
Major Singh Vs Union of India (UOI)

C.W.P. No. 3092 of 1997

Court: Delhi High Court

Date of Decision: April 24, 1998

Acts Referred:

Border Security Force Act, 1968 " Section 48

Citation: (1999) 48 DRJ 601

Hon'ble Judges: Dr. M.K. Sharma, J

Bench: Single Bench

Advocate: R.P. Sharma, for the Appellant; Y.D. Nagar, for the Respondent

Final Decision: Allowed

Judgement

M.K. Sharma, J.

The petitioner herein was Charge-sheeted u/s 48 of Border Security Force Act for alleged commission of an act

prejudicial to good order and discipline of the force. Record of evidence was prepared on the basis of which trial by Summary Security Force

Court was ordered by the Commandant against the petitioner. After the trial, the Summary Security Force Court convicted and sentenced the

petitioner to the punishment of dismissal of its order dated 3rd February, 1996.

2. Being aggrieved by the aforesaid order of conviction and sentence, the petitioner filed a Mercy Petition before the Director General, BSF. The

Director General, BSF converted the sentence of dismissal passed against the petitioner to that of removal from service. Being aggrieved by the

aforesaid orders, the petitioner has preferred the present writ petition.

3. Counsel appearing for the petitioner states that the punishment of removal is not envisaged under the provisions of BSF Act and the Rules

framed there under and, Therefore, the Director General had no power and jurisdiction to impose a punishment on the petitioner which is not

envisaged under the provisions of Section 48 of the BSF Act. His further submission is that the Director General was satisfied that the sentence of

dismissal should not have been imposed on the petitioner and, Therefore, he should have imposed a punishment below that of the dismissal as

envisaged under the provisions of Section 48 of the BSF Act.

4. Counsel for the petitioner further submits that the punishment imposed by the disciplinary authority is disproportionate to the offence alleged

against the petitioner.

5. The respondents have contested the writ petition by filing a counter affidavit contending, inter alia, that the appellate authority u/s 117(2) of the

BSF Act may pass such order thereon as he deems just and proper. Relying on the said provision, counsel appearing for the respondents states

that the power of the appellate authority under the aforesaid section is not ""limited merely to remit and commute the sentence, but, also to impose

any punishment that it deems fit including the punishment of removal.

6. Counsel for the respondents further states that the sentence awarded to the petitioner was not disproportionate to the offence for which he was

charged inasmuch as the offence for which the petitioner was found guilty was of a grave and serious nature.

7. I have considered the rival submission of the counsel appearing for the parties.

8. It is indeed true that the appellate authority has been vested with the power u/s 117(2) of the BSF Act to pass such orders on the appeal

petition has he deems just and proper. That, however, does not mean that the appellate authority can exercise certain powers which is not vested

on him under the Statute. Section 48 of the BSF Act specifically refers to the power and the nature of sentence that could be imposed upon a

person found guilty and removal is not one of the punishments as envisaged under the provisions of the Act. No direction could be issued by a

statutory authority exercising powers under the Statute abridging or running counter to the provisions of the Act. A direction cannot amend or

supersede the provisions of the Act. Therefore, in my considered opinion, the appellate authority does not have the power and jurisdiction to

impose a punishment in the nature of removal from service which is not envisaged within the ambit of Section 48 of the BSF Act.

9. In that view of the matter, I have no other option but to set aside the order passed by the appellate authority and remit back the matter to the

appellate authority to consider the appeal of the petitioner afresh on merits. The same, shall, however, be disposed of, as expeditiously as possible,

preferably within a period of six weeks from the date of receipt of a copy of this order. The submission of the learned counsel for the petitioner that

the punishment imposed on the petitioner is disproportionate to the offence alleged is also a matter which could be considered by the appellate

authority while, disposing of the appeal and, Therefore, I refrain from entering into the legality or validity of the said submission.

10. With the aforesaid observations and directions, the writ petition stands allowed to the extent indicated above, but, without any cost.