

Sonu Kumar Vs. Union of India and Ors.

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Court : Delhi

Decided On : Nov-28-2014

Judge : Kailash Gambhir

Appellant : Sonu Kumar

Respondent : Union of India and Ors.

Judgement :

\$~7, 14 to 17 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of hearing and Order:

28. 11.2014 7 W.P.(C) 4804/2014 SONU KUMAR Through Petitioner Ms. Jyoti Singh, Sr. Advocate with Ms. Tinu Bajwa & Mr. Sameer Sharma, Advocates versus UNION OF INDIA & ORS. Through 14 Respondents Mr. Bhagwan Swarup Shukla, CGSC with Mr. Vinod Kr. Tiwari, Advocate W.P.(C) 7228/2013 MOHIT RATHI Through Petitioner Ms. Jyoti Singh, Sr. Advocate with Ms. Tinu Bajwa & Mr. Sameer Sharma, Advocates versus UNION OF INDIA & ORS. Through 15 Respondents Mr. Arun Bhardwaj, CGSC with Mr. Ram Gopal Pandey, Advocate W.P.(C) 7235/2013 RAJ KUMAR Through Petitioner Ms. Jyoti Singh, Sr. Advocate with Ms. Tinu Bajwa & Mr. Sameer Sharma, Advocates versus UNION OF INDIA & ORS. Through W.P.(C) Nos. 4804/14, 7228/13, 7235/13, 34/14, 3237/14 Respondents Mr. Arun Bhardwaj, CGSC with Mr. 16 W.P.(C) 34/2014 DEEPAK KUMAR Through Petitioner Ms. Jyoti Singh, Sr. Advocate with Ms. Tinu Bajwa & Mr. Sameer Sharma, Advocates versus UNION

OF INDIA & ORS Through 17 Respondents Mr. Manish Mohan, CGSC with Ms. Sidi Arora & Mr. Gaurav Sharma, Advocate W.P.(C) 3237/2014 MOHAN Through Petitioner Ms. Jyoti Singh, Sr. Advocate with Ms. Tinu Bajwa & Mr. Sameer Sharma, Advocates versus UNION OF INDIA & ORS Through Respondents Mr. Anurag Ahluwalia, CGSC with Mr. M.P. Singh, Mr. Amrit Singh alongwith Sh. Jaswant Singh, SAO Legal, SSB CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% KAILASH GAMBHIR, J.

(ORAL) 1. In this batch of Writ Petitions, the common grievance of the petitioners is that they had appeared in the competitive examination conducted by the Staff Selection Commission (hereinafter referred to as SSC) for appointment to the post of Constable in Sashastra Seema Bal (in short SSB). They qualified the said examination and joined their services on 09.07.2012 in SSB, 41 Bn., Ranidanga (West Bengal).

2. By an impugned order dated 17.05.2013 passed by the Inspector General, Frontier Headquarter, SSB, Guwahati, Assam, they were discharged from services on the ground that they had failed to conduct themselves as an efficient member of the Force.

3. Ms. Jyoti Singh, the learned Senior Counsel for these petitioners made two fold submissions to challenge the said order. The first being; that vide order dated 17.05.2013 itself, the Inspector General acting under the powers conferred on him under Section 132 of SSB Act, 2007 read with Rule 185 of SSB Rules, 2009 annulled the proceedings of Summary Force Court (in short SFC) on the ground that the said proceedings were illegal as the SFC had been convened without taking over the case from the concerned Police/ Judicial Authorities for invoking the concurrent jurisdiction of the Force Courts. On the very same day, another order was passed by the same officer directing discharge of these petitioners from service in terms of Clause 4 Part-II (Condition of Service) of Appendix-I, under Rules 16 of SSB Rules, 2009 on the ground that these petitioners had failed to conduct themselves as efficient members of the Force.

4. The contention raised by the learned Senior Counsel is that after having annulled the proceedings of the SFC, there was no other material available with the said officer to take a decision to discharge these petitioners from service. The other contention raised by the learned Senior Counsel is that these petitioners were never detained at the Railway Station by the GRP nor even by the local Police and there is no criminal case registered against them as can be manifest from the chargesheet issued against other Constables.

5. We have heard learned counsel for the parties.

6. In the counter affidavit filed by the respondents, the stand taken is that during the course of their training these petitioners were granted mid term break for 14 days w.e.f. 20.01.2013 to 02.02.2013 and after availing the said leave, they returned from New Delhi to 54th Bn SSB Debendranagar, Assam by Guwahati Sampark Kranti Express on 01.02.2013 and on their way to Guwahati, these petitioners had misbehaved with NCC girl cadets who were also commuting in the same train and an FIR No.34/13 under Sections 354/307 IPC was registered against the recruits of SSB for creating public nuisance, at GRP Police Station, Mughal Sarai, U.P. It is also the stand of the respondents that 12 recruits were detained/ arrested by the GRP on 01.02.2013, out of which two were released because they were having a train ticket for General Compartment and other recruits were produced before the concerned Magistrate on 02.02.2013 and were later on sent for further investigation. It is also the stand of the respondents that the Court of Inquiry (in short COI) as directed against the petitioners by the respondents found them to be blameworthy and the Commanding Officer after affording them an opportunity to be heard under Rule 46(1) of SSB Rules, 2009 had remanded the matter for preparation of Record of Evidence (in short ROE) under the provisions of Rule 51 of SSB Rules, 2009. It is also the stand of the respondents that on the basis of evidence adduced in the ROE, the Commanding Officer had awarded sentence of Two months imprisonment in Force Custody and Forfeiture of Pay and Allowances for 14 days.

7. In counter affidavit, the respondents have admitted the fact that the said proceedings of the SFC were annulled by the Inspector General, Frontier

Headquarter, SSB, Guwahati, Assam vide order dated 17.05.2013 and these petitioners were discharged from service by a separate order passed by the same officer as they had failed to conduct themselves as efficient members of the Force.

8. The learned CGSC for the respondents fairly submits that so far as these petitioners are concerned, they were neither named in the said FIR nor have they been charge-sheeted. Therefore, no criminal case is pending against them, while against others a criminal case is pending W.P.(C) Nos. 4804/14, 7228/13, 7235/13, 34/14, 3237/14 concerned Criminal Court.

9. Taking into consideration the fact that there being no criminal case registered against these petitioners; the SFC proceedings directed against the petitioners having been annulled vide order dated 17.05.2013 by the Inspector General, Frontier Headquarter, SSB, Guwahati, Assam; the other order of the same date passed by the Inspector General, Frontier Headquarter, SSB, Guwahati, Assam, having no other material to base itself upon, would be legally unsustainable. Prejudice cannot be caused to the petitioners in the absence of any incriminatory material implicating them of any wrong doing.

10. In view of the above, the impugned order is set aside qua these petitioners and these Writ Petitions are accordingly allowed in the above terms. KAILASH GAMBHIR, J.

NAJMI WAZIRI, J.

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