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

+ **W.P.(C) 22193/2005 and CM APPL. 51908-09/2019**

KALASH CHANDER

..... Petitioner

Through: Mr. R.N. Pareek, Advocate.

versus

UNION OF INDIA THR. DG BSF

..... Respondent

Through: Ms. Barkha Babbar, Advocate.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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26.02.2020

CM APPL. 51908/2019 (for restoration) & CM APPL. 51909/2019 (for condonation of Delay):

1. The writ petition was filed on 13th September, 2005. Rule was issued on 17th May, 2007. None appeared for the Petitioner when the matter was reflected in the regular cause list during the week commencing from 20th January, 2016, so by an order dated 29th January, 2016, the writ petition was dismissed in default and for non-prosecution.

2. An application for restoration of the writ petition bearing CM APPL. 51908/2019 was filed on 15th November, 2019 along with CM APPL. 51909/2019 seeking condonation of delay in filing the restoration application. In the said application, i.e. CM APPL. 51909/2019, the ground for delay has been explained as being acute illness of the Petitioner and his

family members, as well as financial hardships, that prevented him from approaching his counsel. The application further stated, that even the counsel of the Petitioner had suffered a wrist fracture in his right hand and was unable to perform Court activities.

3. Although, the application for restoration was delayed by 1440 days, keeping in view the larger interest of justice, the delay is condoned and the application for restoration is allowed. The writ petition is restored to its original number. Both the applications are disposed of.

W.P. (C) No.22193/2005

4. The present petition was filed by the Petitioner challenging the final order dated 21st April, 2005, passed by the Directorate General, Border Security Force ('BSF') whereby the appeal of the Petitioner against an order dated 16th September, 2004 dismissing him from service was rejected.

5. In brief, the facts as narrated in the writ petition are that the Petitioner was posted with 'G' Company, 122 Battalion of BSF and was stationed at Raninagar, Jalpaiguri (West Bengal) at the India-Bangladesh Border. On 8th September, 2004, he was granted permission to visit Mekhliganj for six hours to make a telephone call to his home. As per the Petitioner, at around 16:15 hours IST, he inadvertently crossed the International border near BP No, 842/2-S into Bangladesh at Village Burimari and was apprehended by the villagers in Bangladesh who handed him over to the Bangladesh Rifles. It was alleged, that the Petitioner at that time was heavily drunk and picked up a quarrel with the villagers on the other side of the border. Later on, the

Petitioner was handed over to the BSF by Bangladesh Rifles during a Commandant level flag meeting. On 9th September, 2004, the BSF initiated disciplinary proceedings against the Petitioner and he was immediately suspended and placed under “close arrest”. By an order dated 4th September, 2004, Shri A.K. Yadav, Deputy Commandant, was directed to conduct Record of Evidence (‘ROE’) against the Petitioner.

6. From 10th September, 2004 to 13th September, 2004, seven witnesses were examined and their evidences were recorded during the ROE. On 14th September, 2004, charge-sheet was issued to the Petitioner containing the following charges:

“CHARGE SHEET

The accused No. 95911006 Const. Kalash Chander ‘G’ Coy of 122 Bn BSF is charged with

FIRST CHARGE BSF ACT 1968 SEC-40	AN ACT PREJUDICIAL TO GOOD ORDER AND DISCIPLINE OF THE FORCE In that he, On 08 Sep 04 while he was permitted to visit Mekhliganj town for making civil call to his home by his Coy Comdr Sh. Anupam Kumar, AC. He further went to Changrabanda without proper authority.
SECOND CHARGE BSF ACT 1968	INTOXICATION In that he, at about 081300 hrs consumed illicit

SEC-26	liquor at Changrabanda and was intoxicated
THIRD CHARGE BSF ACT 1968 SEC -19 (f)	WHEN IN CAMP BEING FOUND IN A PLACE PROHIBITED BY A UNIT ORDER WITHOUT A PASS In that he At about 081645 hrs inadvertently crossed over the IB near BP No. 842/2-S into Bangladesh Village Burimari where quarrelled with BD locals resulting in apprehension by the BDR of BOP Burimari

Place: Raninagar, Jalpaiguri

Dated: 14 September, 2004

Sd/-14.9.04.
(R.S. NEGI)
COMMANDANT
122 BN BSF”

7. On 16th September, 2004, the Commandant ordered disciplinary proceedings against the Petitioner, who was placed under “open arrest with immediate effect”. However, by an order passed on the same date, his suspension was revoked. On 15th December, 2004, the Commandant passed an order to the effect that the Petitioner had been held guilty of all the charges by the Summary Security Force Court (‘SSFC’) and he was ordered to undergo a sentence of rigorous imprisonment for six months in civil prison and was further ordered to be dismissed from service. The Petitioner

submitted his appeal to the Deputy Inspector General ('DIG'), BSF. On 20th April, 2005, the Competent Authority was pleased to provide relief to the Petitioner by remitting the punishment of six months rigorous imprisonment in civil prison. By the same order, his dismissal from service was upheld. Hence, the Petitioner has filed the present writ petition.

8. Notice in this case was issued on 23rd November, 2005 which was confined only to the quantum of punishment. Counter affidavit was filed by the Respondent.

9. The Court has heard the arguments of learned counsel for the parties. The case of the Petitioner has been detailed hereinabove.

10. The contention of the Respondents is that "on 8th September, 2004 at about 8:10 hours, the Petitioner was permitted to visit Mekhliganj town for making a telephone call to his home". He further went to Changrabandha without proper authority which is about 10-12 kilometres away from Mekhliganj. The Petitioner consumed illicit liquor there and got intoxicated and thereafter, he inadvertently crossed over the International border into Bangladesh and quarrelled with the locals and was apprehended by the Bangladesh Rifles. Later on, he was handed over to the BSF by Bangladesh Rifles "by holding a Commandant Level Flag meeting". That accordingly, the ROE was conducted against the Petitioner wherein, *prima facie*, offences under Sections 40, 26 and 19 (f) of the BSF Act, 1968 were made out and charges were framed against him. Further, the Commandant had ordered a SSFC trial of the Petitioner on 14th September, 2004. The said trial was held

at the Battalion Headquarter Raninagar, Jalpaiguri (West Bengal) on 16th September, 2004. Accordingly, the SSFC found him guilty of all the charges and awarded a sentence “to suffer rigorous imprisonment for six months in civil jail and to be dismissed from service”.

11. Consequent upon reviewing of the SSFC proceedings, the Deputy Inspector General (BSF), Jalpaiguri being the Reviewing Authority, commuted the punishment awarded by SSFC to suffer rigour imprisonment for six months in civil prison and to be dismissed from service. The sentence commuted by the reviewing officer was re-promulgated on 15th December, 2004 and the Petitioner was struck off from the strength of the force with effect from 16th September, 2004, the day when SSFC had passed the order of dismissal from service. The Director General (BSF) did not find any reason to intervene and, therefore, rejected the petition of the Petitioner by an order dated 20th April, 2005.

12. Today, during the arguments before the Court, learned Counsel for the Petitioner has not come up with any reasonable explanation to counter all the three charges under which he was found guilty or to justify his prayer for leniency in sentence. There was no cause or occasion for the Petitioner to visit Changrabandha without proper authority as he had only permission to visit Mekhliganj town for making a telephone call to his home and Changrabandha was about 10-12 kms away from Mekhliganj. Further, he consumed illicit liquor at Changrabandha and was in an intoxicated condition. Thereafter, he crossed over the international border near border post no. 842/2-S into Bangladesh village Burimari and quarrelled with the

local people from Bangladesh and ultimately, he was apprehended by Bangladesh Rifles. All the three offences are quite serious. Even in the past, the Petitioner was visited by two penalties for being found in an intoxicated condition and for absenting without leave.

13. Keeping in view the nature of the offences committed by the Petitioner, his past track record, and the seriousness of the charges proved against him, there is no occasion for this court to interfere with the quantum of punishment being the order of dismissal from service, passed against the Petitioner.

14. The writ petition is without any merit and the same is hereby dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

FEBRUARY 26, 2020/nk