

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 3001 OF 2017

UNION OF INDIA

... Appellant(s)

VERSUS

SHRI DICKSON CHAND MARAK EX. CONST. 930071202

... Respondent(s)

O R D E R

This appeal is against a final judgment and order dated 12.02.2015 passed by the Division Bench of the High Court of Meghalaya dismissing Writ Appeal No. 32 of 2014 against an order dated 14.03.2014 of the Single Bench allowing Writ Petition (C) No.224 of 2011 filed by the respondent, setting aside the order of dismissal of the respondent and directing the appellant to reinstate the respondent forthwith.

The facts giving rise to this appeal are enumerated very briefly hereinafter.

On or about 11.09.1993, the respondent was appointed a Constable of the Border Security Force.

On completion of Basic Recruit Training, the respondent was posted at various places.

Some time in June 2007, he moved with the 126 Bn. BSF to the

Haringhata Dairy Farm, District Nadia (West Bengal) and he was deployed at the Indo-Bangladesh International Border.

In September, 2009, while the petitioner was posted at the Indo-Bangladesh border, it transpired that he had deposited huge amounts in his bank account with the State Bank of India held jointly with his wife

On or about 03.09.2009, a Court of Inquiry was ordered to investigate the involvement of the respondent in illegal activities, particularly smuggling activities with which he had connived. On 07.09.2009, the Deputy Commandant, Drawing and Distribution Officer of the 126 Bn., BSF, wrote a letter to the Manager, State Bank of India, Gandhi Memorial, Kalyani (West Bengal) requesting details of transactions made in the joint saving account of the respondent and his wife Smt. Selina M. Sangma being SB A/c No.11308070706 during the period from 01.07.2007 to 31.08.2009.

On 07.09.2009, the transaction sheet was obtained. On 23.09.2009, the respondent was heard under Rule 45 of the Border Security Force Rules on charge under Section 46 of the Border Security Force Act read with Section 13(1)(e) of the Prevention of Corruption Act for having in possession assets disproportionate to his known sources of income. During the hearing, the respondent pleaded not guilty to the charge. He was given opportunity to cross-examine the prosecution witnesses and to produce witnesses but he declined to do so.

The Commandant referred the case to his superior officer being the Deputy Inspector General of Police along with an application under Rule 52 of the Border Security Force Rules for disposal of the case by holding General Security Force Court for trial of the respondent. The Frontier Head Quarter BSF, South Bengal informed the DIG that considering the nature of offence and for early disposal of the case, it would be appropriate to dispose of the same through Summary Security Force Court.

Thereafter, the respondent was given a charge sheet as per the provisions of Rule 63(5) of the Border Security Force Rules. The charges were as follows :-

"The accused No.930071202 Constable Dickson Ch Marak of 126 Bn BSF is charged with :-

BSF ACT SEC-46 COMMITTING A CIVIL OFFENCE THAT IS TO SAY CRIMINAL MISCONDUCT FOR HAVING BEEN AS PUBLIC SERVANT IN POSSESSION OF PECUNIARY RESOURCES DISPROPORTIONATE TO HIS KNOWN SOURCE OF INCOME FOR WHICH HE CAN NOT SATISFACTORILY ACCOUNT FOR AN OFFENCE SPECIFIED IN SECTION 13(1) (e) OF THE PREVENTION OF CORRUPTION ACT 1988 PUNISHABLE UNDER SECTION 13(2) OF THE SAID ACT.

in that he,

during the period from 02 Aug 2007 to 15 Jan 2009, while deployed at BOP Bithari, Hakimpur, Angrail, Bornberia, Jhaudanga, Kharamath, Arshikari and Govindpur in the area of responsibility of 126 Bn BSF deployed on Indo-Bangladesh International Border has deposited an amount of Rs.6,27,862/- in his SBI joint account No.11308070706 through C?BS from various brochures which were disproportionate to his known source of income."

Thereafter, on 03.01.2010, Summary Security Force Court was

convened under Section 17 of the Border Security Force Act to try the respondent on the charge of having in his possession pecuniary resources disproportionate to his known sources of income. The Summary Security Force Court found the respondent guilty and the respondent was handed over to the Superintendent of Prison, Krishna Nagar (West Bengal).

The respondent submitted a statutory petition dated 26.11.2010 under Section 117(2) of the Border Security Force Act, 1968 addressed to the Director General, Border Security Force, New Delhi. In the representation, he spoke about the number of years for which he had served the Border Security Force. He spoke about his earlier conduct. However, interestingly, there is no explanation as to how the respondent managed to deposit Rs.6,27,862/- in his bank account. It is stated that there is no evidence. The account records speak. It is not in dispute that he had opened the joint account in his own name along with his wife. There is a vague assertion that the charge under the Prevention of Corruption Act could not have been established in the case of the respondent in accordance with law.

In the view of this Court, the Single Bench of the High Court erred in law in interfering with the action taken against the respondent. The question involved in this appeal is whether the Commanding Officer of the respondent suffered from any disability or disqualification from trying the respondent as Summary Court as he had signed and issued the charge sheet.

The provision of Section 70 of the Border Security Force Act, 1968 are in *pari materia* with Section 116 of the Army Act. In *Union of India & Ors. vs. Dinesh Prasad* reported in (2012) 12 SCC 63, it was contended that the order of dismissal by the Summary Court Martial was in violation of the principles of natural justice. This Court held that there was no violation of principles of natural justice. No illegality had been committed in convening the Summary Court Martial by the Commanding Officer nor in the conduct of the Summary Court Martial. This Court did not find any reason for interference with the order of dismissal and, accordingly, allowed the civil appeal and set aside the judgment of the Single Bench as also the Division Bench of the High Court.

In *Union of India & Ors. vs. Vishav Priya Singh* reported in (2016) 8 SCC 641, the Delhi High Court had held that in cases concerning trial of deserters as dealt with in Regulation 381 of the Defence Service Regulations, a specific exception was carved out enabling Commanding Officer of a unit other than the one to which the accused belonged to convene, constitute and complete an SCM. Barring such exception, according to the High Court, it was the Commanding Officer of the unit to which the accused belonged, who alone was empowered to convene, constitute and complete an SCM. The High Court further held that for convening an SCM it was imperative that immediate action was manifestly necessary.

In the aforesaid circumstances, this Court held that it is not imperative that an SCM be convened, constituted and completed by

Commanding Officer of the unit to which the accused belonged. It was competent and permissible for the Commanding Officer of the Unit to which the accused was attached or sent on attachment for the purposes of trial, to try such accused by convening, constituting and completing SCM in a manner known to law, i.e., strictly within the confines of Sections 116 and 120 of the Act and other statutory provisions. This Court endorsed the view of the High Court that Summary Court Martial was an exception and a case must be made out for immediacy of action. The reasons to convene a Summary Court Martial must be followed by well articulated reasons or the record itself must justify such resort.

In the instant case, the reasons to convene Summary Court Martial are reasonably well articulated. The nature of the charges justify resort to a Summary Court Martial. Perhaps, it would be pertinent to refer to paragraphs 26 and 27 of the judgment in Vishav Priya Singh (supra) to appreciate the issue in the aforesaid case :

"26. We now turn to the core question, namely, as to which CO is competent to convene, constitute and complete the SCM. Is it CO of the unit to which the accused belonged or CO of the unit to which he was attached or came to be attached. In this connection there could possibly be three kinds of situations:

- (a) An accused committing an act constituting an offence while he was part of his regular unit is tried by SCM by his own CO i.e. the CO of the unit itself.
- (b) An accused while being on attachment to a different unit commits an act constituting an offence and is therefore tried by SCM by the CO of such unit to which he was sent on

attachment. In such cases, the offence itself would be committed while the accused was on attachment.

- (c) An accused committing an act constituting an offence while being part of his regular unit is later sent on attachment to a different unit and is then tried by SCM by CO of such unit i.e. unit where he was sent on attachment after the offence was committed."

27. Unlike Rule 39 which specially disqualifies CO of the accused or of the Corps to which the accused belongs from serving on a GCM or DCM, there is no embargo on CO of the unit to which the accused belongs being the Court for the purposes of trying the accused by SCM. The first of the aforesaid three categories of offences mentioned above can therefore certainly be tried by the CO of the unit to which he belongs. If the act constituting an offence is linked to the unit in question when such act was committed, in respect of matters falling in the second category, the offence could logically be tried by the CO of the unit to which the accused was attached. Could the accused then insist that the CO of his parent unit alone must try him by SCM. Can it be said, his erstwhile connection with the parent unit must be taken to be the governing factor of such extent that the normal linkage of the unit and the offence in question must stand displaced. Our answer is no. If requirements of Section 120(2) are otherwise complied with and satisfied, the CO of such attached unit is competent to convene, constitute and complete the SCM. It is in his unit that the offence in question was committed and in that sense he would be in seisin of the matter. The CO of the parent unit would have nothing to do in the matter."

The judgment in Vishav Priya Singh is of no assistance to the respondent. The High Court clearly fell in error in interfering with the disciplinary action against the respondent. More so, in the absence of any explanation, not to speak of satisfactory explanation, with regard to deposit of Rs.6,27,862/- in the bank

account of the respondent.

The appeal is, accordingly, allowed. The impugned judgment and order is set aside. The judgment and order of the Single Bench allowing the writ petition is also set aside.

....., J.
(Indira Banerjee)

....., J.
(J.K. Maheshwari)

New Delhi;
March 08, 2022.

ITEM NO.101

COURT NO.8

SECTION XIV-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 3001/2017

UNION OF INDIA

Appellant(s)

VERSUS

SHRI DICKSON CHAND MARAK EX. CONST. 930071202

Respondent(s)

(IA No. 118323/2020 - APPROPRIATE ORDERS/DIRECTIONS IA
No.118325/2020 - EXEMPTION FROM FILING AFFIDAVIT)

Date : 08-03-2022 These matters were called on for hearing today.

CORAM :

HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE J.K. MAHESHWARI

For Appellant(s) Ms. Neela Gokhale, Adv.
Mr. Kushal Choudhary, Adv.
Ms. Poornima Singh, Adv.
Mr. Mukul Singh, Adv.
Mr. B. V. Balaram Das, AOR

For Respondent(s) Ms. Pallavi Sengupta, Adv.
Mr. Balaji Srinivasan, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order. The impugned judgment and order is set aside. The judgment and order of the Single Bench allowing the writ petition is also set aside.

Pending applications, if any, stand disposed of accordingly.

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(MATHEW ABRAHAM)
COURT MASTER (NSH)

(Signed order is placed on the file)