

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. No. 2348 of 2021
Rajeev Kumar Hembram
VS
The Union of India & Ors.

Before : The Hon'ble Justice M.V. Muralidaran

Mr. Jagrin Mishra,

Mr. S. K. Dhar,

Mr. Asit Kumar Das,

Ms. Ananya Bhattacharya,

Ms. Mrinmoyee Das,

----- for the petitioner.

Mr. Sudipto Kumar Mazumder, Ld. DSGI,

Mr. Ajoy Kumar Singhanian,

Mr. Sourab Kar,

----- for the Union of India.

Hearing concluded on :

10.01.2024

Judgment On :

30.01.2024

M.V. Muralidaran, J.:

This writ petition has been filed by the petitioner to quash the impugned order of removal from service dated 23.6.2020 and the order of the appellate authority dated 11.1.2021 and to reinstate the petitioner into service.

2. Brief facts which led to the filing of the writ petition are as follows:

The petitioner was serving with Sashastra Seema Bal (SSB) since 13.06.2012 up to 23.06.2020 in a post of Constable (General Duty) i.e. CT (GD). The petitioner had an unblemished record for 8 years from the date of his joining till 23.06.2020. On 13.07.2018, the petitioner was performing sentry duty at RP Gate - 1 at 41st Battalion (Bn.), SSB Ranidanga diligently. His duty hours was from 0600 hrs to 0900 hrs and, at about 0854 hrs, he took out his mobile phone to talk with the next personnel who was to take over the charge. The mobile phone was seized

by the duty officer JCO ASI (GD) on the spot at the fag end of the duty hours at around 0855 hrs.

2.1. It was further alleged against the petitioner that he altercated and had also cocked his rifle during duty hours in the course of such altercation. However, no pint of allegation ever pontificated that the petitioner had either pointed the rifle against anybody or fired any bullet. In view of the false and concocted accusation raised against the petitioner, he was immediately suspended from duty. Through convening order dated 17.06.2018, the Court of Inquiry (COI) was conducted and submitted a report on 23.07.2018. Thereafter, respondent No.6 prepared a chargesheet under Section 22 of the SSB Act, 2007 and further detailed respondent No.8 to prepare the Record of Evidence (ROE), which was duly submitted on 03.10.2018.

2.2. In furtherance to ROE proceedings, respondent No.6 ordered a Summary Force Court (SFC) which was held on 11.02.2019 and was tried and the petitioner found guilty of the charge and awarded punishment to undergo imprisonment for 40 days. After lapse of almost a year respondent No.5 came up with an order dated 14.02.2020 and further was pleased to annul the SFC trial proceedings holding that the same was

illegal and the order passed was incongruous to the evidence adduced on record. By a letter dated 31.03.2020 addressed to respondent No.11, respondent No.8 sought for legal opinion regarding further course of action since the prior trial was annulled by respondent No.5. Respondent No.11 responded his instruction on 18.04.2020 stating that Bn. to take action as per direction of DIG, SHQ Ranidanga and must complete the proceeding immediately.

2.3. In furtherance to the order dated 14.02.2020 passed by respondent No.5 and after receiving instruction dated 18.04.2020 of respondent No.11, respondent No.10 framed an opinion and was further pleased to pass an order stating that the punishment of 40 days imprisonment awarded to the petitioner, for which the petitioner has already suffered incarceration, will be treated as duty for all purposes. However, with utter dismay, respondent No.6 came up with a fresh charge sheet dated 19.05.2020 lampooning upon the same set of allegations with new charges under Section 44(c) i.e., Miscellaneous Offences along with Section 43, i.e., violation of good order and discipline. Respondent No.6 vide his order dated 06.06.2020 again called upon for SFC on 23.06.2020 in respect of the self-same allegations upon which the earlier SFC trial proceedings were held and the petitioner was convicted. That

the second SFC trial also got concluded on 23.06.2020, wherein the petitioner was yet again found guilty under Section 44(c) and Section 43 of the SSB Act, 2007 and awarded punishment for dismissal from services under Section 51 (1) (c) of the SSB Act, 2007.

2.4. Being aggrieved by the impugned order dated 23.06.2020 passed by the SFC Trial Court by holding the second trial, the petitioner preferred an appeal before respondent No.4. The said appeal was rejected and the Appellate Authority upheld the decision and the findings of the SFC trial vide order dated 11.01.2021. In view of the facts and circumstances mentioned above and in view of the fact that the respondents have acted with mala fide, calibrated designs in a highly sensitive issue conducting ROE, COI, SFC in most arbitrary and capricious manner in complete aberration of law and in violation of principles of natural justice, the petitioner has approached this Court by filing the present writ petition seeking indulgence to quash the SFC trial proceedings and the appellate order with a prayer to reinstate the petitioner into service.

3. Refuting the averments made in the writ petition, the respondents filed affidavit-in-opposition stating that the petitioner joined

SSB on 13.06.2012 at 42nd Bn. SSB, Almora and was posted at 41st Bn. SSB, Ranidangaw.e.f. 29.01.2013 to till the dismissal from service on 23.06.2020. While the petitioner was performing sentry duty at R.P. Gate No. 01 of 41st Bn.SSB, Ranidanga on 13.07.2018 from 0600 hrs to 0900 hrs, he was using his personal mobile phone during duty hours in the sentry post, which is in contravention to order and directions issued time and again by the senior officers as observed by the duty S.O. UIN 14120079 ASI (GD) Partha Bhattacharya. The duty S.O. Partha Bhattacharya took his mobile phone in the presence of duty NCO UIN 14070789 HC(GD) Munna Singh and Guard Commander of R.P. Gate No. 01 UIN 13030102 HC(GD) Sanjib Dey on the said day. The duty S.O. made an entry in the duty register to this effect and moved away from the sentry post along with duty NCO and Guard Commander.

3.1. It is further stated that when the duty S.O., the duty NCO and Guard Commander had moved away about 10 steps from the sentry post, the petitioner came from behind and asked duty S.O. to return his mobile phone. The duty S.O. apprised him that his mobile phone will be returned through office. Suddenly, the petitioner went to the sentry post and cocked his service rifle intentionally. After hearing the sound of cocking rifle, the duty S.O. immediately rushed to the sentry post and took his

service rifle from him along with live ammunitions with the help of duty NCO and Guard Commander.

3.2. It is stated that pointing the weapon towards a target and cocking the weapon reflects the readiness of individual to fire. In basic training also where Drill Practice (DP) weapon is used and trainees are taught not to point weapon to anybody. There was no reason for the petitioner to cock his weapon. Based upon the complaint made by the duty S.O. ASI (GD) Partha Bhattacharjee, the disciplinary authority had placed the petitioner under suspension w.e.f. 17.07.2018 in terms of sub rule (1) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 read with Rule 41 (1) of the SSB Rules, 2009 vide order of the 41st Bn. SSB, Ranidanga dated 17.07.2018.

3.3. It is further stated that the Dy. Inspector General, SHQ, SSB, Ranidanga/Reviewing Authority received the Summary Force Court (SFC) proceedings along with charge sheet, COI proceedings and ROE proceedings in respect of the petitioner through the Addl. JAG, Frontier Hqrs SSB, Siliguri for review. On the basis of the evidence on record, the Reviewing Authority had "annulled" the SFC trial proceedings in terms of Section 132 of the SSB Act, 2007 vide order dated 14.2.2020 with remarks that the disciplinary authority has not appreciated the facts of

the case in totality and the punishment awarded to the petitioner was not commensurate with the gravity of the offence. The Commandant, 41 Bn.SSB, Ranidanga, being the disciplinary authority, vide order dated 04.05.2020, cancelled the punishment for "Imprisonment in Force custody for 40 days" awarded to the petitioner and the entire period of punishment availed by the petitioner w.e.f. 11.02.2019 to 22.03.2019 was treated as duty for all purposes. The petitioner was paid all the benefits, including pay and allowances for the said period. Subsequently the entire period of punishment availed by the petitioner w.e.f. 11.02.2019 to 22.03.2019 was treated as duty for all purposes. The petitioner was paid all the benefits including pay and allowances for those 40 days.

3.4. It is stated that as per provision of SSB Act and Rules an order to convene a SFC against the petitioner scheduled to be held at 41st Bn. SSB, Ranidanga on 23.06.2020 from 1100 hrs was issued by the Commandant, 41st Bn. SSB, Ranidanga and in terms of Rule 135 of the SSB Rules, 2009, the Commandant, 41st Bn. SSB Ranidanga vide Memorandum dated 18.06.2020 had issued a notice and served upon the petitioner along with copy of ROE proceedings and charge sheet under Section 44 (c) 'Miscellaneous offences' and Section 43 Violation of good

order and discipline' of the SSB Act, 2007 before 24 hours with intended date of SFC on 23.06.2020 from 1100 hours. Therefore, the question of second convening order, charge sheet or punishment does not arise at all. The authority had performed his duties as per the provisions of SSB Act and Rules and the same is valid, effective in the eye of law and sustainable.

3.5. It is further stated that the SFC trial conducted on 23.06.2020 from 1100 hrs at 41st Bn. SSB, Ranidanga against the petitioner and the petitioner was found "Guilty" of both the charges framed against him under Section 44 (c) 'Miscellaneous offences' and Section 43 'Violation of good order and discipline' of the SSB Act, 2007. The Court having found the petitioner 'Guilty' of both the charges and awarded punishment of "Dismissal from Service" in terms of the Section 51(1) (c) of SSB Act, 2007 with liberty to prefer an appeal to the Appellate Authority from the date of order. The petitioner had preferred an appeal to the Inspector General, Frontier Hqrs SSB, Siliguri dated 17.09.2020 against the order of 'Dismissal from Service' passed by the Commandant, 41 Bn. SSB Ranidanga. The Appellate Authority had considered the facts of the case in totality and the ground preferred in the appeal by the petitioner and rejected the appeal as devoid of any merit. The Appellate Authority has

expressed its view and categorically mentioned that the issue pertains to security of Force personnel and that too when troops are on duty all time with charged weapon, it is highly inappropriate that a person cocks rifle and due to some technical flaw in proceedings, he cannot be considered for retention in service. As life of all troops depends on a sentry and if he starts behaving in such disorderly manner leading to life threat to all personnel as well as to his own, he cannot be considered as a disciplined member of the Force. Accordingly, the Inspector General, Frontier Hqrs SSB, Siliguri, being Appellate Authority, vide order dated 11.01.2021, had rejected the appeal of the petitioner being devoid of merit and upholds the decision of 'dismissal from service'.

3.6. It is stated that all facts and/or incidents of the present case, and all procedure prescribed in the Act and Rules was followed in every stage of the proceedings. The respondent authorities given all opportunities to the petitioner which are available for him in the Act and Rules. All the grounds taken by the petitioner are incorrect, baseless, misconceived, misleading. The whole proceedings were exercised under the provisions of Act after considering COI, ROE and fair SFC trial with judicial mind. No legal or statutory right of the petitioner has been

violated by the respondents and therefore writ petition is liable to be dismissed.

4. Assailing the impugned order, the learned counsel for the petitioner, *inter alia*, submitted that the annulment of the first proceeding was bad in law. Drawing attention to Chapter 9 (Confirmation and Revision of Proceeding) of the SSB Act, 2007, the learned counsel submitted that the finding and sentence of a SFC is not required to be confirmed. A joint reading of Section 128 and 129 would show that upon transmission there are only two consequences that follows:

- (1) Either the proceeding may be set aside, or
- (2) The sentence may be reduced both such consequences are in favour of the delinquent employee.

Therefore, Section 132 of the Act would not have been resorted to in case of finding and sentence by SFC. Even otherwise, it is the Central Government, Director General or any prescribed officer who could have only annulled the proceeding under Section 132 of the Act.

5. The learned counsel for the petitioner would submit that in the case of the petitioner the annulment was done by an Officer not authorized to do so as per Rule 185 of the Rules. Therefore, the

annulment was bad in law. The question of challenging such annulment at that point of time does not arise because the petitioner has already completed the 40 days of imprisonment in Force custody and it is a pure question of jurisdiction, which can be challenged at any point of time. Even otherwise, the Appellate Authority has relied upon the annulment in its appellate order and, therefore, all previous orders of conversion of Force custody and annulment merges with the Appellate Authority order and has to be challenged before the writ court. Even otherwise, the petitioner had challenged such cancellation of punishment in his appeal preferred before the Appellate Authority, but the same was not decided.

6. The learned counsel further submitted that the conversion of 40 days imprisonment in Force custody as on duty was bad in law. In support, the learned counsel drew the attention of this Court to Chapter 10 of the SSB Act, 2007 which deals with execution of the sentence and the confinement in Force custody in the unit of the Bn. does not exceed three months. There is no difference between confinement in civil prison and in Force custody and the nature and purport of both are same. A delinquent imprisoned in Force custody is a punishment and cannot be counted to be in active duty.

7. The learned counsel further submitted that Section 135 of the Act says that Force custody and confinement in civil prison are one and the same and does not distinguish between the two. Once the petitioner has already completed the 40 days imprisonment in Force custody, his punishment stood served and that could not have been treated as active duty. Therefore, the foundation of the second charge sheet by converting the 40 days imprisonment in Force custody as an active duty is bad in law. The jurisdiction is not created by acquiescence or waiver. The jurisdiction cannot be created by an agreement nor can be taken away by agreement of the parties. The jurisdiction is inherent in nature. If the authority lacks jurisdiction, it goes into the root of the matter and acquiescence and waiver cannot create jurisdiction if the authority has none. Therefore, the second charge sheet and the SFC proceedings, including the confirmation thereto by the statutory Appellate Authority are bad in law.

8. The learned counsel for the petitioner next submitted that the authorities were acted under the dictation and, therefore, the proceeding is bad in law. According to the learned counsel, the Commanding Officer is the only officer who is the decision-making authority once the ROE has been prepared and forwarded to him to take decision regarding a

delinquent employee in his Bn. As per Rule 54 of the SSB Rules, it is the Commanding Officer who has to apply his mind and frame an opinion after going through the record regarding the next course of action against any officer of his Bn. As per Rule 54(2), it is the Commanding Officer who has to proceed with the ROE proceedings and take it to its logical conclusion. He may remand, dismiss, rehear, try or order the conveying of the Court. However, such decision has to be taken by him independently based upon the available record.

9. The learned counsel then submitted that the statutory Rules do not provide for any remote scope of any third-party intervention between the delinquent employee of the Bn. and the Commanding Officer of the Bn. being the disciplinary authority. The act of the Commanding Officer seeking legal opinion was bad in law. The office of the JAG should have informed the Commanding Officer that as per law, it is only the Commanding Officer who has to decide and that too without being influenced by any other authority. Seeking of legal opinion and the legal opinion itself were both bad in law. According to the learned counsel, the Commanding Officer acted in contravention of Rule 54. The JAG which is like a Legal Department for the SSB should have informed the Commanding Officer that he is the person authorized to take a decision

and that too without being influenced by any observation of the Appellate/Superior/Revisional Authority. Arguing so, the learned counsel prayed for setting aside the order of the SFC trial dated 23.06.2020 and order of the Appellate Authority dated 11.01.2021 and after setting aside, the petitioner may be reinstated in duty along with back wages and interest.

10. Per contra, the learned Deputy Solicitor General appearing for the respondents submitted that the Dy. Inspector General, Sector Headquarters SSB, Ranidanga/Reviewing Authority had received the SFC proceedings alongwith charge sheet, COI reports and ROE proceedings in respect of the disciplinary case of the petitioner through Addl. JAG, Frontier Hqrs SSB, Siliguri for review. On the basis of the evidence on record, the Reviewing Authority and also being the Commanding Officer of Sector Headquarters under Rule 185 of SSB Rules 2009, "annulled" the SFC trial proceedings in terms of Section 132 of the SSB Act, 2007 with remarks that the disciplinary authority has not appreciated the facts of the case and the punishment awarded to the petitioner was not commensurate with the gravity of the offence.

11. The learned Deputy Solicitor General further submitted that the petitioner himself in his evidence stated that he had a problem at his home and due to which, he wanted to commit suicide". The witness No.1 qua Question No.37 - Did the sentry take cover of the domestic problem whereas he had some other intention while he cocked the rifle, the answer from the mouth of the witness No.1 is to the effect that when he asked him about the reason of cocking the rifle, he replied that he has a domestic problem and due to which he will commit suicide."

12. The learned Deputy Solicitor General would submit that the earlier SFC was conducted on the charge under Section 22 of the SSB Act i.e., striking or threatening superior officer, however, the charge of attempt to commit suicide is covered separately under the heading of Miscellaneous Offences under section 44(c) i.e. attempt to commit suicide, and, in such, the attempt does any act, towards the commission of such offence. Therefore, the earlier proceedings based on wrong charges was annulled. The Commandant, 41 Bn. SSB, Ranidanga being disciplinary authority, vide order dated 04.05.2020, cancelled the punishment for "Imprisonment in Force custody for 40 days awarded to the petitioner and the entire period of punishment availed by the petitioner w.e.f. 11.02.2019 to 22.03.2019 was treated as duty for all

purposes. The petitioner was paid all the benefits including pay and allowances during the said period. The petitioner never challenged the order of annulment of the proceedings as per the power vested in Section 132 of the SSB Act by the Deputy Inspector General, Sector Headquarters, SSB Ranidanga and as per Rule 185 of the SSB Rules, 2009. If any person did not challenge and/or not aggrieved by the initial order, then he cannot be permitted to challenge the subsequent proceedings.

13. The learned Deputy Solicitor General then submitted that in terms of Rule 135 of the SSB Rules, 2009, the Commandant, 41 Bn. SSB Ranidanga being disciplinary authority, vide Memorandum dated 18.06.2020, had issued a notice and served to the petitioner alongwith copy of ROE proceedings and charge sheet under Section 44 (c) 'Miscellaneous offences' and Section 43 Violation of good order and discipline' of the SSB Act, 2007 before 24 hours with intended date of SFC on 23.06.2020 from 1100 hours.

14. According to the learned Deputy Solicitor General, the SFC trial was conducted on 23.06.2020 from 1100 hrs at 41 Bn. SSB, Ranidanga against the petitioner and the petitioner was found guilty of both the

charges framed against him under Section 44 (c) 'Miscellaneous offences' and Section 43 Violation of good order and discipline' of the SSB Act, 2007. The Court having found the petitioner guilty of the charges awarded punishment of dismissed from service in terms of the Section 51(1) (c) of SSB Act, 2007 with liberty to prefer an appeal to the Appellate Authority from the date of promulgation vide order dated 23.06.2020. The findings and sentence of the Court were promulgated to the petitioner on 23.06.2020 and, accordingly, the petitioner was struck off from the strength of 41 Bn. SSB, Ranidanga w.e.f. 23.06.2020 AN vide order dated 23.06.2020.

15. The learned Deputy Solicitor General would submit that the Dy. Inspector General, SHQ, SSB, Ranidanga being Reviewing Authority has received the SFC proceedings on the disciplinary case of the petitioner through the Addl. JAG, Frontier Hqrs SSB, Siliguri and upheld the punishment awarded to the petitioner by the disciplinary authority. The Reviewing Authority vide Memorandum dated 15.09.2020 has returned the said SFC proceedings to the disciplinary authority for taking further necessary action.

16. The learned Deputy Solicitor General added that the petitioner has preferred an appeal to the Inspector General, Frontier Hqrs SSB, Siliguri dated 17.09.2020 against the order of dismissal from service passed by the Commandant, 41 Bn. SSB, Ranidanga. The Appellate Authority, after considering the facts of the case held that the issue pertains to security of Force personnel and that too when troops are on duty all time with charged weapon, it is highly inappropriate that a person cocks rifle and due to some technical flaw in the proceedings he cannot be considered for retention in service and the petitioner cannot be considered as a disciplined member of the Force.

17. The learned Deputy Solicitor General submitted that the Inspector General, Frontier Hqrs SSB, Siliguri/Appellate Authority has rejected the appeal of the petitioner as devoid of merits and upheld the decision of dismissal from service passed by the Commandant, 41 Bn. SSB, Ranidanga under the order dated 11.01.2021.

18. According to the learned Deputy Solicitor General, all the procedures have been followed and the petitioner was afforded reasonable opportunity to his defense. The annulment is in accordance with law as per section 132 of the SSB Act and the order of annulment is

passed by the prescribed officer. Moreover the petitioner did not challenge the earlier order and as per the principle of estoppel, now he has no right to challenge the subsequent proceedings. There is no question of violation of principles of natural justice and/or irregularities. Thus, a prayer has been made to dismiss the writ petition.

19. This Court considered the rival submissions and also perused the materials available on record.

20. The petitioner was posted to 41 Bn. SSB, Ranidanga on 29.01.2013 and he was performing sentry duty at R.P. Gate No.01 of 41 Bn. SSB, Ranidanga since 21.06.2018. While the petitioner was performing sentry duty at the said gate on 13.07.2018 from 0600 hrs to 0900 hrs, he was using his personal mobile phone during duty hours in the sentry post. On seeing this, the duty S.O. ASI (GD) Partha Bhattacharya took his mobile phone in the presence of the duty NCO HC (GD) Munna Singh and Guard Commander of R.P. Gate No.1 Sanjib Dey. An entry is also made to this effect by the duty S.O. in the Duty Register and moved away from the sentry post along with the duty NCO and Guard Commander. When duty S.O., duty NCO and Guard Commander had moved away about 10 steps from the sentry post, the petitioner came from behind and asked the duty S.O. to return his mobile phone.

The duty S.O. replied that his mobile phone will be returned through office. Immediately, the petitioner went to the sentry post and cocked his service rifle intentionally. After hearing the sound of cocking rifle, the duty S.O. rushed to the sentry post and took his service rifle from him along with live ammunitions with the help of the duty NCO and Guard Commander. Based upon the complaint made by the duty S.O., the disciplinary authority had placed the petitioner under suspension w.e.f. 17.07.2018 in terms of Rule 10(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 read with Rule 41 (1) of the SSB Rules, 2009 vide order dated 17.07.2018.

21. It appears that the disciplinary authority appointed the Enquiry Officer to conduct one man Court of Inquiry (COI) to investigate into the circumstances under which the petitioner had cocked his service rifle while performing sentry duty at R.P. Gate No.1 on 13.07.2018 in accordance with provision contained under Rule 172 (1) & (2) of the SSB Rules, 2009 vide Convening Order dated 17.07.2018. The Enquiry Officer submitted COI proceedings vide his letter dated 23.08.2018 and recommended that a stern disciplinary action should be taken against the petitioner as per the provisions of SSB Act and the Rules framed thereunder, as the petitioner had intentionally cocked his service rifle

during duty hour upon seizing his mobile phone by the duty S.O. On the basis of the findings and opinion of the COI proceedings, the petitioner was called for hearing on 13.09.2018 under Rule 46 of SSB Rules, 2009 by the disciplinary authority, 41 Bn. SSB, Ranidanga and during hearing the disciplinary authority remanded the case for ROE as per Rule 51 of the SSB Rules, 2009. After recording ROE, the ROE order along with copy of charge sheet under Section 22 was served upon the petitioner under order dated 03.10.2018. The Recording Officer submitted ROE proceedings vide letter dated 27.11.2018. The Commandant, 41st Bn. SSB, Ranidanga being the disciplinary authority, called the petitioner on 04.01.2019 at 1600 hrs under the provisions of Rule 54 of the SSB Rules, 2009 for conducting hearing for the offence under Section 22 – 'striking or threatening superior officer' of the SSB Act, 2007 and during hearing remanded the case for SFC vide order dated 06.02.2019. A notice along with copy of COI proceedings and charge sheet was provided to the petitioner 24 hours prior with intended date of SFC on 11.02.2019 at 1100 hrs vide Memorandum dated 06.02.2019. Accordingly, the SFC trial convened on 11.02.2019 at 41st Bn. SSB, Ranidanga against the petitioner and the petitioner was found guilty of the charge framed against him. The Court having found the petitioner guilty of the charge, awarded the punishment of imprisonment in Force custody for 40 days

under Section of 51 (1) (e) of SSB Act, 2007 vide order dated 11.02.2019. The finding and sentence of the Court were promulgated to the petitioner on 11.02.2019 at 1310 hours. Thereafter, the Deputy Inspector General/Reviewing Authority received the SFC proceedings along with charge sheet in respect of the petitioner for review and on the basis of the evidence recorded, annulled the SFC trial proceedings in terms of Section 132 of the SSB Act, 2007.

22. It also appears that the earlier SFC was conducted on the charge under Section 22 of the SSB Act, however, the charge of attempt to commit suicide is covered separately under the head of Miscellaneous Offences under Section 44(c) and, therefore, the earlier proceedings based on wrong charges was annulled. Accordingly, the disciplinary authority cancelled the punishment for imprisonment in Force custody for 40 days awarded to the petitioner and the entire period of punishment was treated as duty for all purposes and the petitioner was also paid the benefits.

23. Subsequently, an order was issued to convene SFC against the petitioner by the Commandant, 41st Bn. and in terms of Rule 135 of the SSB Rules, the disciplinary authority issued notice and served the

petitioner along with copy of ROE proceedings and the charge sheet under Section 44(c) and Section 43 of the SSB Act, 2007 with an intended date of SFC on 23.6.2020 from 1100 hours.

24. The charges framed against the petitioner read thus:

"Charge-I:- "Miscellaneous offences" under section 44(c) of SSB Act, 2007.

In that,

Regt. No. 120666889, UIN - 15020804 CT (GD) Rajeev Kumar Hembrom of 41stBn SSB, Ranidanga while performing sentry duty at RP Gate No.1 on 13.07.2018 from 0600 Hrs to 0900 Hrs and 0855 Hrs he tried to commit suicide by cocking his personal rifle INSAS Butt No. 421 bearing No. 18002242 when his mobile was seized by ASI (GD) Partha Bhattacharjee, Duty SO as he was using mobile during duty hour.

Charge-II: - "Violation of good order and discipline" under section 43 of SSB Act, 2007.

In that,

On 13.07.2018, Regt. No. 120666889, UIN - 15020804 CT(GD) Rajeev Kumar Hembrom of 41stBn SSB, Ranidanga was detailed for sentry duty at RP Gate No.1 from 0600 Hrs to 0900 Hrs and he found using the mobile phone while checking of duty by ASI

(GD) Partha Bhattacharjee, Duty SO of the day during duty hour even after issuing guideline/instructions by the senior officer in this regard time and again. Thus he committed an offence U/S 44(c) "Miscellaneous offences" and U/S 43 "Violation of good order and discipline" of SSB Act, 2007."

25. The Commandant, vide order dated 6.6.2020 called up for SFC on 23.6.2020 in respect of the allegations upon which the earlier SFC trial proceedings were held. The second SFC trial got concluded on 23.6.2020, wherein the petitioner was found guilty under Section 44(c) and Section 43 of the SSB Act, 2007 and was awarded punishment of dismissal from service under Section 51(1)(c) of the SSB Act, 2007 and the findings and sentence were duly promulgated to the petitioner on 23.6.2020. The order dated 23.6.2020 reads thus:

"ORDER

*Regt. No. 120666889 (UIN 15020804)
Constable/GD Rajeev Kumar Hembrom of this unit has been "Dismissed from service" in accordance with section 51(1) (c) of SSB Act, 2007, the charges of under section 44(c) and 43 of SSB Act, 2007 during Summary Force Court held on 23/06/2020 at 41stBn SSB, Ranidanga, Distt.- Darjeeling (WB) vide this order No.E-I/41stBn/SSB/CT(GD)/RKH/18/7501-07 dated 23/06/2020.*

Accordingly, his name has been struck off from the strength of the unit with effect from 23/06/2020 (AN)."

26. Aggrieved by the same, the petitioner has preferred an appeal before the fourth respondent herein and the same was rejected by the appellate authority upholding the decision and the findings of the SFC trial vide order dated 11.1.2021. The order of the appellate authority reads thus:

"ORDER

Whereas UIN- 150208041ExCT(GD) Rajeev Kumar Hembrom of 41 Bn has preferred an appeal to the Inspector General, Fir Hqrs. Siliguri dated 17/09/2020 against the order of 'dismissal from service' passed by the Commandant, 41 Bn, SSB Ranidanga vide order No.E-1/41 Bn/CT(GD)/RKH/18/7501-07 dated 23.06.2020.

And whereas, the facts in brief are that, while performing sentry duty at RP Gate - 01 on 13/07/2018 from 0600 hrs to 0900 hrs, he cocked his charged personal rifle INSAS Butt No. 421 bearing No. 18002242 at around 0855 hrs when his mobile was seized by duty SO, ASI (GD) Partha Bhattacharjee as he was using mobile phone during duty hour in

contravention to order and directions issued time and again by the senior officers.

And whereas, in terms of sub rule (1) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 read with 41 (1) of SSB Rules, 2009. Commandant 41 Bn being disciplinary authority had placed Ex. CT(GD) Rajeev Kumar Hembrom of 41 Bn under suspension w.e.f 17/07/2018 vide order No. 41 Bn/EI/Suspension/Vol-11/2015-17/15358-69 dated 17/07/2018.

And whereas, a 'Court of Inquiry' was ordered by the Commandant 41 Bn in accordance with provision contained under Rule 172 (1) & (2) of SSB Rules, 2000) vide convening order No.E-I/41stBn/SSB/Rajeev/2017/15293-96 dated 17/07/2018 to investigate into the circumstances under which Ex.CT(GD) Rajeev Kumar Hembrom of 41 Bn has cocked his service title while performing sentry duty at RP Gate-1 on 13/07/2018.

And whereas, on the basis of findings and opinion of the Court of Inquiry report, Commandant 41 Bn. Vide Memorandum No. PF/Estt/41 Bn/SSB/SRC/RKII/2016/21905-06 dated 03/10/2018 ordered for Record of Evidence (ROI) in accordance with Rule 51 of SSB Rules, 2009.

And whereas, Commandant 41 Bn being disciplinary authority, in exercise of the power conferred by clause (c) of sub rule (5) of Rule 10 of Central Civil Service (Classification, Control and Appeal) Rules, 1965 read with Rule 41 (4) of SSB Rules 2009 revoked the order of suspension w.e.f. 11/10/2018 in r/o Ex. CT (GD) Rajeev Kumar Hembrom of 41 Bn which was invoked w.e.f. 17/02/2018 vide order No. 41 Bn/E-I/Suspension/Vol-11/2015-17/15358-69 dated 17/07/2018.

And whereas, Commandant 41 Bu had called Ex.CT(GD) Rajeev Kumar Hembrom of 41 Bn for hearing on 04/01/2019 at 1600 hrs under Rule 54 of SSB Rules, 2009 for offence under Section 22- 'Striking or threatening superior officer of SSB Act, 2007 and during hearing remanded the case for Summary Force Court (STC) under provision contained in Rule 135 of SSB Rules, 2009 vide Order No.E-I/PF/CT/GD/RKH/41 Bn/17/1979 dated 06/02/2019 and accordingly a notice No. 1979 dated 06/02/2019 along with copy of COI and charge sheet were provided to the accused before 24 hours with intended date of Summary Force Court (SPC) on 11/02 2019 at 1100 hrs.

And whereas, the accused was tried by Summary Force Court (SFC) on 11/02/2019 by Commandant 41

Bn and found "Guilty of the charge framed against him under Section 22. Striking or threatening superior officer of SSH Act, 2000 and was sentenced 'Imprisonment in force custody for 40 days' under Section 51 (1) (c) of SSB, Act, 2007 vide order No. Estt/41" Bn/SSB/ RKH/2018/2418-26 dated 11/02/2019 The findings and sentence of the Court were promulgated on 11/02/2019.

And whereas, on the basis of the evidences on record DIG, SHQ Ranidanga had 'annulled the Summary: Force Court (SFC) trial proceedings in terms of Section 132 of SSB Act, 2007 vide order No. VIII/9/60/SFC/Fistt/SHQ-RDX/2019/1198-1200 dated 14/02/2020 with remarks that Disciplinary Authority has not appreciated the facts of the case in totality and the punishment awarded to Ex CT(GD) Rajeev Kumar Hembrom of 41 Bn was not commensurate with the gravity of the offence.

And whereas, Commandant 41 Bn vide order No. B-1/41- Bn/Discipline/RKH/2020/4299-303 dated (04/05/2020 has cancelled the punishment for 'imprisonment in force custody for 40 days' awarded to Ex.(CT(GD) Rajeev Kumar Hembrom of 41 Bn and the whole period of punishment w.e.f. 11/02/2019 to 22/03/2019 was treated as duty for all purposes.

And whereas, in terms of Rule 135 of SSB Rules, 2009, Commandant 41 Bn vide Memorandum No. E-1/41 Bn/SSB/PF/CT (GD)/RKH/2019-20/289 dated 18/06/2020 had issued a notice No. 7289 dated 18/06/2020 alongwith copy of ROE and charge sheet to the accused before 24 hours with intended date of Summary Force Court (SFC) on 23/06/2020 at 1100 hrs.

And whereas, the accused was tried by Summary Force Court (SFC) on 23/06/2020 by Commandant 41 Bn for fresh charges under Section 44 (c) & Section 43 of SSB Act, 2007 and found 'Guilty' of both the charges framed against him under Section 44 (c)- Miscellaneous offences and under Section 43- Violation of good order and discipline of SSB Act, 2007 and was sentenced 'Dismissed from Service' under Section 51 (1) (c) of SSB, Act, 2007 vide order No. B-1/41 Bn/SSB/CT (GD)/RKH 18/7501-07 dated-23/06/2020. The findings and sentence of the Court were promulgated on 23/06/2020. The SFC proceedings were duly reviewed and countersigned is DIG, SHQ SSB, Ramidanga on 15/09/2020.

And whereas, the petitioner was at liberty to prefer an appeal to the Competent Authority, ie Deputy Inspector General, FtrSiliguri within 90 days from the date of sentence/promulgation as per provision

contained in Rule 169 (2) and 170 (1) (2) of SSB Rules, 2009.

Now therefore, the undersigned being the Appellate Authority, considering the facts of the case in totality and the ground preferred in the appeal by the petitioner, is of the considered opinion that the issue pertains to security of Force personnel and that too when troops are on duty all time with charged weapon, it is highly inappropriate that a person cocks rifle and due to some technical flaw he be considered for dun. As lite of all troops depends on a sentry and if he starts behaving in such disorderly manner leading to life threat to all personnel as well as to his own, he cannot be considered as disciplined member of the force.

Therefore, the undersigned rejects the appeal dared 17/09/2020 preferred by Regt. No. 120666889 Ex. CT(GD) Rajeev Kumar Hembrom of 41 Bn son of Shri BhaganHembrom, resident of Vill-DebinagarMocharha, PO-Jagailli, PS-Srinagar, Dist-Purnia (Bihar), Pin-854304 being devoid of merit and upholds the decision of 'Dismissal from service' passed by the Commandant 41 Bn vide order No. F-1/41 Bo/SSB/CT (GD)/RKH/18/7501-07 dated 23/06/2020. Hence, his appeal is disposed off herewith."

27. It is contended by the petitioner that the impugned second charge sheet, convening of the second SFC trial and the order passed by the appellate authority are all unsustainable in the eye of law. As per the SSB Act, when any person, subject to the Act has been acquitted or convicted of an offence by a Force Court or by a Criminal Court, he shall not be liable to be tried again for the same offence by a Force Court by way of interpolating graver charges. In the present case, the respondent authorities have failed to appreciate that the charge sheet shall contain the whole of the issue to be tried one time.

28. The petitioner further contended that if a single act or series of acts, the facts which can be proved, will constitute, the accused be charged with having committed all or any of such offences, and any number of such charges may be tried at once or he may be charged in the alternative which having committed some one of the said offences. The petitioner was not given any scope to represent against the cancellation of punishment and convening of subsequent SFC dated 23.6.2020 which is against principles of natural justice. The respondent authorities cannot predetermine and come up with graver charges by way of subsequent charge sheet with an ill-motive to eliminate the petitioner. The actions of respondent authorities are not tenable in the eye of law,

inasmuch as the petitioner cannot be and should not be subjected to and removed from the Force sans the procedure established by law.

29. On the other hand, the respondents contend that the earlier SFC was conducted on the charge under Section 22 of the SSB Act i.e. Striking or threatening superior officer. However, the charge of the attempt to commit suicide is covered separately under the heading of Miscellaneous Offence under Section 44(c) i.e. attempt to commit suicide. Therefore, the earlier proceedings based on wrong charges was annulled.

30. At this juncture, it is apposite to note that the petitioner has not challenged the order of annulment of the proceedings. As rightly argued by the learned counsel for the respondents, if any person did not challenge and/or not aggrieved by the initial order, then he cannot be permitted to challenge the subsequent proceedings.

31. According to the petitioner, Section 132 of the SSB Act would not have been resorted to in case of finding and sentence by a SFC and even otherwise, it is the Central Government, Director General or any prescribed officer who could have only annulled the proceeding under Section 132. In the case of the petitioner the annulment was done by an

officer not authorized to do so as per Rules 185. Therefore, the annulment was bad in law. The aforesaid contention cannot be appreciated and/or countenanced for the reason that the petitioner has failed to challenge the order of annulment of the proceedings. Having failed to challenge the order of annulment, the petitioner cannot say that the annulment was bad in law.

32. As could be seen from the records, in terms of Rule 135 of the SSB Rules, the Commandant being the disciplinary authority on 18.6.2020 issued a notice and served upon the petitioner along with copy of ROE proceedings and charge sheet under Section 44(c) Miscellaneous Offence and Section 43 Violation of good order and discipline of the SSB Act with intended date of SFC on 23.6.2020. The SFC trial was conducted on the scheduled date and the petitioner was found guilty of both the charges framed against him. The Court having found the petitioner guilty of both the charges, awarded the punishment of dismissal from service in terms of Section 51(c) of the SSB Act, 2007 with liberty to prefer an appeal to the appellate authority. In fact, the Reviewing Authority after the receipt of SFC proceedings in respect of the petitioner upheld the punishment awarded to the petitioner by the disciplinary authority. That apart, the appeal preferred by the petitioner was also considered by the

Inspector General, Frontier Hqrs SSB, Siliguri and rejected being devoid of merit.

33. In the instant case, the writ petitioner had availed all the remedies/provisions in his defense as per Act and Rules from time to time. As stated supra, the core issue in the present writ petition pertains to security of Force personnel and that too when troops are on duty all time with charged weapon, it is highly inappropriate that a person cocks rifle in duty time without any valid lawful reasons and/or for that purpose he was not entrusted to hold rifle. Life of all troops depends on a sentry and if a sentry starts behaving in disorderly manner leading to life threat to all personnel as well as to his own, he cannot be considered as a disciplined member of the Force. As such, all orders passed in connection with the petitioner under several provisions of SSB Act, 2007 and SSB Rules, 2009 and Central Civil Services (Classification, Control and Appeal) Rules, 1965 do not require any scrutiny.

34. This Court is of the view that taking into consideration the gravity of the offence committed by the petitioner and since the issue pertains to security of Force personnel and as life of all troops depends on a sentry and if the petitioner starts behaving in such disorderly manner

leading to life threat to all personnel as well as to his own he cannot be considered as disciplined member of the Force, the disciplinary authority has rightly imposed the punishment for removal from service, which was rightly upheld by the appellate authority. Such well-considered orders cannot be interfered with by this Court exercising jurisdiction under Article 226 of the Constitution of India, as in judicial review the power of this Court is very limited. The High Court, in exercise of its powers under Article 226 of the Constitution of India, shall not venture into re-appreciation of the evidence.

35. As stated supra, the procedures have been followed and the petitioner was afforded opportunity to his defense. The annulment is in accordance with law. As the petitioner did not challenge the order of annulment, as per the principle of estoppel, now he cannot challenge the subsequent proceedings. In the instant case, the question of violation of principles of natural justice and/or irregularities does not arise. It cannot also be contended by the appellant that the Commanding Officer acted in contravention of Rule 54. That apart, all the authorities, right from the beginning have acted in accordance with the provisions of the SSB Act and the SSB Rules and have rightly imposed the punishment on the petitioner. This Court is of the view that there is no merit in the present

writ petition and also no valid grounds to interfere with the order of punishment and, therefore, the writ petition is liable to be dismissed.

36. In the result, the writ petition is dismissed. There shall be no order as to costs.

(M.V. Muralidaran, J.)