

(2010) 04 RAJ CK 0072
In the Rajasthan High Court

Union of India (UOI) and Others

APPELLANT

Vs

Devi Lal Sahu

RESPONDENT

Date of Decision : 01-04-2010

Acts Referred:

Border Security Force Act, 1968 — Section 26
Constitution of India, 1950 — Article 14

Citation : (2010) 04 RAJ CK 0072

Hon'ble Judges : Jagdish Bhalla, C.J.;Dinesh Maheshwari, J

Bench : Division Bench

Judgement

Dinesh Maheshwari, J.—This intra-court appeal is directed against the order dated 04.09.2008 passed in CWP No. 5158/2004 whereby the learned Single Judge allowed the writ petition filed by the respondent Devi Lal Sahu (hereinafter also referred to as the writ-petitioner), quashed the impugned order dated 10.11.2003 passed by the Summary Security Force Court ("the SSF Court"/"the SSFC") along with consequential other order, and held the writ-petitioner entitled to all the consequential benefits.

2. This intra-court appeal has been taken up for final disposal at this stage in the background that after condonation of delay in filing, a co-ordinate Division Bench proceeded to admit this appeal on 06.04.2009; and, while permitting expeditious hearing of the appeal, passed the order on the prayer for interim relief to the effect that the appellant shall pay 50% of the last drawn salary including emoluments to the respondent w.e.f. 01.04.2009 and, upon compliance of this condition, the operation of the impugned order passed by the learned Single Judge shall remain in abeyance. It appears that the appellants moved the Hon'ble Apex Court against the said order dated 06.04.2009 by filing a petition for special leave to appeal. The Hon'ble Apex Court dismissed the said petition on 30.09.2009 but on the request of the learned ASG, ordered for expeditious hearing and disposal of this intra-court appeal, preferably within six months. On 22.03.2010, upon the learned Counsel for the parties bringing to our notice the order passed by the Hon'ble Supreme Court and making request for early

hearing, we heard the learned Counsel finally.

3. The relevant facts and the background aspects of the matter could be taken in comprehension thus: The respondent herein filed the writ petition aforesaid with the averments, inter alia, that he joined the Border Security Force ("BSF") on 05.09.1986; that he had been serving with sincerity and dedication and had received certain rewards too; and that he had, of course, been penalized twice, particularly on the allegations of absence without leave and over staying on leave. The writ-petitioner submitted that on 28.10.2003, he was served with a charge-sheet u/s 26 of the Border Security Force Act, 1968 ("the BSF Act") and was placed under close arrest at Headquarter 20 Bn. Barmer on 29.10.2003; and that the Assistant Commandant proceeded with the record of evidence (ROE) on 29/30.10.2003 wherein he denied the charges and stated that he had falsely been implicated. The writ-petitioner further submitted that 07.11.2003, he was informed that SSF Court was going to be held at Headquarter 20 Bn. BSF on 10.11.2003 and he was to be tried for committing offence u/s 26 of the BSF Act; that he could appoint a friend for defending his case but the name of the friend be informed to the office by 08.11.2003; and that he could appoint a civil counsel of his choice, if so desired at his own expenses. The writ-petitioner, however, contended that he was under close arrest since 29.10.2003 and hence, was not in a position to engage a counsel to defend himself and to intimate the name very next day.

4. The writ-petitioner pointed out that the SSF Court assembled on 10.11.2003 presided over by the Commandant 20 Bn. BSF but then, Shri A.K. Tambe was shown to have been appointed as the friend of the accused though never so appointed by him. The writ-petitioner alleged that the trial was held in a casual manner where the Presiding Officer, of his own, held that he had pleaded guilty and that Rule 142(2) of the Border Security Forces Rules, 1969 ("the BSF Rules") was complied with and proceeded to convict and sentence him with dismissal from service; and the said order dated 10.11.2003 was confirmed by the respondent No. 3 on 01.12.2003.

5. The writ-petitioner further pointed out that he preferred an appeal against the order aforesaid that was kept pending for a pretty long time and in the circumstances, he approached this Court by filing a writ petition (CWP No. 3288/2004) that was dismissed because of the pendency of the appeal but with directions for expeditious hearing and disposal of the appeal. The writ-petitioner pointed out that the said appeal came to be dismissed thereafter, by a short order dated 21/22.09.2004.

6. Questioning the orders aforesaid, the writ-petitioner preferred the writ petition wherefrom has arisen this intra-court appeal. It was submitted before the learned Single Judge by the writ-petitioner that the impugned orders were arbitrary and illegal and had been passed in a casual manner; that he never appointed Shri A.K. Tambe as his friend in the proceedings and rather he was not on good terms with the said Shri A.K. Tambe; that before recording the plea of

guilty, the procedure provided under Rule 142(2) of the BSF Rules was not complied with; that he never pleaded guilty before the SSF Court and rather requested for cross-examining the witnesses and for producing his evidence in defence but the penalty was inflicted without any opportunity; that there were no signatures on the proceedings in which the plea was recorded and hence, the whole proceedings stood vitiated. The writ-petitioner submitted even on the merits that he was falsely implicated in the case with allegations of intoxication; and there was no eyewitness to prove that he had consumed liquor while on duty.

7. The respondents in the writ petition (the appellants herein), on the other hand, contended before the learned Single Judge that all the proceedings were undertaken in accordance with the BSF Rules and there was no illegality in the proceedings. It was also submitted that before awarding sentence, the SSF Court considered the previous record of the writ-petitioner and he was found convicted 7 times and his general character was found to be unsatisfactory. The contentions as sought to be urged by the writ-petitioner against the record of the proceedings were refuted with the submissions that the petitioner himself appointed Shri A.K. Tambe as his friend in the trial; that he was given full opportunity to defend; that during the trial he pleaded guilty of the charge in the presence of two members and the SSF Court proceeded further in accordance with Rule 142(2) of the Rules; and that the sentence awarded was commensurate with the gravity of the offence, of consuming liquor while on duty.

8. While pointing out that the question of appointment of Shri A.K. Tambe as friend was totally irrelevant for the reason that the writ-petitioner had been penalized on the basis of plea of guilty and no inquiry whatsoever was conducted, the learned Single Judge observed that the basic question involved in the case was as to whether the plea had been recorded in accordance with Rule 142(2) of the BSF Rules or not. While reproducing the relevant portions of the proceedings of the SSF Court, the learned Single Judge pointed out that the proceedings did not bear the signatures of the accused. The learned Single Judge also indicated a shortcoming in the case of the appellants with reference to the reply averments to the effect that the SSFC complied with all the provisions of Rule 142(2) of the BSF Rules "after" recording the plea of guilty on the charges levelled; and observed that the Rules were required to be complied with prior to recording of such plea of guilty.

9. The learned Single Judge further referred to a Division Bench decision of this Court in the case of Union of India and Ors. v. Ex-L.Nk Bega Ram Mil LJ 2007 (Raj.) 231 holding, in relation to Rule 115(2) of the Army Rules, that not obtaining of signatures of the accused on the "plea of guilty" results in vitiating the proceedings; and to another Division Bench decision of this Court in the case of Union of India and Ors. v. Ex-Sepoy Chandan Singh RLW 1998 (1) (Raj.) 118 holding that Rule 115(2) of the Army Rules was mandatory in nature.

10. The learned Single Judge pointed out that Rule 142(2) of the BSF Rules and Rule 115(2) of the Army Rules were in pari materia and thus, held that the

decisions aforesaid in relation to Rule 115(2) of the Army Rules would equally apply in relation to Rule 142 (2) of the BSF Rules. With reference to the aforesaid decisions in Bega Ram and Chandan Singh and further with reference to the position of the record of the present case where, admittedly, the SSF Court proceedings on the plea of guilty do not bear the signatures of the accusedrespondent, the learned Single Judge concluded that there had been total non-compliance of the mandatory requirements of the Rules; and, thus, set aside the impugned orders and allowed the writ petition as noticed hereinbefore.

11. Assailing the order passed by the learned Single Judge, the learned Counsel for the appellants vehemently contended that the learned Single Judge has erred in placing reliance on the decisions in Bega Ram and Chandan Singh (*supra*); and rather the law declared in Bega Ram's case does not support the submissions made on behalf of the writ-petitioner. The learned Counsel further submitted that Rule 142(2) of the BSF Rules does not provide for obtaining the signatures of the accused on pleading guilty; and rather, the statutory requirement as per Rule 153 of the BSF Rules is for the Court to affix its signatures and date to the sentence; and such signatures authenticate the whole of the proceedings. It is further submitted that the writ petitioner was not entitled to question the proceedings of SSF Court when he never raised any such objection regarding appointment of the friend earlier and when the proceedings were attended at by two independent persons. It is also submitted that the respondent had been involved in multiple cases of misconduct and indiscipline and in fact he had been served with another communication dated 11.08.2003 for retiring/discharging him on the ground of unsuitability but before the competent authority could pass final order thereupon, the writ-petitioner committed yet another offence punishable u/s 26 of the BSF Act for intoxication where for SSF Court was conducted and he was ordered to be dismissed from service on the basis of finding of the SSF Court proceedings held on 10.11.2003. The learned Counsel for the appellants has placed strong reliance on the decisions of the Hon''ble Delhi High Court in the cases of Diwan Bhai v. Union of India and Ors. CW No. 4687/2001, decided on 04.09.2001 and Chokha Ram Vs. Union of India (UOI) and Another,

12. Per contra, the learned Counsel for the respondent, while supporting the order passed by the learned Single Judge, strenuously contended that for the law declared by the Division Bench of this Court in Bega Ram's case (*supra*), the appellants are not entitled to contend that the SSF Court could proceed on a plea of guilty without obtaining the signatures of the accused thereupon. It is submitted that even if the decision in Bega Ram's case had been in relation to the Army Rules, the said decision essentially deals with the rule that is analogous to Rule 142(2) of the BSF Rules and the principles therein directly apply to the facts of the present case. The learned Counsel further submitted that the SSFC proceedings were conducted in a wholly arbitrary manner and apparent it is that the respondent was sought to be penalized without adequate opportunity to defend himself. The learned Counsel submitted that when the respondent had

seriously contested the matter at the time of ROE proceedings on 29/30.10.2003, there was no occasion for him to have pleaded guilty.

13. We may point out that while the original record of SSF Court proceedings was not available with the learned Counsel appearing for the appellants during the course of hearing but at our asking, the learned Counsel has supplied the same after closure of the arguments.

14. We have given a thoughtful consideration to the rival submissions and have examined the material placed on record and that placed for perusal.

15. Before proceeding further, it appears appropriate to observe that on the facts and in the circumstances of this case as noticed, and in view of the limited question on the validity of the proceedings for want of signatures of the writ-petitioner on the plea of guilty, and further, in view of the order proposed to be passed in this appeal, we would refrain from making any comment on any other aspect related with the merits of the accusation and on other submissions made on behalf of the parties like the suggestion made on behalf of the appellants that the respondent had been involved in multiple cases of misconduct and indiscipline; and like the suggestion made on behalf of the respondent that he was on inimical terms with the persons allegedly shown as his nominee for the SSFC.

16. The fact remains indisputable that the plea of "guilty" as allegedly made by the writ-petitioner before the SSF Court does not bear his signatures. The relevant proceedings read as under:

ARRAIGNMENT

Q-1 Question to the accused. How say you No. 86132836 Constable Devi Lal, are you "Guilty" or "Not Guilty" of the charge, which you have heard read ?

Q-1 Answer by the accused.

"GUILTY"

The accused having pleaded GUILTY to the charge, the Court read and explains to the accused the meaning of that charge to which he has pleaded GUILTY and ascertains that the accused understands the nature of the charge to which he has pleaded GUILTY. The Court also informs the accused the general effect of that plea and the difference in procedure which will be followed consequent to the said plea. The Court satisfies itself that the accused understands the charge and the effect of the plea of GUILTY and the difference in procedure which will be followed consequent to the said plea. The Court satisfies itself that the accused understands the charge and the effect of his pleas of guilty to the charge particularly the difference in procedure.

The provisions of BSF Rule 142(2) are complied with.

17. The charge against the petitioner has been of intoxication and reads as

under:

The accused No. 86132836 Constable Devi Lal "G" Coy of 20 Bn BSF, is charged with:

BSF ACT INTOXICATION SECTION-26 In that he, at Mithrau post T.P No. 6 on 28.10.2003 at about 0730 hrs was found in a state of intoxication.

18. As noticed, the question precisely is as to whether the proceedings of SSFC concluded on the basis of the "plea of guilty" allegedly made by respondent could be sustained though not bearing his signatures ? True it is that the Rules do not carry specific requirement of obtaining signatures of the accused on the "plea of guilty" and in Chokha Ram's case (supra), the Hon"ble Delhi High Court has observed that there being no specific legal requirement in regard to obtaining of the signatures, plea of guilty could not be held vitiated for want of signatures but then, a co-ordinate Division Bench of this Court in Bega Ram's case (supra) has approved the position that not obtaining signatures on the plea of guilty amounts to violation of Article 14 of the Constitution of the India while saying,-

Learned Single Judge has rightly held to the extent that not obtaining signature of the respondent on the "plea of guilt" amounts to violation of Article 14 of the Constitution.

19. In the case of Chandan Singh (supra), another Division Bench of this Court disapproved the proceedings under the Army Rules on the alleged plea of guilty, inter alia, with the observations that for not obtaining the signatures of the accused, "the sanctity of such confession becomes doubtful".

20. We may notice at this juncture the parity in the provisions as contained in Rule 115(2) of the Army Rules, 1954 that were considered in Bega Ram's case (supra) and Rule 142(2) of the BSF Rules we are concerned with in the present case. Rule 115(2) of the Army Rules reads as under:

115(2) If an accused person pleads "Guilty", that plea shall be recorded as the finding of the Court; but before it is recorded, the Court shall ascertain that the accused understands the nature of the charge to which he has pleaded guilty and shall inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty and of the difference in procedure which will be made by the plea of guilty, and shall advise him to withdraw that plea if it appears from the summary of evidence (if any) or otherwise that the accused ought to plead not guilty.

21. Rule 142(2) of the BSF Rules reads as under:

142(2) If an accused person pleads "Guilty", that plea shall be recorded as the finding of the Court; but before it is recorded, the Court shall ascertain that the accused understands the nature of the charge to which he has pleaded guilty and shall inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty, and of the difference in

procedure which will be made by the plea of guilty and shall advise him to withdraw that plea if it appears from the record or abstract of evidence (if any) or otherwise that the accused ought to plead not guilty.

22. The aforesaid Rules being in pari materia and rather identical, the position of law as declared by a co-ordinate Bench of this Court in relation to Rule 115(2) of the Army Rules, in our opinion, directly applies to the BSF Rules too; and in the face of the decision of the Division Bench of this Court, we are unable to find any reason to follow the observations made by the Hon''ble Delhi High Court in the decisions relied upon by the learned Counsel for the appellants. There remains yet another reason that we are unable to find applicability of the observations made by the Hon''ble Delhi High Court in Chokha Ram's case that therein, in the course of ROE proceedings, the accused had already made the statement admitting his guilt which could be used as evidence against him in SSF Court trial; and more or less similar had been the position in Diwan Bhai's case. In the present case, it appears from the ROE proceedings that the respondent thoroughly cross-examined all the witnesses and made his statement too; and from the manner and tenor of the cross-examination and so also the statement made by the respondent, it is difficult to deduce that he intended to admit the guilt, directly or even indirectly.

23. In our view, the principles in Bega Ram's case would directly apply to the case at hands; and in the face of the above position of law and the indisputable position that the plea of guilty as allegedly recorded in the present case does not bear the signatures of the respondent, we are unable to uphold the proceedings of SSFC as conducted in this case. The submission that per Rule 153 of the BSF Rules, for affixture of signatures by the Court, the whole of the proceedings stand authenticated does not, in our view, lead to the conclusion that even when the proceedings purport to record a plea of guilty by the accused, his signatures could be dispensed with. Authentication of the proceedings with the signatures of the Court is an aspect entirely different than the question of sanctity when the penalty is sought to be imposed on the basis of confession. Viewed from any angle, we do not find any reason to consider interference with the order passed by the learned Single Judge so far setting aside of the impugned orders of the SSF Court and the appellate authority is concerned.

24. However, we are of opinion that the learned Single Judge, even while setting aside the orders impugned, ought to have taken the overall facts and circumstances into account; and even while not approving the proceedings as standing, ought to have remanded the matter for proceedings afresh from the stage they were considered vitiated for creeping in of violation of principles of natural justice. It was not a case where the proceedings were required to be annulled altogether for any fundamental flaw or lacuna therein. We are of the considered view that the matter deserves to be remanded in the manner that SSF Court be convened at the earliest and matter be proceeded afresh and in accordance with law.

25. As a result of the aforesaid, this appeal is partly allowed to the extent indicated above; while the order passed by the learned Single Judge in setting aside of the impugned orders is not interfered with, but the SSF Court proceedings shall stand restored for re-trial in the manner that recording of the plea of the writ-petitioner shall be taken up afresh and the matter shall be proceeded in accordance with law. The SSF Court shall be convened in the first place on 19.04.2010 and the writ-petitioner (the respondent herein) shall be required to appear before the SSF Court on that date who may also nominate a friend for the purpose of such proceedings in advance. There shall be no orders as to costs of this appeal.