

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU.

SWP No. 848/2001

Date of decision: 08.10.2010

Tarlok Raj

Vs. UOI and others.

Coram:

Hon'ble Mr. Justice Sunil Hali, Judge.

Appearing counsel:

For the petitioner(s) :Mrs. Surinder Kour, Advocate.
For the respondent(s) :Mr. Ajay Sharma, Advocate.

- 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 was enrolled as a Constable on 15.10.1984 in the Border Security Force where after on 23.12.1991 he was promoted as a L/Naik. It is contended by him that while posted in 109 Bn, BSF, he was deputed for Dak duty to Frontier Headquarters, Siliguri on 01.08.2000 with effect from 02.08.2000. It is contended that when the petitioner was returning from said duty in North East Express, he was given some eatables by some co-passengers and thereafter he was beaten up and his luggage was also lifted by those persons after he became unconscious. He states that when the train

reached at Gwahati the petitioner went to the Transit Camp but he was not allowed to enter the Camp for non-availability of his Identity Card, which, according to him, was also lost with his luggage. The petitioner thereafter came to his home at Village Langotian, R. S. Pura, Jammu where he is stated to have got his treatment. He was arrested by Police Station Miran Sahib on 21.11.2000 and handed over to the respondents, on the allegation that he is a deserter and has absented himself without any leave.

Summary Security Force Court was held wherein the petitioner pleaded guilty to the charge and was given following punishment on 09.02.2001:-

“To be dismissed from service.”

The petitioner has challenged the punishment awarded to him through the medium of present writ petition.

On the other hand, respondents have, in their objections, stated that after performing his temporary duty the petitioner was relieved from Frontier Headquarter N/Bengal Silliguri on 03.08.2000, but instead of reporting to his Unit at Gopalpur, New Cooch Behar, he deserted himself en-route. Registered letters were sent on the home address of the petitioner to which he did not respond and, accordingly, a Court of Inquiry was ordered under Rule 62 of the Border Security Force Rules on

20.09.2000 to investigate the circumstances under which the petitioner had absented. The Court of Inquiry was completed on 07.10.2000 and apprehension roll was issued to Superintendent of Police Jammu on 11.10.2000. Additionally a show cause notice was also sent to the petitioner on his home address by registered post. Meanwhile 120 Bn BSF, vide signal No. A/7006 dated 21.11.2000 intimated the respondents that petitioner had been apprehended by Police and handed over to them. It is stated in the reply that " As per BSF rule 49, the accused is not required to be present when the officer prepares the AOE. As per rule 49 a copy of abstract of evidence was handed over to accused at 1330 hrs on 10.1.2001 by the PO of AOE to enable him to make a statement in AOE if he so desired, after duly cautioning him as per rule 48 (3) by giving him more than 24 hours as per rules. The petitioner had availed this opportunity and made a statement before AOE and same has been recorded by the presiding officer on 12.1.2001."

It is further contended that after going through the AOE proceedings, Summary Security Force Court was ordered against the petitioner, wherein the petitioner pleaded guilty to the charge. He was provided a friend of his choice during trial as per Rule 157 of the Rules. After the petitioner pleaded guilty and requested for pardon, the punishment was awarded to him.

I have heard the learned counsel for the parties.

The main ground of challenge to the order impugned by the petitioner is that he was given any opportunity of being heard and to produce the documents in his defence. He was not provided the statements of the witnesses who had deposed against him before the Court of Inquiry. It is further contended that certificate has to be made after getting the signature of the accused as token of attestation and the certificate has to be attested by the competent authority. The petitioner has not signed any such proceedings and plea of guilty, as such, the proceedings are vitiated.

After perusal of the original record, which has been produced by learned counsel for the respondents, it clearly emerges that record of Court of Inquiry was duly made available to the petitioner on 10.01.2001, i.e. before holding of Summary Security Force Court against his proper receipt. Examination of record of Summary Security Force Court clearly shows that when the petitioner was asked to make any statement in reference to the charge or mitigation of punishment, the petitioner replied that "I am poor person. I request that I may be pardon this time. I will not repeat such mistakes in future." Record does not indicate any request of the

petitioner for leading any evidence in defence during trial by the Summary Security Force Court.

The contention of the petitioner that the plea of guilty was not signed by him, cannot be accepted because Rule 142 of the Border Security Force Rules, 1969, does not indicate any requirement of the accused signing the proceedings and plea of guilty. It contemplates that if an accused person pleads "guilty" that plea shall be recorded as the finding of the court, but before it is recorded, the court shall ascertain that the accused understands the nature of the charge to which he has pleaded guilty and shall inform him of the general effect of that plea. The plea is not required to be signed by the accused but only by the court. It is manifest from the record that the plea of guilty has been recorded after complying with the procedure laid down under Rule 142(2) of the Rules.

Since the proceedings have been conducted in accordance with the Rules governing the petitioner, no fault can be found with the order impugned. The contention of the petitioner that he was not granted any opportunity to defend himself cannot be justified as the petitioner has been given proper opportunity of hearing and as noticed above, principles of natural justice too have been complied with.

Even otherwise this Court cannot sit in appeal against the order of dismissal, which has been passed after proper inquiry under Rules. This Court could at best examine the procedure which had been adopted and, in case it finds no fault with the procedure adopted, Court cannot interfere in the same.

It is true that proceedings initiated by the respondents are subject to the judicial review by the High Court under Article 226 of the Constitution of India, but this judicial review, may not permit re-appreciation of evidence by the High Court. It is only when the Summary Security Force Court was not properly convened or there was any challenge to its composition and the proceedings, on the basis of violation of the provisions of the Act and Rules, that the High Court, may exercise its power of judicial review. The Summary Security Force Court has sufficiently discharged its judicial function. Its proceedings indicate that due care and caution had been taken by the Court in adhering to the provisions of the Act and Rules on the subject. Its responsibility to protect the rights of the petitioner charged before it by providing all the procedural safeguards, has been properly discharged by it.

For all what has been said above, I do not find any merit in this petition, which is, accordingly, dismissed.

(Sunil Hali)

Judge

JAMMU.
08.10.2010
Anil Raina, Secy