

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU.

SWP No. 2900/2001

Date of Decision:04.06.2009

Des Raj Vs Union of India & Ors.

Coram:

MR. JUSTICE J.P.SINGH, JUDGE.

APPEARING COUNSEL:

For Petitioner (s) : Mr. Surinder Kour, Advocate.

For Respondent (s) : Mr. Ajay Sharma, CGSC.

i) Whether to be reported in Press/Journal/Media : Yes/No
ii) Whether to be reported in Digest/Journal : Yes/No

Petitioner was serving the Border Security Force as Head Constable when, pursuant to the findings of, and sentence awarded by, the Summary Security Force Court constituted by the Commandant 11th Bn, Border Security Force, for the trial of the petitioner, he was reduced to the rank of Constable.

He has filed this petition, seeking quashing of Commandant 39 BSF's order of February 17, 1998 besides seeking directions against the respondents to permit him to perform his duties as Head Constable.

Referring to the pleas raised in the petitioner's writ petition, his learned counsel submitted that the respondents had convicted and sentenced the petitioner,

without holding a Court of Enquiry which according to the Learned counsel was a pre-requisite for holding the petitioner's trial. He submitted that the petitioner's trial was in violation of the provisions of the Border Security Force Act and Rules framed there under which was liable to be set aside additionally because the respondents had failed to provide opportunity of hearing and right of cross-examination of the witnesses whose statement had been used against the petitioner, to the petitioner, before concluding the trial.

The petitioner's writ petition, in a nut shell, therefore, demonstrates violation of the provisions of Border Security Force Act and rules framed there under by the respondents, in holding his trial.

Responding to the writ petition, the respondents have submitted that, while working as Head Constable with the Border Security Force, the petitioner had absented himself from the Border Security Force Campus without permission during the night hours of October 30, 1997, and on enquiry, it was revealed, that after consuming liquor, the petitioner had handed over his personal weapon to a civilian, Mohd. Shafiq by name, and asked him to extort money from the civilians.

According to the respondents, the petitioner had collected huge amount of money from the civilians at gun point on earlier occasions also.

For his undisciplined activity, the competent Authority had directed recording of evidence and the petitioner was accordingly attached for the disciplinary purpose.

On completion of the recording of evidence, ROE, for short, the petitioner was tried by the *Summary Security Force Court* on January 17, 1998 on four charges under Sections 19 (a), 19 (f) and Section 40 of Border Security Force Act. On arraignment, the petitioner pleaded guilty to all the four charges. The Summary Security Force Court, finding him guilty, accordingly, sentenced him to be reduced to the rank of constable. The sentence awarded was, thereafter, promulgated vide Force's order no. 1917-21 dated March 27, 1998.

Referring to the past history of the petitioner, it has been stated that he had been awarded punishment on three occasions, and as regards, the petitioner's plea of respondents' violating the provisions of the Border Security Force Act and rules framed thereunder in proceedings against him, it is stated that the petitioner had participated in the ROE proceedings and full opportunity had been allowed to him, as required by law.

While availing of the opportunity allowed to him in this behalf, the petitioner had cross-examined only some of the witnesses during the ROE proceedings and had opted not to cross-examine the rest. The Officer holding the ROE proceedings had provided sufficient opportunity to

the petitioner to produce his defence as required under the rules but he had declined to do so.

According to the respondents, the petitioner had been made aware of the allegations appearing against him and he had, on his own volition opted to plead guilty to all the charges.

I have considered the submissions of learned counsel for the parties and perused the records which the Union counsel had produced during the hearing of the petition.

Perusal of the records indicates that the Commandant, had heard the prosecution witnesses in presence of the petitioner after reading out and explaining the charge to him on 01-11-1997. The accused is indicated to have declined to cross-examine the witnesses. The Commandant had, therefore, directed recording of evidence. During the course of recording of evidence too, the petitioner was all along present and had cross-examined some of the witnesses whom he wished so to do. During the course of the petitioner's trial by the Summary Security Force Court, he had pleaded guilty to all the charges.

The Summary Security Force Court, while recording his plea of guilty, had explained to him the meaning of the charge to which he had pleaded guilty and ascertained that the accused understood the nature of the charges to which he had pleaded guilty. The court had further informed the petitioner of the general effect of his pleading guilty, and it

was after satisfying itself, that the accused had understood the charge and the effect of his plea of guilty, that the court had accepted and recorded the plea.

Perusal of the records, therefore, demonstrates that the respondents had complied with the provisions of the Border Security Force Act and rules framed there under in holding the recording of evidence and consequent trial of the petitioner affording him full opportunity as provided under the Act and the rules.

Petitioner's case that the respondents had violated the principles of natural justice and the provisions of the Border Security Force Act and rules framed there under in holding his trial is, thus, not substantiated.

Petitioner's counsel's plea that his trial was bad in law because it was not preceded by a Court of Enquiry too is found untenable, in that, the provisions of rule 174(2) of the Border Security Force Rules, 1969 would have no application to the case of the petitioner because the allegations on which he was tried by the Summary Security Force Court do not fall in any of the contingencies mentioned in Rule-174(2) of the Border Security Force Rules 1969. Holding of Court of Enquiry before the trial of the petitioner was, thus, not required. Petitioner counsel's contention, therefore, fails and is, accordingly, rejected.

For all what has been stated above, the petitioner's trial and consequent punishment awarded to him, is found

to be in accordance with law, And no interference by this court is, thus, warranted.

Petitioner's writ petition lacks substance, and is accordingly, dismissed.

Records be returned to the Union counsel.

Jammu
04.06.2009
Ram

(J.P.SINGH)
Judge