

(2015) 10 DEL CK 0148
In the Delhi High Court
Case No : W.P. (C) 7369/2013

Vinod Singh

APPELLANT

Vs

Director General, SSB and Others

RESPONDENT

Date of Decision : 01-10-2015

Acts Referred:

Border Security Force Act, 1968 — Section 75
Constitution of India, 1950 — Article 14, 20, 20(3)
Sashastra Seema Bal Act, 2007 — Section 131, 22(a), 23(1), 87

Citation : (2015) 225 DLT 478 : (2015) 153 DRJ 183

Hon'ble Judges : S. Ravindra Bhat and Deepa Sharma, JJ.

Bench : Division Bench

Advocate : Shree Prakash Sinha, Advocate, for the Appellant; Vikas Mahajan, CGSC, Rohan Gupta and S.S. Rai, Advocates, for the Respondent

Judgement

S. Ravindra Bhat, J.—The petitioner is aggrieved by the orders dated 23.05.2013 and 16.09.2013 dismissing him from the Sashastra Seema Bal (SSB) in which he was working as a Constable (General Duty) [hereafter referred to as "CT/GD"].

2. He complains that a Summary Force Court (SFC) assembled to try the allegations of misconduct, resulting in conviction, is a nullity in law.

3. The petitioner was appointed as a CT/GD in the SSB in 1999. The SSB is governed by the provisions of the Sashastra Seema Bal Act, 2007 (hereafter "the Act"). In the course of his service, while working with the 25th Battalion at Ghitorni, Delhi, on certain allegations of grave misconduct, the petitioner was placed under suspension on 31.03.2011. The allegation pertained to the misconduct of the petitioner, in assaulting his superior officer - Head Constable (GD) Moti Ram Larja while in C. Coy. at 11.30 PM on 30.03.2011. The charges were framed and a charge sheet was issued, proposing to try the petitioner under Section 22(a) of the Act - striking or threatening the superior officer; Section 23(1) - disobedience of superior officer - i.e. the Commandant; 24(b) - insubordination, and 43 - violation of good order and discipline.

4. The petitioner pleaded "not guilty". The Record of Evidence (ROE) proceedings were conducted under Rule 51 of the Rules framed under the Act. This was pursuant to the order of the Commandant, requiring evidence to be recorded. It is not in dispute that the ROE was in accordance with the Rules and the petitioner was afforded adequate opportunities to cross-examine the witnesses who had deposed. Based upon the ROE, the Commandant - who is empowered to take a further decision under Rule 54, was of the opinion that the charges levelled were grave enough for holding of an SFC. The petitioner was, in the meanwhile, directed to be placed under close arrest and on 15.05.2012, was issued with the charge sheet which stated as follows:

"STRIKING OR THREATENING SUPERIOR OFFICER

Section 22(a) of SSB Act, 2007

In that No. 9960674 CT/GD Vinod Singh (under suspension) of "C" Coy. of 25 Bn, SSB, Ghitorni, New Delhi committed a misconduct in that he allegedly used criminal force on 30/03/2011 against No. 8968379 HC/GD Moti Ram Larja at "C" Coy. at 2330 hrs.

Thus, the said CT/GD committed an offence under Section 22(a) of SSB Act, 2007.

Place: 25 Bn, SSB, Ghitorni, New Delhi.

Dated: 15th May, 2012"

5. On 19.05.2012, the SFC was convened and in the course of its proceedings, the SFC held that the petitioner was "guilty". According to the order made by the SFC, the petitioner had pleaded "guilty". The petitioner alleges that he never pleaded guilty and relies upon the appeal preferred under Section 131 of the Act where he clearly said that he never took the plea of "guilty" and that he was never even informed about the charges of the evidence proposed to be led. In short, his case was one of complete denial of having entered the plea of guilt. The petitioner's appeal was rejected on 16.09.2013. He has, therefore, approached this Court.

6. Learned counsel urges that due compliance with the law would necessarily mean that any plea, especially of guilt, entered by the accused would have to be not only recorded by the Presiding Officer but also signed. It is submitted in this context that even though Rule 144 of the SSB Rules, 2009 which regulates the proceedings in this regard is silent as to the obligation of the concerned authority, i.e. SFC in this case, to record the signatures or otherwise of an accused pleading guilty, nevertheless, in order to maintain the sanctity of the proceedings and to rule out any unfairness, the procedure mandates that such pleas have necessarily to be signed. It is highlighted in this context that Rule 144(2) is specific that before recording plea of guilt, the Court has to necessarily ascertain if the accused understands the nature of charge to which he has pleaded guilty and the Court is further under obligation to inform that the

general effect of plea of guilt and particularly the plea of charge to which he has pleaded guilty.

7. Learned counsel relied upon the decision of this Court in *Devender Kumar Vs. Union of India and Others*--> where *pari materia* provisions of the BSF Act, 1968 were considered and it was held that in the absence of signatures of an accused, allegedly pleading guilty of charges, the trial would be vitiated. Learned counsel also sought to urge that the decision is a further authority on the point that there cannot be a second trial and highlighted Section 87 of the Act in this regard. Learned counsel also relies upon an earlier decision - *L.N.K. Gurdev Singh Vs. Union of India (UOI) and Others*, .

8. This Court had called for the original records and considered the same. The same would reveal that in the ROE, the petitioner had clearly pleaded "not guilty". This resulted in the examination of several witnesses. The petitioner also cross-examined the prosecution witness. Consequently, the Commandant empowered to take a decision in this regard took into account all the circumstances and in exercise of powers under Rule 54 decided to refer the matter for further proceedings/trial by the SFC. The records also show that SFC was constituted on 19.05.2012 and that the petitioner was allegedly appraised of the consequences a plea of guilt entailed - in facial compliance of Rule 144(2). However, the signatures of the present petitioner as well as the other accused - who too stood trial for the charges, were not recorded. There is nothing to show that the record of proceedings of the SFC were even served upon the petitioner. Curiously, another document appears on the original record which reads as follows:

"APPENDIX-"A"

I, No. 9960674 CT/GD Vinod Singh of 25 Bn, SSB, Ghitorni, New Delhi do hereby acknowledge the receipt of following documents served upon me at Bn Hqrs, 25 Bn, SSB, Ghitorni, New Delhi on 21.05.2012 at 1030 hrs so as to enable me to prepare my defence relating to my Summary Force Court under Section 22(a) of SSB Act, 2007 to be conducted at Bn Hqrs, SSB, Ghitorni on 21.05.2012 at 1030 hrs by Commandant 25 Bn SSB, Ghitorni, New Delhi.

(a) Notice of date, place and time of Summary Force Court.

(b) A copy of ROE.

(c) A copy of the charge sheet.

Place: 25 Bn, SSB, Ghitorni, New Delhi.

Signature : Sd/- No.9960674 CT/GD Vinod Singh"

9. As is evident, the document records that some documents were served upon the petitioner at "at Bn Hqrs, 25 Bn, SSB, Ghitorni, New Delhi on 21.05.2012 at 1030 hrs so as to enable me to prepare my defence....". However, the petitioner's signatures are dated 16.05.2012. The record also reveals copies of

summons issued to witnesses - one of whom was at MTC Shimla, i.e. HC/GD Rajinder Singh and the other, CT/GD Binod Kumar, undergoing SFC at TC Kumarsain.

10. The documents further show that the record of proceedings was apparently read and explained to the petitioner/accused. The answer given by the petitioner is "while awarding punishment my conduct during the period of suspension and in view of my past service record, a lesser punishment may please be awarded to me for the mistake or the offence committed by me. I may be given chance to serve better and to continue in service."

11. This was apparently in compliance with Rule 145(3). However, even this document does not bear the signatures of the accused.

12. The judgment in L.N.K. Gurdev Singh (supra) highlighted that in the absence of the signatures of the accused allegedly pleading guilty, the court martial proceedings in the Indian Army would be a nullity. The relevant observations of the Court in the said judgment are as follows:

"12. Though the petitioner has allegedly admitted the charge by pleading guilty, his signatures nowhere appear on the purported plea of guilt. When an accused person pleads guilty, it would be necessary to obtain his signatures to lend authenticity to such proceedings. This basic requirement was not even adhered to, the absence whereof lends credence to the allegation of the petitioner that he was not even present at the time of recording of the summary court martial proceedings and he never pleaded guilty.

13. In our recent judgment pronounced on 17.1.2008 in LPA No. 254/2001 entitled The Chief of Army Staff and Ors. v. Ex. 14257873 K. Sigm Trilochan Behera, we have concluded that such court martial proceedings would be of no consequence and would not stand the judicial scrutiny. In forming this opinion, we had referred to the judgment of the Jammu and Kashmir High Court in the case of Prithpal Singh v. Union of India and Ors. 1984 (3) SLR 675 (J and K). We had also take note of the instructions issued by the respondents themselves in the year 1984, based on the aforesaid judgment of the Jammu and Kashmir High Court, mandating that signatures of the accused pleading guilty of charge be obtained and if there is an infraction of this procedural requirement, it would violate the mandatory procedural safeguard provided in Rule 115(2) of the Army Rules and would also be violative of Article 14 of the Constitution of India. Faced with this, an innovative justification was sought to be given by the respondents, namely, the said guidelines were issued by Northern Command whereas the petitioner was tried by the unit in Eastern Command. We feel that the law of the land has uniform application across the country and there cannot be one law for a particular command and different law for another command under the Army. We may note that even this Court has taken similar view in Ex. Rect. Lachman Vs. Union of India (UOI) and Others, wherein it was held as under:

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14. The matter does not end here. As per the court martial proceedings, the petitioner pleaded guilty to all the four charges, on the basis of which the court held him guilty of these charges. However, interestingly the superior authority exonerated the petitioner on charges 3 and 4. It shows that notwithstanding the alleged plea of guilty, the superior authority did not find the said charges as proved on the basis of evidence produced. Further, as mentioned above, the appellate authority did not even consider it proper to give any significance to the certificate issued by the police authorities and, therefore, took no steps to get the same verified. The appellate authority should have treated the matter as serious when there was another certificate supporting the plea of the petitioner, namely, doctor's certificate, about the medical condition of the petitioner when he was handed over to the police. This certificate clearly mentions that the petitioner was found to be suffering from pain all over his body due to torture before and was suffering from serious illness which had rendered his right foot paralysed and requires long treatment and good management to enable the petitioner to be fully cured. It was the bounden duty of the respondent authorities to attach seriousness to this official documents which they deserved rather on turning a blind eye on the same.

15. We have, thus, no hesitation in quashing such proceedings which are cooked up, malicious and violative of the principles of natural justice and there is a total lack of fair play. We would have directed the official respondents even to take action against the respondent No. 4. However, we are unable to do so as the services of the respondent No. 4 had been terminated in the meantime and he could not be served in these proceedings. Thus, on 17.8.2007, his name was struck off from the array of parties as the petitioner did not want the decision in the writ petition to be further delayed.

16. Accordingly, the rule is made absolute. The summary court martial proceedings dated 15.1.1993 whereby the petitioner was dismissed from service and also awarded rigorous imprisonment for one year is set aside. The consequence of this would be the reinstatement of the petitioner in service by the respondents with all consequential benefits. The petitioner shall also be entitled to costs which are quantified at Rs. 25,000/-."

13. Devender Kumar (supra) resulted in the invalidation of the SSFC proceedings where the plea of guilt was not signed by the petitioner. The Court held that this omission was fatal and rendered the entire penalty and proceedings of the SSFC a nullity. The Court observed pertinently as follows:

"41. Consequently, for the foregoing reasons and in the facts and circumstances of the above case, it cannot be accepted that the petitioner had accepted his guilt before the SSFC, as the "plea of guilty" was not signed by the petitioner, and there have been other violations of Rules 142 and 143 of BSF Rules, 1969 so as to vitiate the punishment of dismissal from service awarded by the respondents, pursuant to the plea that the petitioner had pleaded "Guilty" of the charges framed against him. Resultantly, the order of the SSFC dated 27th

February, 1998 is set aside and the petitioner is entitled for reinstatement forthwith with all the back wages and consequential benefits including promotion and the period from the date of his dismissal up till the date of his reinstatement is to be counted for all purposes in favor of the petitioner.

42. The next contention on behalf of the respondents is that even if the petitioner's punishment by the SSFC dated 27th February, 1998 is set aside on the ground that the "plea of the guilty" by the petitioner could not be accepted as it was not signed by him and there was no other evidence showing that the petitioner had pleaded guilty, the respondents will be entitled to try the petitioner afresh on the charges framed against him.

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44. Perusal of the decision of Ex. Constable Ram Pal (supra) reveals that no reasons have been given by the Division Bench to permit the respondents to try the delinquent afresh except holding without giving any reason that the respondents shall be entitled to try the delinquent afresh in para 21 of the said judgment. In para 21 and 22 of Ex. Constable Ram Pal (supra) the said Division Bench had held as under:-

"21. Accordingly, we disposed of the writ petition quashing the order dismissing the petitioner from service as also the petitioner's conviction at the Summary Security Force Court. We permit the department to try the petitioner afresh. We leave it open to the competent authority to determine as to in what manner the period post levy of penalty of dismissal from service till petitioner reinstatement pending trial would be reckoned.

22. The petitioner would be reinstated forthwith."

45. The learned counsel for the petitioner has refuted this contention of the respondents and has contended that the trial of the petitioner by the SSFC has not been set aside on account of the inherent lack of jurisdiction but because the trial was unsatisfactory. He asserted that keeping in view the embargo under Section 75 of the BSF Act and Article 20 of the Constitution of India, fresh trial of the petitioner shall not be permissible. Reliance has also been placed by the learned counsel for the petitioner on Mr. Banwari Lal Yadav Vs. Union of India (UOI) and Another, .

46. This cannot be disputed by the respondents that the SSFC which tried the petitioner and punished him with dismissal from service on 27th February, 1998 was competent to try the petitioner and the Security Force Court did not lack the jurisdiction to try him. However, in the facts and circumstances, what emerges is that the proceedings of the SSFC were not satisfactory as there was no evidence except the reliance of the Court on the alleged "plea of guilty" by the petitioner which has not been accepted and has already been set aside by this Court. In the circumstances, the trial of the petitioner will not be non est being null and void from its very inception as the SSFC had the jurisdiction to try the petition.

However, in the circumstances, since the petitioner had withstood trial which has been vitiated on account of trial being unsatisfactory, the petitioner cannot be tried again. Therefore, the respondents cannot be permitted to try the petitioner again."

14. We are of the opinion that in the present case, the absence of the petitioner's signatures and the tenor of his appeal - made to the higher authorities lead us to infer that in fact the plea of guilt was never taken. This is also supported by the fact that the petitioner did not plead guilty when the record of evidence was taken down. The original files shown to us do not inspire any confidence. Having regard to this circumstance, we are of the opinion that the consequences spelt out in Section 87 of the Act, i.e. that an accused once tried for an offence cannot be subjected to the trial for the same charge squarely apply. In the opinion of this Court, the infirmity in the entire proceeding is of such a nature as to go to the root of the jurisdiction of the SFC. Section 87 is also by way of a safeguard mandated by Article 20(3) of the Constitution. We underline this aspect because the members of the Force are no different from the other citizens of the country. The member of a Force charged with criminal offences can be tried either by a competent criminal court or the SGFC. The consequence of a jurisdictional irregularity of the kind which has transpired in this case would not entitle the State or any authority to conduct fresh proceedings. If such were the consequence as seems to be the ratio in *Mohammad Safi Vs. The State of West Bengal*, and *State of Karnataka through CBI Vs. C. Nagarajaswamy*, , the consequence of a fatal infirmity in the trial or proceedings by the SFC can be no different.

15. In view of the above conclusions, the impugned orders are hereby quashed. The petitioner is directed to be reinstated to the service by the SSB within 8 weeks from today with continuity of service and all consequential benefits, including grant of notional increments, seniority, fitment etc. and except arrears of salary.