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Court : Jammu and Kashmir

Decided On : Mar-28-2016

Judge : Mohammad Yaqoob Mir

Appeal No. : SWP No. 2594 of 2002

Appellant : Raj Kumar

Respondent : Union of India and Others

Judgement :

1. Vide Order dated 28.02.2000 passed by Commandant, 108 Bn. BSF, petitioner has been dismissed from service w.e.f 28.02.2000. Vide order dated 25.06.2002 passed by Director General of BSF, the appeal filed by the petitioner against the order dated 28.02.2000 has been rejected. Quashment of the said orders and of the Summary Security Force Court proceedings is sought with a further direction to the respondents to consider the case of the petitioner for re-instatement and to pay him salary and all other consequential benefits after treating the period from the date of dismissal to the date of joining as on duty.

2. Petitioner was appointed as constable on 14.04.1986. He under No.860016676 as constable was promoted to the post of Lance Naik in the year 1993. In the year 1997, he met with an accident and suffered head injury as such developed neuro-psychiatric problem. He was placed under low medical category CEE(Temporary) for six months w.e.f. 12.06.1998. He had been sent to Ftr, Hospital, Jammu for

treatment on 8.11.1999 but did not rejoin as such remained absent from 9.11.1999. He had submitted an application for 45 days medical leave on 28.12.1999 but was directed to report back immediately as better medical facilities were available in the Unit. The Court of Enquiry was conducted as per Section 62 of the BSF Act, as a result he was declared as a deserter. The petitioner had voluntarily reported at Tac HQ Bidda 108 Bn. BSF on 03.01.2000 after remaining absent for 55 days. As a result whereof, disciplinary action was initiated against him.

3. Offence report was prepared on 05.01.2000. Record of Evidence (ROE) was ordered which was prepared in his presence. He had declined to cross examine the witnesses but had made a statement under Rule 48(3) of the BSF Rules 1969. On 09.01.2000, the petitioner had slapped on the face of HC Barjinder Singh, 108 Bn. BSF as such committed an offence under Section 20(a) of the BSF Act, 1968. Again he had been heard by the Commandant under Rule 45 of the BSF Rules. Record of Evidence was ordered which again was prepared in his presence and that of the independent witnesses. He had declined to cross examine the witnesses but made a statement under Rule 48(3) of the BSF Rules, 1969.

4. The commandant of the Bn. decided that the petitioner be tried by Summary Security Force Court on both the charges. The copies of both the ROEs had been handed over to him alongwith charge sheet on 26.02.2002 in connection with the trial by SSFC.

5. During SSFC trial, interpreter for the purpose of translating and explaining the SSFC language in hindi was facilitated. He had after understanding the statements of the witnesses as were explained to the petitioner in presence of independent witnesses. Shri M M Kukreti who on the request of the petitioner was appointed to act as friend of petitioner during the trial.

6. Entire proceedings, commenced relatable to the charges against the petitioner culminated in his dismissal from service. Hence the instant petition.

7. The contention of the learned counsel for the petitioner is that the provisions of BSF Act, 1968 and of the BSF Rules, 1969 have been observed in breach. The

contention of the learned counsel is that Chapter-VII of the BSF rules, 1969 beginning from Rule 43 have not been followed rendering the entire proceedings as well as dismissal order as illegal.

8. In opposition, learned CGSC has vehemently highlighted that records bear testimony to the fact that the petitioner has been properly heard and all the provisions of the Act and Rules have been strictly followed. It is further highlighted that the petitioner had acted according to his will, he has chosen to remain absent then has shown arrogance by committing an act of indiscipline while slapping HC Barjinder Singh. The proceedings initiated and the order of dismissal passed by competent authority (Commandant) upheld in appeal by the appellate authority are totally consistent and in consonance with the provisions of law as well as the principles of natural justice. The petition only deserves dismissal.

9. Considered the submissions. The perusal of the records suggests that in accordance with Rule 43 of the BSF Rules, 1969, the allegations against the petitioner have been reduced into writing. Then in terms of rule 45(2)(iii), the accused had been remanded for preparing the record of evidence. The commandant had framed the charge sheet to the following effect:

Ist ^t Charge	
BSF Act Sec. 19(a)	ABSENTING HIMSELF WITHOUT LEAVE
	In that he, on 09.11.99 (AN) absented himself without leave from Ftr. Hospital Jammu where he was sent for medical treatment and voluntarily reported back on 03.01.2000(AN). Total period of absence 55 days.
IInd Charge	
BSF Act Sec 20(a)	ASSAULTING HIS SUPERIOR OFFICER

	In that he, at 1745 hrs on 09.01.2000 slapped in the face of No.73005553 HC Barjinder Singh of 108 BN BSF
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10. In terms of Rule 48, the record of evidence has been prepared then invoking the powers under Rule 51, the Commandant has directed that the petitioner be tried by Summary Security Force Court. The proceedings of the SSFC record of which is produced by learned CGSC suggest that the petitioner attended the trial, friend of the accused SI M M Kukriti of 108 BN BSF and the interpreter Shri R R Mitra, Commandant 108 BN BSF were present. The charge-sheet was read over and explained to the petitioner. The petitioner on arraignment has pleaded guilty of both the charges. It is recorded that the accused having pleaded guilty of the charges which the court read and explained to the accused the meaning of that charge to which he has pleaded guilty. It was ascertained that the accused understands the nature of the charges to which he has pleaded guilty. He was also informed about the general effect of that plea, and the action to follow consequent to the said plea. Then the SSFC has satisfied itself that the accused understands the charge and its effect and the difference in procedure. As such provisions of rule 142(2) of BSF Rules, 1969 have been adhered to. On the plea of guilty after satisfying the requirement of Rule 142 and Rule 143, the SSFC has recorded the sentence to be dismissed from service .

11. Every case has to be adjudged on the basis of its own facts and features, the judgments referred to by the learned counsel for the petitioner, are of no help to him. The petitioner has been given reasonable opportunity of being heard and procedure prescribed has been strictly followed. When petitioner has pleaded guilty, procedure prescribed under rule 142 and rule 143 has been followed. Then there remains hardly any scope for the petitioner to claim that the rules have been observed in breach.

12. The petitioner belongs to disciplined force. A lot has been spent on his training. No employer would like to dismiss such officials except when the official does not behave so as to maintain the discipline. The petitioner had been sent to the Ftr. Hospital Jammu for treatment, without applying for leave or without any cause opted to remain absent. No doubt he had subsequently filed application for grant of 45 days medical leave on 28.12.1999 but he had been directed to report back as the better medical facilities were available in the Unit where he was working. Why he has not chosen to do so has remained to be explained. Then after having been declared as deserter, he after a gap of 55 days reported voluntarily on 03.01.2000 and disciplinary proceedings had been initiated, he also participated.

13. As if to remain absent and to violate the code of discipline was not enough, he committed another act i.e. slapped on the face of HC Barjinder Singh of 108 BN BSF.

14. On such incident also he has been dealt with in accordance with the rules.

15. His contention that he has not signed for having pleaded guilty is totally uncalled for. In the SSFC proceedings, a friend has been appointed for him, interpreter has been provided then on arraignment when he pleaded guilty, its effect has been explained to him. The SSFC cannot be disbelieved unless some concrete acceptable adverse position is brought on record which has not been. Petitioner has chosen a path which was not only unwarranted and illegal but was violative of the basic discipline which a disciplined member of the disciplined force has to exhibit.

16. No plausible ground factual or legal has been brought to the notice of the Court which would persuade interference with the order of dismissal passed by the Commandant and upheld by the DG of BSF.

17. Petition accordingly dismissed.

18. Record as produced by learned CGSC be returned to him.

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