

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

SWP No. 2140/2001

Date of decision: 17.04.2009

Raj Kamal Sudan
(Represented by Ms. Lajja
Devi, mother as his legal
Representative) **Vs.** **Union of India & Ors.**

Coram:
MR. JUSTICE J. P. SINGH, JUDGE.

Appearing Counsel:
For Petitioner(s) : Mrs. S. Kour, Advocate.
For Respondent(s) : Mr. Ajay Sharma, CGSC.

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| i) | Whether approved for reporting
in Press/Journal/Media | : | Yes |
| ii) | Whether to be reported
in Digest/Journal | : | Yes |
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Raj Kamal Sudan, a constable in the Border Security Force, was dismissed from service vide Commandant 51 Bn. BSF's order of August 31, 2001 pursuant to the Verdict of a Summary Security Force Court held on 31-08-2001 on a charge under section 21(1) of the BSF Act 1968, in that, he had shown willful defiance of Authority and Lawful command given personally by his superior No. 77243006 S.I. Darshan Lal to proceed to FDL Jungle, to which he had indicated that he would not go to the post and had thereafter refused to proceed to

the post. He had filed this petition questioning the findings and Verdict of the Summary Security Force Court and seeking its quashing on the grounds that the allegations leveled against him in the charge were false, and proceedings conducted prior to and by the Summary Security Force Court were illegal, in that, he was unaware about the nature of the proceedings and was not afforded any opportunity to make statement or cross-examine the witnesses or produce his defence. Elaborating the plea taken in the writ petition, it is stated that the petitioner was not conversant with the English Language, and was thus deprived of his right to know about the proceedings because the proceedings were conducted by the respondents in English Language. The petitioner was not provided any opportunity either to make his statement or cross-examine the witnesses or for that matter to produce his defence in the case. Projecting his plea of violation of the BSF Rules in conducting his trial, it is submitted that petitioner had not been afforded any opportunity of hearing before amendment of charge nor was he informed about the plea of guilty or its effect as contemplated by the Rules. According to him he was not provided any Friend as required under Rule 157 of the Border Security Force Rules and proceedings held by the respondents indicating that V.K. Mohanty had been provided to him as his friend were against the facts. Further grievance of the petitioner is that he was not provided the copies of the

proceedings though he was entitled thereto under law which had prejudiced him.

Controverting the case set up by the petitioner in the writ petition regarding violation of the Border Security Force Act and Rules in conducting proceedings prior to and during the trial of the petitioner by the Summary Security Force Court, and giving the history of the case, the respondents have indicated that during the course of his duties at FDL, BSF Check, petitioner had refused to obey the lawful command of his Commander, Head Constable Bagh Hussain, who wanted his party, which included the petitioner to move ahead towards FDL, BSF Check. It was after much persuasion that the petitioner had agreed to move towards BSF Check and on reaching there, S.I. Darshan Lal had ordered him to move further to his post FDL where he had been deployed but the petitioner refused to obey the order. The petitioner is stated to have even refused to handover the LMG and had rather become violent. He had threatened saying that ~~मे~~Mein Dekhta Hoon Meri LMG Kon Leta Hai~~मे~~ The LMG was however, taken from him forcibly.

On the matter being reported, the petitioner was heard on the Offence Report by the Commandant under section 21(1) and 22(e) of the BSF Act 1968. It was after hearing the petitioner in presence of the witnesses named in the Offence Report that the Commandant had directed Recording of Evidence. During the course of the Recording

of Evidence, the petitioner was afforded opportunity to cross-examine the witnesses but he had declined to do so. Petitioner was also afforded opportunity to lead evidence and make any statement he wanted to so make but he had declined to do so. After recording Summary of Evidence, the petitioner was charged only under section 21(1) of the BSF Act 1968 and his trial commenced on 31st day of August, 2001 which was held by C. Vasudevan Commandant 59 Bn. BSF in presence of B.S. Negi, Assistant Commandant and S.I. Basant Kumar. Friend of the accused Colonel B. K. Mohanty, Deputy Commandant too is shown to have attended the trial. The charge was explained to the petitioner who had pleaded guilty thereto. Complying with the requirements of Rule 142 (2) of the Border Security Force Rules, the petitioner had been informed about the general effect of his plea of guilty and the difference in procedure to be followed pursuant thereto.

The stand taken by the respondents about their having complied with the requirements of the Border Security Force Act and Rules is sought to be supported by the copies of the documents placed on records. Respondents' counsel has produced the original records too for perusal of the Court.

Petitioner has not filed any rejoinder to the writ petition after the filing of the counter affidavit by the respondents. Petitioner died

during the pendency of this writ petition and his mother Lajja Devi is impleaded as petitioner in the case.

I have considered the submissions of the learned counsel for parties and perused the documents placed on records as also the Summary Security Force Court trial proceedings made available by the respondents ~~to~~ counsel.

Perusal of the records demonstrate compliance of all the Rules which the respondents were required to follow while proceeding against the petitioner. There is no material on records in support of petitioner's plea that he was not made to understand the nature of proceedings which had been held against him. On the other hand the records reveal that the petitioner had been heard on the Offence Report to which he had pleaded not guilty whereafter the Commandant had directed Recording of Evidence which was attended by the petitioner saying that he would not cross-examine the witnesses or make his statement when provided opportunity in this behalf by the Officer recording the evidence. The Record of Evidence has been done in accordance with the Rules as the certificate appended to the proceedings also so indicates. Petitioner has signed the proceedings which negates his plea that he was unaware about the proceedings. Proceedings held by C. Vasudevan, Commandant 59 Bn. B.S.F. specifically record that the Officer holding the trial had been duly affirmed in terms of the Rules and the trial had been attended both by

the witnesses as also by B. K. Mohanty, Deputy Commandant, friend of the accused. Certificate issued by the Commandant, the court, certifies the compliance of the provisions of Rule 142(2) of the BSF Rules saying specifically that petitioner had been made aware about the effect of his plea of guilty.

After going through the records of the Summary Security Force Court trial proceedings which carries the records of the Recording of Evidence and hearing of the petitioner on the Offence Report, I do not find any infirmity in the trial of the petitioner and the pleas raised by the petitioner in the writ petition are not found substantiated.

For all what has been said above, I do not find any ground for interference with the Verdict of the Summary Security Force Court directing dismissal of the petitioner from service. The writ petition lacks substance and is, accordingly, dismissed.

(J. P. Singh)
Judge

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