



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

*Date of decision: 14.08.2024*

+ W.P.(C) 665/2012  
JAI PAL

.....Petitioner

Through: Mr. Aditya Hodda and Mr. Manpreet Singh, Advs.

versus

UOI AND ORS.

.....Respondents

Through: Mr. Rajesh Gogna, CGSC with Mr. Nipun Jain, Ms. Priya Singh and Mr. Jasbir Singh Bajaj, Advs.

**CORAM:**

**HON'BLE MS. JUSTICE REKHA PALLI**

**HON'BLE MS. JUSTICE SHALINDER KAUR**

**J U D G M E N T**

**SHALINDER KAUR, J (Oral)**

1. The petitioner, through his wife, has approached this Court under Article 226 of the Constitution of India seeking quashing of orders dated 27.11.2004 and 27.05.2005 vide which he was dismissed from service by the Summary Security Force Court (hereinafter referred to as "SSFC") and subsequently his statutory petition under Section 117 of BSF Act, 1969 was rejected. Additionally, he prays for release of service pension along with disability pension/extraordinary pension in his favor.

2. One may recite the brief facts of the case by beginning with noting that the petitioner joined the Border Security Force (hereinafter referred to as "BSF") as a Constable (Driver) on 29.06.1990 and served in various parts



of the Country. It is the petitioner's claim that in September, 2004, when he was posted at 75<sup>th</sup> Battalion (Bn.) BSF, Pokharan, Rajasthan, he started suffering from a mental illness which was later diagnosed as "Acute psychiatric episode Manic/Bipolar disorder". Faced with such a situation, he was compelled to absent himself from service without sanction of leave for short periods of time i.e., 03.09.2004 to 15.09.2004, between 18.09.2004 to 07.11.2004 & finally between 09.11.2004 to 18.11.2004 (71 days, total).

3. The petitioner's case is that he absented himself for getting treatment for his bipolar disorder at his native place. His father, he submits, took him for treatment to Rohtak Psychiatry Centre, Post Graduate Institute of Medical College, Rohtak (PGI, Rohtak) and to a local physician. As soon as his symptoms reduced, his father brought him back to join the Unit on 18.11.2004 and also supplied the petitioner's medical documents to the respondents. However, on the said date itself, he was placed under arrest by the Commandant and was kept in the Quarter Guard.

4. The petitioner was thereafter ordered to be tried by the SSFC for three charges under Section 19(a) of the BSF Act for absenting himself without sanction of leave on 3 occasions. Before the trial, the petitioner was medically examined at BSF and was declared medically fit for facing the trial by the SSFC. Consequently, on 27.11.2004, the petitioner was, on the basis of his plea of guilty, convicted and awarded punishment of 'dismissal from service'.

5. The petitioner challenged the conviction and his dismissal from service by filing a statutory petition under Section 117 of the BSF Act against the SSFC's order dated 27.11.2004, which was rejected on 27.05.2005 by the Appellate Authority. Notably, the petitioner had thereafter



filed a Writ Petition bearing no. 9043/2011 before this Court which was, vide order dated 10.01.2012 dismissed as withdrawn with liberty to file a fresh petition. Hence, the present petition came to be filed.

### **SUBMISSIONS OF THE PETITIONER**

6. In support of the present petition, Mr. Aditya Hodda, learned counsel for the petitioner submits that there are multiple irregularities with the manner in which the SSFC proceedings were conducted. Beginning with the Commandant, who could not have ordered for the petitioner to be tried by the SSFC keeping in view his bipolar disorder. In this regard, father of the petitioner had already produced medical documents pertaining to his treatment from PGI, Rohtak before the respondents. Therefore, his case should have been considered as per provision under Section 99 of the BSF Act.

7. The learned counsel vehemently contends that from a bare perusal of the Record of Evidence (ROE), it can be made out that the petitioner was not mentally fit to have understood the Charges against him or the nature of punishment and its consequences. Despite this, the Commandant proceeded to try him and consequently dismissed him from service on the basis of his 'plea of guilty'.

8. The learned counsel submits that even the medical report of the petitioner certifying petitioner's fitness, opining that he could undergo trial by the SSFC was a fabricated report as the petitioner was not even examined by the said doctor. Moreso, the medical certificate itself does not indicate any tests conducted by the doctor in ascertaining the petitioner's medical fitness.



9. Learned counsel further assails the order of dismissal and contends that the petitioner never pleaded guilty for any of the three charges on which the SSFC dismissed him from service, which is evident from the fact that the petitioner had not signed any such 'plea of guilty', which is against the principles of natural justice as the 'plea of guilty' is mandated to bear the signature of the accused.

10. Learned counsel draws our attention to Rule 142(2) of BSF Rules, 1969 and contends that the Commandant did not comply with the said Rule as the petitioner was not even advised to withdraw his plea of 'guilty' taking into account the severity of the penalty in the present case, could be his dismissal from service thereby vitiating the entire inquiry proceedings. Moreover, the fact that the petitioner was under constant treatment of psychiatrist from PGI, Rohtak w.e.f. 07.09.2004 till date, has been grossly ignored by the respondents. Therefore, the petitioner was awarded a punishment which was highly disproportionate.

11. Furthermore, the petitioner was not even provided with the copies of Court Martial Proceedings which he was entitled to under Rule 129 of BSF Rules.

12. Learned counsel finally contends that once the very basic principles of natural justice were violated by the authorities, the proceedings of the SSFC deserve to be set aside on this very ground alone. He, therefore, prays that the SSFC proceedings alongwith all consequential orders be set aside and the petitioner be directed to be reinstated in the service with all due benefits.

13. In support of his plea, he places reliance on the following decisions:-

- (i) ***Ex. HC Rajinder Singh vs. Union of India & Ors.*** W.P.(C) No. 2715/2000



(ii) *Vinod Singh vs. Director General, SSB & Anr.* W.P.(C) No. 7369/2013.

**SUBMISSIONS OF THE RESPONDENTS**

14. On the other hand, Mr. Rajesh Gogna, who appears on behalf of the respondents defends the impugned orders and submits that as per the service profile of the petitioner, it is clear that he was a habitual offender/absentee as earlier also he had been awarded 3 punishments under Section 19(a), 26, 30(b), 20(c) and 22(e) of the BSF Act during his service span of total 14 years. On 27.11.2004, he was tried by SSFC for three distinct offences committed by him under Section 19(a) of BSF Act and the proceedings were held in strict compliance of BSF Rules and consequently, he was dismissed from service on 27.11.2004 on his voluntary plea of guilty, for recording of which, the Commandant had followed the due procedure as prescribed under Section 142(2) of BSF Rules, which is also evident from the record of the proceedings. His plea of guilty, he contends, was fairly recorded after explaining the petitioner about the Charges against him.

15. The petitioner was given full opportunity during the hearing of Charge, however, he did not opt for leading of evidence during the trial and rather made a statement regarding his 'guilt'. Moreover, the appeal under Section 117 of the Act filed by the petitioner was dismissed on 27.05.2005 as it was found to be devoid of any merit.

16. Furthermore, there is no requirement under the BSF, Act/Rules to obtain signatures of the accused on the plea of guilty. As per Rule 153, the Court is mandatorily required to affix its signature & the date of the sentence, the said signature in itself, he contends, authenticates the entire



proceedings. Additionally, copies of the proceedings are provided to a person only if and when such a demand is made therefor as per Rule 129 of BSF Rules. However, the petitioner did not make any such request and hence was not supplied with the copies of the proceedings.

17. Learned counsel further submits that the petitioner was at the time of his trial found to be medically fit and contends that had his case been of medical unfitness, he was at liberty to seek treatment from the Unit hospital at Bn Headquarter, which he never availed by reporting to the Doctor at Unit HQ, Pokhran about his ailment. Had the petitioner reported to the Unit Hospital, he would have been referred to a medical specialist, if needed.

18. Learned counsel contends that apart from being absent from service without leave, the petitioner neither joined duty nor informed of his purported medical unfitness to the respondents despite their letters directing him to join duty at the Bn. As far as the plea of petitioner with respect to pensionary benefits is concerned, the learned counsel submits that the petitioner was awarded the punishment of dismissal from service w.e.f. 27.11.2004 as per BSF Act and Rules and therefore, as per provision of Rule 24 CCS Pension Rules, 1972, his part service stood forfeited upon his dismissal. The petitioner, he contends, is not entitled to any relief and therefore, prays that the petition be dismissed.

### **ANALYSIS AND CONCLUSION**

19. We have carefully considered the submissions addressed on behalf of the parties and perused the record. Before us, the foremost grievance of the petitioner is that the Hearing of the Charge, by the Commandant during the SSFC was conducted in a perfunctory manner. The word 'guilty' according



to the petitioner was already typed on a sheet of paper forming the part of the SSFC proceedings even before he was arraigned. Also, the plea of guilty does not bear his signatures. Moreover, according to the petitioner, he was suffering from bipolar disorder and there is a serious doubt about his mental capacity and fitness to understand the Charges on which he had to face the trial.

20. Viewed thus, the material question for determination in the present case is, whether the petitioner has been tried by the SSFC fairly and in accordance with procedure laid in the BSF Rules.

21. The record indicates that the SSFC was convened on 27.11.2004 and the Commandant, 75 Bn. BSF was the Presiding Officer with Sh. A.K.S. Billawaria, AC being appointed as the friend of the petitioner. On the very same day, the SSFC proceedings commenced in the presence of the petitioner. The Charges, after being translated, were explained to the petitioner by the Presiding Officer whereafter it was enquired from the petitioner as to whether he pleads 'guilty' or 'not guilty' to the Charges preferred against him. With respect to all the charges, the answer of the petitioner was recorded with the observations of the Commandant in the proceedings which are reproduced hereinbelow:-

*"Ans. Guilty"*

*"The accused having pleaded guilty of all three charges, the Court explains to the accused the meaning of charges to which he has pleaded guilty and ascertains that the accused understands the nature of the charges to which he has pleaded guilty. The Court also informs the accused of the general effect of that plea and the difference in procedure, which will be followed, consequent to the said plea. The Court having satisfied itself that the accused understands the charges and the effect of his plea of guilty accepts and records the same.*

*The provision of Rule 142(2) are complied with"*



22. The petitioner was further questioned, if he wished to make any statement in reference to Charge or in mitigation of punishment. The answer of the petitioner as recorded reads as under:-

*“The accused says that he has committed a serious mistake by running away thrice from Bn HQ without leave for which he regrets. He further says that he is only source of earning for his family members and wants to serve in the Force”*

23. As per the SSFC proceedings, with respect to the query put to the petitioner as to whether he wants to call any witness as to his character, he had replied in negative. What thus emerges from the record is that the findings of the SSFC recorded against the petitioner are not based on any evidence recorded during the trial and he has been held guilty of charges solely on the basis of his ‘plea of guilty’ as recorded by the SSFC.

24. This now brings us to scrutinize the manner in which the ‘plea of guilty’ of the petitioner was recorded by the SSFC. The first and foremost fact, which emerges from the record is that the signatures of the petitioner are not available / appended where the plea of guilt has been recorded. The respondents have not disputed that the signatures of the petitioner were not obtained by the Commandant underneath the recording of his plea of guilty.

25. In the light of this factual position when the signatures of the petitioner on his purported plea of guilty are not available, it would now be relevant to note the provision, that deals with the manner in which the SSFC is required to record the ‘plea of guilty’, as contained in Rule 142 as was applicable before the amendment on 25.11.2011. The same reads as under:-

*“142. General plea of “Guilty” or “Not Guilty”.-*

*(1) The accused person’s plea of ‘Guilty’ or ‘Not Guilty’ or if he refuses to plead or does not plead intelligibly either one or the other, a plea of ‘Not Guilty’ shall be recorded on each charge.*

*(2) If an accused person pleads ‘Guilty’ that plea shall be recorded*



*as the finding of the Court but before it is recorded, the Court shall ascertain that the accused understands the nature of the charge to which he has pleaded guilty and shall inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty, and of the difference in procedure which will be made by the plea of guilty and shall advise him to withdraw that plea if it appears from the record or abstract of evidence (if any) or otherwise that the accused ought to plead not guilty.*

*(3) Where an accused person pleads guilty to the first two or more charges laid in the alternative, the Court may after sub-rule (2) has been complied with and before the accused is arraigned on the alternative charge or charges, withdraw such alternative charge or charges as follow the charge to which the accused has pleaded guilty without requiring the accused to plead thereto, and a record to that effect shall be made in the proceedings of the Court."*

26. A bare perusal of Sub-rule 2 of Rule 142 would indicate that it lays down an elaborate procedure for recording of plea of 'guilty' or 'not guilty'. If the accused pleads 'guilty' the provision mandates for the Court, before it records its findings of guilt, to ascertain whether the accused understands the nature and meaning of the charges to which he pleads guilty as also he must be informed of the general effects of that plea of guilty and the difference in procedure that will follow. Additionally, if it is apparent from the record or abstract of evidence that the accused ought to have pleaded 'not guilty', the Court is required to advise the accused to withdraw that plea and proceed to record a plea of 'not guilty' of the accused instead. The procedure prescribed for recording of plea of 'guilty' is not only exhaustive but also mandatory. In the event of any breach, the trial would be vitiated on the ground of violation of principles of natural justice alone.

27. At this stage, we may refer to a recent decision in ***Union of India and Others vs. Jogeshwar Swain***, (2023) 9 SCC 720, wherein the Apex Court



emphasized upon strict adherence with Rule 142(2) before accepting the ‘plea of guilty’. The relevant observations of the Apex Court read as under:-

*“42. Before acting on the plea of guilty, compliance of the procedural safeguards laid down in sub-rule (2) of Rule 142 is important as it serves a dual purpose. **First, it ensures that before pleading guilty the accused is aware of not only the nature and meaning of the charge which he has to face but also the broad consequences that he may have to suffer once he pleads guilty.** This not only obviates the possibility of an uninformed confession but also such confessions that are made under a false hope that one could escape punishment by pleading guilty. **The other purpose which it seeks to serve is that it ensures that confessions do not become an easy way out for deciding cases where marshalling of evidence to prove the charge becomes difficult.** It is for this reason that sub-rule (2) of Rule 142 requires an SSFC to advise the accused to withdraw the plea of guilty if it appears from the examination of the record or abstract of evidence that the accused ought to plead not guilty. Since, the procedure laid in sub-rule (2) of Rule 142 serves an important purpose and is for the benefit of an accused, in our view, its strict adherence is warranted before accepting a plea of guilty.”*

*(Emphasis supplied)*

28. In view of the aforesaid, we have no hesitation in holding that the proceedings of SSFC, held on 27.11.2004, were in transgression of the Rule 142(1), which has led to grave miscarriage of justice. Bearing in mind that the petitioner was awarded major penalty of “dismissal from service” based on his trial by SSFC, the prescribed rules were required to be strictly followed. The proceedings indicate that even though the chargesheet was read over and explained to the petitioner, the plea of guilty was recorded without explaining the meaning of the Charges and without making the petitioner aware of the general effects of plea of guilty and the consequences of making such a plea. The proceedings further do not indicate as to what advice was rendered to the petitioner with regard to the general effect of plea of guilty purportedly taken by him.



29. Furthermore and most importantly, the proceedings only bear the signatures of the Commandant and none else. The 'plea of guilty' does not bear the signatures either of the petitioner or his friend appointed by the respondents meaning thereby that the plea taken by the petitioner has not been acknowledged by him.

30. No doubt, the Commandant has observed underneath the 'plea of guilty' that he has followed the procedure under Section 142(2), however, a verbatim reiteration of statutory rules made by the Commandant without any indication of the manner as to how the petitioner was explained about the consequences of pleading guilty, cannot be said to be in due compliance of Sub-Rule 2 of Rule 142 of BSF Rules.

31. In our view, merely saying or noting in the proceedings that Rule 142 has been followed is not sufficient. The statutory rule requires that the Court has to essentially explain to the accused the nature of the Charge and to warn him of the consequences and effect of plea of guilt. The accused himself must be made aware that a different procedure will be followed if he pleads guilty and about the punishments laid under the Act that could be awarded to him. It is only upon his understanding of the content of the Charge and the effect of recording of plea of guilty and also being aware of a different procedure that shall consequently follow upon recording of such plea, it can be inferred that the petitioner voluntarily pleads guilty to the Charges and thereafter such a plea should be recorded.

32. We are constrained to observe that, in the present case, the plea of guilty appears to have been recorded first and thereafter the procedure laid down in Rule 142 has been mentioned. Such being the case, coupled with the lack of signatures of the petitioner and his next friend in the



proceedings, the plea of guilty before the SSFC, in our view, cannot be accepted.

33. We may further note the submission of learned counsel for the respondents that in the past, petitioner had faced proceedings for various infractions and was punished, thus petitioner had voluntarily pleaded guilty as he is in a habit of absenting himself from his place of posting, has no merit. This plea of the respondents, even if accepted, would not relieve the respondents of their onus to prove the Charges in the present proceedings against the petitioner in accordance with law and on the basis of credible evidence.

34. Be that as it may, in the present case, from the original record produced before us, it clearly emerges that the respondents have failed to conduct the SSFC proceedings in accordance with Rule 142 of BSF Rules, 1969. The trial by the SSFC conducted on 27.11.2024, therefore, stands vitiated and is quashed alongwith all consequential orders.

35. Having said so, another important issue that requires determination is whether the petitioner can, at this stage, be directed to be reinstated by the respondents. In this regard, it may be apposite to note that the petitioner has himself pleaded that he is suffering from 'bipolar disorder' and this medical condition had forced him to remain absent from his duty. The respondents have, however, refuted this stand of the petitioner and have contended that petitioner was medically fit and was not suffering from any such ailment.

36. Generally, upon setting aside of the impugned order, the relief of reinstatement in service would have followed, however, keeping in view the fact that the petitioner, who has served for 14 years in the BSF, has remained out of service for almost 20 years since his dismissal from the BSF



coupled with the fact that he is said to be suffering from Bipolar disorder, it is not a fit case for directing his reinstatement in service. In our view, the ends of justice will, therefore, be met by directing that the petitioner would be treated in service till today when he will stand compulsorily retired from service with full pensionary benefits. This course of action is acceptable to the petitioner.

37. Insofar as the arrears from the date of his dismissal till today are concerned, taking into account the past service record of the petitioner and the fact that he had not rendered any service during this period of about 20 years, we direct that 50% of back wages be paid to the petitioner. The exercise in terms of this order will be carried out within a period of eight weeks.

38. The writ petition is, accordingly, disposed of in the aforesaid terms.

**(SHALINDER KAUR)**  
**JUDGE**

**(REKHA PALLI)**  
**JUDGE**

**AUGUST 14, 2024**  
**KM/ss**