courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 09/11/2025

(2014) 09 CAL CK 0064

Calcutta High Court

Case No: W.P. 26896 of 2014

Ram Krishna Pathak — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision: Sept. 19, 2014

Acts Referred:

- Border Security Force Act, 1968 - Section 141, 30(f), 40, 53, 64

Hon'ble Judges: Harish Tandon, J

Bench: Single Bench

Advocate: Kalyan Bandopadhyay, Bhaskar Vaisa, Mintu Kumar Goswami and Sirsanya Bandopadhyay, Advocate for the Appellant; Tanmay Kumar Ghosh, Advocate for the Respondent

Final Decision: Disposed Off

Judgement

Harish Tandon, J.
The challenge is made to the charge sheet as well as the order dated 9th September, 2014, by which an additional charge was framed and the order was passed that the matter would be tried by the General Security Force Court.

2. The challenge is basically founded on two grounds-firstly that the commandant after exercising his discretion in referring the case to the competent superior officer to be dealt with on administrative side, there is no justification in remitting the matter to the General Security Force Court; secondly the trial before the General Security Force Court can only be done, if the commandant applies to a competent officer or the authority empowered in this regard.

3. Shorn of unnecessary details, the facts involved in this writ petition pertain to certain monetary claims for official tour under the travelling allowances. According to the petitioner, he was allowed by an authority to undergo certain programmes and he was to stay in the hotels and the bills received from the respective hotels are required to be

reimbursed as the petitioner is entitled to "travelling allowances". The Account Branch of 95 Battalion, Border Security Force, raised certain objections and it was decided that a proceeding should be initiated against the petitioner for his act, which amounts to defraud as envisaged u/s 30(f) of the Border Security Force Act, 1968. The original charge sheet as it appears contains three articles of charge, which are reproduced below:

"CHARGE-I

SEC. 30(f) BSF ACT 1968

DOES ANY THING WITH INTEND TO DEFRAUD

In that he,

at HQ, 95 Bn BSF, Radhabari, on 03/04/2012 with intend to defraud submitted a TA claim of Rs. 15503/- to the PAD BSF, New Delhi in respect of his tour to Kolkata in connection with review medical of one candidate for recruitment of Const (GD) in CAPF 2011-12, by attaching a false and fabricated hotel bills bearing Bill No. 6300 dated 05/03/12 of Hotel Tiger Inn, Kolkata.

CHARGE-II

SEC. 30(f) BSF ACT 1968

DOES ANY THING WITH INTEND TO DEFRAUD

In that he,

at HQ, 95 Bn BSF, Radhabari, on 03/04/2012 with intend to defraud submitted a TA claim of Rs. 48,980/- to the PAD BSF, New Delhi in respect of his tour to Kolkata in connection with review medical of one candidate for recruitment of Const (GD) in CAPF 2011-12, by attaching a false and fabricated hotel bills bearing Bill No. 6275 dated 21/02/12 of Hotel Tiger Inn, Kolkata and bill No. 3661 dated 10/02/12 of Hotel Astron, Kolkata;

CHARGE-III

SEC. 40 BSF ACT 1968

ACT PREJUDICIAL TO GOOD ORDER AND DISCIPLINE OF THE

FORCE

In that he,

at HQ, 95 Bn BSF, Radhabari, submitted a false and fabricated TA bills in respect of his tour to Kolkata in connection with review medical of one candidate for recruitment of Const (GD) in CAPF 2011-12, to PAD, BSF, New Delhi, which is improper on the part of

officer and prejudicial to good order and discipline of the force."

4. Rule 45-B of the Border Security Force Rules, 1969 framed in exercise of the Rule making power provided under Sub-section 1 and 2 of Section 141 of the Border Security Force Act, 1968 provides the hearing on the charge where the officer is not an enrolled person, by commandant. Under the said provision the statement of the witness and the relevant documents shall be recorded and the said commandant after hearing may either dismiss the charge or remand the accused for preparation of record of evidence or preparation of abstract of evidence against the accused.

5. Rule 48 of the said Rules contains extensive provisions for recording of evidence and the recording officer after completion thereof shall give a certificate in the manner as provided in Sub-rule 8 thereof. After receiving the recording of the evidence, the commandant may either dismiss the charge; or dispose of the case summarily, if he is so empowered; or refer the case to a competent superior officer for disposal; or apply to a competent officer or authority to convene a General Security Force Court for the trial of the accused.

6. Before proceeding further, this Court feels to record that Section 64 of the said Act contemplates three kinds of Security Force Courts; namely General Security Force Courts, Petty Security Force Courts and Summary Security Force Courts. The specific powers of each of such Courts are provided in the subsequent Sections under Chapter-VI of the said Act.

7. Reverting back to the core issue, this Court feels to record that the trial of an accused by the General Security Force Court is not automatic, but requires an application in the prescribed form under Rule 52 of the said Rules.

8. It further appears that the commandant in his order dated 12th July, 2012 not only recorded the evidence in support of the aforesaid charges, but opined that because of the conduct of the delinquent, one opportunity must be given to the officer and the case may be disposed of by way of taking administrative action. It is also not in dispute that subsequently the Deputy Inspector General, SHQ BSF Siliguri also recorded his agreement with the recommendation of the commandant. According to the petitioner, the commandant has, in fact, exercised the power under Clause-(iii), Sub-rule 2 of Rule 51A of the said Rules, meaning thereby that the case was referred to the competent superior officer for disposal.

9. It is submitted by the petitioner that on the said decision the case is required to be dealt with administratively and not judicially before the Court. The attention of this Court is drawn to Section 53 of the said Act, which contains the provisions of minor punishments to be imposed by the commandant and not by the specified Courts. Subsequently the commandant framed the charges, the excerpt whereof is quoted below:

"Charge BSF ACT 1968 Sec-30(f)

Doing a thing with intent to cause wrongful gain to himself

In that he,

at Bn HQ Radhabari on 31/03/2012, with intent to cause wrongful gain to himself, submitted TA claim of Rs. 45,234/- and 15,503/- respectively by attaching following fake hotel bills:

and it was directed that the matter should be tried by the General Security Force Court. Simultaneously therewith the General Security Force Court was constituted by the Inspector General as a Convening Officer.

10. The sheet anchor of the arguments of the petitioner before this Court is that after invoking the provisions contemplated in Clause-(iii), Sub-rule 2 of Rule 51A of the said Rules, the matter cannot be dealt with on judicial side. It is further submitted that referring the case to the General Security Force Court and the constitution thereof is in clear contravention to the provisions contained under the aforesaid Rules and, therefore, the action taken on 9th September, 2014 cannot withstand on legal parameters.

11. It is no doubt true that the commandant after framing the charges can either dismiss the same after hearing the delinquent or refer the case for recording of evidence by an authorized officer. In the instant case the commandant exercised the second option, i.e. he referred the matter for recording of evidence and after receiving the report opined that the matter can be tried administratively thereby declining to exercise his other power i.e., the case to be tried by a specified Courts; even the superior authority agreed with the said recommendation and did not want that the case should be tried by the specified Courts. There does not appear any document on the record pertaining to the change of the decision.

12. However, an internal correspondence is relied upon by the respondent authorities, wherefrom it appears that the Director General, Border Security Force, showed his disagreement with the said recommendation and directed the matter to be tried by the General Security Force Court. Astonishingly the said superior authority also framed a charge of his own and restricted the trial on the said charge.

13. My endeavour has failed to find out any such power conferred upon the Director General either under the Border Security Force Act or under the Rules. It is no doubt true that the superior authority can disagree with the recommendation, but cannot dictate the subordinate officer to do a thing in a particular manner.

14. The Apex Court in case of Union of India (UOI) and Others Vs. B.N. Jha, deprecates the exercise of the power by the superior authority in directing the commandant to act in a particular manner in the following words:

"21. In the instant case, Mr. Garcha in his letter to Mr. M.S. Arya described himself as Commandant, BTC, TC&S which itself is a pointer to show that BTC is not a unit totally independent of TC&S. It is further not in dispute that Mr. Arya was an officer subordinate to him. His letter dated 4-9-1990 in no uncertain terms points out that he had for all intent and purpose directed Mr. Arya to initiate a disciplinary action against the respondent. The said action was to be taken on the basis of the materials disclosed therein. Such a procedure is unknown in law. An authority who is higher than the Commandant, in exercise of his power conferred upon him under Rule 46 could not have directed the Commandant of a wing of his own unit to initiate departmental proceedings. In law it was the disciplinary authority alone who was required to apply his independent mind to the materials on record so as to enable him to arrive at the conclusion as to whether a disciplinary action is contemplated or not. He cannot do so at the instance of a higher authority who has not only no role to play in the matter but also admittedly was biased. (See Commr. of Police v. Gordhandas Bhanji and Union of India v. Harish Chandra Goswami) Bias against the respondent on the part of Mr. Garcha is undisputed."

15. The action of the Director General in not only framing the charges, but also directing the commandant that the case should be tried by the Court, does not appear to be in consonance with the provisions of the Act or the Rules; at least none of the learned advocates before this Court could place relevant provisions, which permits the Director General not only to frame the charges, but direct the case to be tried by a specific Court. The authorities, who are regulated and controlled by a statutory provisions, are required to act strictly within the precinct thereof and cannot travel beyond it.

16. Under the Rules, the commandant is empowered to apply that the case to be tried by a specific Court and such application is to be taken out in a prescribed manner indicated in Rule 52 of the said Rules. There does not appear, at least, on record that any application was taken out by the commandant for the case to be tried by the specified Court. It is a settled proposition of law that if a thing is required to be done in a particular manner, it is to be done in such manner and no manner at all.

17. Rule 44 of the said Rules mandates that the allegation shall be reduced to writing in the form set out in Appendix VI, which partakes the character of a charge sheet and the hearing on the charges shall be made by the commandant under Rule 45-B of the said Rules. In case of a minor punishment, it is to be heard under Rule 45-A of the said Rules by the commandant or such other officer duly specified by the Director General with the consent of the Central Government.

18. Scraping of all the articles of charge and framing the independent article of charge by the Director General is absolutely beyond the scope of the said Act and the Rules. Furthermore the Director General of Border Security Force straightway directed the case to be tried by the General Security Force Court as he disagreed with the recommendation of the commandant as well as the Inspector General in absence of any application in the prescribed form required under Rule 52 of the said Rules. The source of power can only

be traced from the statute or the subordinate legislation and cannot be usurped whimsically, capriciously and arbitrarily by an authority, who is bound by the Rule of law. The Director General appears to have usurped the power of the commandant and acted at his own peril and whims and such course of action is unknown either under the Border Security Force Act or the relevant Rules This Court, therefore, has no hesitation to arrive at the decision that the charge framed on 9th September, 2014 and the constitution of the General Security Force Court for trial of the said case on the basis of the said article of charge is illegal, invalid and have been done beyond the legal sphere.

19. This Court hereby quash and set aside the order dated 9th September, 2014, by which the matter was directed to be tried by the General Security Force Court, the constitution of the General Security Force Court as well as the articles of charge framed by the commandant as per the dictate of the Director General.

20. The commandant is directed to proceed with the case strictly in terms of the Rules and the Act and shall take his independent decision so far as the findings on the guilt as well as the inflicting of the penalties are concerned.

21. With these observations the writ petition is disposed of.

22. There will be no order as to costs.

23. Urgent photostat certified copy of this order, if applied for, be supplied on priority basis.