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the jewellery. As per record, both the parties in the presence of Local Commissioner stuck to their respective claims. In view thereof, it cannot be said in definite terms as to which party is deposing falsely. The value of 20 tolas of jewellery as estimated by the wife in her claim petition under Section 27 of the Act is Rs. 50,000/- PW-8 Khushi Ram had deposed that items as mentioned by the wife in the petition were given at the time of marriage but he could not depose with exactitude the quantity of jewellery which was given to the appellant at the time of marriage as the jewellery was never weighed in his presence. However, keeping in view the totality of facts and circumstances, in our opinion, the ends of justice would be met if the appellant-wife is awarded a sum of Rs. 20,000/- to be paid by the husband on account of jewellery which was given at the time of marriage.

(15) The appeal and the Cross Objections are disposed of in the manner indicated above. The parties are left to bear their own costs.

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**R.N.R.**

*Before Ajay Kumar Mittal, J*

NO. 86076848 EX. CONST. NASIB SINGH,—*Petitioner*

versus

UNION OF INDIA & OTHERS,—*Respondents*

*CrI. W.P. No. 374 of 2000*

30th November, 2004

*Constitution of India, 1950—Arts. 14 & 227—Border Security Force Act, 1968—S. 117—Charge against Constable of assaulting superior Officer—Trial by the Summary Security Force Court (SSFC)—Dismissal from service—Director General BSF also affirming the order of dismissal—Challenge thereto—No allegation that constitution of the SSFC was improper or it was not properly convened—Proceedings conducted in accordance with the procedure prescribed—No violation of the principles of natural justice in any manner—Order of the SSFC dismissing the petitioner based on evidence—High Court has no jurisdiction to re-examine the conclusion and probabilities on the basis of evidence—Petition dismissed.*

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*Held*, that ordinarily, there is a finality to the finding of facts arrived at by the competent authority in the SSFC proceedings and the jurisdiction of the High Court in exercise of power under Article 226 of the Constitution of judicial review are limited for the purpose of finding out, whether there has been infraction of any mandatory provisions of the Act prescribing a procedure which has resulted in grave miscarriage of justice, or to find out, whether it involves violation of principles of natural justice. The High Court in exercise of power under Article 226 of the Constitution shall not sit as a Court of Appeal to re-appraise the evidence in coming to the conclusion.

(Para 11)

*Further held*, that there is no allegation that constitution of the SSFC was improper or it was not properly convened. The proceedings had been conducted in accordance with the procedure prescribed. Nothing could be shown that the principles of natural justice in any manner had been violated. The witnesses had been examined in the presence of the petitioner and he had been provided adequate opportunity to cross-examine them. Further there is also no allegation that there has been any infraction of any law or that any mandatory provision of law has been violated. The petitioner during the cross-examination of witnesses could not elicit from them as to why they were deposing against him and also the credit worthiness of these witnesses could not be doubted. The prosecution witnessess have supported the case of the prosecution and have deposed that the petitioner had attempted to fire a shot each on SI C.P. Singh and HC Yadu Nath Singh, both of Station Head Quarter Ferozepur on 31st December, 1996 through a weapon, reportedly under intoxication condition. Thus, the petitioner was guilty of the offence under section 20 of the 1968 Act and had been rightly convicted by the SSFC. Thus, the present case cannot be said to be a case of no evidence.

(Para 16)

Narender Hooda, Advocate, for the petitioners.

Anil Rathee, Additional Central Government Standing Counsel,  
for the respondents.

## JUDGMENT

### AJAY KUMAR MITTAL, J

(1) In this petition, the petitioner is seeking quashing of order Annexure P-2 passed on 6th February, 1997 by the Commandant, 87 Battalion, Border Security Force, Ferozepur whereby he has been dismissed from service and the communication, Annexure P-4 dated 17th July, 1997 whereby it was conveyed that his statutory petition under section 117 of the Border Security Force Act, 1968 (in short "the 1968 Act") against the same has been rejected.

(2) The facts lie in a narrow compass and may thus be noticed as under :

(3) The petitioner, while serving in the Border Security Force, which is one of the para-military forces of the country, was tried by the Summary Security Force Court (in short "the SSFC") for the charge of assaulting his superior officer. He was awarded the punishment of dismissal from service w.e.f. 6th February, 1997. Copies of charge sheet and dismissal order have been appended to the petitioner as Annexure P-1 and P-2 respectively. The statutory appeal preferred by the petitioner under section 117 of the 1968 Act against the order Annexure P-2 was dismissed by the Director General, Border Security Force, New Delhi which was conveyed to the petitioner by the Chief Law Officer,—*vide* letter dated 17th July, 1997, Annexure P-4. This is how the petitioner has challenged the orders Annexure P-2 and P-4 on the grounds that the same are illegal, arbitrary and based on no evidence. The petitioner further alleged that the aforesaid orders are non-speaking orders and thus are violative of principles of natural justice.

(4) In the written statement filed by the respondents, the averments as contained in the writ petition were denied. It was stated that action against the petitioner was taken strictly in accordance with the provisions of the 1968 Act and the Rules framed thereunder. It was further stated that since the petitioner has assaulted his superior officer, he has been rightly dismissed from service on being found guilty by the competent authority. It is also stated that the appeal filed by the petitioner was duly considered by the competent authority and after due consideration of mind and going through the entire record, the same was rightly dismissed.

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(5) Mr. Narender Hooda, learned counsel appearing for the petitioner made the following submissions :—

- (a) the charge levelled against the petitioner does not stand established as there is no evidence to support the same;
- (b) the principles of natural justice have been violated and therefore, this Court in exercise of its power under Articles 226/227 of the Constitution of India can go into merits of the case;
- (c) the rules of natural justice shall be read into a provision unless it is specifically excluded. By referring to the evidence of various witnesses and by pointing out discrepancies therein, learned counsel submitted that no conclusion could have been arrived at by the SSFC and the affirmation of the same by the Director General, Border Security Force, New Delhi is legally unsustainable ;
- (d) offence under section 20(1) (a) of the 1968 Act is not made out as the petitioner had not cocked his rifle on BHM Yadu Nath Singh and SI C.P. Singh ;
- (e) by making reference to the entire evidence on record, it was further submitted that findings of fact recorded by the respondent-authorities are perverse findings of fact, based on no evidence and thus, the charge cannot be supported. He, however, further submitted that it is no doubt true that the High Court would not be justified in interfering with the findings of the SSFC proceeding by appreciation of evidence but if the evidence is of such nature that no reasonable man would come to the conclusion that an offence under section 20 of the 1968 Act had been committed then certainly the Court would be justified in interfering with the findings arrived at by the SSFC.

(6) Learned counsel for the petitioner placed reliance on **Union of India versus Major A. Hussain (1), Punjab National Bank and others versus Kunj Behari Misra (2), Union of India versus Himat Singh Chahar (3), Dhani Ram Chaudhary versus State of Haryana and another (4).**

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- (1) AIR 1997 S.C. 2386
- (2) (1998) 7 S.C.C. 84
- (3) 1999 (3) R.S.J. 256
- (4) 1998 (3) P.L.R. 298

(7) Mr. Harish Rathee, learned counsel appearing for the Union of India rebutted the submissions of learned counsel for the petitioner. He countenanced the same by submitting ;

- (a) that it is not a case of no evidence, and in case, it was so pleaded, then it should have been taken before the SSFC itself ;
- (b) that no reasons are required to be given by the SSFC or on an appeal under section 117 of the 1968 Act by the Director General. To substantiate this plea, the counsel submitted that in the Army Act, there has been an amendment in 1993 whereby giving of reasons has been incorporated and it has been made mandatory, whereas there is no such amendment or requirement under the 1968 Act ;
- (c) that the petitioner has not challenged the proceedings or the constitution of the SSFC or raised any grievance that no opportunity was given to him. This Court under Articles 226 of the Constitution of India does not sit as a Court of Appeal to reappraise the evidence on record and it should not reverse the findings of fact arrived at by the respondent-authorities.
- (d) since the charge of cocking the rifle and trying to fire on BHM Yadu Nath Singh and SI C.P. Singh has been held to have been established on the basis of material on record, therefore, it cannot be said that no offence as envisaged under section 20(1) (a) of the 1968 Act has been committed by the petitioner. The counsel thus, submitted that the petitioner has, therefore, been rightly dismissed from service.

(8) Mr. Rathee placed reliance on **Union of India and others versus IC - 14827, Major A. Hussain (5), Union of India and others versus Ex-Constable Amrik Singh (6), Som Datt Dutta versus Union of India and others (7), Union of India and others versus R.K. Sharma (8)**, and judgments of this Court in

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- (5) AIR 1998 S.C. 577
- (6) AIR 1991 S.C. 564
- (7) AIR 1969 S.C. 414
- (8) AIR 2001 S.C. 3053

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**Muthilesh Kumar *versus* Union of India and others (9), and Inder Pal Singh *versus* Union of India and others (10).**

(9) The Border Security Force is a disciplined force and is an Armed Force of the Union of India and is primarily connected with the defence of the country. The preamble of 1968 Act states that it is an Act to provide for the constitution and regulation of the Armed Forces of the Union for ensuring the security of the Borders of India and for matters connected therewith. It is not in dispute that 1968 Act is a complete code in itself and procedure has been prescribed which is required to be followed in the SSFC proceedings and it also provides remedy to an individual by way of filing a petition under section 117 of the said Act. Section 117 of the 1968 Act reads thus :

“117 (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”.

(10) The Apex Court in **R.K. Sharma's case** (supra) while following **Major A. Hussain's case** (supra) in para 11 observed as under :—

“The law on the subject is aptly set out in the case of **Union of India V. Major A. Hussain** reported in (1998)1 SCC 537. This was a case where a Major had been Court-martialed

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(9) 2003 (2) R.C.R. (Criminal) 585

(10) 2003 (2) R.C.R. (Criminal) 741

and dismissed from service. The High Court quashed the Court Martial and the sentence on the ground that the delinquents had been denied a reasonable opportunity to defend himself. This Court, after considering various Army Orders, Rules and Provisions of the Army Act, concluded that the Court Martial had been properly held. It was then held as follows (Para 23 of SCC) :

“23—Though Court—martial proceedings are subject to judicial review by the High Court under Article 226 of the Constitution, the Court-martial is not subject to the superintendence of the High Court under Article 227 of the Constitution. If a Court-martial has been properly convened and there is no challenge to its composition and the proceedings are in accordance with the procedure prescribed, the High Court or for that matter any Court must stay its hands. Proceedings of a Court-martial are not to be compared with the proceedings in a criminal Court under the Code of Criminal Procedure where adjournments have become a matter of routine though that is also against the provisions of law. It has been rightly said that Court-martial remains to a significant degree, a specialised part of overall mechanism by which the military discipline is preserved. It is for the special need for the armed forces that a person subject to Army Act is tried by Court-martial for an act which is an offence under the Act. Court-martial discharges judicial function and to a great extent is a Court where provisions of Evidence Act are applicable. A Court martial has also the same responsibility as any Court to protect the rights of the accused charged before it and to follow the procedural safeguards. If one looks at the provisions of law relating to Court-martial in the Army Act, the Army Rules, Defence Service Regulations and other Administrative Instructions of the Army, it is manifestly clear that the procedure prescribed is perhaps equally fair if not more than a criminal trial provides to the accused. When there is sufficient evidence to sustain conviction, it is unnecessary to examine if pre-trial investigation was adequate or not. Requirement of proper and

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adequate investigation is not jurisdictional and any violation thereof does not invalidate the Court-martial unless it is shown that the accused has been prejudiced or a mandatory provision has been violated. One may usefully refer to Rule 149 quoted above. The High Court should not allow the challenge to the validity of conviction and sentence of the accused when evidence is sufficient. Court-martial has jurisdiction over the subject-matter and has followed the prescribed procedure and is within its power to award punishment.”

(11) Thus, ordinarily, there is a finality to the finding of facts arrived at by the competent authority in the SSFC proceedings and the jurisdiction of the High Court in exercise of power under Article 226 of the Constitution of judicial review are limited for the purpose of findings out, whether there has been infraction of any mandatory provisions of the Act prescribing a procedure which has resulted in grave miscarriage of justice, to find out, whether it involves violation of principles of natural justice. The High Court in exercise of power under Article 226 of the Constitution shall not sit as a Court of Appeal to reappraise the evidence in coming to the conclusion.

(12) Reliance of Mr. Honda on Dhani Ram Chaudhary's case (*supra*) and Kunj Behari Misra's case (*supra*) is of no help to the learned counsel as those are the decisions which are not under the 1968 Act but are relating to civil servants. Further the reliance of Mr. Hooda on A. Hussain's case (*supra*) is also of no assistance to him. The apex Court in A. Hussain's case (*supra*) as noticed earlier, had held that when there is sufficient evidence on record, the High Court shall not interfere under Article 226 of the Constitution of India and Court Martial proceedings are not subject to superintendence of the High Court under Article 227 of the Constitution of India.

(13) It has been further held in Himmat Singh Chahar's case (*supra*) as under :—

“that the High Court has got power of judicial review under Article 226 of the Constitution of India as under :—

- (i) When there has been infraction of any mandatory provisions causing miscarriage of justice.



- (ii) When there has been violation of principles of natural justice.
- (iii) When Authority exercising the jurisdiction has not been vested with jurisdiction.
- (iv) High Court cannot re-appreciate evidence.”

(14) Thus, judicial review of High Court, cannot be higher than the jurisdiction of High Court exercised under Article 227 against the order of an inferior Tribunal.

(15) Now advertng to the facts of the present case, there is no allegation that constitution of the SSFC was improper or it was not properly convened. The proceedings had been conducted in accordance with the procedure prescribed. Nothing could be shown that the principles of natural justice in any manner has been violated. The witnesses had been examined in the presence of the petitioner and he had been provided adequate opportunity to cross-examine them. Further there is also no allegation that there has been any infraction of any law or that any mandatory provision of law has been violated. The main thrust of arguments of the learned counsel for the petitioner was that it is a case of no evidence against the petitioner and he had been found guilty and dismissed from service on no evidence and, in fact, his presence at the spot was doubtful.

(16) I have given considerable thought to the argument of the learned counsel for the petitioner and have not felt persuaded to agree with the same. Learned counsel for the petitioner has referred to the oral testimony of the witnesses and has tried to point out discrepancies in their testimonies. The testimony of prosecution witness No. 1 S.I., C.P. Singh and PW-2 HC Yadu Nath Singh had in unequivocal terms corroborated the prosecution version. Testimonies of PW-3 Naresh Kumar and also of PW-4 Mr. Bhagi Ram not lend any support to the argument of the counsel for the petitioner. To the same effect are the testimonies of other prosecution witnesses, i.s. PW-5 to PW -8. The petitioner during the cross-examination of these witnesses could not elicit from them as to why they were deposing against him and also the credit worthiness of these witnesses could not be doubted. The prosecution witnesses

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have supported the case of the prosecution and have deposed that the petitioner has attempted to fire a shot each on S.I. C.P. Singh and HC Yadu Nath Singh, both of Station Head Quarter, Ferozpur on 31st December, 1996 through a weapon, reportedly under intoxication condition. Thus the petitioner was guilty of the offence under section 20 of 1968 Act and had been rightly convicted by the SSFC. Thus, the present case cannot be said to be a case of no evidence.

(17) Learned counsel for the petitioner by reference to testimony of various witnesses made a valiant effort to convince this Court that the finding recorded by the SSFC and affirmed under section 117 of the 1968 Act by the Director General could not have been recorded on the basis of the evidence on record. I am afraid, the argument of the learned counsel is totally misconceived. As noticed earlier, the prosecution witnesses had deposed against the petitioner and there has been no suggestion in their cross-examination that they are deposing falsely against the petitioner due to some enmity or for any other reason. The effort of the learned counsel to re-appreciate the entire evidence is legally not possible and this Court shall not sit as Court of Appeal and re-examine the conclusion and probabilities on the basis of evidence of various witnesses in exercise of jurisdiction under Article 226 of the Constitution of India.

(18) The irresistible conclusion is that the petitioner has been rightly convicted and dismissed from service by the SSFC which order has been affirmed by the Director General, Border Security Force, New Delhi in appeal. There is no violation of the principles of natural justice. Therefore, the proceedings of the SSFC, its findings and sentence awarded thereunder cannot be quashed in exercise of powers jurisdiction under Articles 226/227 of the Constitution.

(19) The criminal Writ petition is accordingly dismissed. No order as to costs.

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**R.N.R.**