

Sunil Kumar Vs. Union of India and Ors

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Court : Jharkhand

Decided On : Nov-20-2017

Appellant : Sunil Kumar

Respondent : Union of India and Ors

Judgement :

1 WP(S) No. 3593 of 2008 IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (S) No. 3593 of 2008 Sunil Kumar, S/o Subhash Mistry, Resident of Village-Gartha, Post- Shivpur, Dist- Bhojpur (Bihar) ... Petitioner Versus 1. The Union of India 2. Ministry of Home Affairs, Inspector General, Border Security Force, Block No. 10, Lodi Road, New Delhi 3. The Commandant, Special Training School, Training Centre & School, Border Security Force, Hazaribagh 4. D.I.G.-cum-Commandant, B.S.F., Meru, Hazaribagh Respondents For the Petitioner : Mr. Jai Shanker Tripathy, Advocate For the Respondents : Mrs. Nitu Sinha , C.G.C. PRESENT HONBLE MR. JUSTICE ANIL KUMAR CHOUDHARY .. By Court :- Heard the parties.

2. The petitioner has invoked the jurisdiction of this court under Article 226 of the Constitution of India assailing the order dated 28.03.2008 passed by the Commandant, STS, TC&S BSF, Hazaribagh, Jharkhand (annexure 1), consequent upon the Summary Security Force Court convicted the petitioner for the offence under section 40 of the Border Security Force Act, 1968 for an Act prejudicial to good order and discipline of the Force and sentenced him to be dismissed from service. The petitioner has been struck off the strength of the institution with effect

from 28th March, 2008 (AN). 2 WP(S) No. 3593 of 2008 3. The facts involved in this case shorn of unnecessary details is that one Sandhya Kumari, who is not legally married or is related to the petitioner, resided in Quarter No. 121 Type-I in the BBSF campus, allotted to the petitioner from 1st March, 2008.

4. Though it has been mentioned in the paragraph 3 of the writ petition that annexure 2 to the writ petition is photocopy of the notice for Summary Security Force Court but annexure 2 at page 9 of the brief reads as under :- APPENDIX- IX (Rule 106 (08)) The finding and sentence of the Summary Security Force Court held at TC& S BBSF Hazaribagh on 28.03.08 for the trial of the accused No. 06002744 W/C (EF) Sunil Kumar were promulgated to the accused at STS wing, TC& S, BBSF Hazaribagh on 28th day of Mar08. Extracts for STS, TC & S BSF records have been taken. Place: Meru Camp (S K BARUA) DATE:

28. Mar08 COMMANDANT STS WING TC &S, BSF, Hazaribagh The order of dismissal of the petitioner has been given effect to with effect from 28.03.2008.

5. In the counter affidavit filed by Deputy Inspector General, BSF in Training Centre and School, Hazaribagh, it has been averred that the allegation against the petitioner is that one Sandhya Kumari made written complaint on 17.03.2008 alleging that the petitioner had married her against the will of his family members and she and the petitioner lived together for two years in Meru village. After that the petitioner has betrayed her and got married with another lady. It was also alleged by said Sandhya Kumari that she remained pregnant of petitioners child but the fetus was aborted at the instance of the petitioner. Sandhya Kumari alleged that she stayed with the petitioner in Qtr. No. 121 Type-I, in the BSF campus allotted to the petitioner and when the matter was checked, it was found that though the petitioner was given 3 WP(S) No. 3593 of 2008 outliving permission for treatment of his mother, however, he stayed with the lady Sandhya Kumari in rented house in village Meru for more than a year and when he was allotted a family quarter inside BSF campus, the petitioner and Sandhya Kumari even shifted together in the family quarter. Persons known to them, presumed them to be husband and wife as the lady moved around in the campus along with the petitioner putting vermilion on her forehead. Only after the petitioner got married to another girl, it

came to light that the lady with him was not his legally wedded wife.

6. The petitioner was put up on offence report under Section 40 of BSF Act for an act prejudicial to good order and discipline of the Force and after hearing charge under BSF Rule, a Record of Evidence was ordered to be prepared against the petitioner.

7. After preparation of the record of evidence, a prima facie case was made out that the petitioner on 1st March, 2008 and subsequent days, stayed in quarter no. 121 Type I allotted to him in TC & S BSF campus along with the lady Sandhya Kumari, with whom he was not legally married or was in any way related. Accordingly, he was tried by a Summary Security Force Court on 28th March, 2008. After recording the evidence, the court found him guilty of the charge and sentenced him to be dismissed from service. Consequent upon the petitioner was dismissed from service w.e.f. 28th March, 2008 (AN).

8. It has also been averred in the counter affidavit that the punishment awarded to the petitioner is well commensurate to the gravity of the offence committed by him. The charge against the petitioner has been proved beyond any reasonable doubt.

9. It has also been averred in the counter affidavit that the petitioner submitted statutory petition against his conviction by Summary Security Force Court and the same was duly considered by the DG, BSF but was rejected being devoid of any merit. 4 WP(S) No. 3593 of 2008 10. Mr. J.

S. Tripathy, the learned counsel for the petitioner submitted that there is no legal evidence to justify the punishment which has been awarded to the petitioner. The petitioner has not been given any opportunity of being heard and fair summary trial has not been conducted by the respondents. Learned counsel for the petitioner relied upon the judgment of his court passed in WP(S) No. 206 of 2004 in re: Paras Singh vs. Union of India dated 18.06.2012, wherein this Court has held as under:- It is important to mention herein that the offences under section 14(c) of the B.S.F. Act is punishable with death while offence under section 16(b) is punishable with imprisonment for a term which may extend to 7 years. Therefore, all the offences either under section 14(c) or under section 16(b) or under section

40 of the B.S.F. Act must be proved beyond doubt and no inference without there being any cogent evidence should be drawn against the accused to hold him guilty. Although BSF Court has jurisdiction either to award sentences as provided under the sections mentioned hereinabove or to impose other penalties/punishments which are provided under section 48 of the BSF Act, which includes dismissal from service, reduction to the ranks, forfeiture of seniority, forfeiture of service for the purpose of increased pay and pension, reprimand and stoppage of pay and allowances. In the present case, although BSF Court has not awarded imprisonment and has awarded alternate punishment i.e. dismissal from service, however, fact remains that charges against the petitioner were not proved beyond reasonable doubt to justify the dismissal from the service. And submitted that the charges having not been proved against the petitioner beyond doubt the petitioner ought not to have been punished.

11. It was further submitted that the petitioner was not given any opportunity and fair summary trial has not been conducted by the respondents. Hence, the said order dated 28.03.2008, kept at annexure 1 of the writ application, be quashed.

12. Per contra, learned counsel for the Central Government, drawing attention of the court to paragraph 23 of the counter affidavit submitted that this writ application has been filed suppressing material fact that the petitioner has submitted statutory petition against his conviction by Summary Security Force Court and the same was duly considered and rejected by the Director General of BSF vide his dated 31st July, 2008 and the said order is also not challenged. 5 WP(S) No. 3593 of 2008 13. It is further submitted by the learned counsel for the Central Government that the writ petitioner in paragraph 2 has categorically admitted that Sandhya Kumari who is not legally married or related to the petitioner resided with him in the Qtr. No. 121 Type I allotted to him in TC & S, BSF campus allotted to him from 1st March, 2008. It is also submitted by learned counsel for the Central Government that vide order dated 19th November, 2013, the Division Bench of this court has been pleased to stay the order dated 18th June, 2012 passed by Single Judge of this court in WP(S) No. 206 of 2004. The petitioner has failed to substantiate his allegation that the petitioner has not been given any opportunity and that fair summary trial has not been conducted by the

respondent as the writ petition does not contain any specific averment as to in what manner the opportunity was not given and in what manner the fair summary trial has not been conducted by the respondents. It was further submitted that there is no illegality or infirmity in the order passed by respondent no. 3 dated 28.03.2008, which is annexed as annexure 1, to the writ petition, hence, it is submitted that this writ petition being without any merit be dismissed.

14. After giving anxious consideration to the attending facts, this court finds that in paragraph - 2 of the writ application, the petitioner admits the allegation against him that Sandhya Kumari who is neither legally married nor is related to him, stayed with him in the Qtr. No. 121 Type I in TC & S, BSF campus allotted to him. The petitioner has failed to substantiate his contention that opportunity of being heard was not given to him or that fair summary trial has not been conducted by the respondent, as such allegations are vague being without any detail and is not specific as to in what manner opportunity of being heard was not given to him or how fair summary trial has not been conducted by the respondents. Further, the facts of the case of Paras Singh (supra) is entirely different from the facts involved in this case because in that case the allegation against the petitioner of that case was denied by the petitioner of that case, which is not the fact in this case, as it is not 6 WP(S) No. 3593 of 2008 disputed by the petitioner that Sandhya Kumari who is neither legally married nor is related to him, stayed with him in the Qtr. No. 121 Type I in TC & S, BSF campus allotted to him.

15. Hence, in view of the discussions made above this court does not find any merit in this writ petition. Accordingly, the same is dismissed being devoid of any merit. (Anil Kumar Choudhary, J.) Jharkhand High Court, Ranchi Dated, the 20th November, 2017 Smita/AFR

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