

HIGH COURT OF JAMMU & KASHMIR
AT JAMMU

SWP No.1078/2003
MP No.1100/2003

Date of Order: 23 .02.2016

Ram Niwas Pandey	vs	State of J&K and ors.
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Coram:

Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge

Appearing counsel:

For the petitioner(s)	: Mr. Anil Sethi, Advocate.
For the Respondent(s)	: Mr. Rajesh Thapa, CGSC.

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| (i) | Whether approved for reporting in Law Journal/Digest: | Yes |
| (ii) | Whether approved for reporting in Press/Media: | Yes/No. |
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1. Petitioner seeks quashment of the Order issued under No.2031/ESTT/Disc/SSFC/RNP/02/1098-0125 dated 23.09.2002 in pursuance whereof he has been dismissed from service.

2. Petitioner was serving in Border Security Force (BSF). On 04.09.2002 alongwith three other officials was detailed for new Pump House STC BSF, Udhampur. Allegedly, he had attempted an indecent act as against constable Vinay Kumar who was also detailed alongwith the petitioner for new Pump House STC BSF, Udhampur. Constable Vijay Kumar had reported the matter to Inspector Amolkjit Singh, Coy, 2IC.

3. Offence report was prepared to the following effect:

“DISGRACEMENT CONDUCT OF AN INDECENT KIND

In that he, at STC BSF Udhampur on 04.09.02 at 2110 hrs while on guard comdr duty at new water pump house opened the trouser of No.01006103 R/Const Vinay Kumar ‘A’ Coy, Batch No.78 who was sleeping in guard room near said guard comdr.”

4. As against the said offence report, he had pleaded not guilty. The act alleged committed by the petitioner falls within the ambit of Section 24 of the Border Security Force Act, 1968.
5. The proceedings were held under Rule 45 of the BSF Rules. The witnesses as examined were cross-examined by the petitioner.
6. After record of the evidence, the accused was required to be tried by Summary Security Force Court which the Commandant himself was competent to do.
7. Charge has been framed on 20.09.2002. On 21.09.2002, the Commandant issued the order providing that the petitioner will be tried by Summary Security Force Court on 23.09.2002

at STC BSF Udhampur for offence committed by him within the meaning of Section 24(a) of BSF Act 1968. Shri J S Bhandari, DC, STF BSF Udhampur had been appointed as Friend of the petitioner.

8. After recording the evidence, petitioner was called upon for his defense. His statement is recorded. He did not choose to produce any witness in defense.
9. The Summary Security Force Court recorded the finding to the effect that the petitioner is guilty of the charge. Then has been sentenced i.e. dismissed from service.
10. Learned counsel for the petitioner would submit that the provisions of the BSF Act and the rules have not been followed. On a single day i.e. 23.09.2002, entire Summary Security Force Court proceedings were held and concluded. Therefore, petitioner has been deprived of reasonable opportunity of being heard. He further contends that Rule 133 Chapter-XI of the BSF Rules, 1969 provides for

procedure to be followed by SSFC has not been followed properly.

11. On perusal of the records as produced by the counsel for the respondents, what emerged is that petitioner allegedly had committed an indecent act which fell within the ambit of Section 24 of the BSF Act. For such disgraceful act, offence note had been prepared and the proceedings were held as required under rule 45 of the BSF Rules. Then invoking the powers under rule 51 of the BSF Rules, the Commandant had ordered trial by Summary Security Force Court. Vide order dated 21.09.2002, the petitioner had been given ample chance. Shri J S Bhandari DC STC BSF Udampur was provided as a Friend to defend the case. Then on 23.09.2002, proceedings of the SSFC were held. The petitioner has actively participated and he has also cross-examined the witnesses. Then his statement has also been recorded and on conclusion of the trial has been held guilty.

12. The respondent have strictly followed the rules.
13. It is true that on one day i.e. 23.09.2002, entire SSFC proceedings were held but he has been properly heard. He has cross-examined the witnesses. He can have no grievance because speedy disposal of the proceedings by SSFC after proper hearing could not be found fault with.
14. Petitioner belonged to a disciplined force. For an indecent and disgraceful act, could he expect a lenient view? A person belonging to a disciplined force is required to be disciplined in all respects. When he did not spare his colleague, what unwanted could not be expected from him by the authorities? When the respondent authorities have followed the procedures and law, there is no scope to interfere. In this context, it shall be advantageous to quote the following para from the judgment rendered by Hon'ble Apex Court in the case captioned UOI vs. A Hussain (AIR

1998 SCW 171):

“Though Court Martial proceedings are subject to judicial Review by the High Court under Article 226 of the Constitution, the Court Martial is not subject to the superintendence of the High Court under Article 227 of the Constitution. If a Court Martial has been properly convened and there is no challenge to its composition with the procedure prescribed, the High Court or for that matter, any Court must stay its hands. Proceedings of a Court Martial are not to be compared with the proceedings in a criminal court under the Code of Criminal Procedure where adjournments have become a matter of routine, though that is also against the provision of law. It has been rightly said that Court-Martial remains to a significant degree a specialized part of overall mechanism by which the Military Discipline is preserved. It is for the special need for the Armed Forces that a person subject to the Army Act is tried by Court-Martial for an Act which is an offence under the Act. Court Martial discharges judicial functions and to a great extent is a Court where provisions of Evidence Act are applicable. A Court Martial has also the same responsibility as any court to protect the rights of the accused charged before it and to follow the procedural safeguards.....”.

15. While following the principle, no ground whatsoever has been made out which would warrant any interference. Petition is accordingly found to be without any merit, as such is **dismissed** alongwith connected MP.

16. The record of SSFC trial proceedings as produced by the learned counsel for the respondents be returned to him.

17. Disposed of as above.

(Mohammad Yaqoob Mir)
Judge

Jammu
23.02.2016
Raj Kumar