

*

%

+

Som Dutt

... Petitioner

versus

Union of India & Ors.

... Respondents

Advocates who appeared in this case:

For the Petitioner

: Mr.S.K.Bandhopadhyay, Advocate

For Respondent

: Ms.Sonia Mathur, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

ANIL KUMAR, J.

✻

1. The petitioner has sought the quashing of order dated 5th

2. Brief facts to comprehend the disputes are that the petitioner was

attached with the 25 Bn BSF, Chhawla Camp, New Delhi w.e.f. 6th December, 2001 to 17th November, 2004.

3. A complaint was made against the petitioner by Sh. Bhola Prasad Yadav, a civilian. Consequently, the petitioner was attached with the BSF Air Wing by order dated 23rd June, 2005 on disciplinary grounds. The complainant had stated that the petitioner had accepted money for providing the job of TTE in the Delhi Metro Rail Corporation for Sh.Bhola Prasad Yadav's son and his son's brother-in-law. A Court of Inquiry was conducted by order dated 25th July, 2005. On the basis of the Court of Inquiry proceedings, it was found that *prima facie* case was established against the petitioner for having illegally accepted money from Sh.Bhola Prasad Yadav by collaborating with Sh.V.K.Pandey.

4. Consequent to the *prima facie* case against the petitioner for having committed the offence under Sections 46 of the BSF Act, i.e. committing a civil offence, that is to say cheating and dishonestly inducing delivery of property punishable under Section 420 of the Indian Penal Code, a Summary Security Force Court trial (SSFC) was conducted from 10th December, 2007 to 5th February, 2008.

5. The charges were framed by charge sheet dated 29th November, 2007 which are as under:-

<u>First Charge</u> <u>BSF Act</u> <u>Sec-46</u>	<u>COMITTING A CIVIL OFFENCE THAT IS TO SAY</u> <u>CHEATING AND DISHONESTLY INDUCING DELIVERY</u> <u>OF PROPERTY PUNISHABLE UNDER SECTION 420</u> <u>IPC</u> In that he at Delhi, during 19.02.04 to 24.04.04, cheated Shri Bhola Prasad Yadav S/o Shri Ram Chandra Gop R/o A-35 Ganga Vihar Gokulpuri, Delhi by dishonestly inducing him to deliver Rs1,70,000/- (Rupees one lakh seventy thousand) only in installments to him for providing jobs as TTE in Metro Rail to his son Shri Rakesh Kumar and Shri Ram Prakash.
<u>Second Charge</u> <u>BSF Act</u> <u>Sec-46</u>	<u>COMITTING A CIVIL OFFENCE THAT IS TO SAY</u> <u>CHEATING AND DISHONESTLY INDUCING DELIVERY</u> <u>OF PROPERTY PUNISHABLE UNDER SECTION 420</u> <u>IPC</u> In that he at Delhi, on 03.03.2004, cheated Shri Bhola Prasad Yadav S/o Shri Ram Chandra Gop R/o A-35 Ganga Vihar Gokulpuri, Delhi by dishonestly inducing him to deliver Rs.50,000/- (Rupees fifty thousand) only to Shri V.K.Pandey S/o Ram Bilas Pandey R/o Mangolpur, Delhi for providing jobs as TTE in Metro Rail to his son Shri Rakesh Kumar and Shri Ram Prakash.

6. During the SSFC, Sh. Bhola Prasad Yadav, PW-1; Mr. P.K.V. Nair, PW-2; Mr. P.S. Tyagi, PW-3; Mr. Jeet Kumar, PW-4 and Capt. MMS Boura, PW-5 were examined. The petitioner had also examined Sh. Ajay Kumar Rathore as his witness. The SSFC conducted the proceedings from 10th December, 2007 to 5th February, 2008 and on perusal of the evidence found that the petitioner was guilty of both the charges framed against him under Sections 46 of the BSF Act, 1968. Consequently, the

petitioner was sentenced 'to be dismissed from service'.

7. Against his conviction, the petitioner submitted a petition dated 7th February, 2008. The petitioner also filed a mercy petition dated 5th February, 2008 for condoning the sentence, to enable him to earn pensionary benefits as he had already completed 20 years of service. The petitions of the petitioner were, however, rejected. The appeal filed by the petitioner was also rejected by order dated 31st March, 2008. Aggrieved by his dismissal from service and the dismissal of his appeal and also the rejection of his mercy petition claiming that at least he should be granted pensionary benefits as he had completed 20 years of service, the petitioner has filed the present writ petition, *inter-alia*, on the grounds that the order of dismissal is in violation of Section 46 read with Section 47 of the BSF Act, 1968 and Rules 41 & 42 and contrary to the duty prescribed under Chapter VIII & IX of the BSF Rules, 1959. According to the petitioner, the procedure prescribed under Rule 96, 97, 98 & 99 was not followed at all. The petitioner alleged that he had not committed any offence, and that his only mistake was that he had known both the complainant as well as Mr. V.K.Pandey, who had assured the complainant that he would provide a job to his son and his son's brother-in-law. The petitioner also referred to the complaint made to the police authority at the first instance, wherein the complainant had categorically alleged that the payment was made to Sh. V.K.Pandey and it was also pointed out that in the said complaint the complainant

had sought action against Sh. V.K.Pandey only and that no reference was made to the petitioner. The petitioner contended that since no reference was made in the first complaint referred to the police, it is evident that the complainant had not paid any money to the petitioner at any point of time. The petitioner contended that the said complaint filed by the complainant was a pressure tactic to get the money recovered from Sh. V.K.Pandey, as the petitioner had introduced Sh. V.K.Pandey to the complainant. The petitioner further alleged that the witnesses produced by the complainant had given a concocted version, as all of them were his colleagues.

8. The petitioner emphasized on the fact that on the complaint of the complainant to the police, no action was taken by the police authorities since the complainant had failed to produce any documents or other evidence before the police authorities. The petitioner also relied on the statement of Sh. V.K. Pandey, who had allegedly assured the complainant that he would be giving job to the relatives of the complainant, which was also allegedly recorded before the Court of Inquiry. According to the petitioner, Sh. V. K. Pandey had categorically deposed that whatever money he had received, the same was not returned as it is the policy of his company to not return the money, nor had the complainant asked for any money from him.

9. The petitioner also challenged the punishment awarded to him under Section 19 as according to the petitioner under the said section the punishment of dismissal could be awarded only for absence without leave or for over staying on leave.

10. The writ petition filed by the petitioner is contested by the respondents who filed the counter affidavit of Mohd. Ashraf Khan, Deputy Inspector General in BSF. The respondents contended that the charges against the petitioner were established on the basis of the testimonies of the witnesses and the documents produced before the SSFC and that there had not been any violation of any fundamental rights of the petitioner in any manner. The respondents asserted that this Court, while exercising its jurisdiction under Article 226 of the Constitution of India, will not act as an Appellate Court. According to the respondents, this Court under Article 226 of the Constitution of India for judicial review of the dismissal order and the order passed in the appeal, dismissing the appeal, is limited to finding whether the order of sentence suffers from any illegality, procedural irregularity or perversity of any kind. The respondents contended that the punishment awarded to the petitioner was not disproportionate to the charges made out against him. The respondents also asserted that the SSFC was validly constituted and the proceedings were conducted as per law.

11. The respondents emphasized that the petitioner had introduced the complainant Sh. Bhola Prasad Yadav to Sh. V.K. Pandey, who was running a placement agency at Sector-8, Rohini, New Delhi, for providing job to the complainant's son and the son's brother-in-law in the Delhi Metro Rail Corporation. The respondents, however, disclosed that the petitioner had registered a complaint against Sh. Bhola Prasad Yadav in the Police Station, Nand Nagri on 25th December, 2004 for seeking police protection for his family after a threat had been given by Sh. Bhola Prasad Yadav. The respondents disclosed that there is evidence that a sum of Rs. 1, 70,000/- was received by the petitioner from the complainant in installments on different dates from 19th February, 2004 to 24th April, 2004, consequent to which a complaint was registered against the petitioner in Police Station, Nand Nagri on 26th December, 2004 by the complainant. In the circumstances, it was asserted that the petitioner had obtained money illegally from the complainant and he could not provide a job to the complainant's relatives in the Delhi Metro Rail Corporation. The respondents also referred to the statement made by Sh. V.K. Pandey in the Record of Evidence (ROE) disclosing that Sh. V.K. Pandey and the petitioner had received a sum of Rs. 2,20,000/- from the complainant in installments from 19th February, 2004 to 24th April, 2004. It was also pleaded by the respondents that Sh. V.K. Pandey had received the amount through the petitioner and had acted in collusion with him. In the circumstances, it has been asserted that there is sufficient evidence on record to prove

that the petitioner had received money from the complainant for providing the job of TTE in the Delhi Metro Rail Corporation and by indulging in such an illegal act, the petitioner had committed a misconduct, for which he was tried under Section 46 of the BSF Act, 1968. Relying on Section 46 of the BSF Act, 1968, the respondents contended that the petitioner could be tried by the SSFC. The respondents pleaded that the civil offence for which the petitioner was tried is not barred under Section 47 of the BSF Act. As for the jurisdiction to try the offence committed by the petitioner it is contended that, as per Section 80 of the BSF Act, when jurisdiction could be exercised by the criminal court as well as the Security Force Court, it shall be the discretion of the Director General or the Inspector General or the Deputy Inspector General within whose command the petitioner was serving to decide before which Court the proceedings shall be instituted. Thus, in exercise of the said discretion by the competent authority, the petitioner was tried by the SSFC. In the circumstances, it is urged that since no action was taken by the police authorities, it will not vitiate the action taken against the petitioner pursuant to the proceedings by the SSFC.

12. The respondents admitted that Mr. Bhola Prasad Yadav had filed the complaint which was written by his son on his behalf and it was found that the contents of the complaint were correct during a detailed SSFC proceedings based on the statement of the witnesses and the

documents produced before the SSFC. In the circumstances, it is contended that the petitioner had dishonestly induced the complainant to deliver money to the petitioner and to Sh. V.K. Pandey for providing jobs to his son and his son's brother-in-law.

13. The respondents disclosed that the petitioner had introduced the complainant Sh. Bhola Prasad Yadav to Sh. V.K.Pandey to pay an amount of Rs.2,50,000/- out of which 80% of the amounts i.e. Rs.2,20,000/- was paid by the complainant to the petitioner and the remaining amount was agreed to be paid after the completion of the job. The respondents relied on the fact that the petitioner is known to Sh. Bhola Prasad Yadav since his childhood. On appreciation of the evidence produced on behalf of the complainant and the petitioner, the version of the petitioner was found to be unreliable.

14. The respondents disclosed that the sentence was promulgated to the petitioner on 5th February, 2008 and the SSFC proceedings were counter signed by the Reviewing Officer, Deputy Inspector General (Air) on 10th March, 2008.

15. The respondents also contended that ROE was conducted in the presence of the petitioner and he was given opportunities under Rule 48 (2), 48(3) and 48(4) to cross-examine the prosecution witnesses, to make a statement in his defence and to produce the defence witness.

The petitioner had, in fact, cross-examined PW1 and PW3 and had produced one defense witness. However, in the ROE the petitioner had declined to make any statement in his defence. The complainant had also been called at the Headquarter DG BSF where he had apprised the authorities of the development pertaining to the case and the enquiries were initiated only thereafter to ascertain the real issues involved in the matter. In the circumstances, it was contended that no rule was violated in any manner.

16. Regarding the punishment being disproportionate, the respondents contended that as per the provision of Rule 151 of BSF Rules, 1969, the SSFC had taken into account the rewards and punishment and the status of the petitioner to assess his overall conduct prior to the award of his punishment. All these factors were also considered by the Appellate Authority while deciding the appeal.

17. The petitioner filed a rejoinder dated 19th February, 2010 denying the pleas and contentions raised on behalf of the respondents and emphasizing that he had not indulged in any act which is contrary to the law of the land and that there is no sufficient evidence which will establish his misconduct and that he could not have been punished in the manner it has been done.

18. This court has heard the learned counsel for the petitioner at length and has even perused the evidence recorded before the Summary Security Force Court. Ms. Sonia Mathur, learned counsel for the respondents, who had appeared on advance notice has also been heard. The learned counsel for the respondents has asserted that this court will not go into the correctness of the truth of the charges as it should not take over the function of Summary Security Force Court. She contended that in any case there is sufficient evidence to inculcate the petitioner.

19. This cannot be disputed that this Court will not take over the functions of the Summary Security Force Court. The writ petition is not an appeal against the findings of SSFC nor this court is exercising or assuming the role of the Appellate Authority. It cannot interfere with the findings of the fact arrived at by the SSFC except in the case of mala-fides or perversity i.e where there is no evidence to support a finding or where the finding is such that no one acting reasonably or with objectivity could have arrived at or where a reasonable opportunity has not been given to the accused to defend himself or it is a case where there has been non application of mind on the part of the SSFC or if the charges are vague or if the punishment imposed is shocking to the conscience of the Court. Reliance in respect of jurisdiction of the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India has been placed on State of U.P & ors. Vs Raj Kishore Yadav &

anr., (2006) 5 SCC 673; V.Ramana Vs A.P. SRTC & ors., (2005) 7 SCC 338; R.S.Saini Vs State of Punjab & ors., JT 1999 (6) SC 507; Kuldeep Singh Vs The Commissioner of Police, JT 1998 (8) SC 603; B.C.Chaturvedi Vs Union of India & ors, AIR 1996 SC 484; Transport Commissioner, Madras-5 Vs A.Radha Krishna Moorthy, (1995) 1 SCC 332; Government of Tamil Nadu & anr.Vs A. Rajapandia, AIR 1995 SC 561; Union of India & ors. Vs Upendra Singh, (1994) 3 SCC 357 and State of Orissa & anr. vs Murlidhar Jena, AIR 1963 sc 404.

20. It also cannot be disputed that the grounds on which action of the SSFC is subject to control by judicial review are, "illegality"; "irrationality" and "procedural impropriety". The Court will not interfere in such matters unless the decision is tainted by any vulnerability like illegality, irrationality and procedural impropriety. Whether the action falls within any of the categories is to be established and mere assertion in that regard may not be sufficient. To be "irrational" it has to be held that on material, it is a decision "so outrageous" as to be in total defiance of logic or moral standards. If the power is exercised on the basis of facts which do not exist or reaching conclusions which are patently erroneous, such exercise of power shall be vitiated. Exercise of power will be set aside if there is manifest error in the exercise of such power or the exercise of power is manifestly arbitrary. To arrive at a decision on "reasonableness" the Court has to find out if the respondents have left out a relevant factors or taken into account

irrelevant factors. It was held in (2006) 5 SCC 88, M.V.Bijlani Vs Union of India & ors. that the Judicial review is of decision making process and not of re-appreciation of evidence. The Supreme Court in para 25 at page 96 had held as under:

‘25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.’

21. Similarly in (1995) 6 SCC 749, B.C.Chaturvedi v. Union of India & ors Supreme Court at page 759 has held as under:-

‘12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary

proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.'

22. The petitioner was heard under BSF Rule 45 and charges were framed in accordance with the rules. The petitioner had pleaded 'Not Guilty'. ROE was prepared in accordance with rules in which the petitioner was given opportunity to cross examine the prosecution witness, however, he had declined to cross examine them nor did he make any statement. The petitioner before the SSFC had cross examined Pw.1, Shri Bhola Prasad Yadav; Pw.2 Sh. PKV Nair; Pw.3, P.S.Tyagi; Pw.4 Mr. Jeet Kumar; Pw.5, Capt. M.M.S Boura. The petitioner had engaged a counsel during the trial as his friend. The petitioner had also examined a witness in the defense, Dw.1, Ajay Kumar Rathore and had given his statement. In these circumstances there is no denial of reasonable opportunity to the petitioner nor it can be inferred that Principles of natural Justice had been violated. The learned counsel for the petitioner has also not shown any other

procedural impropriety or irregularity. The counsel rather reiterated that there is no evidence, though this Court is not to re-appreciate the evidence led before the SSFC.

23. This plea of the counsel that there is no evidence is also not substantiated from the record. Pw.1 has deposed that the petitioner himself and through the wife had insisted that he can get a job for the son and a relative of the son. He had demanded Rs. 1,50,000/- for each person. The relevant testimony of the said witness is as under:

“ In 2003 Dec. my wife Mrs. Pawan Devi intimated me that during one of the visits to my residence Const. Som Dutt has enquired about the present employment of my son Rakesh Kumar and my wife intimated him that he is still unemployed. My wife has also intimated me that Ct. Som Dutt had offered to provide job to my son Rakesh Kumar in some Govt. organization in lieu of money as he was having good contact. Though initially I did not pay any heed but due to constant pressurizing by Const. Som Dutt to my wife I asked what is the offer. On that she intimated that Const. Som Dutt can procure Govt. job for my son and others also if he be paid Rs. 1,50,000/- (One lac fifty thousand) only for each person. As per his offer 80% money was required to be paid in advance and rest after completion of job. Since my son Rakesh Kumar and his brother in law Mr. Ram Prakash s/o Mahavir Yadav, both were unemployed and Const. Som Dutt was putting pressure through my wife as such I met him somewhere in Jan, 2004 at my residence where he submitted a proposal to me that due to his contacts he can procure a job to my son Rakesh Kumar and any other person provided the money as demanded be paid to him i.e Rs.1.5 lacs (One lac fifty thousand) only for each. As per his offer 80% money was paid in advance and rest after completion of work. The post promised was TTE in Delhi Metro. Accused also told me that is resigning very soon from BSF and associated with a security agency. Thereafter, he took me to one office “ Shakti International” at Rohini Sector – 8 and introduced me with one person namely Mr. Vinod Pandey reportedly to be the Director of

Shakti International placing agency he also stated that he is Manager of the agency. I was offered a cup of tea there and I saw female employees working in the office. Mr. Vinod Pandey was also assured me that work will be done provided if money as asked can be given to them. I discussed with them about my son Mr. Rakesh Kumar and for his brother in law Mr. Ram Prakash s/o Mahavir Yadav. Then Const. Som Dutt asked me to firstly get the registration done in Metro for job of TTE for my son Rakesh Kumar and my relative Ram Prasad s/o Mahavir Prasad. He asked Rs. 10,000/- (Ten Thousand) only for registration alongwith 4 nos. of photographs, certificate, employment card etc. Accordingly on 19th Feb, 2004 I paid Rs. 10,000/- (Ten Thousand) only and other documents etc. at the residence of Ct. Som Dutt to Const. Som Dutt and I asked Const. Som Dutt that he should get the registration done, money will be arranged soon. I have taken Rs. 01 lac (One lac) loan from labour welfare fund on 1st Mar, 2004 and out of that I have only Rs.50,000/- (Fifty thousand) only to Const. Som Dutt and Mr. Vinod Pandey in presence of Mr. Jeet Kumar at Shakti International Office Rohini on 3rd Mar, 2004. On 4th Mar, 2004 I paid another amount of Rs.01 lac (One lac) to Const. Som Dutt at his residence in presence of my wife Mrs. Pawan Devi and Const. Som Dutt's wife. Then Mahavir Prasad Yadav gave me Rs.01 lac (One Lac) through 04 Bank Drafts of Rs.25,000/- (Twenty Five thousand) only each and I deposited the amount in my account. Again on 17th Mar, 2004 I paid Rs.40,000/- (Forty Thousand) only to Const. Som Dutt in presence of Mr. Jeet Kumar at his residence i.e. A-60, Gali no. 2, Somvily Extn. Sahdra, Delhi – 93. On 24th Apr, 2004 I paid the balance amount Rs.40,000/- (Forty Thousand) only to Const. Som Dutt in the presence of Mr. V.K.Pandey at his Rohini address as such by that time I had already paid Rs.2.2 lacs (Two lacs twenty thousand) only which is 80% of Rs. 2.5 lacs. Const. Som Dutt assured me that both the boys will get the job at the earliest and I should not bother now he will take care of the rest.”

24. In the cross examination, the said witness admitted that he had not signed the application which was address to the Director General, BSF, however, his name is mentioned there and he stands by the contents of the complaint. The deposition of the said witness was

corroborated by PW-2 who deposed that Sh.Bhola Prasad Yadav had given Rs.2.20 lakhs to the petitioner and his friend in lieu of arranging jobs in the Delhi Metro Rail Corporation for his son, Rakesh Kumar, and son's brother in law, Ram Prakash. To both the above noted witnesses it was not even proposed that money as claimed by Bhola Prasad Yadav was not given to the petitioner. The witness PW-3 Mr.Tyagi also deposed about the amount of Rs.2,20,000/- paid by Mr.B.P.Yadav to the petitioner and even to the said witness, it was not suggested that the amount was not paid by the petitioner. Jeet Kumar, PW-4 gave the details about the money paid at different times to the petitioner and V.K.Pandey. In his statement, the petitioner alleged that B.P.Yadav had told that V.K.Pandey took Rs.2,20,000/- from him to provide a job to his son. On examining the testimonies of the witnesses, the SSFC concluded that both the charges had been made out against the petitioner. In the circumstances, it cannot be held that there is no evidence to support the finding or that the finding is such that anyone acting reasonably or with objectivity could not have arrived at the same. The petitioner was given reasonable opportunity to cross examine the witnesses and in fact the petitioner had cross examined the witnesses and also produced his own witness and gave the statement in support of his pleas. In the facts and circumstances, the inference that the charges have been made out against the petitioner cannot be termed to be "irrational" or so outrageous so as to be in total defiance of logic. The learned counsel for the petitioner has failed to show any manifest error

and no such factors have been pointed out which have not been considered by the SSFC.

25. While deciding the appeal/statutory petition by order dated 31st March, 2010 the respondents have considered and held that there is sufficient evidence to establish that the petitioner had received the money from the complainant Sh.Bhola Prasad Yadav and that the allegations by the petitioner to the contrary are untenable.

26. The plea of the petitioner that his wife and the petitioner were heart patients was not established as no medical papers in this regard were produced by the petitioner either before the SSFC or with the writ petition. The respondents noted that though the petitioner had 20 years and 16 days of service on the day of his trial, however, he has no rewards to his credit, and rather he was punished twice earlier on 5th May, 1990 for an offence under Section 19(a) of the BSF Act and thereafter on 8th March, 1992 for an offence under Section 19(b) of the BSF Act which had led to the punishment of 4 days rigorous imprisonment and the second time for 7 days rigorous imprisonment in forced custody respectively.

27. The learned counsel for the petitioner has also contended that the order of the SSFC is in violation of Section 46 read with Section 47 of the BSF Act. Sections 46 and 47 of the BSF Act are as under:-

- “46. Attachment of another unit:- The Commandant shall not deal with any case
- (i) where the offence with which the accused is charged is against the Commandant himself, or
 - (ii) where the Commandant is himself a witness in the case against the accused, or
 - (iii) where the Commandant is otherwise personally interested in the case and the accused shall be attached to another battalion or unit for disposal of the case under the order of the Deputy Inspector-General:

Provided that a Commandant shall not be disqualified from hearing a charge merely because the offence was committed against the property of a Force Mess, band or institution of which the Commandant is a member or trustee or because the offence is one of disobedience of such Commandant's orders.

47. Charges not to be dealt with summarily- A charge for an offence under section 14 or section 15 or clauses (a) and (b) of section 16, or section 17 or clause (a) of section 18 or clause (a) of section 20 or clause (a) of section 24 or section 46 (other than that for simple hurt or theft) or a charge for abetment of or an attempt to commit any of these offences shall not be dealt with summarily.”

28. Section 47 of the BSF Act contemplates those offences which are not triable by the Security Force Court which are an offence of murder or of culpable homicide not amounting to murder or of rape in relation to a person who is not subject to the BSF Act. Admittedly, the offence committed by the petitioner is neither an offence of murder or of culpable homicide not amounting to murder or of rape. In the circumstances, the plea of the learned counsel for the petitioner that the alleged offence by the petitioner is not triable by Security Force Court cannot be accepted and is not tenable. The offence of the petitioner was tried by the SSFC in accordance with the rules and

regulations and no illegality, irregularity or any such perversity has been made out by the petitioner which will require interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

29. The writ petition in the facts and circumstances is without any merit and it is, therefore, dismissed.

ANIL KUMAR, J.

MAY 4, 2012
'k/vk'

SUDERSHAN KUMAR MISRA, J.