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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 13th November, 2025
Pronounced on : 17th December, 2025

\+ W.P.(C) 11963/2009

ABDUL RASHID SHEIKH .....Petitioner
Through: Mr. Ankur Chibber & Mr. Anshuman Mehrotra, Advs.

versus

UNION OF INDIA AND ORS .....Respondents
Through: Ms. Barkha Babbar and Mr. Sushmit Mishra, Advs. with Paramveer Singh Law Officer BSF.

\+ W.P.(C) 11983/2009

DWARKA DASS .....Petitioner
Through: Mr. Ankur Chibber, & Mr. Anshuman Mehrotra, Advs.

versus

UNION OF INDIA AND ORS .....Respondents
Through: Ms. Barkha Babbar and Mr. Sushmit Mishra, Advs. with Paramveer Singh Law Officer BSF.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

***Per* DINESH MEHTA, J.**

1. The petitioners, who were Constables in the Border Security Force *(hereinafter referred to as BSF)*, have approached this Court raising grievance *qua* the order dated 01.04.2009 passed by the Director General, BSF, affirming the order on sentence 'To be dismissed from Service' passed by Summary Security Force Court *(hereinafter referred to as SSFC)*

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pursuant to the proceedings conducted between 05.07.2008 to 08.07.2008, countersigned by DIG, SHQ, BSF Behrampore for petitioner Abdul Rashid Sheikh on 25.11.2008, so also for petitioner Dwarka Dass on 26.11.2008, whereby they have been held guilty of misconduct of facilitating the smugglers in smuggling out cattle from the border.

2. Narrated in a nutshell, the facts relevant for the present purposes are that when the petitioners were posted in the 123 Battalion, BSF and deployed at BOP Kanchantar, BOP Peasbari and BOP Subhash, Anurag Saxena, Inspector General, informed that during the intervening night of 19/20.02.2008, a large number of cattle had been smuggled out of India from BOP Peasbari, where three constables, namely, Dwarka Dass, Ranjith Singh KR and Abdul Rashid Sheikh were deployed at Naka nos. 2,3 & 4 respectively, between 12:00 a.m. to 06:00 a.m. on 19/20.02.2008, close to Gate no. 11 of the post.

3. Upon receiving the information, Subedar Umed Singh confronted these personnel who were deployed at the concerned posts at about 11:30 a.m., and out of three constables, one Ranjit Singh, who at the relevant time was posted at Naka No. 3, committed suicide using his service rifle.

4. On 21.02.2008, a Court of inquiry was instituted. On 24.02.2008, the petitioners were heard by the Commandant in terms of Section 40 of the BSF Act, and upon a *prima-facie* finding of a case worth trial, orders for recording evidence were issued.

5. In furtherance of the decisions so taken, on 02.07.2008, the petitioners were charge-sheeted and trial was commenced by the SSFC. During the trial 18 witnesses appeared on behalf of the Prosecution namely, PW-1/Ex-Subedar Umed Singh, PW-2/Subedar Nirmal Singh, PW-3/HC(G) J.

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Hazarika, PW-4/ SI Prem Singh, PW-5/ SH Haresh Seikh, PW-6/ HC Ram Sewak Sharma, PW-7/ Ct Mahadevi Swami, PW-8/HC Ajesh Kumar, PW-9/HC Suresh Kumar Gill, PW-10/ Ct B K Shaw, PW-11/HC N K Garai, PW-12/CT Ganesh Thakur, PW-13/ Ct R Murgain, PW-14/S N Dubey, PW-15/ADI/Min. Rajeev Ranjan, PW-16/R S Kanwar, PW-17/Insp. Anurag Saxena, and PW-18/ ASI/Min. Shakuntala.

6. The petitioners denied all the allegations and charges and produced Ct Shamsher Singh as defence witness. The SSFC concluded the trial on 08.07.2008 and held the petitioner/ Dwarka Dass guilty of the charge I and II, whereas petitioner/ Abdul Rashid Sheikh was held guilty of charge II. The charges framed against the petitioners are reproduced hereinfra:

> *"CHARGE-I (Accused No. 2)*
> *BSF ACT, 1968 SECTION 46*
>
> *COMMITING A CIVIL OFFENCE THAT IS TO SAY CRIMINAL MISCONDUCT FOR HAVING BEEN AS PUBLIC SERVANT IN POSSESSION OF PECUNIARY RESOURCES DISPROPORTIONATE TO HIS KNOWN SOURCE OF INCOME FOR WHICH HE CANNOT SATISFACTORILY ACCOUNT FOR AN OFFENCE SPECIFIED IN SECTION 13(1)(e) OF THE PREVENTION OF CORRUPTION ACT, 1988 PUNISHABLE UNDER SECTION 13(2) OF THE SAID ACT*
>
> *In that he.*
>
> *while deployed at BOP Peasbari when verified his CBS account on 09 Apr' 08 from SBI Farakka, was found to have excess money of Rs. 10,000/- (Rupees Ten Thousand) in his CBS accounts No. 11077476401, SBI Gurdaspur (Pb) and said amount is disproportionate to his known source of income which he could not satisfactorily account for.*
>
> *CHARGE-II (Both Accused)*
>
> *BSF ACT-1968, SECTION-40*
>
> *AN ACT PREJUDICIAL TO GOOD ORDER AND DISCIPLINE OF THE FORCE*
>
> *In that they.*

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in the intervening night of 19/20 Feb 2008 while on Naka duty from 192400 hrs to 200600 hrs in AOR of BOP Peasbari deliberately allowed smugglers to smuggle out a large number of cattle heads (approx 40-50 Nos) to Bangladesh through IBB Fence Gate No. 11."

7. On conclusion of the trial, the SSFC passed a sentence that both the petitioners be dismissed from Service. The SSFC while giving its verdict dated 08.07.2008 took note of the past conduct of the petitioners, who had been awarded following punishments:

(a) Abdul Rashid:-

Within Last 12 Months				**Since Enrollment**		
Date of punishment	Section of Offence	Punishment awarded		Date of punishment	Section of Offence	Punishment awarded
				01.7.96	19(a)	14 days RI in force custody.
Nil				08.2.00	19(b)	Fine equal to 14 days pay.
				19.6.03	40	07 days RI in force custody.
				16.9.05	19(b)	07 days RI in force custody.

(b) Dwarka Dass:-

Within Last 12 Months				**Since Enrollment**		
Date of punishment	Section of Offence	Punishment awarded		Date of punishment	Section of Offence	Punishment awarded
04.12.07	19(b)	14 days pay fine		04.12.07	19(b)	14 days pay fine.

8. The sentence dated 08.07.2008 awarded by SSFC was countersigned by the DIG, SHQ, BSF Behrampore on 25.11.2008 & 26.11.2008. Thereafter, the petitioners filed a petition under Section 117 of the BSF Act before the Director General (DG), BSF challenging the sentence awarded by

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the SSFC. Said petition was dismissed vide order dated 01.04.2009.

9. Learned counsel for the petitioners submitted that the premise for holding the petitioner guilty is essentially the testimony of PW1-Umed Singh and PW2-Nirmal Singh, and if their statements are taken into account, the finding of misconduct, rather guilt, recorded against the petitioner is wholly unsustainable.

10. He submitted that the SSFC has not considered their testimony in true perspective and has recorded the finding of guilt on the basis of conjectures and surmises.

11. It was argued by the learned counsel for the petitioners that the important aspect of the matter is, that the Constable deployed at naka no. 3, Ranjit Singh, had committed suicide after being confronted about passing of the cattle from gate no. 11, which is indicative of the fact that it was Ranjit Singh who was responsible for or who had connived to facilitate smuggling. He argued that the respondents have made the petitioners scapegoats, as they could not do anything against said Ranjit Singh, who was posted at naka no. 3.

12. Learned counsel for the petitioners argued that even if the evidence that has come on record and the finding of SSFC is taken to be correct, then also, what had transpired is, that there existed some hoof marks of the cattle between naka nos. 2 & 3, where the petitioner/Dwarka Dass (naka no. 2) and Ranjit Singh (naka no. 3) were posted.

13. He argued that simply by observing hoof marks, that too, after 12:00 p.m. on the next date, it cannot be said with certitude that the cattle had passed between the period during which the petitioners were guarding the posts. He argued that the petitioners cannot be held guilty of negligence or

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connivance in facilitating the smugglers merely on the basis of this solitary piece of evidence, more particularly when their duty was over at 06:00 a.m. and thereafter other persons were guarding the nakas or posts.

14. It was vehemently argued by learned counsel for the petitioners that a barbed fence is laid at the border between Bangladesh and India, having iron gates at regular intervals and considering that the hoof marks were found between naka no. 2 and 4 up to gate no. 11, which had an iron gate that remained closed with lock and the keys of which were always kept in the '*Kote'* under the charge of Sub-Inspector Prem Singh, it cannot be believed that without the involvement or connivance of said SI Prem Singh who was in charge of the keys, the cattle could ever have crossed the border.

15. Inviting Court's attention towards the testimony of Sub-inspector Prem Singh, PW-4 (at page no. 34), learned counsel pointed out that he had stated that at 08:30 a.m. on 20.02.2008, he found that the seal on the lock placed at gate no. 11 was intact. He highlighted that the finding recorded against the petitioners was untenable inasmuch as the petitioners' (Dwarka Dass and Abdul Rashid Sheikh) duty at naka no. 2 and naka no.4, respectively was over at 06:00 a.m. He added that as a matter of fact Prem Singh who himself was guilty could not have been made a witness in their case.

16. He, in other words, argued that when up to 08:30 a.m., (when the duty changed), the seal at gate no. 11 was found intact, even if it is assumed that the petitioners were negligent or otherwise responsible for allowing the cattle to pass in or around the area of naka no. 2, how could the cattle pass through gate no. 11 from the barbed fence as long as gate was closed and seal remained intact.

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17. Learned counsel submitted that custody of the keys at the '*Kote'* was with Sub-Inspector Prem Singh, who had been made a prosecution witness, and consequently, he had shifted his guilt onto the petitioners. He argued that it is surprising to note that relatively higher ranked officer, Sub-Inspector Prem Singh, who should rather have been held guilty, had been "let go" with a minor penalty of censure, whereas the petitioners have been punished with an extreme penalty of dismissal.

18. Learned counsel for the petitioners while relying on the testimony of PW-8/HC Ajesh Kumar, argued that Sub Inspector Prem Singh admittedly used to handle the keys and opened the gates himself, had directed said witness only to make register entries, thereby placed the entire responsibility for checking the lock and seal on him. Consequently, the petitioners cannot be held liable for any connivance or even lapse, when they admittedly neither opened the gate nor were tasked with verifying the seal.

19. He further submitted that the testimony of PW-9/HC Suresh Kumar Gill clearly establishes that all gates were properly opened, closed, and sealed by him under the supervision of SI Prem Singh, with no cattle movement recorded in the day(s) preceding the incident.

20. Taking the Court through the order of the Disciplinary Authority, namely the DIG, BSF, dated 01.04.2009 learned counsel for the petitioners argued that the same is clearly contrary to law and the Principles of Natural Justice inasmuch as the DG, BSF has cursorily recorded his satisfaction regarding the inquiry conducted by SSFC, and has taken an extreme decision of dismissal from service, though the provision under which the respondent had proceeded was in relation to a minor penalty.

21. He however, fairly accepted the position that Hon'ble the Supreme

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Court in the judgment rendered in **Union of India and Another v. Dinesh Kumar**, reported in (2010) 3 SCC 161 has held that as per Rule 99 and Rule 149 of the BSF Rules, the Summary Security Force Court (SSFC) is not required to furnish reasons during its adjudication process and a declaration of the individual's guilt suffices, and also that, as per Section 48 of the BSF Act, 1968 a major punishment like that of dismissal from service can be awarded by SSFC in respect of offences committed by BSF personnel.

22. *Per contra*, learned counsel for the respondents, Ms. Barkha Babbar, submitted that the petitioners had conspired with the smugglers and had facilitated smuggling of cattle, which is aptly proved by the testimony of PW-4/Prem Singh and PW-16/RS Kanwar. She highlighted the relevant part of the testimony of PW-16 and pointed out that an entry of huge amounts of Rs. 10,000/- and Rs. 35,000/- was found in the account of the petitioners Dwarka Dass and Abdul Rashid Sheikh, respectively. She pointed out that the petitioner-Abdul Rashid Sheikh had given an explanation that said sum was deposited by his brother-in-law, whereas petitioner - Dwarka Dass stated that the amount was given to him by Ct. Shamsher Singh.

23. She further submitted that upon an inquiry conducted from the Airtel office through the Superintendent of Police, Malda, it was found that a number of calls, including long-duration calls, had been made from Abdul Rashid Sheikh's telephone to mobile Nos. 9932841826 and 9933050548, which belonged to local residents.

24. She argued that the petitioner who hailed from another State and therefore, could not have any occasion to talk to the local people on these numbers, which belonged to smugglers.

25. With respect to Prem Singh, learned counsel for the respondent

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submitted that action was taken against Prem Singh as well, and he had been appropriately punished (censure).

26. Learned counsel for the petitioners, in rejoinder, argued that the SSFC had not followed the due procedure as prescribed in Rule 145 and 149 of the BSF Rules and, therefore, the proceedings have thus vitiated. He argued that since the proceedings are not in accordance with law, the conclusion drawn by the SSFC and the impugned order passed by the DIG, BSF dated 08.07.2008 and 01.04.2009 respectively, are liable to be quashed.

27. Heard learned counsel for the parties and perused the record.

28. Before proceeding in the matter, we wish to reiterate that in disciplinary proceedings, more particularly, in the proceedings relating to disciplined force like BSF, the strictness of proof cannot be equated with the level of strictness of proof required in a criminal trial; the conclusion can be drawn on the basis of preponderance of evidence.

29. Though there exist certain flaws in the testimony of the witnesses as pointed out by the petitioners' counsel, Mr. Ankur Chhibber, but the same do not constitute any major discrepancy so as to render the conclusion of the SSFC perverse or untenable in the eyes of law.

30. Regardless of the above, if we consider the testimony of PW-1, PW-2, PW-4/Prem Singh, PW-16 and other witnesses, it is apparent that cattle did cross from gate no. 11 through the area between naka nos. 2 & 3 and the petitioners – Dwarka Dass and Abdul Rashid Sheikh being posted at naka no. 2 and 4, respectively were not supposed to merely guard the post as explained by the respondents. If petitioners were deployed at a naka at the border and were not supposed to stand at a particular point, it was their duty to keep vigil over the area falling between both sides of naka no. 2 and naka

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no. 4, where they were posted. Had they remained vigilant, in our view, 40 – 50 cattle could not have passed through said area. It cannot be believed that such movement would go unnoticed.

31. The petitioners' conduct, therefore, on the basis of the evidence appears to be that of negligent Constables, if not malafide.

32. If their negligence is considered in light of testimony of PW-16, who deposed that pursuant to an inquiry being conducted through the SP, Malda, it has transpired that the petitioner/Abdul Rashid Sheikh had a number of telephonic conversations with two mobile numbers being 9932841826 and 9933050548, belonging to local residents alleged to be smugglers.

33. Moreso, the fact that an unaccounted sum of Rs. 10,000/- was found in the account of Dwarka Dass and a sum of Rs. 35,000/- was found in the account of petitioner-Abdul Rashid Sheikh, raises a doubt. Similarly, petitioner-Abdul Rashid Sheikh's explanation that his brother-in-law had deposited the said amount in his account, is difficult to believe.

34. On overall assessment of the evidence on record, we are of the view that petitioners' negligence if not connivance with the smugglers, is proved. Looking to their past conduct, their dismissal does not warrant any interference.

35. We are of the view that discipline in forces like the BSF and CRPF operates on a markedly higher threshold. The view has been affirmed by Hon'ble the Supreme Court in the case of **Union of India vs. Ex. Constable Ram Karan,** reported in **2022 (1) SCC 373** which makes it clear that what may be a major penalty ordinarily is statutorily treated as a minor punishment in disciplined forces reflecting the legislature's intent that grave or sensitive misconduct by personnel demands far stricter response**.**

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36. Though the petitioners' counsel has argued that at 08:30 a.m. the seal of the gate was found intact as per the testimony of PW4-Prem Singh, the same, in our view, could have been an attempt by said Prem Singh to save his skin, who according to us, could not have been exonerated as has been done by the SSFC. According to us, but for involvement of said Prem Singh, the smuggling of the cattle could not have been possible.

37. In the absence of Prem Singh having been proceeded against appropriately, we are conscious that we ought not to record a finding. But we cannot leave the matter without making an observation. The observation so made shall not be treated as a finding against said Prem Singh, but we shall be failing in our duties if we do not express our concern about the manner in which said Prem Singh has been practically exonerated and punished with a minor penalty, that too of censure, when he was the in-charge of the keys being deployed at the relevant *kote*. However, since a period of 17 years has passed, we do not propose to issue any direction qua Prem Singh.

38. In view of the foregoing discussion, both the petitions are dismissed.

DINESH MEHTA
(JUDGE)

VIMAL KUMAR YADAV
(JUDGE)

DECEMBER 17, 2025/*nk*

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