Court by way of filing a writ petition being Civil Rule No. 35(SH) of 1994. This Court vide order dated 1.6.95 disposed of the writ petition with the following direction; viz.

The D.G. should look into the matter personally after giving the Petitioner ample opportunity in the matter and pass such order as he may deem fit and proper.

8. On receipt of the order of the Court, the Petitioner had filed an additional appeal u/s 117(2) of the act for its consideration as directed by the Court. Simultaneously, the Deputy Director (Pers) of the D.G. Office vide letter dated 11.7.95 asked the Petitioner to submit his additional points for D.G.'s consideration allowing him 15 days time for submitting the additional points and accordingly an additional/supplementary appeal was filed on 8.8.1995. Thereafter a communication was made by the Deputy Director (Pers) on behalf of the D.G. to the Petitioner by which his appeal was rejected which is quoted hereunder:

Consequent upon the order passed by the Hon''ble High Court of Gauhati (Shillong Bench) dated 1.6.95 in Civil Rule No. 35(SH) of 1994 in the case of Shri Anil Kumar Bajpai v. UOI and Ors., you were afforded opportunity to make additional points for consideration by the Director General, Border Security Force i.e. in addition to the points raised by you in the writ petition. Accordingly, you submitted the petition dated 08 Aug., 1995.

The Director General, after carefully considering the points raised by you in the writ petition and the additional points made by you in your petition dated 08

Aug., 1995 and all the facts and circumstances of the case, has found that the issues raised by you do not, in any way, affect the gravity of the charge on which you were tried and found "Guilty", nor make out any case for mitigating the sentence. The Director General, has thus, rejected your petition being devoid of any merit.

9. The said rejection order was communicated on 16.10.95 and hence the second round of litigation between parties assailing the impugned orders as indicated above.

10. Before the learned Single Judge, several submissions were made in support of the writ petition, but the following submissions were pressed, viz.-

- a) Denial of defence counsel of Petitioner's choice;
- b) Violation of Rule 45B of the BSF Rules, 1969 on amended charge-sheet dated 4.10.91;
- c) Pre-confirmation petition made u/s 117(1) of the Act and the rejection of the same without disclosing the mind of the confirming authority on the points raised by the Petitioner thereby violating the provisions of the Act.;
- d) The order of the appellate authority on the petition made u/s 117(2) of the Act lacks due application of mind because his appeal was rejected on the basis of legal opinion rendered by the Chief Law Officer of the Force though he was not assigned with the job under the provisions of the Act and the rules:
- e) The denial of his right of promotion to the next higher post due to the pendency of the disciplinary proceedings leading to the convening of GSFC though persons junior to him were promoted.

11. In order to appreciate the points raised, the learned Single Judge has held that there was no violation of Rule 123 of the BSF Rules and the writ Petitioner was not in any way prejudiced in conducting the case before the GSFC and hence rejected the first contention.

12. In regard to second contention the learned Single Judge has dealt with the matter very exclusively. Therefore, it would be appropriate to quote the charge sheet submitted against the Petitioner with the offence u/s 30(b) vide charge sheet dated 10.11.1990. The charge sheet reads:

In that he, while posted in 27BN BSF at Rajouri during 1981-82 and carrying out the duties of AC (Tech.) and construction officer has manipulated and got embezzled of Rs. 3000/on 30.9.81 in purchasing of one Mild Steel Tank of 1800 Ltrs. for the use of ORS Mess 27 BN BSF.

13. In regard to the above charge, proceedings of record of evidence under Rule 48 and abstract of evidence under Rule 49 was accomplished. However, at the stage of proceeding under Rule 59 which deals with the disposal of the application for convening a Security Force Court made by the Commandant under

Rule 52 before the Superior Officer, the Superior Officer found that for Petitioner's conviction u/s 30(b) there was no evidence. Accordingly he reframed the charge to the one u/s 40 of the Act. Accordingly, the amended charge sheet dated 4.10.91 charging the Petitioner with the offence u/s 40 was served on him. The amended second charge sheet reads as follows:

In that he, at Rajouri on 20 Feb., 1982, while performing the duties of construction Officer of 27 BN BSF, failed to exercise proper scrutiny and due check of all connected documents relating to purchase of M.S. Tank of 1800 Ltrs. capacity, before signing supply order No. Q/SD/27/80 dated 20 February, 1982 in favour of M/S Sitaram and Sons of Jammu which resulted in an over payment of Rs. 3000/- (Rupees three thousand only) to the said Firm.

Admittedly the Petitioner was heard on the charge sheet dated 10.11.90, however, no hearing was done by his commandant on the amended/reframed charge sheet dated 4.10.91, though the nature of the first charge was totally different from the second amended charge which was dropped due to obvious reasons as stated hereinabove.

14. Before dealing with the above submissions made on behalf the Petitioner, the learned Single Judge has gone through the various provisions of the Act and the Rules frame thereunder. The Border Security Force Act, 1968 was enacted by the parliament in order 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 matter connected therewith. The Central Government in exercise of powers conferred by Sub-section (1) and (2) of Section 141 of BSF Act 1969 makes the Rules which is called the Border Security Force Rules, 1969. Therefore, compliance with the various provisions of the Act and the Rules framed thereunder are mandatory in nature and any infraction of the provisions would vitiate the action taken relating to any matter connected with the discipline of the force. The provisions of the Act and the rules are exhaustive in nature as it would appear from the provisions of the Act and the Rules framed thereunder.

The relevant chapter of the Act and its provisions under the Act and the Rules are relevant in order to appreciate the argument advanced by the parties as held by the learned Single Judge. Chapter-III deals with offences and Chapter-IV deals with punishment. Chapter V deals with arrest and procedure to be followed before trial of an accused. Chapter VI deals with Security Force Courts (SFC in short) their variety, composition, power to convene, need when it is to be dissolved and powers of respective SFC. Courts, place of trial and limitation for trial. Chapter-VII provides for the procedure to be followed during trial of offences by the SFC whereas Chapter-VIII deals with confirmation and revision of findings and sentence of the SFC, Chapter-IX deals with the execution of sentence pardons and remission etc. whereas last chapter deals with miscellaneous matters.

Now it is to be seen as to whether the authorities are competent to alter and/or

amend the charge and if so what are the procedures to be followed after amendment of the charge. Proviso to Rule 59 Sub-rule 2(b) empowered the authority to reframe the charge which is quoted hereunder; viz.--

Provided further that the Superior authority or higher authority while convening a Court may reframe the charge sheet on which the accused is to be tried.

Once the charge is amended/reframed; which has been done in the case in hand, Rule 45(B) of the Rules is to be followed which is quoted hereunder, viz.-

Rule 45(B): Hearing of charge against an officer and a subordinate officer: (1)(a) The charge against an officer or a subordinate officer shall be heard by his Commandant;

Provided that charge against a Commandant, a Deputy Inspector-General or an Inspector General may be heard either by an officer commanding a Unit or Headquarters to which the accused may be posted or attached or by his Deputy Inspector-General, or his Inspector-General or, as the case may be, the Director-General.

(b) The charge-sheet and statements of witnesses if recorded and relevant documents, if any, shall be read over to the accused:

Provided that where written statements of witnesses are not available, the officer, hearing the charge shall hear as many witnesses as he may consider essential to enable him to know about the case.

(c) The accused shall be given an opportunity to make a statement in his defence.

(2) After hearing the charge under Sub-rule (1), the officer who heard the charge may--

(i) dismiss the charge; or (ii) remand the accused, for preparation of a record of evidence or preparation, of abstract of evidence against the accused:

Provided that he shall dismiss the charge if in his opinion the charge is not proved or may dismiss it if he considers that because of the previous character of the accused and the nature of the charge against him, it is not advisable to proceed further with it:

Provided further that in case of all offences punishable with death, a record of evidence shall be prepared.

15. A conjoint reading of Rule 45B read with Clauses (1), (2), (3), (4), (5), (6) and (8) of Rules 48, Rule 49, 51A, 52, 59, 63, 106 alongwith Appendix-VIII and Rule 123 are relevant for deciding the case in hand. These Rules are not a mere formalities to be observed but it cast a duty on the authority to follow the procedure prescribed in order to uphold the imposition of punishment awarded by the GSFC and subsequent confirmation, both pre-confirmation and post confirmation and the power of the appellate authority.

16. Though Rule 59 of the Rules empowered the authority to reframe the charge but the said Rule is silent in regard to the procedure to be followed after a charge has been reframed which is altogether a new charge at the stage of convening the court for trial on charge. The Rule though silent in respect of the procedure to be followed but it does not rule out the process to be followed under Rules 45B, 48, 49 and 51A. Rule 45B read with Rule 59 gives wide power to the commanding officer and to the convening or the Superior Officer including the power to discharge the accused. It is after he remands him for preparation of record of evidence or the abstract of evidence that Rules 48, 49 and 51A comes into play.

Therefore, these Rules are not mere formality. Right of the accused to be heard by his commandant under Rule 45B is mandatory in nature. The right of hearing on the charge is coupled with the possible chance of the accused being discharged from the charge in case his commandant dismiss the charge. The Rule casts a mandatory duty on the Commandant to apply his mind to the charge and the evidence available to substantiate the charge and on being satisfied that there are material evidence to support the charge and on being satisfied that the prima facie case is made out to substantiate the charge then the accused may stand for trial. After hearing the accused on the charge if he is satisfied he orders for the remand of the accused for taking action under Rules 48, 49 and 51A.

17. Under the provisions of the Act and the Rules the definite corollary follows that the power of the commandant and convening officers are independent of each other. Both have independent powers to exercise the discretion of dismissing the charge, whereas the commandant has the option at two points, viz., under Rule 45B and under Rule 51A.

18. Therefore, the accused is entitled for consideration of his case by the commandant and any other argument and/or interpretation of Rule 45B and 51A is not acceptable because fair play in action demands that the accused should be entitled to the principles of natural justice and the foundation of the charge and the procedure followed being faulty in the instant case the entire proceeding including the trial, the findings and the sentence recorded by GSFC, confirmation of the findings and the appellate order vitiates for violating the Rules as mentioned hereinabove.

19. In regard to the third point formulated by the counsel of the Petitioner, the learned Single Judge had dealt with the relevant provisions viz., Sections 107, 113, 117 alongwith pre-confirmation appeal which the Petitioner filed on 7.12.91 and the rejection order dated 10.3.92. There was no consideration on what grounds the pre-confirmation appeal was dismissed. No material record was produced to substantiate the rejection order and hence the learned Single Judge has held that the confirmation order is a nullity in the eye of law and therefore answered in favour of the Petitioner.

20. The fourth contention raised in respect of Section 117(2) for the post-confirmation review of the findings and sentence of the GSFC by the Central Govt. or by the Director General of the Force or by an Officer who is superior in command to the Officer who confirmed the finding and sentence. The power under the aforesaid sections are wide to make any order on the review application of the accused person as the Officer may think proper. Section 118 empowers the Central Govt. or the Director General of the Force to annul the proceedings of any GSFC on the ground that the same is illegal or unjust.

21. It would be appropriate to refer the order of the learned Single Judge passed in Civil Rule 35 (SH) 94 on 1.6.95 in connection with the petition made u/s 117(2) of the Act. In order to ascertain the manner of rejection of petition made u/s 117(2) of the Act, this Court directed the learned Counsel appearing for the Union of India on 8.4.97 to produce original order of the Director General passed on 16.10.95. Accordingly the original record was produced and this Court had the occasion to go through the original record and found that the two appeals filed by the Petitioner were rejected by the Chief Law Officer of the Office of the DG, which was only approved by the D.G. Therefore, the power exercised by the Chief Law Officer was not empowered under any of the provisions of the Act and the rules framed thereunder though order of the learned Court is otherwise. Therefore, this court has held the order rejecting the appeals is not an order which is contemplated under Sections 117(2) and Section 118 of the Act and hence answered in the affirmative and in favour of the Petitioner and allowed the writ petition as indicated above.

22. We have heard the argument advanced by Shri S. Shyam, learned Central Govt. standing counsel, appearing on behalf of Union of India the Appellant herein and Shri S.K. Deb Purkayastha, learned Counsel appearing for the Respondents.

23. The first limb of argument advanced by the counsel on behalf of Union of India, criticizing the judgment and order date 10.3.98 is that, Section 113 of the Act provides for revision of finding or sentence and Section 117 provides for remedy against order, finding or sentence of Security Force Court. The learned Counsel has drawn our attention relating confirmation and revision of the findings and sentence contained in Chapter VII of the Act and Rule 106 of the Rule. The sentence awarded by GSFC has been confirmed and his appeals u/s 117(2) of the Act having been rejected by the appellate authority in a case relating to discipline of a force, the learned Single Judge committed an error apparent on the face of the record in interfering with the decisions of the trial, sentence, confirmation Order and the order of the appellate authority.

24. The second limb of argument is that the 2nd review of the findings and sentence of the GSFC was made against the Petitioner by the D.G., BSF on the petition filed by the Petitioner on 19.10.92, therefore, the learned Single Judge committed an error apparent on the face of the record in interfering with the 2nd reviews made by the D.G., B.S.F.

25. The third limb of argument is that in pursuance to the order dated 1.6.95 passed in Civil Rule No. 35(SH)94 of this Court an opportunity was given to submit additional points apart from the pleadings made in the writ petition and the said appeal was considered by the appropriate authority and the same having been rejected, the High Court in exercise of power under Article 226 of the Constitution may not interfere with the findings recorded by the appellate authority.

26. The fourth limb of argument advanced is that whether judicial review in the matter of departmental enquiry initiated against an employee of the Force is permissible in exercise of Power under Article 226 of the Constitution of India. The power of judicial review being limited in the matter of trial by GSFC, the learned Single Judge exceeded its jurisdiction in setting aside the entire proceeding.

27. Lastly, it was argued that the penalty imposed being not disproportionate to the gravity of offence, the learned Single Judge committed an error apparent on the face of the record in interfering with the award of punishment.

28. On the other hand the argument advanced by Shri S.K. Deb Purkayastha, learned Counsel appearing on behalf of the Respondent is that, the charge having been reframed in exercise of power under Rule 59 of the Rules; Rule 45B read with 51A has to be complied with. The matter and the procedure adopted in the instant case would show that there is a gross violation of the Rules which are mandatory in nature; therefore, the learned Single Judge has rightly allowed the writ petition and the appellate Court may not interfere with the judgment and order passed by the learned Single Judge and dismissed the appeal preferred by the Appellants.

29. We have considered the arguments advanced by the counsel of the respective parties, we have also gone through the various provisions of the Act and the Rules framed under the Act. Chapter-VIII of the Act and Rule 106 of the Rules, contains the provisions regarding confirmation and revision of the findings and sentence. Section 107 of the Act provides the need of the findings and the sentence of GSFC to be confirmed as provided under the Act. Section 108 provides that the findings and sentences of GSFC may be confirmed by the Central Govt. or by any Officer empowered in this behalf by warrant of Central Govt. Section 109 of the Act deals with the findings and sentences of Petty Security Force Courts, which may be confirmed by an officer having power to convene a General Security Force Court or by any officer empowered in this behalf by warrant of such officer.

Section 111 of the Act empowers the confirming officer if he has been authorized by the Central Govt. by a warrant in that behalf, to exercise the following powers while confirming the findings and sentence of the GSFC:

(a) mitigate or remit the sentence of the GSFC or;

(b) to commute the punishment to a lesser one than the punishment which has been awarded.

This power can be exercised only in conformity with the conditions and restrictions with which the power to confirm has been given to the confirming authority.

Section 113 of the Act also empowers the confirming authority, be it the Central Govt. or its nominee, to revise the findings and sentence of the Court and on such revision, the Court if so directed by the confirming authority may take additional evidence. Section 117(1) of the Act has given a right to the accused to put up his own objections/points for consideration by confirming authority before the findings arrived at and sentence awarded by GSFC are confirmed u/s 113 and at the same time cast a corresponding duty on that authority to take such steps as may be considered necessary to satisfy itself as to the correctness, legality or propriety of the order passed or as to the regularity of any proceeding to which the order relates.

A conjoint reading of two Sections 113 and 117 of the Act would show that the confirming authority while exercising the power of confirmation has the duty of examining of points raised u/s 117(1) i.e. Pre-confirmation appeal. The confirming authority must apply its mind in regard to the point raised and record his reasons in case he turns down the points. The appeal before pre-confirmation authority is for the consideration of his objections relating to flaw of different procedure followed in violation of the provisions of the Act and the Rules.

30. In the case in hand the confirming authority has just put in the following words:

The findings and sentence awarded by the Court are confirmed.

No reason has been recorded which implied that the mandatory provision has been left out at the whims of the Respondent authorities. A glance of pre-confirmation appeal dated 7.12.91 and its rejection order dated 10.3.92 would show that no ground had been assigned for dismissal of the pre-confirmation petition. The order does not disclose application of mind by the confirming authority which can safely be held that the pre-confirming authority had failed to discharge the imperative statutory duty cast by Section 113 and 117 of the BSF Act. Therefore, we hold that statutory duties had not been complied with by the authority. The argument advanced has thus no force.

31. In regard to second review of the findings and sentence of the GSFC by D.G., BSF made against the Petitioner on his petition dated 19.10.1992, the record reveals that the post confirmation review was rejected by D.G. vide order dated 4.5.93 which culminated in filing the writ petition. The writ petition being Civil Rule No. 35(SH) of 1994 was disposed of on 1.6.95 directing the D.G. to look into the matter personally after giving the Petitioner ample opportunity in the matter and pass such order as it may deem fit and proper. The record reveal that

the writ Petitioner in fact filed his additional appeal u/s 117(2) for its consideration. Thereafter he was asked to submit his additional points for D.G.'s consideration vide communication dated 11.7.95 to which he had filed the same on 8.8.95. The order rejecting the post confirmation review was rejected without assigning any reasons. The records further reveals that Section 117(2) and 118 coupled with the order of the Court do not empower the Chief Law Officer to consider the appeal. The recommendatory note and the reasons supplied by the Chief Law Officer had been approved by the D.G. There is no indication that the D.G. had applied his mind in the case while rejecting the appeal. The mandatory duty having being failed to be performed by the D.G., we have no other alternative but to reject the contention raised by the learned CGSC.

32. It is true that judicial review in the matter of trial by the GSFC and its findings, sentence, pre-confirmation and post-confirmation order, appellate order are limited. But where the mandatory duty to achieve its goal has not been performed by the authorities which resulted in miscarriage of justice, the Court is not powerless to set right the wrongs committed by the statutory authority. In the instant case after the first charge was dropped, the amended charge was framed under Rule 59 of the Rules, but the manner and the procedure prescribed under Rule 45B, 48, 49 and 51A have not been followed and the punishment imposed therefore is nonest in the eye of law. Considering the facts of the case as well as materials on record, this court exercised the power of judicial review which, to our mind, was appropriate and just. The discretionary power to exercise was right in its true perspective and as such we do not want to interfere with the judgment and order passed by the learned Single Judge.

33. A faint argument advanced by the learned CGSC was that the punishment imposed was commensurate with the gravity of the offence and the writ Court may not interfere with the punishment imposed. The provisions of the Act and the Rules are statutory in nature and the authority must oblige to perform its statutory duty casts upon them. The statutory provisions having not been followed in the trial, all the consequential orders are nullity in the eye of law, non-application of mind is writ large in the instant case. Therefore, we hold that the punishment imposed cannot be sustained which we hereby do by dismissing the appeal.

34. For the aforesaid reasons, we find no merit in this appeal which is hereby dismissed. No costs.