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

Date of Decision: 1st December, 2021

+ **W.P.(C) 13572/2021**

GUDDU KUMAR Petitioner
Through Ms. Saahila Lamba, Advocate

versus

UNION OF INDIA & ORS. Respondents
Through Mr. V.N. Goyal, Advocate

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed by the petitioner challenging the order dated 29.12.2020 passed by the Commandant 148 BN, Border Security Force (hereinafter referred to as 'BSF'), directing the dismissal of the petitioner from service; the order dated 13.04.2021 passed by the respondent no. 3, dismissing the representation of the petitioner against the above order of removal from service; and the order dated 09.06.2021 passed by the respondent no. 2 wherein the representation of the petitioner for setting aside the impugned order dated 29.12.2021 was again dismissed on the ground that under Section 117 of the Border Security Force Act, 1968 (hereinafter referred to as the 'Act') read with Rule 167(2) of the Border Security

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Force Rules, 1969 (hereinafter referred to as the 'Rules'), a person aggrieved by any order passed by the Summary Security Force Court (hereinafter referred to as 'SSFC') can present only one petition to any of the officers mentioned in Section 117 of the Act and since the petitioner had already availed said opportunity by submitting a statutory petition to the respondent no. 3 which was duly considered, there is no provision to entertain another representation in the same regard.

2. It is the case of the petitioner that a hearing under Rules 45/45A/45B of the Rules was conducted against the petitioner on 18.12.2021 on six charges viz. (i) on 16.12.2020 at about 1845 hours while on duty the petitioner was found in a state of intoxication; (ii) on 16.12.2020 at about 1845 hours while on duty the petitioner misbehaved and abused Insp/Offg Coy Commander Sunil Yadav; (iii) on 16.12.2020 at about 1845 hours while on duty the petitioner used threatening language against Const/GD P M Rao; (iv) on 16.12.2020 at about 1845 hours while on duty the petitioner was found in unauthorized possession of a pouch of 180 ml Officer Choice whiskey; (v) on 16.12.2020 at about 1845 hours while on duty the petitioner was found in possession of mobile phone which is against the instructions and (vi) on 16.12.2020 at about 2130 hours while on duty the petitioner refused to sit in the ambulance for proceeding for his medical test despite order by SI Ganpat Lal to do so. The charges so framed were corroborated by six witnesses and vide order dated

18.12.2020, a Record of Evidence was directed to be prepared against the petitioner.

3. On 29.12.2020, after the preparation of the Record of Evidence, the SSFC was conducted against the petitioner wherein he was found guilty on all six of the aforementioned charges. The petitioner is alleged to have admitted to being guilty of the six charges hence, the order of dismissal from service was passed.

4. The learned counsel for the petitioner submits that the petitioner was forced to enter plea of guilty on the six charges against him and on the basis of this forced plea of guilt entered by the petitioner, the SSFC held the petitioner to be guilty of the charges framed against him without recording any evidence whatsoever and awarded the sentence of dismissal from service to the petitioner. She further submits that the petitioner did put on record his version of the events by admitting to consuming liquor on 16.12.2020 as he claimed to be under duress due to his father's hospitalization and was not aware of what happened. The learned counsel for the petitioner contends that this admission is only with respect to the first charge framed against the petitioner, that is, intoxication, and not *qua* the remaining five charges. Placing reliance on the judgment dated 11.07.2011 of this court in ***Ashok Kumar v. DG. BSF & Ors. (W.P. (C) 2145/1998)*** she submits that the petitioner was suffering from mental tension and therefore, deserved leniency. She submits that the punishment of dismissal from service is therefore, disproportionate.

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5. We have considered the submissions made by the learned counsel for the petitioner and find no merit in the same.

6. The charges found against the petitioner to be proved is that while being deputed on duty on 16.12.2020, the petitioner was found to be under the influence of alcohol and used threatening and insubordinate language to his superior officers. The above charges framed against the petitioner are extremely grave. The same clearly reflect gross indiscipline on part of the petitioner. The petitioner is a member of a disciplined force and was found to be indulging in these activities while being on duty. Moreover, we find no merit in the argument by the learned counsel of the petitioner that the admission of guilt was forced as the petitioner has appended his signature on the proceeding sheet. The proceeding sheet also records that the petitioner was warned of the repercussion of such admission. The said proceedings are dated 29.12.2020 and surely the petitioner understood the same.

7. In *Union of India & Ors. vs. Diler Singh*, (2016) 13 SCC 71, the Supreme Court has held that unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court, there is no scope for interference. When a member of the disciplined force deviates to such an extent from the discipline, it is difficult to hold that punishment of dismissal is disproportionate or shocking to the judicial conscience.

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8. In *Union of India & Ors. vs. Lt. Col. Kuldeep*, (2019) 10 SCC 449, the Supreme Court reiterated that though the Tribunal/Court is competent and empowered to interfere with the punishment awarded by the appropriate authority in any departmental action on the ground of the same being excessive or disproportionate to the misconduct proved against the delinquent officer, however, exercise of such power is circumscribed and can be invoked only in exceptional and rare cases, when the punishment awarded by the Disciplinary Authority shocks the conscience of the Tribunal/Court or is so unreasonable that no reasonable person could have taken such an action. The Tribunal/Court cannot act as a court of appeal and substitute its own view and findings by replacing the subjective satisfaction arrived at by the competent authority in the backdrop of the evidence on record.

9. In the present case, as noted hereinabove, the charges against the petitioner are of grave nature and we do not find the penalty imposed on the petitioner to be disproportionate.

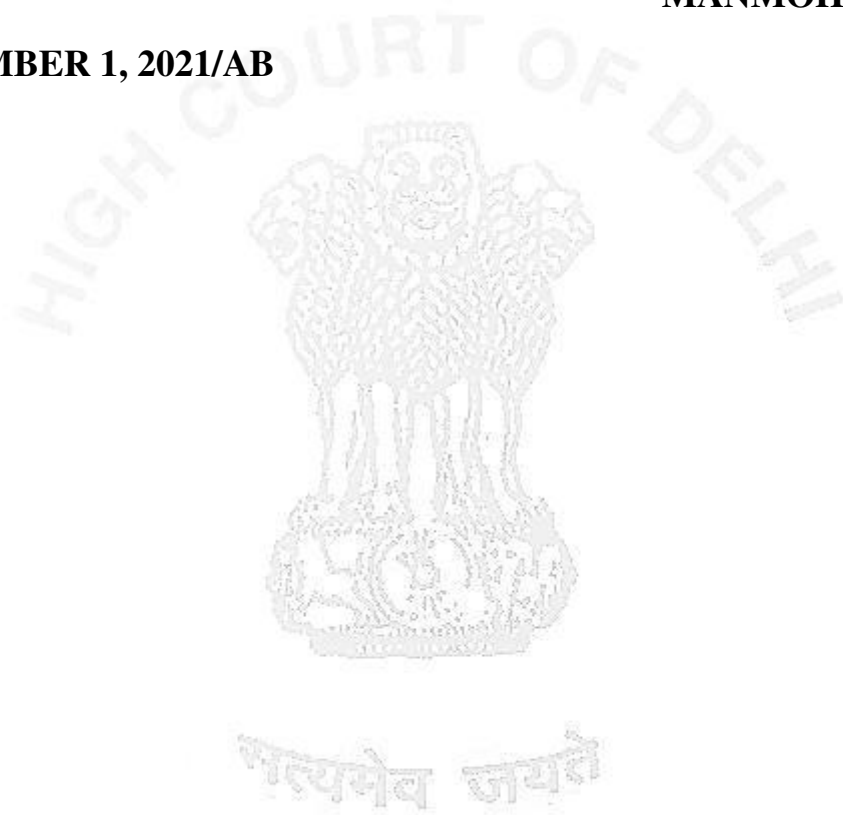
10. The observation of this court in *Ashok Kumar (supra)* cannot be considered as having laid down as a rule that in every case where an officer of Armed Force is found to be intoxicated on duty and indulging in unruly behavior, he would deserve leniency.

11. We, therefore, find no merit in the present petition. The same is dismissed. There shall be no order as to cost.

NAVIN CHAWLA, J

MANMOHAN, J

DECEMBER 1, 2021/AB



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