A

UNION OF INDIA AND OTHERS

v.

EX-CONSTABLE AMRIK SINGH

JANUARY 29, 1991

B [S. RATNAVEL PANDIAN AND K. JAYACHANDRA REDDY, JJ.]

Border Security Force Act, 1968/Border Security Force Rules, 1969: Section 117(2)/Rules 167-169—Petition under—Disposal of—Whether personal hearing required to be given.

C

Administrative Law: Natural justice—Principles of—Whether applicable to special enactments like Border Security Force Act.

The respondent in the appeal, a Mounted Constable in the Border Security Force, was charged for an offence under s. 31(b) of the Border
D **Security Force Act, 1968 for extracting a sum of money from a person without proper authority. A charge-sheet was issued, evidence in support of the same was recorded, and thereafter a Summary Security Force Court as provided under the Act was constituted and the respondent was put on trial. During the recording of evidence, the respondent was given an opportunity to cross-examine prosecution witnesses, but**
E **he declined, pleaded guilty and prayed for a lenient view to be taken. The Summary Security Force Court passed an order sentencing him to rigorous imprisonment for one year civil prison and also to be dismissed from service.**

Aggrieved by the aforesaid order, the respondent preferred a
F **petition under s. 117(2) of the Act to the Director General, B.S.F., who after going through the petition and the records of the case, rejected the same as devoid of any merit.**

The respondent thereupon filed a petition under Articles 226 and 227 of the Constitution before the High Court urging that there was
G **violation of the principles of natural justice since he had not been heard before disposing of his petition. The High Court allowed the writ petition, and directed fresh hearing of the petition of the respondent, after giving him an opportunity of being heard.**

The Union of India appealed to this Court against the decision of
H **the High Court contending that s. 117(2) of the Act does not provide for**

a personal hearing. The appeal was contested by the respondent contending that as the Border Security Force Act does not expressly exclude a personal hearing and that an employee cannot be condemned without observing the principles of natural justice. A

On the question: whether a personal hearing is required before disposing of a petition under s. 117(2) of the Border Security Force Act, 1968 against an order of the Summary Security Force Court, B

Allowing the appeal, this Court,

HELD: 1. The doctrine of principles of natural justice and *audi alteram partem* are part of Article 14 of the Constitution. Although principles of natural justice apply to administrative orders affecting the rights of citizen yet it is also clear that in cases of special enactments, like Army Act, all the principles of natural justice cannot be imported. The same ratio applies to a petition under s. 117(2) of the Border Security Force Act also. [187A-B; 191G] C D

1.2 Chapter XIII consisting of Rules 167 to 169 of the Border Security Force Rules deals with petitions filed under s. 117 of the Border Security Force Act. Even in them there is nothing to indicate that a hearing has to be given before disposal of a petition. [191G-H]

Maneka Gandhi v. *Union of India,* [1978] 2 SCR 621; *Som Datt Datta* v. *Union of India & Ors.,* [1969] 2 SCR 177; *Union of India* v. *Jyoti Prakash Mitter,* [1971] 1 SCC 396; *Captain Harish Uppal* v. *Union of India and Others,* [1973] 2 SCR 1025; *Shri S.N. Mukherjee* v. *Union of India,* JT 1990 (3) 630 and *Union of India* v. *Col. J.N. Sinha and Anr.,* [1971] 1 SCR 791, relied on. E F

Lt. Col. K.N.S. Sidhu v. *The Union of India and Others,* All India Service Law Journal 1977 page 721, referred to.

2.1 Under s. 117(2) of the Border Security Force Act, the person aggrieved is only entitled to file a petition but the disposal of such a petition does not attract principles of natural justice. [192A] G

2.2 The authority disposing of the petition under s. 117(2) is not a court, and every order passed administratively cannot be subjected to the rigours of principles of natural justice. [192B]

3. In the instant case, the respondent had been tried by observing H

the due process of law, and the verdict of the Summary Security Force Court was confirmed and it was only a post confirmation petition that was filed under s. 117(2) of the Border Security Force Act. The order was passed by an authority and not by a court and every order passed administratively could not be subjected to the rigours of principles of natural justice. [192A-B]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3201 of 1989.

From the Judgment and Order dated 28.2.1989 of the Punjab and Haryana High Court in C.W.P. No. 7769 of 1988.

Dr. N.M. Ghatate and C.V.S. Rao for the Appellants.

P.P. Singh for the Respondent.

The Judgment of the Court was delivered by

K. JAYACHANDRA REDDY, J. Whether a personal hearing is required before disposing of a petition filed under Section 117(2) of The Border Security Force Act, 1968 ('Act' for short) against an order of the Summary Security Force Court? This in short is the question involved in this appeal filed by the Union of India.

The facts that give rise to this appeal may be noted at the outset. The sole respondent who was working as Mounted Constable in the Border Security Force ('BSF' for short) was charged for an offence under Section 31(b) of the Act for extracting a sum of Rs.14,000 from a person without proper authority. A chargesheet was issued to the respondent. The evidence in support of the same was recorded. Thereafter a Summary Security Force Court as provided under the Act was constituted and the respondent was put on trial on 17.2.1988. During the recording of the evidence, though the respondent was given an opportunity to cross-examine the witnesses he declined to do so and according to the enquiring authorities, he pleaded guilty and prayed that a lenient view may be taken. During the trial he was also given an opportunity to examine defence witnesses, if any but he did not do so. It is also averred that since the respondent pleaded guilty, Summary Security Force Court passed the orders and sentenced him to rigorous imprisonment for one year in civil prison and also to be dismissed from service. Aggrieved by the said order the respondent preferred a petition under Section 117(2) of the Act to the Director General, BSF who

after going through the petition as well as other records of the case rejected the same as devoid of any merit. The said decision was informed to the respondent. Aggrieved by the same, the respondent filed a petition under Articles 226 and 227 of the Constitution of India before the High Court of Punjab & Haryana. It was urged that there was violation of principles of natural justice since he had not been heard before disposing of the petition filed under Section 117(2) of the Act. The High Court without going into the merits allowed the writ petition and directed a fresh hearing of the petition filed by the respondent in accordance with law after hearing him. Aggrieved by the said order the Union of India has filed the present appeal. Learned counsel for the appellants submitted that Section 117(2) of the Act does not provide for personal hearing and that the courts, which examined the similar provisions in the Army Act, have held that the personal hearing need not be given particularly having regard to the nature of the act and the post held. The learned counsel appearing for the respondent, on the other hand, submitted that the statute does not expressly exclude a personal hearing and that an employee cannot be condemned without observing the principles of natural justice.

Before we examine the decisions cited by either side, it is necessary to refer to some of the provisions of the Act and the Army Act. The BSF is an armed force of the Union of India constituted under Item 2 of List I of Schedule 7 of the Constitution of India and is primarily connected with the defence of the country. The preamble states that the Act is to provide for the constitution and regulation of an Armed Force of the Union for ensuring the security of the borders of India and for matters connected therewith. Section 4 provides for constitution of an Armed Force of the Union called the Border Security Force for ensuring the security of the borders of India and subject to the provisions of the Act, the Force shall be constituted in such manner as may be prescribed and the conditions of service of the members of the Force shall be such as may be prescribed. Chapter III deals with offences and Chapter IV with punishments that can be awarded by the Security Force Court. Chapter VI deals with the constitution of the Security Force Courts and their powers to try the offences punishable under the Act. Chapter VII contains the procedure to be followed by Security Force Courts. As per the said procedure, the witnesses can be summoned and examined. Section 87 lays down that the Evidence Act, shall, subject to the provisions of the Act, apply to all proceedings before the Security Force Courts. For the purpose of this appeal it may not be necessary to go into the details of this procedure. As per Section 107 no finding or sentence of a Security

Force Court shall be valid except so far as it may be confirmed as provided under the Act. Sections 108 and 109 deal with the authorities empowered to confirm the decision of the General Security Force Court or an ordinary Security Force Court. Under Section 117, the aggrieved person is entitled to file a petition to the concerned authority mentioned therein against the order passed by any Security Force Court. Section 117 reads as under:

> "117(1) Any person subject to this Act who considers himself aggrieved by any order passed by any Security Force Court may present a petition to the officer or authority empowered to confirm any finding or sentence of such Security Force Court, and the confirming authority may take such steps as may be considered necessary to satisfy itself as to the correctness, legality or propriety of the order passed or as to the regularity of any proceeding to which the order relates.
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> (2) Any person subject to this Act who considers himself aggrieved by a finding or sentence of any Security Force Court which has been confirmed, may present a petition to the Central Government, the Director-General, or any prescribed officer superior in command to the one who confirmed such finding or sentence, and the Central Government, the Director-General, or the prescribed officer, as the case may be, may pass such order thereon as it or he thinks fit."

The next relevant Section is Section 118 which reads thus:

> "The Central Government, the Director-General, or any prescribed officer may annul the proceedings of any Security Force Court on the ground that they are illegal or unjust."

In the instant case, we are concerned with the post-confirmation petition presented under Section 117(2) to the Director-General, BSF. As already mentioned the Director-General rejected the same holding that it is devoid of merit without giving any personal hearing. The petition filed by the respondent under Section 117(2) is marked as Annexure 'C' in this appeal before us. We have gone through the same and we find that request for personal hearing as such has not been made. With this background we shall now examine whether it is ob-

ligatory that a personal hearing should be given and whether there has been violation of principles of natural justice? A

The doctrine of principles of natural justice and *audi alteram partem* are part of Article 14 and there are any number of decisions rendered by this Court regarding the scope of this doctrine. We shall, however, refer to one or two important cases relied upon by the B learned counsel for the appellants. In *Maneka Gandhi* v. *Union of India,* [1978] 2 SCR 621 all the earlier important cases are referred to. Suffice it to say that it is laid down that principles of natural justice apply to administrative orders affecting the rights of citizens. But it is also observed that:

> "The *audi alteram partem* rule may, therefore, by the C experimental test, be excluded, if importing the right to be heard has the effect of paralysing the administrative process or the need for promptitute or the urgency of the situation so demands. But, at the same time, it must be remembered that this is a rule of vital importance in the field of D administrative law and it must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. It is a wholesome rule designed to secure the rule of law and the Court should not be too ready to eschew it in its application to a given case. The Court must make every effort to salvage this cardinal rule to the maximum extent E permissible in a given case."

In State of Haryana v. *Ram Krishan and Others,* [1988] 3 SCC 416 the question was whether in a case of premature termination of mining leases by the Government, it was necessary to give an opportunity of hearing. The Court held that: F

> "Since there is no suggestion in the section to deny the right of the affected persons to be heard, the provisions have to be interpreted as implying to preserve such a right. The Section must be interpreted to imply that the person who may be affected by such a decision should be afforded G an opportunity to prove that the proposed step would not advance the interest of mines and mineral development. Not to do so will be violative of the principles of natural justice. Reference may be made to the observations of this Court in *Baldev Singh* v. *State of Himachal Pradesh,* [1987] 2 SCC 510, that where exercise of a power results in civil H

A consequences to citizens, unless the statute specifically rules out the application of natural justice, such rule would apply."

The learned counsel appearing for the Union of India, however, submitted that the courts have not gone to the extent of holding that in B every petition or revision by way of representation filed against an order of a Tribunal under special statute should also be given an opportunity of hearing before disposal of the same.

Most of the other decisions cited deal with the question of giving an opportunity before disposal of a petition filed under Section 164(2) of the Army Act which is in *pari materia* to Section 117(2) of the Act. C We may usefully extract Section 164 of the Army Act which reads thus:

"164. Remedy against order, finding or sentence of court-martial.—Any person subject to this Act who considers D himself aggrieved by any order passed by any court-martial may present a petition to the officer or authority empowered to confirm any finding or sentence of such court-martial and the confirming authority may take such steps as may be considered necessary to satisfy itself as to the correctness, legality or propriety of the order passed or as to the regu- E larity of any proceedings to which the order relates.

(2) Any person subject to this Act who considers himself aggrieved by a finding or sentence of any court-martial which has been confirmed, may present a petition to the Central Government, the Chief of the Army Staff or any F prescribed officer superior in command to the one who confirmed such finding or sentence and the Central Government, the Chief of the Army Staff or other officer, as the case may be, may pass such orders thereon as it or he thinks fit."

G In *Som Datt Datta* v. *Union of India & Ors.*, [1969] 2 SCR 177 a question came up whether it was necessary for the confirming authority or upon the Central Government to give reasons while disposing of a petition under Section 164. It was held that:

"Apart from any requirement imposed by the statute or H statutory rule either expressly or by necessary implication,

we are unable to accept the contention of *Mr. Dutta that there is any general principle or any rule of natural justice that a statutory tribunal should always and in every case give reasons in support of its decision.*"

(emphasis supplied)

In *Union of India* v. *Jyoti Prakash Mitter,* [1971] 1 SCC 396 a queston came up whether an order passed by President acting under Art. 273 of the Constitution of India is justiciable. This Court held that the appreciation of the evidence by the President is entirely left to him but the Court will not sit in appeal over the judgment of the President. Now coming to the question of personal hearing it was further held that:

"The President had given ample opportunities at diverse stages to the respondent to make his representations. All evidence placed before the President when he considered the question as to the age of the respondent was disclosed to him and he-respondent-was given an opportunity to make his representation thereon. There is nothing in clause (3) of Article 217 which requires that the Judge whose age is in dispute, should be given a personal hearing by the President. The President may in *appropriate cases in the exercise of his discretion give to the Judge concerned an oral hearing, but he is not bound to do so.* An order made by the President which is declared final by clause (3) of *Article 217 is not invalid merely because no oral hearing was given by the President to the Judge concerned.*"

(emphasis supplied)

In *Lt. Col. K.N.S. Sidhu* v. *The Union of India and Others,* All India Service Law Journal, 1977 Page 721 a Division Bench of the Punjab & Haryana High Court has considered this very question and held that the rejection of a representation made under Section 164(2) of the Army Act without giving a personal hearing does not suffer from any illegality and after referring to *A.K. Gopalan* v. *State of Madras*, AIR 1950 SC 27 and *Union of India* v. *Jyoti Prakash Mitter,* AIR 1971 SC 1093, held that:

"From the observations reproduced above, it is abundantly clear that there is no hard and fast rule for the applicability of principles of natural justice and that in each case it has to be definitely ascertained if the statute governing it leaves

A any discretion for involving their assistance."

It was further observed that:

> "The Act applies to a class of people who are the backbone B of the country. They are governed by the codified law. Discipline is maintained by resorting to the provisions of the codified law. There would hardly be any justification for importing the principles of natural justice in a completely codified statute."

In *Captain Harish Uppal* v. *Union of India and Others*, [1973] 2 SCR C 1025 also the question whether an opportunity to be heard is necessary before confirmation under Section 164 of the Army Act, was considered and it was held that:

> "The contention that Brig. Bhilla should either have given D a hearing to the petitioner or the Chief of Army Staff should have given a hearing to the petitioner before confirming the subsequent sentence by the court martial is not a requirement under the Act. While it can be at least said that there is some semblance of reasonableness in the contention that before he ordered what in effect was an E upward revision of the sentence passed on the petitioner, he should have been given a hearing, *to insist that the confirming authority should give a hearing to the petitioner before it confirmed the sentence passed by the court-martial, is a contention which cannot be accepted. To accept this contention would mean that all the procedure laid down by* F *the Code of Criminal Procedure should be adopted in respect of the court martial, a contention which cannot be accepted in the face of the very clear indications in the Constitution that the provisions which are applicable to all the civil cases are not applicable to cases of Armed Personnel. It is not a requirement of the principles of natural justice.* G Indeed when he was informed that the subsequent sentence passed on him had been sent to the Chief of the Army Staff for confirmation it was open to the petitioner to have availed himself of the remedy provided under Section 164 of presenting a petition to the confirming officer, i.e. the Chief of the Army Staff in this case. He does not appear to H have done so."

(empahsis supplied)

In this decision this Court has held in unambiguous terms that the confirming authority need not give a personal hearing and this ratio applies with equal force to a post confirmation petition under Section 164(2) and consequently to an application under Section 117(2) of the Act. A

In a recent decision in *Shri S.N. Mukherjee* v. *Union of India,* JT (1990) 3 630 a Constitution Bench of this Court having noted the principle that requirement to record reasons can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities, however, proceeded to hold that "There is nothing in the language of sub-section (2) of Section 164 which indicates that recording of reasons for an order passed on the post-confirmation petition was necessary." In arriving at this finding, the Bench referred to the ratio laid down in *Som Datt Datta's* case. At this stage we may refer to another decision of this Court in *Union of India* v. *Col. J.N. Sinha and Anr.,* [1971] 1 SCR 791 wherein it is held: B C

> "Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. As observed by this Court in *Kraipak and Ors.* v. *Union of India,* AIR 1970 SC 150, "the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law but supplement it. D E
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> Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power." F

From the above discussion it emerges that in cases of special enactments like Army Act, all the principles of natural justice cannot be imported. The same ratio applies to a petition under Section 117(2) of the Act also. We may also point out here that Chapter XIII consisting of Rules 167 to 169 of the BSF Rules deals with petitions filed under Section 117 of the Act. Even in them there is nothing to indicate that a hearing has to be given before disposal of a petition. G H

A As noted above, under Section 117(2) the respondent is only entitled to file a petition but the disposal of such a petition does not attract principles of natural justice. The respondent has been tried by observing the due process of law and the verdict of the Security Force Court was confirmed and it is only a post-confirmation petition that B was filed under Section 117(2) of the Act and the authority which disposed of the same is not a court any every order passed administratively cannot be subjected to the rigours of principles of natural justice.

For the aforesaid reasons, the order of the High Court is set aside and the matter is remitted back to the High Court for disposal on C merits. The appeal is accordingly allowed. In the circumstances of the case, there will be no order as to costs.

R.P. Appeal allowed.