

# SUPREME COURT OF INDIA

Union of India

Vs.

Debashish Ghosh

(V.S. Sirpurkar J.)

21.05.2009

## ORDER

1. This is an appeal by Union of India against the judgment of the Division Bench of the Calcutta High Court whereby the Calcutta High Court allowed the writ appeal filed by the respondent herein. The respondent herein was serving as a constable in the Border Security Force, 'BSF' for short, having joined the service in the year 1988. In his checkered career, on seven occasions, he went on leave and never reported back in time. On first two occasions, he was merely warned but thereafter on three occasions he was imprisoned for 28 days under the BSF Act. He did not mend his ways and remained absent for substantial period on seventh occasion. He was, therefore, charge-sheeted for the offence under Section 19 of the BSF Act. Summary Court was formulated, evidence was collected and ultimately he was ordered to be dismissed. That dismissal was challenged by him by filing a writ petition. The learned single Judge of the Calcutta High Court dismissed his writ petition. Thereafter, he filed an appeal in which he succeeded. That is how the matter has come before us.

2. The Division Bench has taken a view that the punishment of dismissal awarded to the respondent could not have been awarded reading Sections 19, 48(c) and 49 of the *BSF Act*. It is on that short ground that the punishment of dismissal has been set aside by the High Court in the impugned judgment. We must point out at this stage that after allowing the appeal, his reinstatement has been ordered, though the High Court has kept it open for the respondent Union of India to take appropriate action in accordance with the provisions of the Act and law as indicated.

3. We have carefully considered the provisions as well as the facts which have been brought before us by the learned counsel appearing on behalf of the Union of India. He points out that as per Section 19, the punishment for the offence covered under clause(c) thereof would ordinarily have been three years. Learned counsel points out to the particular portion of the Section which are as under:-

“19. Absence without leave.- Any person subject to this Act who commits any of the following offences, this is to say,- (a) xxx (b) without sufficient cause overstays leave granted to him; or (c) to (g) x x x shall, on conviction by a Security Force Court, be

liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned."

[Emphasis supplied]

Learned counsel further takes us to Section 48 which provides the punishments awardable in the Act. Those punishments are:

(a) death;

(b) imprisonment which may be for the term of life or any other lesser term but excluding imprisonment for a term not exceeding three months in Force custody;

(c) dismissal from the service;

(d) imprisonment for a term not exceeding three months in Force custody;

(e) to (l) xxxxx Learned counsel argues and in our opinion rightly that the punishment of dismissal is certainly a lesser punishment than the three years of rigorous imprisonment which was awardable under Section 19 (see the emphasised portion of Section 19 quoted earlier) and, therefore, that punishment was awarded to the delinquent respondent and the authorities were, therefore, justified in passing the order of punishment of dismissal.

He also invites our attention to sub-section (2) of Section 48 which are as under:- "(2) Each of the punishments specified in sub-section(1) shall be deemed to be inferior in degree to every punishment preceding it in the above scale."

Learned counsel, therefore, buttresses his argument further that punishment provided under Section 48(1)(c) is a lesser punishment than Section 48(1)(b) and under Section 19 the punishment covered by Section 48(1)(b) could have been given but the lesser punishment of dismissal was given. Learned counsel also points out the power to award alternative punishments awardable by Security Force Courts covered by Section 49."

4. The learned counsel appearing on behalf of the respondent points out that in the past the delinquent respondent was awarded with punishment of 28 days imprisonment for his overstaying and, therefore, he should have been awarded the punishment upto 90 days as covered under Section 48(1)(d) and, therefore, the punishment of dismissal could not have been awarded by the authorities. We are unable to agree with this argument. As pointed out earlier, the punishment of dismissal is certainly a lesser punishment than the one covered under Section 48(1)(b) which could have been the punishment of three years as covered under Section 19. If, therefore, the lesser punishment of dismissal was given, the authorities were perfectly justified in awarding such lesser punishment.

5. The learned counsel for the respondent also says that the punishment of dismissal was disproportionate considering that on earlier occasions he was either given imprisonment punishment for 28 days or merely warned. The same offence had been committed on the basis of which the proceedings were initiated against him. We do not agree. BSF is a uniformed service and, therefore, the discipline is extremely important for such Force. It was obvious that during nine years that he served in the BSF, he has overstayed his leave for seven times. Thus, he had probably developed a habit of not joining in time after exhausting his leave.

6. In that view, we do not feel that the punishment is disproportionate to the misconduct on the part of the delinquent respondent. We, therefore, are unable to agree with the appellate judgment of the Calcutta High Court which has taken a view that the punishment of dismissal could not have been awarded on the basis of the language of Sections 19, 48(c) and 49 and would choose to set aside the same.

“Accordingly, the impugned judgment of the Calcutta High Court is set aside and that of the learned single Judge is restored without any order as to costs.”