

GAHC010039462017



2024:GAU-AS:11082

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5587/2017

RANJEET KUMAR PANDEY
EX-CT/GD NO. 0583908, 16TH BATALLION, SASHASTRA SEEMA BAL,
KOKRAJHAR, S/O- SRI NAND KISHORE PANDEY, , R/O- VILL
BIKARAMPUR, P.O- RAMPUR DAUD SASAMUSA, DIST- GOPALGANJ,
BIHAR, PIN- 841505

VERSUS

THE UNION OF INDIA and 3 ORS.
REP. BY THE SECRETARY TO THE GOVT OF INDIA, MIN OF HOME
AFFAIRS, NORTH BLOCK, NEW DELHI- 110001

2:THE SASHASTRA SEEMA BAL
REP. BY ITS DIRECTOR GENERAL
SASHASTRA SEEMA BAL
EAST BLOCK-V
R K PURAM
NEW DELHI- 110066

3:THE DEPUTY INSPECTOR GENERAL
SECTOR HEADQUARTERS
SASHASTRA SEEMA BAL
BONGAIGAON
ASSAM
PIN- 783380

4:THE COMMANDANT
16TH BATTALION
SASHASTRA SEEMA BAL
RANIGHULI
KOKRAJHAR
ASSAM
PIN- 78337

Advocate for the Petitioner : MR. D BORAH, MRS. M D BORUAH, MRS R BEGUM, MR P KATAKI, MRS R BORAH

Advocate for the Respondent : MRS. A GAYAN (CGC, R1-R4), ASSTT.S.G.I.

BEFORE
HON'BLE MR. JUSTICE KALYAN RAI SURANA

For the petitioner	: Mrs. R. Begum, Advocate.
For the respondents	: Mrs. A. Gayan, CGC.
Date of hearing	: 13.06.2024.
Date of judgment	: 13.11.2024.

JUDGMENT AND ORDER
(CAV)

Heard Mrs. R. Begum, learned counsel for the petitioner. Also heard Mrs. A. Gayan, learned CGC appearing for the respondents.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner, who was then working as Constable (General Duty) and posted at 'B'-Coy of 16th Bn., SSB, Kokrajhar, Assam has prayed for setting aside and quashing of the Charge-sheet dated 06.08.2013, issued by the Commandant, 16th Bn., SSB (respondent no.4); order dated 16.08.2013, issued by respondent no.4, by which the petitioner was found guilty of charges and was sentenced to dismiss from service; as well as the impugned order dated 28.11.2014, issued by the Deputy Inspector General, Sector Headquarters, SSB, Bongaigaon, by which his appeal was rejected. The petitioner has also prayed that the proceedings of Summary Force Court convened on 16.08.2013 be declared illegal and he has also prayed for directing the respondent authorities to reinstate the petitioner on service with all consequential benefits and back wages.

3. The case of the petitioner is that at the relevant time, the petitioner was deployed as Intelligence Man at Dadgiri and was assigned a task of collecting intelligence by the SAO, In-charge and on receipt of information about fake Indian currency note, racketeers from one of his source, he informed the SAO, In-charge and on being instructed, the petitioner launched an operation on 08.06.2013. It is projected that the deal of fake currency was to happen at Bongaigaon, but the deal was shifted to Goalpara and later on to Guwahati. When the petitioner reached Guwahati along with his source as well as a person accompanying the source, the petitioner was arrested by the Assam Police in a car theft case near ISBT, Guwahati and was taken to Jalukbari Police Station and questioned. The petitioner took the alibi of a businessman, but when the police interrogated one Kausik Das, his source, he disclosed that the petitioner was a SSB personnel. On a search being made, the police seized from the petitioner cash amount of Rs.5,000/-, a mobile phone, a fake identity card of Sub-Inspector (General Duty) and a golden ring. It is also projected that on being informed, the SAO, In-charge did not defend.

4. Vide notice dated 13.08.2013, the petitioner was informed that a Summary Force Court has convened on 16.08.2013 at 11.00 AM at 15th Bn., SSB, Bongaigaon on the offence under Section 38(a)/23(1)/21(a) of the Sashatra Seema Bal Act, 2007 (SSB Act for short). However, the Summary Force Court was held at 16th Bn. Headquarter, SSB on 16.08.2013 and he was held guilty and dismissed from service. It is projected that the petitioner suffered depression after being dismissed from service under Section 51(1)(c) of the SSB Act. It is projected that after recovery when the petitioner was declared fit, he filed an appeal after about 1 (one) year, which was rejected and accordingly, the present writ petition has been filed.

5. The learned counsel for the petitioner has submitted that the petitioner had given a prior report of the fake Indian currency note deal to be made on 08.06.2013 and he had proceeded to unearth the said racket along with his source, namely, Kausik Das, who came with one Niyema Deo Adhikari. It is also submitted that the fake identity card, which was found with the petitioner was handed over by Kausik Das, his source, but as he found it fake, the petitioner kept the card to prevent Kausik Das from misusing it. It was also submitted that as the petitioner was travelling from his SSB location to Bongaigaon and then to Goalpara and then to Guwahati on being led by Kausik Das, the petitioner could not keep the SAO (Sub Area Organizer) informed. It was further submitted that the petitioner was manipulated in the Summary Force Court to accept his guilt on first and second charges, but he had not plead guilty to the third charge and accordingly, it is submitted that the admission of guilt was *non est* in the eye of law.

6. It was submitted that certain dates or events were very relevant, which would show that the relevant rules under Chapter-VII of the Sashastra Seem Bal Rules, 2009 was not adhered to. It was submitted that the alleged offence took place on 07.06.2013 and 08.06.2013. On 28.06.2013, the statement of one Arun Deogam was recorded and as such, the commencement of the Court of Enquiry was on 28.06.2013. The report of Court of Enquiry was submitted on 02.08.2013. Charge-sheet and Offence Report was issued on 06.08.2013. Order was issued on 07.08.2013 for preparing record of evidence and statement of PW nos.1, 2 and 4 were recorded on 07.08.2013 and 08.08.2013. On 10.08.2013, the petitioner was given an opportunity to give his statement in the record of evidence. On 12.08.2013, certificate was issued that the record of evidence was made in the presence and hearing of the petitioner. Thereafter, on 13.08.2018, the petitioner was informed about convening of

Summary Force Court on 16.08.2013. The petitioner was required to nominate his "friend" to present the case. On 16.08.2013, Summary Force Court was held and the petitioner was found guilty and his service was terminated. Accordingly, it is submitted that in the present case, the Charge-sheet was prepared prior to the investigation, but not after preliminary investigation was done and accordingly, it is submitted that the relevant Rule 45 and 46 of the SSB Rules were flouted and that the Charge-sheet was mechanically issued without the Commandant recording his satisfaction prior to issuance of Charge-sheet. It is also submitted that although the signed statement of Shri Arun Deogam was recorded on 02.08.2013, the record of evidence discloses that the said statement was taken out from the Court of Enquiry and marked as Ext.A. In this regard, it is also submitted that under Rule 175(8)(b) of the SSB Rules, the petitioner was entitled to cross-examine Arun Deogam, enquiry against whom was done behind the back of the petitioner. Accordingly, it is submitted that as a part of enquiry was recorded without the presence and hearing of the petitioner, the proceedings of the Court of Enquiry was illegal.

7. It was also submitted that sufficient time was not given to the petitioner to make his defence and moreover, the venue of the Summary Force Court has changed from Bongaigaon to Ranighuli, for which the petitioner could not properly take his defence. Accordingly, it is submitted that the petitioner got only 1 (one) day's time to name his defence witnesses and to nominate a "friend of the accused". It was also submitted that the order dated 16.08.2013 against the petitioner was never promulgated as required under Rule 160 of the SSB Rules and nor the proceedings of the Summary Force Court was transmitted to the Deputy Inspector General, Sector Headquarters for his consideration, which was in violation of Section 129 of the SSB Act. It was also submitted that in violation of Rule 171(3) of the SSB Rules, the petition submitted by the

petitioner against the order of dismissal was not sent to the Judge Advocate General or to an approved officer, which is in violation of Section 171(3) of the SSB Rules. Accordingly, it is submitted that due to procedural lapses, the proceedings against the petitioner is vitiated, which is liable to be set aside by reinstating the petitioner in service.

8. Heard the submissions of the learned CGC, who has referred to the affidavit-in-opposition filed by the respondent nos.1, 2 and 3.

9. It is seen that as per the Offence Report dated 06.08.2013, the charges against the petitioner was as follows:

(1) Under Section 38(a) of SSB Act, 2007 "Falsifying official documents and false declaration".

In that he at 1400 hrs on 08/06/2013 was found in possession of a fake I/Card bearing No.101111 of SI/GD and also falsely declared himself to be a Sub-Inspector of SSB to Assam Police at the time of his arrest in Guwahati on 08/06/2013.

(2) Under Section 23(1) of SSB Act, 2007 "Disobedience to superior officer".

In that he on 07/06/2013, disobeyed the lawful command of his superior officer, Sh. Tilak Gogoi, SAO of AO Officer Kokrajhar, by willfully going to Guwahati on 08/06/2013 without any intimation or permission of his superior officer. In that, No. 0583908 CT/GD Ranjit Kumar Pandey went to Guwahati instead of going to Dadgiri as directed by Sh. Tilak Gogoi, SAO.

(3) Under Section 21(a) of SSB Act, 2007 "Absent without leave".

In that he on 08/06/2013, went to Guwahati without any permission from his superior officer and thereby absented himself without leave w.e.f. 07/06/2013 (AN) to 08/06/2013 (AN).

10. From the contents of the Offence Report, it is seen that the petitioner was served with the allegations in writing in the form as prescribed under Rule 44 of the SSB Rules. The said offence report also discloses that out of the three charges extracted above, the petitioner had pleaded guilty of the first two charges and he pleaded not guilty in respect of the third charge and the petitioner was put to notice by the said Offence Report dated 06.08.2013 that the record of enquiry (RoE for short) was to be conducted by one Amit Kumar, Assistant Commandant, 16th Bn., SSB. Thereupon, the petitioner was also served with a copy of order dated 07.08.2013 issued by the Second in Command, Commandant, 16th Bn., SSB on the three charges. In course of proceedings carrying out on 07.08.2013 and 08.08.2013, the respondent authorities had examined the following 4 (four) witnesses, namely, (1) ASI Babul Basumatary, Assam Police (PW-1); (2) HC/MIN Vijay Kumar, 16th Bn., SSB (PW-2); (3) Arun Deogam, Deputy Commandant, 16th Bn., SSB (PW-3); (4) Tilak Gogoi, AO Office, Kokrajhar, SSB (PW-4) and 6 (six) documents were examined in evidence, being (1) I/Card issue Register, 16th Bn., SSB (Page No. 393); (2) Original I/Card No.101111 issued to No.0583908 CT/GD Ranjeet Kr. Pandey, 16th Bn., issued on 05.09.2012; (3) Fake I/Card bearing No. 101111 of SI/GD which was seized by Assam Police from the possession of No. 0583908 CT/GD Ranjeet Kr. Pandey on his arrest in Guwahati on 08.06.2013; (4) Jalukbari P.S. FIR No. 434/13 dated 09.06.2013; (5) Memo of Arrest of CT/GD Ranjeet Kr. Pandey by Jalukbari Police Out Post dated 09.06.2013; (6) Seizure Memo of items recovered from CT/GD Ranjeet Kr. Pandey at the time of his arrest. The

record of RoE, which is Annexure-2 to the writ petition discloses that all the 4 (four) witnesses were examined in the presence and hearing of the petitioner and he has put his signature with date in the RoE of the proceeding against the petitioner. It also contains a certificate under Rule 51(9) of the SSB Rules certifying that the record of evidence was made in the presence and hearing of the petitioner and the provisions of Rule 51 of the SSB Rules was complied with.

11. Although the statement of Arun Deogam, Deputy Commandant, 16th Bn., SSB was recorded on 28.06.2013 and it is projected by the petitioner that the said statement was not recorded in his presence would be of no consequence because Shri Arun Deogam was shown to the petitioner and he has duly signed the certificate in the R/O statement of Arun Deogam. There is nothing to show that the petitioner had made any prayer for cross-examination of PW-3 in course of the RoE.

12. Thereafter, the Summary Force Court Trial was notified on 13.08.2013 to be convened on 16.08.2013 and was directed to reach the SSB office by 14.08.2013 at 10 00 hrs. and along with the said notice dated 13.08.2013, charge-sheet and a copy of RoE were enclosed.

13. In this case, the petitioner has admitted charge no.1 and 2 as stated in the Offence Report dated 06.08.2013. Accordingly, the petitioner has accepted that he was holding a fake identity card in his name, projecting himself to be Sub-Inspector of SSB, which was disclosed to the Assam Police at the time of his arrest on 08.06.2013 at Guwahati. Thus, the petitioner has accepted the charge against him for committing offence under Section 38(a) of the SSB Act. In respect of charge no.2, the petitioner has admitted that he was guilty of disobeying the lawful command of his superior officer i.e. the SAO of AO office, Kokrajhar by going to Guwahati instead of going to Dadgiri as directed. Thus,

the petitioner has admitted himself to be guilty of committing offence under Section 23(1) of the SSB Act.

14. The third charge against the petitioner was under Section 21(a) of the SSB Act that he had absented himself without leave, which an offence under Section 21(a).

15. It is noted that the prescribed punishment for offence under Section 21(a) is to suffer imprisonment for a term which may extend to 3 (three) years or such less punishment as mentioned in the SSB Act; the punishment for offence under Section 23(1) is to suffer imprisonment for a term which may extent to 14 (fourteen) years or such less punishment as mentioned in the Act; and the punishment for offence under Section 38(a) is to suffer imprisonment for a term which may extent to 10 (ten) years or such less punishment as mentioned in the SSB Act. Under the circumstances, the punishment imposed on the petitioner of dismissal or removal from the service as provided under Section 51(1)(c) cannot be said to be disproportionate because not only the petitioner has unauthorizedly came to Guwahati in violation of the made by his superior officer, but he was also possessing a fake identity card.

16. Despite the appeal of the petitioner being barred by limitation, the Deputy Inspector General, SHQ, SSB had considered the appeal of the petitioner and the same was rejected by order dated 28.11.2014.

17. The learned counsel for the petitioner had strenuously submitted that the fake identity card was prepared by Shri Kausik Das, the source of the petitioner, who had given him information about fake Indian currency note racket and that the petitioner had kept it to prevent his source from misusing it and that as the place of transaction of fake Indian currency notes had shifted from Bongaigaon to Goalpara and thereafter, from Goalpara to Guwahati, the

petitioner was following the trail and as his mobile power was critically low, he could not contact his superior officer and inform him of his travel to Guwahati, but the said explanation does not inspire confidence of the Court because instead of destroying the fake identity card, the petitioner carried it with him and therefore, he was admittedly in possession of fake identity card of SSB when he was arrested by the Assam Police at Guwahati. His arrest, in turn, exposed that the petitioner was at Guwahati instead of the place where he was supposed to be as per command of his superior officer.

18. The nature of offence committed by the petitioner has invited the punishment of dismissal from service which was imposed by the competent authority and affirmed by the appellate authority.

19. Accordingly, the Court is of the considered opinion that this is not a fit case to interfere with the impugned order of dismissal of petitioner from service with all benefit and back wages.

20. Accordingly, the writ petition is found without any merit and the same is dismissed, leaving the parties to bear their own cost.

JUDGE

Comparing Assistant