(2005) 2 GLR 584

Gauhati High Court (Agartala Bench)

Case No: C.R. No. 08 of 1995

Surendra Pd. Sarma		APPELLANT
	Vs	
Union of India (UOI) and Others		RESPONDENT

Date of Decision: Dec. 13, 2004

Acts Referred:
Border Security Force Act, 1966 â€" Section 117, 117(2), 64, 84#Border Security Force Rules, 1969 â€" Rule 143(2), 157, 161, 48, 48(3)

Citation: (2005) 2 GLR 584

Hon'ble Judges: A.B. Pal, J

Bench: Single Bench

Advocate: B. Das, A. Bhattacharjee and S. Chakraborty, for the Appellant; K. Bhattacharjee, for the Respondent

Final Decision: Dismissed

Judgement

A.B. Pal, J.
The petitioner Surendra Prasad Sarma was appointed as a constable in the Border Security Force in July 68 and gradually he

was promoted to the rank of Lance Naik, Naik and Head Constable. During the service period, he was awarded 3 major rewards, but

reprimanded twice and once he was reverted from the rank of Lance Naik to the rank of constable in 1978. That punishment was later withdrawn.

On 26.4.1993, the Commandant directed the Assistant Commandant to conduct a record of enquiry against him on 2 charges of accepting money

from smugglers and to provide them safe passage of their goods from India to Bangladesh. On the basis of the result of the enquiry, a Summary

Security Force Court commenced trial against the petitioner and on 16.5.1994, the Commandant Sri P.C. Punetha sentenced him by reducing him

to the rank of constable. Against this order of sentence, the petitioner has filed the instant writ petition.

2. The petitioner alleged that he had developed bitter relation with Sri A.S. Bedi, Deputy Inspector General (DIG) in April 94 when he was posted

at Singicherra border outpost and since then he was subjected to reprimands by the DIG on several occasions. He apprehended a deep-rooted

conspiracy to punish him and in that conspiracy one D.B. Gurung, SI had also a role to play. However, he was falsely charged with accepting

money from the smugglers and a record of enquiry conducted in order to initiate a Court proceeding to inflict a punishment on him. During the

enquiry the witnesses who deposed against him were tutored and as a result the report went against him. He, however, admitted that during

enquiry he was given opportunity to cross-examine the witnesses, but he declined to cross-examine as he was not aware of the practice and

procedure of the proceedings. He further alleged that he was not given the assistance of a friend and though he pleaded not guilty, the record of the

Summary Security Court showed him as having pleaded guilty. Even though he could prefer appeal to the DIG, BSF he did not do so as the DIG

had already approved his conviction and the incumbent of the post of DIG was the person at whose instance the conspiracy hatched against him.

The petitioner claimed that the entire proceeding was void ab initio and, therefore, liable to be quashed.

3. The Union of India, the DIG, BSF and the Commandant, BSF are the respondents who contested the case by filing counter affidavit. The

respondents denied the allegation of conspiracy and contended that the service record of the petitioner was not without blemish. He was reverted

from the rank of Head Constable to the rank of Constable in 1978. On several occasions, he was found conniving with the smugglers for easy and

extra money and on 14.4.1993, a message was sent to the Company Commander to make a detailed enquiry and report about his activities. Prima

facie, the evidence was against him about his connivance with the smugglers and illegal gratification and accordingly, the Summary Security Court

commenced trial against him where he had confessed his guilt. His confession was recorded and witnesses were examined according to the

procedure laid down in the Border Security Force Act, 1966 and the Rules framed thereunder. There was no procedural irregularities in the Court

proceedings and, therefore, no injustice was occasioned.

4. I have heard Mr. B. Das, learned senior counsel assisted by Mr. A. Bhattacharjee, advocate for the petitioner and Mr. K. Bhattacharjee,

learned Sr. CGSC for the respondents.

5. Mr. Das submitted that SI D.B. Gurung was an enemy of the petitioner and there was a conspiracy which led to the Court proceeding. But this

argument is misplaced or a writ court cannot sit in appeal and make an enquiry about the alleged conspiracy. It is to be seen whether the petitioner

was denied reasonable opportunity for defending himself against the charges or whether the proceedings before the Summary Security Court had

any serious lapse resulting denial of justice.

6. As regards reasonable opportunity, the petitioner himself in paragraph 12 of his petition admitted that he was given opportunity to cross-

examine the witnesses but as he was not aware of the practice and procedure in a Court proceeding, he did not exercise his right to cross-

examine. But nowhere in the petition he stated that he had drawn the attention of the Presiding Officer about his ignorance or that he sought

assistance of any person to make him aware about the practice and procedure of the courts. Rule 157 of the BSF Rules provides that during a trial

at a Summary Security Force an accused may take assistance from any person including a legal practitioner as he may consider necessary. But the

petitioner could not state whether and when he applied for such assistance and if there was any denial whether he made any appeal to the higher

authority. Rule 157 further provides that though the accused may take assistance of any person such person shall not examine or cross-examine

witnesses or address the Court. In other words, the accused himself has to examine or cross-examine the witnesses and address the Court and the

person engaged under Rule 157 may only assist him. The reason for not seeking any assistance seems to be, as submitted by the learned Sr.

CGSC, that the petitioner having confessed his guilt did not consider the need of any assistance. This is further substantiated by the fact that none

of the witnesses was examined or cross-examined by him as he admitted in paragraph 12 of his petition.

7. Rule 48 of the BSF Rules provides the procedure to record the evidence of witnesses. Sub-rule (3) of that Rule provides that after all the

witnesses against the accused have been examined, he shall be cautioned that he may make a statement if he wished to do so and he is not bound

to make one and whatever he may state shall be taken down in writing and may be used in the evidence. The record shows that this particular Rule

has been strictly complied with. His allegation that he did not plead guilty and the Presiding Officer wrongly and falsely recorded his guilt could not

be substantiated by him. This allegation seems to be wild and baseless for the reason that knowing fully well that he had opportunity to file an

appeal he did not do so. His plea of guilt was read over and explained to him and if there was any wrong recording he could immediately draw the

attention of the Court or file a petition before the appellate authority. The paragraph 17 of the petition, he clearly states that he could prefer appeal

which he did not do only because the DIG was the authority who approved the conviction and the incumbent was the person who hatched the

conspiracy. At the time of his conviction P.C. Punetha was the Commandant. There is no allegation that P.C. Punetha was also inimical towards

him. Sub-section (2) of Section 117 of the Border Security Force Act provides that any person 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. In the instant case, Mr. Punetha being the Commandant convicted and sentenced

the petitioner and this was confirmed by the DIG. Even if he was A.S. Bedi, the petitioner could submit a petition to the Director General or the

Central Government which he did not do. Mr. Das further submitted that Section 84 of the BSF Act provides that at all trials by the General

Security Force Court or by a Petty Security Force Court, as soon as the Court is assembled the names of the Presiding Officer and members shall

be read over to the accused, who shall thereupon be asked whether he objects to being tried by any officer sitting on the Court. But, in the instant

case, this provision was not applied causing prejudice to the petitioner. This argument is misplaced for the reason that the Section has not included

the Summary Security Court and this procedure is applicable only to the General Security Force Court and a Petty Security Force Court. Section

64 of the Act provides that there shall be three kinds of Security Force Courts which are (a) General Security Force Courts; (b) Petty Security

Force Courts and (c) Summary Security Force Courts. Chapter XI of the Border Security Force Rules contains provisions relating to the

procedure to be adopted in the Summary Security Force Court. Rule 143(2) provides that ""after the record of the plea of ""guilt"" on a charge the

Court shall read the record of abstract of evidence and annex it to the proceedings, or if there is no such record, or abstract shall take and record

sufficient evidence to enable it to determine the sentence, and the reviewing officer to know all the circumstances connected with the offence."" The

copies of the proceedings in Annexures-A, B and C have sufficient indication to prove that this provision was fully complied with. Rule 161 enjoins

the DIG either to set aside the proceeding or to reduce or commute the sentence or to countersign the proceedings. In the instant case, after the

sentence was imposed, the records were sent to the DIG who after careful consideration countersigned the proceedings. This provision, as

discussed above, provides sufficient checks and balances while conducting an enquiry or trial and imposing a punishment.

8. Apart from the above discussion on several issues touching procedural aspects, reasonable opportunities and natural justice, the most important

and precise question is whether this writ petition is well advised and maintainable in view of the admitted fact that the petitioner did not avail of the

alternative remedy of present a petition against the impugned order u/s 117 of the BSF Act. This provision is quoted below :-

117. Remedy against order, finding or sentence of Security Force Court.-(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.

(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."".

9. As I have already discussed the petitioner was quite aware of this alternative remedy as noted by him in paragraph 17 of his petition. It is,

therefore, apparent that being aware of this remedy he did not avail of the same on the flimsy and unbelievable contention that the DIG being the

authority having approved the conviction and the incumbent of the post being a party to the conspiracy against him, he did not consider it useful to

prefer the appeal. The fact remains that the DIG was not the authority to whom he could file a petition against the impugned order. The appropriate

authority was the Director General or the Central Government. Therefore, he could show no sufficient reason for not availing of the alternative

remedy and as such the present writ petition is misconceived. He made an allegation that he was transferred out of Tripura in order to deprive him

of opportunity of pursuing the Court proceedings against the impugned order. But, it appears from the counter affidavit of the respondents that the

petitioner belonged to 11 B. BSF and the entire Unit was moved out of Tripura. Being a member of that unit, he also had to move out of Tripura.

Therefore, his transfer out of Tripura had no connection with the alleged hostility on the part of the respondents.

10. For the reasons discussed above, this writ petition is found to be misconceived and devoid of any merit which is hereby dismissed leaving the

parties to bear their own costs.