

## HIGH COURT OF JAMMU & KASHMIR AT JAMMU

SWP No. 2085/2001      Date of Decision: 11-5.2007

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Devi Dass Vs. Union of India & Ors.

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Coram:

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Hon'ble Mr. Justice H.Imtiyaz Hussain

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Appearing Counsel:

For the appellant (s) : Mr.H.A. Siddiqui Advocate

For respondents(s): : Mr. Ajay Sharma Addl. CGSC

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i/ Whether to be reported in      Yes/No

Press, Journal/Media      :

ii/ Whether to be reported in      Yes/No

Digest /Journal      :

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Petitioner Devi Dass son of Shri Gian Chand R/o village Batyari

Tehsil Bishnah District Jammu was serving in 161 Bn BSF at Kadamtala Darjeeling when on the allegation of commission of offence under section 20-A of BSF Act 1968, he was placed under close arrest on 3.3.1997 by Commandant 161 Bn BSF vide order dated 3.3.1997. The charge against the petitioner was that he, at Gate No.04 of BSF Campus Kadamtala on 2.3.1997, at about 2330 hours while on sentry duty tried to cock his SLR at his superior officer namely, Nk Lalam Ram No. 82002558, Guard Commander challenging him while he was reporting to Adjutant about his consumption of liquor and thus intimidating him. The proceedings of record of evidence were initiated by the Recording Officer, A.K. Arya and after the completion of the proceedings, Summary Security Force Court found the petitioner guilty of the offence and passed sentence of dismissal from service on him. The petitioner was dismissed from service vide Order No. Estt/SSPC/Bn/161/96/3772-77 dated 10.6.1997. Aggrieved of the order of dismissal, the petitioner challenged the same

before this court through petition OWP No. 839/97 which was disposed of by this court on 23.1.2001 with the direction that the writ petition be treated as statutory appeal and respondents be asked to pass appropriate orders. The appeal was thus heard by the Director General, BSF who vide order dated 11.5.2001, which is impugned in the present petition found that there was no merit in the said appeal. The Director General therefore, dismissed the appellant.

The petitioner is now aggrieved of the order of rejection of statutory appeal passed by the Director General and has through the medium of present petition challenged the same. He has prayed for writ of certiorari for setting aside and quashing order dated 22.3.1997 passed by Commandant 161 Bn BSF dismissing the petitioner from service. He has also prayed for a writ of mandamus directing the respondents to reinstate him in service with all consequential benefits. The petitioner states that the respondents have not complied with the provisions of BSF Act and Rules while holding the trial and that the Summary Security Force Court has in utter disregard to the provisions of the law passed the dismissal order against him without affording him any opportunity of being heard.

The petition has been resisted by the respondents. It is stated that the petitioner had earlier also filed a petition wherein this court directed to treat the petitioner's statutory appeal and pass appropriate speaking order within six months. In compliance to judgment of this court, the writ petition was examined and a speaking order No. 6-27-2001/Pet/CLO(I&L)/BSF/2612-18 dated 11.5.2001 was issued rejecting the said appeal as being devoid of merit after a detailed and careful consideration of all the facts and circumstances of the case.

The petitioner has challenged his order of dismissal as well as the findings arrived at by the Director General BSF in the appeal which was considered in compliance to the direction of the court on the sole ground that the respondents have not while conducting the trial against the petitioner followed the procedure as laid down in the BSF Act and the Rules. The Commandant 161 Bn BSF has, according to the learned counsel for the petitioner, in utter disregard to the provisions of the BSF Rules conducted the trial and has not afforded an opportunity of being heard to the petitioner. The learned counsel states that without supplying copies of record of evidence the petitioner was asked to make a statement in gross violation of Rule 49 on March 18, 1997. That the Summary Security Force Court assembled and without calling any prosecution witnesses for recording their statements and without affording the petitioner any opportunity of being heard or defending held him guilty of the offence and passed the sentence of dismissal from service on him.

Heard. I have considered the matter.

I have gone through various annexures placed on file and have minutely examined the grounds taken. I have also gone through the judgment of this court in earlier petition of the petitioner disposed of on 25.1.2001. In his earlier writ petition too, the petitioner had raised the same pleas regarding infraction of rules while conducting the proceedings against him but the court has on consideration of the matter rejected the grounds and held that so far as the merit of the controversy is concerned, the respondents have followed the procedure as indicated in the Rules. The court further found that it would not be possible to interfere in the findings which stand recorded by the

authorities. The petitioner has not challenged these findings of this court which have therefore, attained the finality. In view of these findings, we cannot go to the issue of infraction of Rules as raised by the petitioner in the present petition.

On the direction of the court, the matter was heard in appeal by the Director General, BSF who has passed speaking order on 11.5.2001, impugned in the present petition. On perusal of present petition, I find the petitioner has not raised any ground to challenge the order passed by the appellate authority on May 11, 2001. The learned counsel for the petitioner also could not point out the legal or factual defects in the said order. I have gone through the order impugned passed by the Director General, BSF and find the matter has been properly considered by the Director General who has found that the Security Force Court (Court Martial) has conducted the trial in accordance with the Rules and has based its findings on the evidence recorded by him. The Director General has, in this behalf, observed as under:-

“In view of all above facts and the legal position, the Court (SSFC) has rightly found the petitioner guilty of the charge and there has been no legal or procedural flaw in the proceedings which have been conducted in accordance with the provisions of the BSF Act and the Rules made thereunder. As regards punishment, the Court has considered his past record of service before deciding the quantum of punishment. In fact, assaulting a superior officer is considered to be a very grave offence which carries punishment upto 14 years imprisonment. In the instant case, the petitioner has not been awarded any imprisonment and simply dismissed from the service in view of his young age and past record of service. The BSF is an Armed Force of the Union raised for ensuring the security of the borders of the country. To discharge this onerous responsibility a very high standard of discipline is required among all members of the Force. The offence u/s 20(a) i.e. assaulting a superior officer is viewed with due seriousness in the BSF. If the members of the Force are allowed to indulge in such offences the discipline, which is the backbone of this Force will be completely jeopardized.”

In these circumstances I find due compliance of the provisions of Rules both by the Commandant 161 Bn BSF who was heading the Security Force Court ( Court Martial) and by the Director General BSF while disposing of the appeal. I do not find any ground to interfere either with the findings of Security Force Court or with the reasons given and findings arrived at by the Director General. The result is that this petition is dismissed.

Ordered accordingly.

(H. Imtiyaz Hussain) Judge

Jammu

11.5.2007

Chuni/pps