

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

ORDER

S.B. Civil Writ Petition No.2987/2014
Narendra Bahadur Yadav V/s Union of India and ors.

Date of Order :: **14th May, 2014**

P R E S E N T

HON'BLE Dr. JUSTICE VINEET KOTHARI

Mr.K.K.Shah, for the petitioner.
Mr.Lokesh Mathur, for the respondents.

BY THE COURT:

1. Heard. Admit. No fresh notices are required to be issued as the parties are already served.

2. The learned counsel for the petitioner, Mr. K.K. Shah has relied upon judgment of Hon'ble Supreme Court in the case of ***Union of India V/s Dev Singh – (2007)15 SCC 709*** and the learned counsel for the respondents, Mr. Lokesh Mathur relied upon the judgment of Hon'ble Supreme Court in the case of ***Major General Inder Jit Kumar V/s Union of India and ors. - AIR 1997 SC 2085.***

3. The post confirmation order passed by the Under Secretary to the Government of India dtd.26.3.2014 affirming the sentence of dismissal and imprisonment of two years passed by the

2/7

authority concerned under the order dtd.29.1.2013 is challenged in the present writ petition by the petitioner.

4. The various rival contentions raised by the learned counsels for the parties and bulky record produced before this Court require consideration by this Court. Hence, the writ petition is admitted. No fresh notices are required to be issued as the parties are already served.

5. Reply to the writ petition has already been filed. The learned counsel for the petitioner prays for some time to file rejoinder which may be filed within a period of four weeks.

6. Heard the arguments for interim relief on the application for suspension of sentence of 2 years imposed by the respondent - authorities.

7. By the impugned order Annex.1 dtd.**29.1.2013**, the petitioner was sentenced to suffer rigorous imprisonment for two years and to be dismissed from service. Out of said period of two years, the learned counsel for the petitioner submitted that the petitioner has already suffered the sentence to the extent of 21 months in the following manner:

- (i) Open arrest – 21.7.2012 to 29.1.2013 (6 months)
- (ii) Closed arrest – 29.1.2013 to 24.7.2013 (6 months)

3/7

- (iii) Civil imprisonment – 24.7.2013 to 23.9.2013 (two months)
- (iv) 23.9.2013 till now under the suspension of sentence under the order of High Court in SBCWP No.8720/2013 – **Inspector Narendra Bahadur Yadav V/s the Union of India and ors.** by which the pre-confirmation order was challenged and coordinate bench of this Court suspended the sentence of the present petitioner by a detailed order on 23.9.2013 of 12 pages partly allowing the writ petition filed by the petitioner. The operative portion of the said order is quoted below for ready reference:

*“16. In the result, the writ petition is partly allowed. The order passed by the GSFC sentencing the petitioner for rigorous imprisonment for a period of **two years is directed to be suspended pending disposal of the revision petition preferred by the petitioner under Section 117(2) before the Central Government.** The petitioner – Inspector Narendra Bahadur Yadav may be released forthwith on his furnishing personal bond in the sum of Rs.20,000/- and one surety of the like amount to the satisfaction of Superintendent of the Jail, where he is presently lodged. The revision petition shall be decided by the Central Government expeditiously, uninfluenced by any observation made by this Court on*

merits in this order incidentally. The petitioner shall be at liberty to submit the additional submissions before the Central Government within a period of two weeks from the date of receipt of certified copy of this order. Needless to say that the petitioner shall be at liberty to avail the appropriate remedy available under the law, if aggrieved by the order to be passed by the Central Government on the revision petition preferred as aforesaid. No order as to costs."

8. The learned counsel for the petitioner, Mr. K.K. Shah submitted that the said period of suspension under the order of the High Court has also to be added to the period of sentence under Section 133 of the Border Security Force Act, 1968, which reads as under:

"133. Computation of period of suspension :- Any period during which the sentence is under suspension shall be reckoned as part of the term of such sentence."

9. On the other hand, the learned counsel for the respondents, Mr. Lokesh Mathur vehemently opposed the said submissions of the learned counsel for the petitioner and urged that the petitioner has undergone the imprisonment under the impugned order only for a period of 14 months and not for 21 months as contended by the learned counsel for the petitioner and the period of

suspension of sentence under the orders of this Court cannot be added to the period of sentence as per Section 134 of the Act which also reads as under:

“134. Order after suspension :- The authority or officer specified in section 130 may, at any time while a sentence is suspended, order -

(a) that the offender be committed to undergo the unexpired portion of the sentence; or

(b) that the sentence be remitted.”

10. The learned counsel for the respondent, Mr. Lokesh Mathur, therefore submitted that the unless the order suspending the sentence passed by the competent authority under the said Act is made subject to conditions stipulated under Section 134 of the Act then only it can be so added to the period of sentence suffered by the petitioner and therefore, since it has not so happened, the petitioner has only suffered 14 months of imprisonment and has not surrendered yet before the concerned authority for civil imprisonment to be undergone by him, therefore, this application for suspension of sentence deserves to be rejected.

11. He also submitted that the petitioner was charged with grave offences of collecting money from the recruits in the BSF Unit for alleged construction of boundary wall in some school in his village, which was contrary to Section 31(b) of the BSF Act and that charge

was proved by the various witnesses examined by the concerned authority in the Court Martial held against him.

12. These submissions of the learned counsel for the respondents were countered by Mr. K.K. Shah, learned counsel for the petitioner on the ground that the entire proceedings held against the petitioner was not only malafide but there was breach of mandatory provisions of relevant Rules for holding such Court Martial and also such charges are levelled on account of certain complaint made by the petitioner for some unnatural acts by one **Ct.Sunil Kumar** and against whom a regular Court Martial was held against the said constable Sunil Kumar and he was punished by the competent authority but since he was close to the concerned authority and as a matter of revenge, the said story was cooked up against the present petitioner and he was tried and punished with the aforesaid punishment of dismissal from service and sentenced by way of imprisonment of two years. In the circumstances of the case, the learned counsel for the petitioner urged that the sentence of the present petitioner deserves to be suspended at this stage.

13. Considering the submissions made at the bar, this Court is inclined to suspend the sentence now remaining to be served under the impugned orders subject to final decision of this writ petition provided the petitioner furnished a personal bond of Rs.50,000/- with two sureties of like amount to the satisfaction of the Dy. Registrar (Judl.) of this Court.

7/7

14. The present stay application No.2779/2014 for suspension of sentence, is accordingly allowed.

15. Put up the writ petition for hearing in due course.

(Dr. VINEET KOTHARI), J.