

Union of India and ors Vs. Ex. Constable Papu Singh

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Court : Rajasthan Jodhpur

Decided On : Feb-26-2014

Appellant : Union of India and ors

Respondent : Ex. Constable Papu Singh

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

Union of India & ORS.versus Ex Constable Papu Singh D.B.CIVIL SPECIAL APPEAL NO.6/2010 UNDER RULE134OF THE RAJASTHAN HIGH COURT RULES.

Date of Judgment: Feb.26, 2014 P R E S E N T HON'BLE THE CHIEF JUSTICE MR.AMITAVA ROY HON'BLE MR.JUSTICE VIJAY BISHNOI Mr.V.K.Mathur, Asstt.Solicitor General, for the appellants.

Mr.S.K.Nanda, for the respondent.

BY THE COURT : (PER HON'BLE THE CHIEF JUSTICE) The present appeal mounts a challenge to the judgment and order dated 28.10.2009 passed in S.B.Civil Writ Petition No.4597/1997 instituted by the respondent herein, whereby the Summary Security Force Court proceedings conducted against the respondent/writ petitioner have been quashed and the rejection of his statutory

petition has also been adjudged to be illegal.

The appellants have, thus, been directed to reinstate the respondent/writ petitioner in service.

We have heard Mr.V.K.Mathur, learned Assistant Solicitor General for Union of India and Mr.S.K.Nanda, learned counsel for the respondent/writ petitioner.

The pleaded narration of the respondent/writ petitioner is 2 that he had joined the Border Security Force (for short hereinafter referred-to as the BSF/Force.) in the year 1988 in the rank of Constable.

While he was posted under the Commandant, 66 Battalion BSF, he was charged with the offence (s) under sections 354 and 451 IPC triable under Section 46 of the BSF Act, 1968 (for short hereinafter referred to as the Act.).This was on 7.6.1995, whereafter on 9.6.1995, he was placed under arrest vide the order of the respondent No.4 i.e.Commandant, 66 Bn.

BSF, Jaisalmer.

According to the respondent/writ petitioner, though the purported proceeding in connection with the charge was thereafter pursued, it was in violation of Rule 44 and Rule 45 thereof.

Be that as it may, as averred by him, the Record of Evidence (for short hereinafter referred-to as the RoE.) was prepared on the orders of the respondent No.4, whereafter according to him, in contravention of Rule 51 of the Rules, additional RoE was ordered to be recorded, which was done.

Eventually, the respondent No.4 vide letter No.Estt./07/66 Bn/96/1987 dated 22.2.1996 proposed trial of the respondent/writ petitioner by the Summary Security Force Court (for short hereinafter referred-to as the SSFC.) in terms of Section 70 of the Act without complying with the mandatory requirements of Section 74 thereof.

According to the respondent/writ petitioner, thereafter he was supplied with a copy of the chargesheet dt.22.2.1996 consisting of two charges under Section 46 of the

Act containing endorsement of the respondent No.4 i.e. Commandant of the Battalion concerned that he (respondent/writ petitioner) be tried by the SSFC.

The 3 respondent/writ petitioner has averred that he was, subsequent thereto, served with a communication indicating that the trial of the SSFC would be held on 11.3.1996 at Battalion Headquarter, Jaisalmer.

He has alleged that the respondent No.4 did not permit him to avail the services of an officer of his choice as Friend of the accused.

in terms of Rule 157 of the Rules and instead, nominated Shri Mangi Lal Choudhary, Dy. Commandant, 66 Bn.

BSF to discharge this role.

The respondent/writ petitioner has asserted that this officer was junior to respondent No.4 and was neither legally qualified nor had any experience to provide any effective assistance to him.

At the end of the trial in the SSFC, the respondent No.4 sentenced the respondent/writ petitioner with the penalty of dismissal from service and promulgated the same in terms of Rule 159 of the Rules on the very same day i.e. 20.3.1996.

Though, initially neither the copy of the SSFC proceedings was furnished to him nor he was apprised about his right of filing a statutory petition against the decision under Section 117 of the Act, he, through the intervention of his counsel, procured the same and eventually filed the said petition, which was rejected on 21.3.1997.

The respondents in their reply, while endorsing the validity of the steps, taken including the initiation and conduct of the SSFC and the sentence of dismissal awarded, have averred that the respondent/writ petitioner while serving in 66 Battalion BSF, Jaisalmer on 7.6.1995 at about 1130 Hrs entered the house of HC K.S. Karjee (attached with SHQ BSF Jaisalmer) and tried to outrage the modesty of his wife.

That the respondent/writ petitioner was identified to be the trespasser and the miscreant by the lady following which her husband (K.S.Karjee) lodged a written report about the incident, was stated.

The respondents averred that the RoE was ordered thereafter and eventually, the respondent/writ petitioner was put on trial by the SSFC with effect from 18th March, 1996 under Section 46 of the Act and he, having been found guilty of charge, was sentenced with dismissal from service.

The respondents controverted the imputation of contravention of the provisions of the Rules and pleaded that at all stages, the respondent/writ petitioner had been afforded due opportunity to defend himself, as contemplated in law.

That in couRs.of additional RoE, he was afforded the opportunity of cross examining the witnesses but he declined to do so, was mentioned as well.

It was asserted that he was heard by the Commandant before he ordered that the RoE be conducted.

The respondents stated that the Commandant, after careful study of the RoE, ordered that the respondent/writ petitioner be tried by the SSFC under the Act and the Rules framed thereunder.

That the sentence of dismissal from service and the rejection of the respondent/writ petitioner's statutory petition, is valid in law in the attendant facts and circumstances, was underlined.

The learned Single Judge annulled the proceedings of the SSFC and the penalty awarded on the basis thereof on the ground of non-compliance of Section 74(2) of the Act.

It was held that in the facts of the case, the Dy.Inspector General, BSF, 5 was the authority in terms of Section 74(2) of the Act to grant sanction for the conduct of the SSFC against the respondent/writ petitioner.

Referring to the documents, laid in the writ proceedings, the learned Single Judge held that the letter dated 27.6.1995 was a communication from the officiating

Commandant, 66 Battalion, whereby the recommendation was made for the respondent/writ petitioner's trial by the General Security Force Court.

The letter dated 4.9.1995 of the Junior Assistant Director (Law) conveyed to the Station Head Quarter, BSF, Jaisalmer to the effect that the Commandant, 66 Battalion, may try the respondent by way of SSFC, though, was taken note of as well, in absence of any noting of the Inspector General, BSF generating the satisfaction of the said authority to grant sanction, it was held that a seal on the back of the document dt.4.9.1995 of the Dy.Inspector General and his signatures thereon, was not in sufficient compliance of Section 74(2) of the Act.

Mr.V.K.Mathur, learned counsel for the appellants, has assiduously argued that it would unmistakably appear from the original records and the communications contained therein that the requirements of Section 74(2) of the Act had been complied with and that the finding to the contrary, is unsustainable.

Contending that Section 74(2) of the Act does mention about a reference and not a sanction as a condition precedent for convening the SSFC, the learned counsel has urged that in any view of the matter, the respondent/writ petitioner having 6 participated in the proceedings of the SSFC, in couRs.whereof he had been afforded all reasonable opportunities to defend the charge, no prejudice had been caused to him in any manner whatsoever and, thus, the impugned judgment and order ought to be interfered-with in the interest of organizational discipline and probity.

Mr.Mathur submitted that even assuming that the enjoinders of Section 74(2) of the Act had not been adhered-to literally, it is still a case of substantial compliance thereof and in the face of a full fledged SSFC proceedings and in absence of any prejudice to the respondent/writ petitioner in the whole process, any omission in the pre trial procedure is inconsequential.

The learned counsel insisted that having regard to the gravity of the charge proved against the respondent/writ petitioner, no interference with the impugned decision of awarding the penalty of dismissal on the respondent/writ petitioner is warranted.

Mr.Mathur to reinforce his arguments, placed reliance on the decisions of the Apex Court in (i) Union of India versus Major A.Hussain AIR 1998 SC577 (ii) Union of India versus R.K.Sharma AIR 2001 SC3053 & (iii) Union of India versus Dinesh Kumar (2010) 3 SCC161 and of this court in (iv) Surendra Singh versus Union of India 2009(3) WLN209 Per contra, Mr.Nanda has emphatically pleaded that in the face of the mandatory requirements for compliance of Section 74 (2) of the Act as a necessary pre condition to convene the SSFC under the Act and the failure of the respondent to adhere to the predication of the said statutory provision, the impugned action 7 is void ab initio and, thus, the plea of want of prejudice is wholly immaterial.

Referring to the reply of the appellants, the learned counsel has maintained that it would be apparent therefrom that the SSFC had been convened on the orders of the respondent No.4 i.e.the Commandant 66 Bn.

in gross contravention of the prescription of Section 74(2) of the Act and as the proceedings of the impugned SSFC qua the respondent/writ petitioner is vitiated by an incurable illegality, the learned Single Judge was perfectly justified in annulling the same.

According to Mr.Nanda, the intra departmental communications, as sought to be relied upon by the appellants, do not demonstrate reference under Section 74(2) of the Act and, thus, have been rightly rejected by the impugned judgment and order.

Referring to the dictionary meaning of word reference., the learned counsel has urged that the endorsement of the D.I.G., BSF on the back side of the letter dated 4.9.1995, by no means, can be construed to be a sanction for convening the SSFC and, thus, is wholly inconsequential.

The decision of the Hon'ble Apex Court in Union of India versus A.K.Pandey, 2009(1) SCC552d has been relied upon.

The pleaded facts alongwith the other materials on record as well as the rival arguments have been duly analyzed.

Noticeably, the competing pleas veer around the aspect of compliance or otherwise of Section 74(2) of the Act.

This statutory provision in view of its formidable relevance in the present adjudicative process deserves to be extracted as hereunder: 8 74.

Powers of a Summary Security Force Court.- (2) When there is no grave reason for immediate action and reference can without detriment to discipline be made to the officer empowered to convene a Petty Security Force Court for the trial of the alleged offender, an officer holding a Summary Security Force Court shall not try without such reference any offence punishable under any of the sections 14, 17 and 46 of this Act, or any offence against the officer holding the court.

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As would be evident from the above quote, this statutory provision predicates that if there is no grave reason for immediate action and reference without detriment to the discipline, can be made to the officer empowered to convene a Petty Security Force Court for the trial of an alleged offender, an officer holding a SSFC shall not try without such reference any alleged offender for any offence punishable under sections 14, 17 and 46 of the Act or any offence against the officer holding the court.

The purport of this provision, thus, is that a reference to the officer empowered to convene a Petty Security Force Court, unless there is a grave reason for immediate action and such reference can be made without detriment to the discipline of the Force, an officer would not try the offences as referred to therein in a SSFC without such reference.

The word shall.

in our estimate renders such restraint absolute.

It is not the case of the appellants that either there was a grave reason for immediate action or that a reference, if made, would have resulted in any detriment to the discipline of the Force.

The records laid before us in this regard contain a letter dated 27.6.1995 of the 2 I.C.Offg.Commandant 66 Bn.

BSF, 9 addressed to the Sector HqRs.BSF, Jaisalmer, forwarding amongst others the manuscript of the ROE and the additional ROE recorded in the proceedings involved qua the respondent/writ petitioner with a recommendation that he be tried by the General Security Force Court.

By a written communication dated 4.9.1995 of the Junior Assistant Director (Law) for I.G., BSF R&G, the RoE proceedings and other connected documents were returned to the Station Head Quarter, BSF, Jaisalmer with the observation that the Commandant, 66 Battalion, BSF, be directed to try the respondent/writ petitioner by the SSFC.

To the same effect is the letter dated 8.9.1995 of the Jr.Asstt.Director (Admn) DIG, BSF, Jaisalmer.

This letter on the overleaf contains the signature of the DIG, BSF, Jaisalmer.

When queried by this court, Mr.Mathur had disclosed that the RoE and the additional RoE proceedings alongwith other documents had been forwarded from the office of the Commandant, 66 Battalion, BSF to the I.G., BSF (R&G) enroute DIG BSF, Jaisalmer.

The contents of the letters dated 4.9.1995 and 8.9.1995, to reiterate, in our comprehension, do demonstrate considerations of the RoE proceedings and other connected documents forwarded by the Commandant, whereafter the respondent/writ petitioner has been recommended to be tried by the SSFC.

Bearing in mind that Section 74(2) of the Act, though mandates reference to the appropriate authority as a pre condition for SSFC as contemplated therein but not a sanction 10 therefor, we are inclined to conclude in view of the letters dated 4.9.1995 and 8.9.1995, the authenticity whereof is not questioned, that the present is not a case of contravention of the aforementioned provision of the Act.

Absence of any endorsement on the foot of the chargesheet mentioning about the sanction under Sec.74(2) of the Act by the DIG of the Force ipso facto, according to us, does not vitiate the proceedings of the SSFC.

The stand taken by the appellants in their reply per se does not amount to any admission on their behalf that Section 74(2) of the Act had not been complied with in the instant case.

Incidentally, a coordinate Bench of this court in Surendra Singh (supra) referring to Section 74(2) of the Act, had observed that the same did not enjoin any sanction from the competent authority to convene a Petty Security Force Court and the only requirement is of making a reference by the competent authority.

The parties are not in issue that the DIG, BSF is the competent authority to make the reference under Section 74(2) of the Act.

The letters having been issued from the establishment of the IG, BSF (R&G) and DIG, BSF, Jaisalmer, the plea of non-compliance of Section 74(2) of the Act, in our understanding, lacks persuasion.

As all relevant records had been forwarded to these authorities by the establishment of the respondent No.4 and SSFC having been recommended against the respondent/writ petitioner on a cumulative consideration of the communications involved and available in the original records, we are disinclined to sustain the challenge to the 11 proceedings thereof on this plea.

The Hon'ble Apex Court, amongst otheRs.in Union of India versus R.K.Sharma (supra).while recalling its decision rendered in Union of India versus Major A.Hussain (supra) on the scope of the judicial review of the court martial proceedings under Art.226 of the Constitution of India, had observed that when there is sufficient evidence to sustain conviction, it is unnecessary to examine if the pre trial investigation was adequate or not.

Their Lordships held that the requirement of proper and adequate investigation is not jurisdictional and any violation thereof does not invalidate the court martial, unless it is shown that the accused has been prejudiced or a mandatory provision

has been violated.

Though the edict of Section 74(2) of the Act, to reiterate, is obligatory, in the attendant facts & circumstances, in our analysis, there has been no breach thereof.

In that view of the matter, the decision rendered in Union of India versus A.K.Pandey (supra).as relied upon on behalf of the respondent/writ petitioner is of no avail.

As alluded hereinabove, no other argument has been advanced.

The charge levelled against the respondent/writ petitioner is a serious one, when judged, more particularly in the institutional perspectives of the Force.

12 The appeal, therefore, has substance and is allowed.

The impugned judgment and order is set aside.

(VIJAY BISHNOI).J.

(AMITAVA ROY).C.J.RANKAWAT JK, PS

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