

Serial No.05
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA No.16/2019

Date of Order: 29.11.2021

A. Murali Krishna Vs. Union of India & ors

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. D Bhattacharjee, Adv with
Mr.S Thapa, Adv
For the Respondent(s) : Mr. N Mozika, ASG with
Ms. T Sutnga, Adv

- i) Whether approved for reporting in Law journals etc.: Yes/No
- ii) Whether approved for publication in press: Yes/No

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

1. This appeal is utterly baseless and a complete waste of time by a recalcitrant erstwhile Border Security Force (BSF) employee. What is worse is the attempt on the appellant's part to mislead the court.

2. The appellant has been dismissed from service after being found guilty on all four charges levelled against him. The writ petition was made out in such a manner that the papers pertaining to the first set of charges were appended to the writ petition, but the other papers were not. The impression that was sought to be given in the writ petition was that the writ petitioner admitted his guilt in respect of the two minor charges but there may not have been adjudication on the two major charges.

3. However, what is undeniable is that upon the writ petitioner being found guilty on admission on all four charges and being dismissed from service, he preferred a departmental appeal which was dealt with by an order dated May 11, 2017. A copy of the order is appended to the writ petition. Paragraph 2 of the appellate order, in so far as it summarizes the facts, is set out:

“2. The brief facts of the case are that Ex-Ct A Murli Krishna 123 Bn BSF, the petitioner was tried by a SSFC on two charge sheets containing 02 charges each. The trial proceeded first on the 1st charge sheet containing two charges u/s 40 and 26 of the BSF Act, 1968 for an act prejudicial to good order and discipline of the force and intoxication respectively. The particulars of the 1st charge sheet averred that he, on 21.02.2016, at about 2030 hrs visited and entered the house of local female villager namely Romola r/o Village – Ryingku and demanded the liquor. The particulars of the 2nd charge are that he, at BOP Ryingku on 21.02.2016 at about 2030 hrs was found in a state of intoxication. On being arraigned by the Court, petitioner pleaded ‘Guilty’ to both the charges. Thereafter, the Court complied with the provisions of BSF Rule 142(2) wherein he was explained the nature of charges, general effect of his plea of ‘Guilty’ and difference in procedure to be followed consequent to said plea. After having fully satisfied that the petitioner had understood the same and there was no need for the petitioner to withdraw his plea, the Court accepted his plea and recorded findings of ‘Guilty’ on both charges on 1st charge sheet. Thereafter, the trial proceeded on the 2nd charge sheet containing 02 charges u/s 21(1) and 20(c) of BSF Act for disobeying in such a manner as to show a willful defiance of authority a lawful command given personally by his superior officer in the execution of his office and using insubordinate language to his superior officer respectively. The particulars of the 1st charge averred that he, at BOP Ryingku on 22.02.2016 at about 1000 hrs when ordered by No.859110718 ASI/GD (CASIM) K K Nayak to appear before Coy Comdr as directed by him, refused to do so stating “MURALI KISI SE NAHI MILTA HAI JO KARNA HAI KAR LO” and did not appear before the Coy Comdr.. The particulars of the 2nd charge are that he at BOP Ryingku of 123 Bn BSF on 21.02.2016 used abusing language to No.859110718 ASI/GD (CASIM) K K Nayak of the same unit by saying “BAHANCHOD MAI YAHI PAR HUN KAUN BOLA AAPKO” or words to that effect. On being arraigned by the Court, petitioner pleaded ‘Guilty’ to both

the charges. Thereafter, the Court complied with the provisions of BSF Rule 142(2) wherein he was explained the nature of charges, general effect of his plea of 'Guilty' and difference in procedure to be followed consequent to said plea. After having fully satisfied that the petitioner had understood the same and there was no need for the petitioner to withdraw his plea, the Court accepted his plea and recorded findings of 'Guilty' on both the charges on 2nd charge sheet also. The Court also recorded his previous convictions, character and reward etc. and sentenced him "**to be dismissed from service**" on 01.04.2016. The trial proceedings were countersigned by the DIG, SHQ BSF, Jowai on 07.10.2016."

4. It is evident from the above quoted paragraph that the writ petitioner pleaded guilty both to the two counts of charge in the first charge-sheet and to the further two counts of charge in the second charge-sheet. The first charge-sheet pertained to the writ petitioner demanding liquor from a village woman and, later in the day, being found in an intoxicated state. There is no dispute, as would be evident from the papers appended to the writ petition, that the writ petitioner pleaded guilty to such charges.

5. What is further evident from the paragraph quoted above is that the writ petitioner also admitted his guilt in respect of the two charges in the second charge-sheet which were far more serious upon the writ petitioner having disobeyed a command to meet the Company Commander and the writ petitioner using abusive and intemperate language in connection therewith.

6. The writ petitioner has relied on the appellate order without the slightness of reservation expressed in the writ petition to the effect that the

facts as recorded in the appellate order are contrary to record. Indeed, if the facts as recorded in the second paragraph of the appellate order were contrary to record, it was incumbent on the writ petitioner to produce the record, copies whereof are obviously in his possession, to demonstrate that the writ petitioner had merely pleaded guilty to the first set of charges and other set of charges were not considered at all.

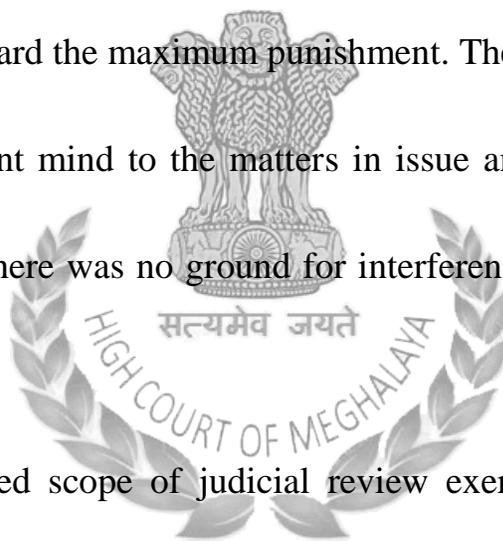
7. As it happens, the entire effort on the part of the writ petitioner's case was to emphasize on the apparently unconscionable punishment meted out to the writ petitioner following the discovery of the writ petitioner being intoxicated upon having obtained liquor from some village women. The attempt by the writ petitioner was to demonstrate that despite the writ petitioner accepting his guilt and expecting a lenient treatment, the writ petitioner was handed out the ultimate punishment of dismissal from service.

8. The writ petitioner deliberately glossed over the greater counts of default in the second charge-sheet which pertained to the writ petitioner refusing to meet the Company Commander despite being informed that he had been summoned and of the writ petitioner using abusive language in connection therewith. As the second set of charges stood proved upon the writ petitioner's admission, as duly recorded in the second paragraph of the appellate order, there can be no grievance on the writ petitioner's part that

he had been dealt with harshly in course of the trial by the Summary Security Force Court.

9. At the end of the day, the writ petitioner belonged to a disciplined force. The previous record of the writ petitioner showed that he had been imprisoned on at least three occasions, though for short tenures. The writ petitioner had refused to respond to the call of his Company Commander and had used intemperate language in course of such refusal. In the light of the writ petitioner's conduct, the Summary Security Force Court was well within its rights to award the maximum punishment. The appellate authority applied its independent mind to the matters in issue and, upon examining the case, found that there was no ground for interference with the order of dismissal.

10. In the limited scope of judicial review exercised in respect of matters of the present kind, the court cannot supplant its discretion in place of that which has been exercised by the disciplinary authority unless the exercise of the discretion is found to be perverse. Indeed, the court, in such a scenario, looks into the decision-making process rather than the decision itself. Of course, if the punishment appears to be grossly disproportionate to the acts complained of or if it shocks the conscience of the court, the court may interfere with the punishment awarded.



11. In the present case, a member of a disciplined force was found to be intoxicated and such member was also found on another occasion to have directly refused to obey a command by his Company Commander and used abusive language in course of such refusal. If the superiors within the disciplined force found that it was imperative that such indiscipline be dealt with in the harshest manner, it does not shock the conscience of the court for the court to step in and interfere with the punishment.

12. At any rate, the entire conspectus was duly considered by the Single Bench while dealing with the matter and appropriate reasons have been furnished as to why no interference was called for.

13. For the writ petitioner's misadventure and attempt at misleading the court, the writ petitioner will pay costs assessed at Rs.5,000/-.

14. WA No.16 of 2019 is dismissed without interfering with the judgment and order impugned dated May, 20, 2019.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
29.11.2021
"Lam DR-PS"