

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU**

Case:- **SWP No. 1227/2009**

**Khambod Singh  
S/o Sh. Mukat Singh,  
R/o Shankerpur (Awaran),  
Tehsil Etawah, District Etawah (U.P.),  
Age 42 years.**

**.... Petitioner**

Through: Mrs. Surinder Kour, Sr. Advocate with  
Mr. Sunil Kumar, Advocate.

**Vs**

- 1. Union of India through Home Secretary, Ministry of Home Affairs, Government of India, New Delhi.**
- 2. Director General, Border Security Force, CGO Complex, Lodhi Road, New Delhi.**
- 3. Inspector General of Border Security Force, Frontier Head Quarters, Paloura Camp, Jammu.**
- 4. Deputy Inspector General of Border Security Force, Sector Head Quarter, Paloura Camp, Jammu.**
- 5. Commandant, 91 Bn. BSF Sector C/o 56 APO.**
- 6. Officiating Commandant (2IC), 91 Bn. BSF C/o 56 APO.**

**..... Respondents**

Through: Mr. Vishal Sharma, DSGI.

**Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE**

**JUDGMENT  
16.07.2025**

1. Heard learned counsel for the parties. Perused the writ pleadings and the record therewith also the record produced from the end of the respondent No. 1 relating to the subject matter of the case.

2. Through the medium of this writ petition, the petitioner came forward with a cause of action to claim the following reliefs:

- i) To quash order No. Estt./613/91 BN/2008/11185-94 dated 17<sup>th</sup> July, 2008, issued by respondent No. 6, Officiating Commandant, 91 Bn. BSF by which the petitioner has been awarded sentence "to be reduced to the rank of Constable and to forfeit pay and allowances for three months and also to quash proceedings of Summary Security Force Court and the charges framed against the petitioner, by issuance of writ of certiorari;
- ii) To issue directions to the respondents restraining them to implement order No. Estt./613/91 BN/2008/11185-94 dated 17<sup>th</sup> July, 2008, issued by respondent No. 6, Officiating Commandant, 91 Bn. BSF by which the petitioner has been awarded sentence "to be reduced to the rank of Constable and to forfeit pay and allowances for three months, by issuance of writ of prohibition;
- iii) To issue directions to the respondents to allow the petitioner to work on the post of Head Constable on which the petitioner is working on the post prior to the issuance of order dated 17<sup>th</sup> July, 2008, by issuance of writ of mandamus;
- iv) To declare order No. Estt/613/91 BN/2008/11185-94 dated 17<sup>th</sup> July, 2008, issued by respondent No. 6, Officiating Commandant, 91 Bn. BSF by which the petitioner has been awarded sentence "to be reduced to the rank of Constable and to forfeit pay and allowances for three months and the proceedings of Summary Security Force

Court and also the charges framed against the petitioner, as ultra virus, illegal, arbitrary, unconstitutional, unjust and contrary to the provisions of BSF Act and Rules and against the provisions of principles of natural justice, by issuance of writ of mandamus; OR

- v) To issue any other writ, order or directions which the Hon'ble Court may deem just and proper in the facts and circumstances of the case in favour of the petitioner and against the respondents with costs.

3. The petitioner was appointed as a Constable in the Border Security Force (BSF) on 10.06.1987 bearing belt No. 874342772. Upon completion of his training at STC BSF, Bangalore, the petitioner came to be posted at different places in different States/Regions of India.

4. In the course of his service, the petitioner came to be promoted to the post of Head Constable on 06.04.2002, besides earning cash rewards and appreciation letters in relation to performance of his service.

5. While posted in 91 Bn BSF at Painthee, Samba, J&K, the petitioner is alleged to have indulged in a misconduct amounting to an offence under the Border Security Force (BSF) Act, 1968 related to an alleged incident of **25.06.2008** at about 7.40 p.m., at the Border Out Post (BOP), Mazra, when the petitioner in fit of rage is said to have hit SI-Prem Chandra Mishra No. 78002543 of 91 Bn with a stick on his legs accompanied by use of abusive

language against the same very officer SI-Prem Chandra Mishra which amounted to penal misconduct warranting action against him under the Border Security Force (BSF) Act, 1968.

6. SI Prem Chandra Mishra (78002543) of 91 Bn BSF, posted at Mazra post (Samba Sector) as Post Commander, came to submit a written complaint thereby complaining against the petitioner saying that in first week of June 2008 the petitioner had reported asking for 15 days' leave for which a requisite report was made to the Company Commander by him (SI Prem Chandra Mishra). On 24.06.2008, the Company Commander, on his way back from patrol duty from Zero Line, had a stopover in the Camp when the petitioner was afforded a meeting with him to be told that leave would be granted but on the same day a log came from Bn Hqr., to the Adjutant that there would be no leave sanction for anyone because of scheduled Chamlyal Mela afterwards which only personnel can go on leave. This direction was apprised to the petitioner upon which he wanted to meet Company Commander personally to be told in response that he can have a meeting at 09:30 p.m. after finishing his Gate Duty but at 7:30 p.m. the petitioner came to him (SI Prem Chandra Mishra) and within ten minutes got enraged and picked up a wooden log running helter-skelter in the Camp creating nuisance, speaking obviously and roughly that if he would not get leave today then he would kill everybody. At the relevant point of time, when he (SI Prem Chandra Mishra) was going for his evening bath, the petitioner

came rushing to him giving two blows of wooden log on his (SI Prem Chandra Mishra) feet and thereby injuring his right foot leading to its bleeding. This incident was immediately brought to the notice of the Company Commander – Inspector Prem Singh who came rushing and spoke to the petitioner. Witnesses were enlisted to have witnessed the incident and they being :-

- i) P. Jojo, (87655729);
- ii) Surya Kant, (90499061);
- iii) Lokman Singh, (90633830);
- iv) K. Balashankar, (97005262);
- v) B. P. Tiwari, (0415604) &
- vi) Sarwan Paswan, (94911031).

In addition, five civilians at the gate were also witnesses and, therefore, an action was solicited against the petitioner on the basis of a complaint. It also stood mentioned in the complaint that the petitioner was commanded by the Company Commander to sit in the vehicle whereupon the petitioner again started abusing and threatening that if somebody would write anything against him he would suffer dire consequences and in that scenario the petitioner was taken away by the Company Commander in his vehicle to CHQ.

7. The witnesses named in the complaint are also said to have penned down their individual testimonial version about the incident to accompany the complaint of SI Prem Chandra Mishra.

8. The complaint above referred of SI Prem Chandra Mishra, Platoon Commander Border Out Post, Mazra, so made to the Company Commander – Inspector Prem Singh was in turn forwarded to the Commandant 91 Bn BSF, Painthee, Samba, J&K who then was Mr. R. K. Dua by a written report bearing the signature of Inspector Prem Singh, 'F' Coy, BOP Nanga.

9. In his written report, Inspector Prem Singh Came to make a reference to the incident stating therein that upon getting information about the incident he had rushed with Head Constable M. N. Mahato and two guards to confront the petitioner about the incident to be answered by him that he was not in his senses at the time of charging SI Prem Chandra Mishra and adding further version that when the petitioner was being brought to the Company Headquarter at Nanga in the vehicle he had again violent shouting abuses as reproduced in the said report. Upon reaching Company Headquarters, the matter is said to have been brought to the notice of 2 IC/Offg Commandant and the petitioner was kept under guard.

10. Thus, Inspector Prem Singh along with his report forwarded the complaint lodged by SI Prem Chandra Mishra and the statements in writing of the witnesses.

11. The aforesaid course of action led to proceedings, purportedly under rule 43 of BSF Rules, 1969 without being so mentioned, by preparation of Form –Appendix-A by reference to

section 53 of the Border Security Force Act, 1968 prepared on 28.06.2008 by the Offg. Commandant, 91 Bn, BSF Mr. R. K. Dua.

12. In the said Form, the place and date of offence stood mentioned to be 25.06.2008, nature of offence mentioned to be under section 20(a) of using criminal force to Superior Officer and section 20(c) of using insubordinate language to Superior Officer, of BSF Act, 1968, with plea of **Guilty** recorded, names of witnesses mentioned and even findings also recorded as **Guilty**, but instead of dealing with the case under section 53 of the BSF Act, 1968 relatable to infliction of minor punishment, Offg. Commandant, 91 Bn BSF directed the **Record of Evidence** to be prepared by Narender Kumar, AC. This Form is duly signed by the Offg. Commandant, 91 Bn, BSF and also the Adjutant 91 Bn, BSF bearing date 28.06.2008.

13. On the same date of **28.06.2008**, Record of Proceedings under Appendix-A before the Offg. Commandant, 91 Bn, BSF by reference of Rule 45 & 45(B) was prepared wherein it came to be mentioned that the petitioner declined to cross-examine eight witnesses namely:-

- i) Insp. Prem Singh, 'F' Coy;
- ii) SI. P. C. Mishra, 'F' Coy;
- iii) HC M. N. Mahato, 'F' Coy;
- iv) HC P. Jojo, 'F' Coy;
- v) Ct. Lokman Singh, 'F' Coy &;

- vi) Ct. Surya Kant, 'F' Coy;
- vii) Ct. B. P. Tiwari, 'F' Coy;
- viii) Cook Sharwan Paswan, 'F' Coy.

14. This Record of Proceedings also bears reference to the order made by the Offg. Commandant 91 Bn, BSF with respect to preparation of **Record of Evidence (ROE)** to be prepared by Narender Kumar, AC.

15. On the same very date related to the proceedings being conducted under rule 45/45 (B) of the BSF Rules, 1969, the statement was ascribed to the petitioner that he had committed a great sin and is feeling sorry for which requesting to be pardoned for his offence and ready for any punishment but his children should not suffer because of him. However, this statement is unsigned by reference to the petitioner.

16. As **Record of Evidence** was solicited to be prepared in terms of rule 45(2)(iii) of the BSF Rules, 1969, an order to the said effect No. Estt/ROE-Kamod/91 Bn/2008/10078-82 dated 28.06.2008 is said to have been passed by the Offg. Commandant, 91 Bn BSF by appointment of Narender Kumar, AC (IRLA No. 10282618) as detailing officer to prepare Record of Evidence(ROE) to be submitted by 05.07.2008 but this appointment came to be rescinded after four days.

17. For the reasons which are not forthcoming from the record produced for perusal of this Court from the end of the respondents related to the proceedings against the petitioner leading to his punishment, it is not forthcoming as to what led to supersession of appointment of Narender Kumar (IRLA No. 10282618) as detailing officer for preparing Record of Evidence (ROE) in terms of rule 48 of the BSF Rules, 1969 when by an order No. Estt/ROE-Kamod/91 Bn/2008/10361-68 dated 03.07.2008 in place of Narender Kumar appointment of Himanshu Undeyria, Dy. Comdt., 91 Bn BSF, Ministry of Home Affairs to prepare the Record of Evidence (ROE) was directed.

18. It is very pertinent to make an observation at this very stage here that Himanshu Undeyria, Dy. Comdt. is the officer whose signature appear on the Offence Report dated 28.06.2008 purportedly prepared under rule 43 of the BSF Rules, 1969 signed by Offg. Commandant, 91 Bn BSF wherein the petitioner was said to have pleaded guilty against two counts of charges but still an order for preparation of Record of Evidence (ROE) to be made by Narender Kumar was issued by the Offg. Commandant, 91 Bn BSF obviously aiming to penalize the petitioner with a preconceived mindset.

19. In his order No. Estt/ROE-Kamod/91 Bn/2008/10361-68 dated 03.07.2008 appointing Mr. Himanshu Undeyria as an officer detailed for preparing Record of Evidence (ROE) in place of Sh. Narender Kumar, AC, Mr. R. K. Dua, the Offg. Commandant,

91 Bn BSF did not spell out as to whether Narender Kumar had undertaken any preparation/exercise of Record of Evidence (ROE) during the course of his assignment as detailing officer lasting for four days or not and if prepared where said exercise came to be placed and if not then the reason for non-compliance and non-action at the end of Mr. Narender Kumar, AC.

20. The Offg. Commandant, 91 Bn BSF, on the one hand while ordering Record of Evidence (ROE) to be prepared against the petitioner which was yet to be prepared to be considered in terms of rule 51 of the BSF Rules, 1969, simultaneously prepared a charge-sheet dated **28/06/2008** under rule 53(2) of BSF Rules, 1969 which is otherwise an incident to take place after a hearing upon Record of Evidence (ROE) prepared has taken place under rule 51 of the BSF Rules, 1969.

21. The charge-sheet dated 28.06.2008 so prepared against the petitioner under rule 53(2) Appendix –VI is as under:-

**APPENDIX-VI  
RULE 53(2)**

**CHARGE SHEET**

The accused, No. 874342772 Kambod Singh of 91 Battalion BSF is charged with :-

**BSF ACT 1968  
U/S. 20(A)**

**BSF ACT 1968 UNDER SEC. 20(a)  
USING CRIMINAL FORCE TO HIS SUPERIOR OFFICER**

in that he,  
at BOP Mazra on 25 June 2008 at about 0740 hrs struck with stick on both legs of No. 78002543 SI Prem Chandra Mishra of same unit.

**Ind Charge**

**BSF ACT 1968  
U/S. 20(c)**

**BSF ACT 1968 UNDER SEC. 20(c)  
USING IN-SUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER**

in that he,  
at BOP Mazra on 25 June 2008 at about 0815 hrs used the following in-subordinate language to No. 78002543 SI P C Mishra "NAUKRI GAYI BHAD MEIN, MADARCHOD TUJHE TERE GHAR TAK NAHI CHOUDUNGA. BAHANCHOD KYA SAMAJHTA HAI TU, WRITTEN KARYAVAHI KAREGA TO TUJHE TERA GHAR TAK NAHI CHODUNGA" and words to that effect.

Place: Painthee, Samba (J&K)  
Date, the 28 June, 2008

**sd/-**  
**( R K DUA)**  
**OFFG COMMANDANT**  
**91 BATTALION BSF**

22. Mr. Himanshu Undeyria, Dy. Comdt. purportedly engaged himself to prepare Record of Evidence (ROE) on 05.07.2008 and 06.07.2008. Mr. Himanshu Undeyria, Dy. Comdt. prepared Record of Evidence (ROE) by examining SI P. C. Mishra, HC P. Jojo, Ct. Surya Kant, Cook Sarwan Paswan, Ct. B. P. Tiwari on 05.07.2008 whereas Inspector Prem Singh & HC M. N. Mahato and the petitioner on 06.07.2008.

23. In his examination, SI Prem Chandra Mishra, the original complainant, came forward narrating a version as set out in his original complaint with an added version that the Offg. Coy. Commander Insp. Prem Singh, 'F' Coy, upon reaching the BOP Mazra, so acted by saying that he was giving to the petitioner as well as to the complainant – SI Prem Chandra Mishra twenty minutes to decide what to do next to which SI Prem Chandra Mishra had said that he does not wish to leave the petitioner and desired the case to be forwarded ahead as he has giving a complaint in writing to the Commandant on which Offg. Coy. Commander, 91 Bn BSF Prem Singh stated that the petitioner was saying sorry but the same was refused by the SI Prem

Chandra Mishra to be accepted and wanted the complaint to be forwarded to BN HQ.

24. This latest version was all missing in his original complaint so made by SI Prem Chandra Mishra. It came to be further stated by SI Prem Chandra Mishra that he had followed Offg. Coy. Commander, 91 Bn BSF to Coy., Hqr where the matter was reported to the Adjutant & 2 IC of the Unit who is also said to have come to the BOP and enquired about the complete matter. It further came to be stated that the complaint SI Prem Chandra Mishra had gone to Ramgarh Hospital for his first-aid.

25. The petitioner is said to have made no cross-examination of SI Prem Chandra Mishra except being attributed a statement of being sorry for the incident.

26. All the witnesses similarly examined were allegedly refused by the petitioner to be cross-examined by him.

27. In his statement, Inspector Prem Singh, 'F' Coy, then officiating as Company Commander 'F' Coy, came up with a version which is not in sync with the version of SI Prem Chandra Mishra about the course of things taking place upon arrival of Inspector Prem Singh at BOP Mazra. In his examination, Inspector Prem Singh stated that he telephonically informed Adjutant and the Officiating Commandant 91 Bn BSF about the complete incident in response where to the Offg. Commandant, 91 Bn BSF directed him to prepare detailed report of the incident

and that he was also reaching BOP Nanga and that Offg. Commandant, 91 Bn BSF - R. K. Dua along with Jaswinder Singh DC/QM and Narender Yadav AC reached BOP Nanga in front of all of whom the petitioner admitted of having committed a mistake by using force on SI Prem Chandra Mishra and asked for pardon whereupon Offg. Commandant, 91 Bn BSF directed Inspector Prem Singh to give a detailed report and get medical of SI Prem Chandra Mishra conducted. It is in the said background that Inspector Prem Singh had prepared his report dated 27.06.2008 bearing No. ESTT/IN-DISC/F/91/08/199 comprising of ten leaves and addressed and submitted to the Commandant, 91 Bn BSF.

28. Insofar as the medical report of the SI Prem Chandra Mishra is concerned, as obtaining on the record, it does not make mention of any physical injury except the words "Injuries Noted" and the names of the medicines prescribed without stating the treatment administered to the petitioner with respect to any wound/cut where the bleeding is alleged to have taken place.

29. Mr. Himanshu Undeyria, Dy. Comdt., 91 Bn BSF came to forward Record of Evidence (ROE) accompanied with a Certificate under rule 48 of the BSF Rules, 1969 to the Offg. Commandant, 91 Bn BSF Sh. R. K. Dua.

30. The respondent No. 5 by virtue of a communication No. Estt/610(SSFC-KS/91Bn/2008/10844 dated 13.07.2008

addressed to the petitioner came to apprise him that he was subjected to Summary Security Force Court trial to be held on 17.07.2008 without bearing any reference in the communication as to whether the Summary Security Force Court convening order has been passed or not.

31. By virtue of a communication No.Estt/610(SSFC-KS)/91Bn/2008/10925 dated 14.07.2008, the respondent No. 5 came to forward a copy of charge-sheet and a copy of Record of Evidence (ROC) comprising of 27 leaves to the petitioner with respect to his Summary Security Force Court trial scheduled for 17.07.2008 again without bearing any recital in the communication as to vide which order the Summary Security Force Court trial was ordered to be convened.

32. The petitioner is said to have been put on Summary Security Force Court trial under section 70 of the BSF Act, 1968 in terms of an Order No. Estt./610(SSFC-C-KS)/91Bn/2008/10986-94 dated 15/07/2008 addressed to the petitioner with respect to holding of Summary Security Force Court on 17/07/2008.

33. The purported proceedings of Summary Security Force Court came to be held on 17.07.2008 by the Offg. Commandant, 91 Bn BSF – Mr. R. K. Dua in which the court was presided over by him, and the Friend of the accused nominated being Narender Yadav, AC, 91 Bn BSF, the same very person who was first detailed to prepare Record of Evidence (ROE) in the case.

34. The petitioner's purported trial by the Summary Security Force Court seems to have been put into effect by the Offg. Commandant, 91 Bn BSF by ascribing and attributing a plea of guilty to the petitioner with respect to both charges as set out in Appendix – VI, Rule 53(2) of the BSF Rules, 1962 in the form of charge-sheet dated 14.07.2008 similarly texted as Appendix-VI Rule 53(2) charge sheet dated 28.06.2008 meaning thereby the charge-sheet was already prepared under rule 53(2) of the BSF Rules, 1969 before the Record of Evidence (ROE) preparation and that is live exhibit of the trial of the petitioner being a farce.

35. The charge-sheet dated 28.06.2008 had already been reproduced herein above wherein charge-sheet dated 14.07.2008 is reproduced herein next to exhibit that both are mirror images of each other :-



**APPENDIX-VI  
RULE 53(2)**

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that effect.

Place: Painthee, Samba (J&K)  
Date, the 14 July, 2008

sd/-  
( R K DUA)  
OFFG COMMANDANT  
91 BATTALION BSF

36. The petitioner was ascribed a statement that he has committed a huge blunder for which he was deeply sorry and that he had already put up an application for proceeding on voluntary retirement and would continue to feel sorry even after going back home and that he be given some less severe punishment.

37. The Offg. Commandant, 91 Bn BSF – Sh. R. K. Dua came forward with the purported verdict from the Summary Security Force Court as well as Sentence of holding the petitioner guilty of both charges and sentenced to be **reduced to the rank of Constable along with forfeiture of Pay and Allowances of three months.**

38. The verdict and the sentence is dated 17.07.2008 which came to be counter signed by Deputy Inspector General, BSF, Jammu on 07.08.2008.

39. The promulgation of the sentences upon the petitioner came to be carried out under rule 159 on 17.07.2008 by Offg. Commandant, 91 Bn BSF.

40. The petitioner came forward with the institution of the present writ petition on 13.07.2009 throwing challenge to the

punishment inflicted upon him and the trial conducted against him on the grounds as set out in para 7(i) to (xi).

41. The petitioner has in fact challenged the entire course of action leading to punishment inflicted upon him against the provisions of the BSF Act and the Rules. The petitioner has, in very categorical terms, questioned the framing of a charge-sheet under Rule 53 of the BSF Rules, 1969 without preparation of any offence report and without any enquiry preceding thereto.

42. The petitioner has stated that no offence report under Rule 43 of BSF Rules, 1969 was prepared in his case which would have resulted in follow-up action under Rule 45. The petitioner has also taken an exception to the change of detailing officer- Sh. Narender Kumar, AC who was first appointed to prepare Record of Evidence (ROE) and in his place substituting Mr. Himanshu Undeyria, Dy. Comdt., 91 Bn BSF, who is alleged to have carried out mechanically Record of Evidence (ROE) exercise without affording the petitioner an opportunity of cross-examining the witnesses and without witnesses being recorded in his presence. The petitioner has also asserted that he did not plead guilty as attributed to him in terms of his trial under Summary Security Force Court. The petitioner has also questioned the competence of Offg. Commandant, 91 Bn BSF - R. K. Dua to act with full authority of the Commandant in terms of BSF Act, 1968 so as to be competent to deal with the delinquent BSF enrolled person as the petitioner was at the relevant point of time.

43. On the other hand, the respondents in their reply have literally drawing support from the proceedings of the case to show that the petitioner was guilty of the misconduct and, therefore, on the basis of Record of Evidence (ROE) as well as the proceedings of Summary Security Force Court the petitioner was found deserving to be punished which as per the discretion of the respondent No. 5 came to be inflicted by demoting the petitioner and directing withholding of his pay and allowance for a given period of time.

44. Now coming to the appraisal of the case on its merits, factual as well as legal, even if it is to be assumed that the petitioner did indulge in the misconduct as reported by SI Prem Chandra Mishra which warranted the petitioner to be dealt with under BSF Act, 1968 and the BSF Rules, 1969, still the legal course of action should have been governed and guided as per the mandate of the BSF Act, 1968 and the BSF Rules, 1969 and not in by loose manner.

45. At the very inception of reporting of alleged misconduct of the petitioner to the respondent No. 5, a plea of guilty came to be attributed to the petitioner by none else than the respondent No. 5 himself as is borne out from appendix-A Form signed by the respondent No. 5 dated 28.06.2008 being the very next day of report dated 27.06.2008 made by the Company Commander-Prem Singh, 'F' Coy, 9Bn BSF whereby the alleged misconduct of the petitioner was reported to the respondent No. 5.

46. If the petitioner was found to be in a state of being guilty by his own reading and finding as recorded by the respondent No. 5 acting upon the plea of guilty purportedly made by the petitioner, then the very purpose of putting the case for Record of Evidence (ROE) and then convening a Summary Security Force Court was nothing but an exercise aimed to act upon a preconceived mind to penalize the petitioner heavily and harshly rather than subjecting him to minor punishments which course of option was first open to the respondent No. 5 in the face of purported plea of guilty so made by the petitioner.

47. It is, thus, a pointer to the fact that the proceedings from the end of the respondent No. 5 was set into effect bearing preconceived and biased mindset with a judgment already made that the petitioner needed to be fixed by tagging plea of guilty to him and the rest of the things in the name of Record of Evidence (ROE) and Summary Security Force Court trial was a matter of going through motions, which cannot be name of a fair trial of a BSF enrolled person.

48. Therefore, this Court finds the proceedings vitiated with said illegality which is further confirmed from the fact that instead of generating offence report in terms of Rule 43 of the BSF Rules, 1969 what was actually generated against the petitioner is a charge-sheet in terms of rule 53 of the BSF Rules, 1969 which legally comes into existence only after a fact finding enquiry in the form of Record of Evidence (ROE) comes to be laid before the

Commandant, thereby *prima-facie* establishing that there is a case for the trial of an accused BSF personnel in which trial he may prove himself innocent of the charge to be framed against him or may suffer conviction but by no stretch of legality and legitimacy a Commandant of Unit of BSF can be heard to say that charge-sheet under rule 53 of BSF Rules, 1969 can substitute offence report envisaged under rule 43. This is the precise situation which has happened in this case that the charge-sheet actually became offence report and, therefore, the cart was put before the horse in the matter of trial of the petitioner.

49. Another vitiating factor is that without anything obtaining on the record of the file produced for the perusal of this court from the end of the respondents relatable to the trial of the petitioner as to what actually led the respondent No. 5 Commandant to change Mr. Narender Kumar, AC first appointed as a detailing officer for preparing Record of Evidence (ROE) by Himanshu Undeyria, Dy. Comdt., 91 Bn BSF. The respondent No. 5 has put in no reasons as to how and why Mr. Narender Kumar, AC for three days of being a detailing officer acted or omitted to prepare Record of Evidence (ROE) in the case.

50. The petitioner is not wrong in his plea that change of Narender Kumar as detailing officer was without any reason and basis and, therefore, the proceedings for preparation of Record of Evidence (ROE) conducted by Himanshu Undeyria, Dy. Comdt., 91 Bn BSF was all an eye-wash in which everything was

attributed to the petitioner in terms of purported admission of the incident with an objective to leave the petitioner defenceless. It is not understandable as to why Mr. Narender Kumar, AC who was first deputed and then removed as a detailing officer was then assigned as a friend of the petitioner in the Summary Security Force Court proceedings.

51. There is no examination of any witness in the Summary Security Force Court proceedings except a direct plea of guilty being attributed to the petitioner and thereupon punishment getting inflicted upon the petitioner by reduction in the rank and stoppage of his pay and allowances.

52. When this Court examines the punishment so inflicted upon the petitioner of reduction of rank from Head Constable to Constable while remaining in the same Battalion, this Court is left to wonder if the petitioner had ventured to indulge in alleged misconduct in rage of being refused leave applied for, then whether the petitioner being demoted in his rank and expected to serve the same battalion or for that matter any other battalion of BSF would be doing it in a good pose and state of mind and that is a pointer to the fact that actual accusation against the petitioner is more than what meets an eye.

53. The Division Bench of the Hon'ble High Court of Delhi in the case of **"Balvinder Singh Vs Union of India & others" 2010 (172) DLT 200** came to deal extensively with the essence of

application of the Border Security Force Act, 1968 and the Border Security Force Rules, 1969 in the context for trial of BSF personnel and held the letter and spirit compliance of the trial provisions obtaining in the Act as well as in the Rules being non-negotiable considering the end purpose and end objective of any given trial against a BSF personnel being put up for trial for act of omission or commission amounting to offence/s as provided in chapter III sections 14 to 47 of the Border Security Force Act, 1968. This Court draws support from the reading of the said judgment with respect to the examination of the facts and circumstances of the present case to hold that the very accusation against the petitioner and the trial based thereupon was a farce without real and truthful projection of facts being there from the very beginning.

54. Even the allegation of injuring SI Prem Chandra Mishra by hitting of stick is not substantiated as a fact as there is no such medical opinion on record reporting the injury as alleged to have been suffered by said SI Prem Chandra Mishra.

55. Cumulative effect of all the aforesaid facts and circumstances of the case would render the very trial of the petitioner vitiated with illegality and, therefore, rendering the punishment inflicted upon him also as an illegality admitting of scope for its judicial review warranting it to be set aside.

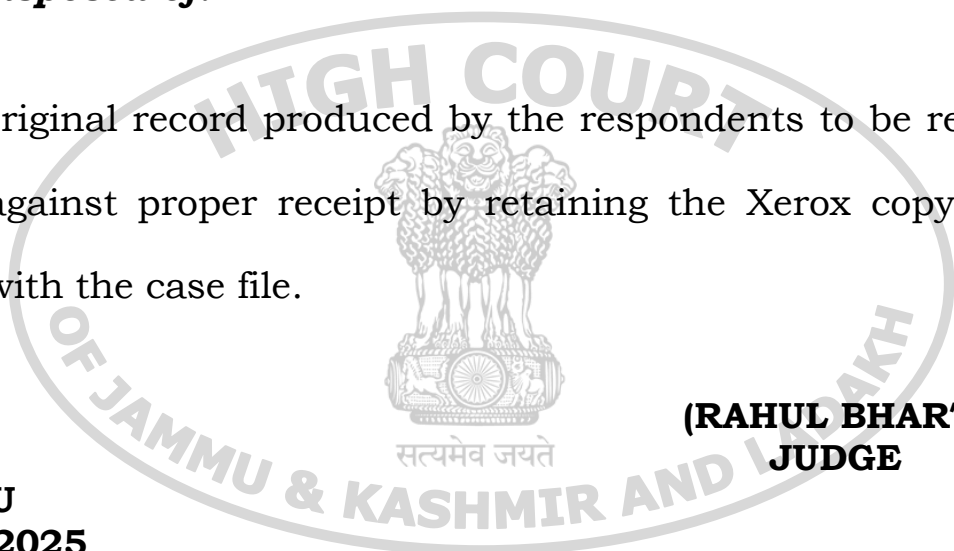
56. The writ petition filed by the petitioner is, thus, **allowed** by setting aside Order No.Estt./613/91 BN/2008/11185-94 dated 17<sup>th</sup> July, 2008 read with consequent confirmation order whatsoever.

57. The petitioner shall be entitled to his reinstatement as Head Constable with effect from 17<sup>th</sup> July, 2008 itself along with the consequent service benefits whatsoever accrued on account of being restored as Head Constable, BSF.

58. **Disposed of.**

59. Original record produced by the respondents to be returned back against proper receipt by retaining the Xerox copy of the same with the case file.

**JAMMU**  
**16.07.2025**  
Muneesh



**(RAHUL BHARTI)**  
**JUDGE**

Whether the judgment is speaking : **Yes**