



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: April 24, 2024

+ W.P.(C) 15437/2022

AMARJEET SINGH

..... Petitioner

Through: Mr. M.A. Inayati, Adv.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Siddharth Khatana, Sr. PC for
UOI

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

V. KAMESWAR RAO, J

1. This petition has been filed by the petitioner with the following prayers:

“In view of above stated facts and circumstance it is most respectfully prayed that your good self make graciously be pleased to:

a) Pass an order setting aside the dismissal order dt 30.12.2021 and consequential order dt. 27.09.2022 and reinstate the Petitioner with continuity in service with direction to release the pending salary of the period of dismissal along with consequential and future benefits.

b) Pass any other or further order/orders or direction in the interest of justice as this Hon'ble Court may deems fit and proper in the facts and circumstances of the present case.”

2. It is the case of the petitioner and so urged by Mr. M.A. Inayati, learned counsel appearing for the petitioner that the petitioner joined



BSF/respondents, as Constable in the year 2012 and since his joining, he has rendered service with due diligence and honesty.

3. It is the case of Mr. Inayati that on June 10, 2020, the petitioner was dismissed from service on the allegations of having found under intoxication on duty on January 4, 2020. The above said sentence order dated June 10, 2020 was set aside by the IG (Frontier) vide order dated April 20, 2021 with a direction to hold *de novo* trial against the petitioner, which as per him, was done in violation of Section 75 of the Border Security Force Act, 1968 ('BSF Act', for short). Accordingly, vide order dated May 30, 2021, the petitioner was regularised and taken on the strength of the Battallion.

4. He submitted that on December 30, 2021, the petitioner was tried *de novo* in an arbitrary manner and was again dismissed from service. Resultantly, an appeal dated January 24, 2022, was preferred by the petitioner against the order of dismissal of the IG, BSF Frontier, on which, when no information was received, the petitioner sent a representation to the IG for expeditious disposal of the appeal.

5. It was on May 9, 2022, the petitioner received a letter from the IG stating that the said appeal has been filed without obtaining the copy of the Summary Security Force Court's ('SSFC, for short) trial proceedings and it was also informed that the petitioner is at liberty to file an appeal before the concerned authorities as stipulated in Section 117(2) of the BSF Act.

6. It is his submission that despite best efforts, when the petitioner did not obtain the copy of the SSFC's trial proceedings, he preferred a writ petition being W.P.(C) 9822/2022 before this Court. The said writ



petition was disposed of by this Court after the then counsel for the respondents submitted that the photocopies of the SSFC's trial proceedings have already been dispatched to the petitioner with liberty to the petitioner to prefer an appeal as per law.

7. The petitioner having received the trial proceedings in the first week of July, 2022, came to know that the Reviewing Officer (DIG), on February 09, 2022, has set aside the findings on the First Charge due to non-compliance of mandatory provision of Rule 142(2) of the Border Security Force Rules, 1969 ('BSF Rules', for short) in letter and spirit and also being against the weight of evidence. Whereas, the findings on the Second and Third Charges have been countersigned by the Reviewing Officer. It is only after receiving the copies of the trial proceedings that the dismissal order was challenged by the petitioner by way of a Statutory Petition dated July 23, 2022, before the DG BSF. The said Statutory Petition was also dismissed as being devoid of merits on September 27, 2022.

8. It is his submission that the IG was not justified in ordering *de-novo* trial while setting aside the first dismissal order dated June 10, 2020. According to him, the IG does not have any power under Section 115 BSF Act read with Rule 161 of the BSF Rules, to order *de-novo* trial. Under Rule 161 of the BSF Rules, it is only the DIG, whose power under the said Rule is limited to either set aside the trial proceedings or reduce the sentence or commute the sentence awarded. Therefore, the IG did not have any power under Section 115 read with Rule 161 to order a *de novo* trial.

9. He also submitted that the IG has committed illegality while



ordering *de-novo* trial as the same is also in contravention to Section 75 of the BSF Act which clearly prohibits second trial arising out of same offence. Moreover, Section 75 of the BSF Act has to be interpreted in light of Article 20 of the Constitution of India, which also puts an embargo on prosecution for the same offence more than once. He has relied upon the judgment of this Court in the case of ***Banwari Lal Yadav v. Union of India & Anr. W.P.(C) No. 14098/2009*** to contend that where a Court has no jurisdiction to try an offence then the trial would be *non-est*, being null and void from its very inception. However, where the trial *ipso facto* is unsatisfactory and the same is marred by irregularities then it would be deemed that the accused has withstood the trial and, he cannot be tried again.

10. He has also relied upon the judgment of this Court in the case of ***Ex. Head Constable Rajinder Singh v. Union of India & Ors., W.P.(C) No. 2715/2000*** to contend that if the sentence has been set aside because on the plea of guilty, the signature of the accused is not obtained then in such a scenario, *de novo* trial cannot be directed.

11. He also submitted that the decision of the DIG to the effect that the findings on the First Charge have been set aside due to non-compliance of mandatory provision of Rule 142(2) BSF Rules in letter and spirit and being against the weight of evidence and whereas the findings on Second and Third Charges have been countersigned, is not sustainable in law, inasmuch as, the DIG could not have sustained Second and Third Charges, which form part of the same document comprising of the First Charge as well, which has been duly signed by the petitioner and especially, when all the three charges are



interconnected with each other. Therefore, the whole proceedings were liable to be set aside on the ground of non-compliance of mandatory provisions of the BSF Rules.

12. That apart, he also submitted that the petitioner is not well versed with English and as such did not understand the content of the charges which were framed against the petitioner. Moreover, on the date of his dismissal, the petitioner was asked to sign some documents in English without even providing their translation. Also, even the trial proceedings were conducted in English without providing any translated copy of the same or interpreting the same to the petitioner in violation of Rule 134 of the BSF Rules.

13. He also submitted that if the petitioner had pleaded guilty, he would not have challenged the first dismissal order by making a representation against the same.

14. In effect, it is his submission that the petitioner was not given proper opportunity to defend himself as his signature was obtained in a fraudulent manner. In this regard, he has relied upon the judgment in the case of **Balwinder Singh v. Union of India & Ors. W.P.(C) No.7875/2007**, wherein it is held that the denial of proper opportunity to defend in SSFC proceeding shall be in violation of the right to life under Article 21 of the Constitution of India. As such, he seeks the prayers as made in the writ petition.

15. On the other hand, Mr. Siddharth Khatana, learned Senior Panel Counsel appearing for the respondents submitted that the petitioner has committed serious offences under the BSF Act while deployed on Indo-Bangladesh Border. The petitioner was also



dismissed from service in SSFC proceedings, which was held at BN HQ 174 Bn BSF, Maheshpur, Raiganj, West Bengal. Therefore, on the ground of this Court having no territorial jurisdiction, the petition needs to be dismissed.

16. It is his submission that as the petitioner did not disclose any procedural irregularity in the conduct of the trial conducted, there exists no necessity of judicial review by this Court. In this regard, he has relied upon the judgment of the Supreme Court in the case of ***Union of India & Ors. v. Major A. Hussain, MANU/SC/0874/1998***, to contend that though Court-Martial proceedings are subject to judicial review but the same is not subject to the superintendence of the High Court under Article 227 of the Constitution of India.

17. For similar proposition, he has relied upon the judgment of the Supreme Court in the case of ***Coal India Limited & Anr. v. Mukul Kumar Choudhary & Ors., Civil Appeal Nos.5762-5763/2009***, decided on August 24, 2009. Reliance has also been placed upon the judgment of this Court in the case of ***Ex-Constable/GD Rana Pratap Singh v. Union of India & Ors., W.P.(C) 5878/2011***, decided on September 13, 2011 to contend the same.

18. That apart, on merits, it is his submission that the petitioner was enrolled on May 25, 2012 as Constable (GD) in BSF. During his tenure of approximately nine years in BSF, besides his trial by the SSFC which is under challenge, he had earlier also been punished five times for committing the following offences under the BSF Act:

“(i) Tried summarily on 16.08.2017 for committing an offence under Section 35(e) of the BSF Act, 1968 and on



being found guilty of the said charge awarded punishment of 07 days' pay fine.

(ii) Tried summarily on 20.10.2017 for committing an offence under Section 19(a) of the BSF Act, 1968 and on being found guilty of the said charge awarded punishment of 28 days RI in Force custody.

(iii) Tried summarily on 21.04.2018 for committing offences under Section 22(e) & 26 of the BSF Act, 1968 and on being found guilty of the said charges awarded punishment of 14 days' pay fine.

(iv) Tried summarily on 08.12.2019 for committing offences under Section 22(e) & 40 of the BSF Act, 1968 and on being found guilty of the said charges awarded punishment of 14 days' pay fine.

(v) Tried summarily on 09.05.2021 for committing an offence under Section 22(e) of the BSF Act, 1968 and on being found guilty of the said charge awarded punishment of 14 days RI in Force custody and 14 days' pay fine."

19. According to him, all the punishments were awarded to him for his casual attitude towards the nation's security and dishonesty with no moral integrity. Therefore, the petitioner's claim of rendering service with due diligence and honesty is false and baseless.

20. Insofar as the charges framed against the petitioner are concerned, it is his submission that on January 4, 2020, the petitioner while performing patrolling duty in the area of responsibility of BOP Ganglar on Indo-Bangladesh Border, was found absent from duty and also found to have consumed alcohol. Accordingly, the Coy Commander of 'F' Coy of 174 Bn BSF submitted a detailed report on the said incident of misconduct by the petitioner to the Commandant 174 Bn BSF. On receipt of report regarding misconduct of the petitioner, disciplinary action was initiated against him and he was



heard by the Commandant, 174 Bn BSF on January 5, 2020 under the provisions of Rule 45 of the BSF Rules on three charges, i.e., first charge under Section 22(e) of the BSF Act for “*neglects to obey any general, local and other order*”; the second charge under Section 26 of the BSF Act for “*Intoxication*”; and the third charge under Section 40 of the BSF Act for “*An act prejudicial to good order and discipline to the Force*”. After conducting hearing under Rule 45 of the BSF Rules, the Commandant, 174 Bn BSF ordered for preparation of the Record of Evidence (‘ROE’, for short) against the petitioner on the aforementioned charges vide order dated January 7, 2020.

21. The ROE against the petitioner was prepared as per the provisions of Rule 48 of the BSF Rules, wherein the petitioner was afforded all the opportunities for his defence as provided in the Rules. After completion of the ROE and having gone through the same, the Commandant, 174, Bn BSF, exercising his discretion under Rule 51(3)(iii) of the BSF Rules, decided to dispose of the disciplinary case against the petitioner by holding SSFC. Before conducting the SSFC trial of the petitioner, all the requisite documents as required under Rule 63(4) read with Rule 64(6) of the BSF Rules, i.e., copy of charge sheet and ROE proceedings etc. were provided to him well in advance for preparation of his defence.

22. It is his submission that in terms of Rule 157 of the BSF Rules, the petitioner was also asked to intimate name of the ‘*Friend of Accused*’ to defend him during his SSFC trial. The petitioner nominated Shri Harindra Singh Chaudhary, AC of 174 Bn BSF as his ‘*Friend of Accused*’. Thereafter, the petitioner was tried by the SSFC by the



Commandant, 174 Bn BSF on the aforesaid three charges. On being arraigned by the Court, the petitioner pleaded ‘Guilty’ to all the charges against him. The Court also found him guilty of all the charges. Thereafter, the Court sentenced him “*To be dismissed from service*”. The findings and sentence of the Court were promulgated to the petitioner on the same day as per the provision of Rule 159 of the BSF Rules. Accordingly, the petitioner was struck off from the strength of 174 Bn BSF w.e.f. June 10, 2020 (AN) and a formal order in this regard was issued on the same day.

23. According to Mr. Khatana, feeling aggrieved by the aforesaid dismissal order, the petitioner submitted a petition addressed to the Inspector General, North Bengal Ftr. BSF, praying therein to set aside the order dated June 10, 2020 vide which he was dismissed from service and also requested for re-instatement in service with all arrears benefits. While examining the aforesaid petition of the petitioner, it was observed that after compliance of Rule 142(2) of the BSF Rules, i.e., the signature of the petitioner was not taken as provided in the proviso to the said rule. Thus, due to violation of the said mandatory provisions of the BSF Rule 142(2), the Competent Authority set aside the SSFC trial proceedings of the petitioner and further directed to hold *de-novo* trial against the petitioner vide order dated April 20, 2021. Consequently, the petitioner was reinstated in service by regularising his absence period vide order dated May 30, 2021.

24. It is his submission that the petitioner had reported for duty on May 8, 2021 and on the very next day, i.e., May 9, 2021 at about 1710 hrs., the petitioner was again found to have consumed liquor at Gate



No.03 of Bn HQ 174 Bn BSF. On the basis of detail report and medical examination report of the Medical Officer of SHQ Hospital Raiganj, the petitioner was heard on an offence report on May 22, 2021 under Rule 45 of the BSF Rules by the Commandant, 174 Bn BSF for committing an offence under Section 22(e) of the BSF Act and further tried summarily under the provisions of Section 53 of the BSF Act for committing an offence under Section 22(e) of the BSF Act for a charge being “Neglects to obey any general, local and other order” and on being found guilty of the said charge, he was awarded punishment of 14 days RI in Force custody and 14 days’ pay fine.

25. He submitted that on December 30, 2021, the petitioner was tried *de novo* by the SSFC constituted in terms of Section 70 of the BSF Act on the aforesaid three charges. In substance, the charges which were framed against the petitioner are the following:

BSF ACT, 1968 BSF ACT U/S-22(e) BSF ACT, 1968 SECTION-26 BSF ACT, 1968 BSF ACT U/S-40	FIRST CHARGE <u>“NEGLECTS TO OBEY ANY GENERAL, LOCAL AND OTHER ORDER”</u> in that he, on 04.01.2020 at about 0430 while performing the patrolling duty in the AOR of BOP Ganglar, was found having consumed alcohol in contravention of Battalion Order No. Steno/order/174 Bn/2019/ 18159-68 dated 03.10.2019 SECOND CHARGE <u>INTOXICATION</u> in that he, on 04.01.2020 at about 0430 hrs, was found in the state of intoxication during patrolling duty between BFL No. 22 GB to 23 GB in the AOR of BOP Ganglar ‘F’ Coy, 174 Bn BSF. THIRD CHARGE <u>“AN ACT PREJUDICIAL TO GOOD ORDER AND DISCIPLINE TO THE FORCE”</u> in that he, on 04.01.2020 at about 0430 hrs, Insp(GD) Subodh Kumar, Coy 21C while on vehicle patrolling, No. 12061623 CT(GD) Amarjeet Singh ‘C’ Coy was not found present in the AOR of BOP Ganglar, after that he was found having consumed alcohol.
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26. According to Mr. Khatana, before conducting the *de novo* SSFC trial of the petitioner, all the requisite documents as required under Rule 63(4) read with Rule 64(6) of the BSF Rules, i.e., copy of the charge sheet and ROE proceeding etc. were again provided to him well in advance vide letter dated December 24, 2021 on proper receipt for preparation in his defence. He was again asked to intimate the name of the “Friend of Accused”.

27. It is his submission that during the trial, on being arraigned by the Court, the petitioner himself pleaded ‘Guilty’ to all the three charges against him. The Court complied with the provisions of Rule 142(2) of the BSF Rules, and obtained signature of the “Accused” and “Friend of the Accused” thereon. Thereafter, the Court proceeded on the plea of guilty and ROE proceedings were read over, explained to the petitioner and attached to the proceedings. Accordingly, the Court found the petitioner ‘Guilty’ of all the three charges. On being given an opportunity to make statement in reference to the charges or in mitigation of punishment, the petitioner has stated that, *“He wishes to serve the Force. He may be given one more opportunity and he will not do any mistake again. He wishes to serve again for the sake of his family and requested that he may be given one more opportunity as he is the only earning member of his family. This mistake which is has done may be pardoned and he will not do it again”*. Moreover, the petitioner declined to call any witness as to his character.

28. He submitted that the Court after having found the petitioner ‘Guilty’ of all the three charges and taking into consideration his previous conviction, character, age, length of service etc., the Court



sentenced him “To be dismissed from service”. The findings and sentence of the Court were promulgated to the petitioner on the same day as per the provisions of Rule 159 of the BSF Rules. Accordingly, the petitioner was struck off from the strength of 174 Bn BSF w.e.f. December 30, 2021 (AN) and a formal order in this regard was issued vide order dated December 30, 2021.

29. However, while reviewing the SSFC trial proceedings of the petitioner, it was observed by the DIG that though the petitioner has pleaded guilty to the First Charge, however, there is no cogent evidence available on record in the ROE proceedings to prove the ingredient of the said charge. It was also observed that the Court had not satisfied itself with respect to second limb of Rule 142(2) of the BSF Rule, wherein the Court was to read the ROE or the AOE, as the case may be and if it appears from the record that the accused ought to plead ‘Not guilty’, to record a plea of ‘Not guilty’ and proceeded with the trial as far as first charge against the petitioner was concerned. Accordingly, the DIG, SHQ BSF Raiganj, by virtue of powers vested in him under Section 115 of the BSF Act read with Rule 161 of the BSF Rules, set aside the finding on the First Charge due to non-compliance of mandatory provisions of Rule 142(2) of the BSF Rules in letter and spirit and being against the weight of evidence. However, the findings on Second and Third Charges and the sentence of dismissal from service were countersigned by him. After, counter signature of the SSFC trial proceedings by the DIG, SHQ BSF Raiganj, the findings and sentence of the Court were re-promulgated to the petitioner through registered post vide letter dated February 15, 2022.



30. He submitted that thereafter, the petitioner had submitted statutory petitions dated January 24, 2022 and April 13, 2022 addressed to the Inspector General, North Bengal Ftr. BSF, praying therein to set aside the order dated December 30, 2021 vide which he was dismissed from service and requested for his re-instatement in service with all benefits. The petitioner was informed vide letter dated May 9, 2022 to file a fresh petition.

31. He submitted that the *de novo* proceedings were conducted strictly in accordance with the rules and procedure as prescribed under the BSF Act and Rules, wherein the petitioner was given all the opportunities to defend himself at every stage. Moreover, there is sufficient and cogent evidence available on record in the ROE proceedings to substantiate the charges and sustain the conviction of the petitioner on the second and third charges.

32. It is his submission that there is neither violation of Section 75 of the BSF Act nor Article 20(2) of the Constitution of India. Section 75 of the BSF Act, provides that when any person subject to BSF Act has been acquitted or convicted of an offence by a SSFC, he shall not be liable to be tried again for the same offence by SSFC or dealt with under the same Sections. Similarly, Article 20(2) of the Constitution of India lays down that no person shall be prosecuted and punished for the same offence more than once.

33. He stated that the conviction of the petitioner by the SSFC or punishment awarded by the said Court on June 10, 2020 does not exist as the SSFC trial proceedings have been set aside by the IG BSF, North Bengal, Frontier vide order dated April 20, 2021 by considering the



representation of the petitioner. Thus, no earlier conviction or sentence remain in force on the same charges against the petitioner, hence, his *de novo* trial is not barred by law.

34. Insofar as compliance of Rule 142 (2) is concerned, he submitted that during the *de novo* SSFC trial proceedings, the ROE proceedings prepared against the petitioner were read over and explained to him after translating it. The petitioner also participated in the SSFC proceedings right from the beginning which indicates that the petitioner was being explained the proceedings in language of his understanding. Further, the petitioner had appended his signatures only after the compliance of Rule 142(2) of the BSF Rules, which signifies that the same were being translated and the whole proceedings were understood by the petitioner. Also, as the petitioner had joined BSF, where the minimum qualification for Constable is 10th Pass, hence, the petitioner can understand preliminary English language very well.

35. Mr. Khatana has heavily relied upon the fact that the petitioner had pleaded 'Guilty' to all the charges. He also stated that discipline is the bedrock of the Armed Forces and conduct of the petitioner in consuming liquor and not being present at his place of duty while detailed for border guarding duties on the International Border in the early hours of January 4, 2020 are very serious offences and the same are unpardonable. Such dereliction to perform operational duty on the International Border by any soldier like the petitioner is a serious threat to the national security and needs to be suitably dealt with. Such grave misconducts of the petitioner have no place in disciplined Force like BSF being Armed Force of the Union of India where highest level of



discipline is required. Therefore, keeping in view the gravity of the offences committed by the petitioner, he has deservedly been dismissed from service by the SSFC. As such, he has sought the dismissal of the writ petition.

36. Having heard the learned counsel for the parties and perused the record, at the outset, we may state here that we first intend to consider the plea of Mr. Khatana that the conviction being on the ground that plea of guilty having been accepted by the petitioner, though a *de novo* trial was conducted, is a sufficient ground to dismiss the petitioner.

37. In order to completely appreciate this plea, we first need to consider as to whether the mandate of Rule 142(2) of the BSF Rule and the latest judgment of the Supreme Court in the case of ***Union of India (UOI) and Ors. v. Jogeshwar Swain, MANU/SC/0977/2023***, have been followed by the respondents while conducting the SSFC trial proceedings on the premise of the petitioner having pleaded guilty to all the three charges.

38. Before, we deal with this issue, it is necessary to reproduce the contents of the proceedings wherein the petitioner alleged to have accepted the plea of guilty with regard to all the three charges as under:-



THE COURT

ArraignmentQuestion to the accused

- Q.2 How say you No.120616231 Constable Amarjeet Singh of 174 Bn BSF, are you guilty or not guilty of the first charge?
- Ans. 2 Answer by the accused,
"Guilty".
- Q.3 How say you No.120616231 Constable Amarjeet Singh of 174 Bn BSF, are you guilty or not guilty of the second charge?
- Ans.3 Answer by the accused,
"Guilty".
- Q.4 How say you No.120616231 Constable Amarjeet Singh of 174 Bn BSF, are you guilty or not guilty of the third charge?
- Ans.4 Answer by the accused,
"Guilty".

The accused having pleaded guilty to the 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 in the language he understands, 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 and satisfied from the record/abstract of evidence or otherwise that there is no need for the accused to withdraw his plea of guilty, accepts his plea and records the same.

(The provisions of rule 142 (2) are complied with)

ACCUSED

No. 120616231
Constable(GD)
Amarjeet Singh
174 Bn BSF

FRIEND OF THE ACCUSED

(Dharampal Singh), DC
(IRLA No 40489339)
174 Bn BSF

THE COURT

(Gajendra Sharma)
Commandant
174 BN BSF
One Court

39. It may be stated here that with regard to the First Charge, the DIG had reviewed the SSFC trial proceedings in terms of Rules 160 and 161 of the BSF Rules and was of the following view:

SENTENCE BY THE COURT

Taking all these matters into consideration, I now sentence the accused No. 120616231
Rank Constable Name Amareet Singh of 174 BN BSF TO BE DISMISSED FROM
SERVICE".

Signed at HQr 174 Bn BSF, Maheshpur, Raiganj (WB) on 30th day of December
2021.

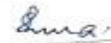

CHANDENDRA SHARMA
COMMANDANT
IRLA NO. 39666499
174 BN BSF, MAHESHPUR, RAIGANJ (WB)
(HOLDING THE TRIAL)

The trial is closes at 1300 hours.

Remarks by the Reviewing Officer

" By virtue of Powers vested in me under Section 115 of the
BSF Act, 1968 read with Rule 161 of the BSF Rules, 1969, I set-aside
the finding on the first charge due to non-compliance of mandatory
provisions of Rule 142(2) of the BSF Rules, 1969 in letter & spirit
and being against the weight of evidence. The findings on
second and third charge and the sentence are "COUNTERSIGNED".

Place: Sector 162 Karmajora
Raiganj
Date: The 09th Feb' 2022


09-02-22
श्रीमान आचार्य श्रीवास्तव
S. A. Shrivastava
उप महाप्रबन्धक
Deputy Inspector General
भारत म. गी. गु. मह. प्रमन
SHQ BSF Raiganj

40. We may also highlight the opinion of the Supreme Court in the case of **Jogeshwar Swain** (*supra*), wherein the Supreme Court in paragraphs 33 to 38, has held as under:

"33. Rule 142 of the BSF Rules, 1969 which fall in Chapter XI of the BSF Rules, 1969 deals with the manner in which an SSFC is required to record the plea of guilty. Rule 143 provides for the procedure after the plea of guilty is recorded. The relevant portion of Rule 142 as it stood on the date of the proceeding in question is reproduced below:

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.

34. A plain reading of Sub-rule (2) of Rule 142 would indicate that on the Accused pleading guilty, before a finding of "Guilty" is recorded, the SSFC is not only required to ascertain whether the Accused understands the nature and meaning of the charge to which he has pleaded guilty but it must also inform the Accused of the general effect of that plea and of the difference in procedure which will be made by the plea of guilty. That apart, even if the Accused pleads guilty, if it appears from the record or abstract of evidence or otherwise that the Accused ought to plead not guilty, the SSFC is required to advise him to withdraw that plea.

35. 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.

36. Reverting to the facts of this case, we notice from the record that the minutes of the proceedings of the SSFC dated 23.07.2005 do not indicate as to what advice was rendered to the Accused with regard to the general effect of the plea of guilty taken by him. The minutes dated 23.07.2005 are nothing but a verbatim reproduction of the statutory rule. There is no indication as to how the Accused was explained of the broad consequences of him pleading guilty. Verbatim reproduction of the statutory Rule and nothing further, in our view, is no compliance of the provisions of Sub-rule (2) of Rule 142 of the BSF Rules, 1969. Therefore, we are of the view that the Appellants cannot draw benefit from the minutes of the proceedings as to canvass that the plea of guilty was accepted after due compliance of the requirements of Sub-rule (2) of Rule 142 of the BSF Rules, 1969.

37. Further, the record of the proceedings of SSFC dated 23.07.2005 does not bear the signature of the Accused. No doubt, the requirement of having the signature of the Accused on the minutes recording plea of guilty was first introduced by insertion of the proviso to Sub-rule (2) of Rule 142 with effect from 25.11.2011. But there existed no embargo in obtaining signature of the Accused to lend credence to the making of the plea of guilty. Absence of signature of the Accused in this case assumes importance



because here the Accused denies taking such a plea and looking at the available evidence, pleading guilty appears to be an unnatural conduct. At the cost of repetition, it be observed that the case against the Petitioner was in respect of clicking photographs of a lady doctor while she was taking her bath. There was no eye-witness of the incident; the camera was recovered from some other person's house; PW-9, a witness to the keeping of the camera by the Accused (i.e., the original Petitioner), in her previous statement made no such disclosure; there was no cogent evidence with regard to ownership of that camera; and, above all, even the reel was not developed to confirm the allegations. In these circumstances, when there was a challenge to the making of such confession before the High Court, a very heavy burden lay on the non-Petitioners (Appellants herein) to satisfy the conscience of the Court that the plea of guilty was recorded after due compliance of the procedure prescribed by the BSF Rules, 1969. As we have already noticed that there was no proper compliance of the procedure prescribed by Sub-rule (2) of Rule 142 of the BSF Rules, 1969, absence of signature of the Accused in the minutes further dents the credibility of the SSFC proceeding. The High Court was therefore justified in looking at the evidence to find out whether punishment solely on the basis of confession (i.e., plea of guilty) was justified.

38. In this context, the High Court meticulously examined the record of evidence prepared under the direction of the Commander to come to the conclusion that except for the statement of PW-9 that the camera was hidden by the original Petitioner, there was no worthwhile evidence in respect of his culpability. The High Court also noticed that even PW-9 was not consistent, as during investigation PW-9 had not made any such disclosure that the original Petitioner had hidden the camera in the house from where it was recovered. What is important is that the house from where the camera was recovered was not the house of the original Petitioner but of another constable who had his



house adjoining the quarter where the lady doctor had taken her bath. Interestingly, there was no evidence led to indicate that the said camera was of the original Petitioner. In these circumstances, where was the occasion for the original Petitioner to make confession of his guilt when there was hardly any evidence against him. Admittedly, none had seen him clicking photographs and the lady doctor also did not inculcate the original Petitioner though she might have suspected the original Petitioner. Further, we notice that while preparing the record of evidence also, plea of guilty of the original Petitioner was recorded, which the original Petitioner claims to have been obtained under duress and without giving him sufficient time to reflect upon the evidence as is the mandate of the proviso to Sub-rule (3) of Rule 49 of the BSF Rules, 1969. At this stage, we may remind ourselves that while preparing the record of evidence the statement of last witness was recorded on 29.06.2005 and on that day itself, without giving twenty-four hours' time for reflection, as is required by the proviso to sub- Rule (3) of Rule 49 of the BSF Rules, 1969, alleged confessional statement of the original Petitioner was recorded. In these circumstances, when the original Petitioner had raised a plea before the High Court that his confession was involuntary and that in fact no confession was made by him, there was a serious burden on the non-Petitioners (i.e., the Appellants herein), to satisfy the conscience of the High Court that there had been due compliance of the procedure and that the confession was made voluntarily. More so, when the record of evidence contained no worthwhile evidence regarding the guilt of the original Petitioner. In the aforesaid backdrop, the SSFC ought to have advised the original Petitioner to withdraw the plea of guilt as per provisions of Sub-rule (2) of Rule 142 of the BSF Rules, 1969.”

41. From the reading of the judgment of the Supreme Court, it is noted that in what manner a guilty plea needs to be recorded in a given



SSFC trial proceeding in terms of the mandate of Rule 142 (2) of the BSF Rules, in the following manner:

- (i) The SSFC is not only required to ascertain whether the accused understands the nature and meaning of the charge to which he has pleaded guilty but it must also inform the accused of the general effect of that plea and of the difference in procedure which will be made by the plea of guilty;
- (ii) Even if the accused pleads guilty, if it appears from the record or abstract of evidence or otherwise that the accused ought to plead not guilty, the SSFC is required to advise him to withdraw that plea;
- (iii) Before acting on the plea of guilty, the compliance of the procedural safeguards need to be followed, inasmuch as, it needs to be ensured 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;
- (iv) It is for such a reason that Rule 142 (2) 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;

(v) Since, the procedure laid down in Rule 142 (2), serves an important purpose and is for the benefit of an Accused, its strict adherence is warranted before accepting a plea of guilty.

42. Therefore, in this regard it is important to peruse the document of the SSFC proceedings wherein the petitioner has pleaded guilty in respect of the three charges in order to ensure whether the respondents have recorded the guilty plea in conformity with the mandate of Rule 142 (2) of the BSF Rules, the scope of which has been delineated by the Supreme Court in the case of **Jogeshwar Swain (supra)** as highlighted by us in the aforementioned paragraph.

43. Having perused the document as reproduced by us in paragraph 38 above, which records the guilty plea of the petitioner, it is revealed that the following has been put to the petitioner insofar as compliance of Rule 142(2) of the BSF Rules is concerned:-

- (i) The Court has explained to the accused/petitioner the meaning of charges to which he has pleaded guilty and ascertained that the accused understood the nature of the charges to which he has pleaded guilty;
- (ii) The Court has also informed the accused/petitioner in the language he understands, the general effect of that plea and the difference in procedure which will be followed consequent to the said plea;



(iii) The Court having satisfied itself that the accused understands the charges and the effect of his plea of guilty and satisfied from the record / abstract of evidence or otherwise that there is no need for the accused to withdraw his plea of guilty, accepts his plea and records the same.

44. Suffice to state, the plea of guilty has not been recorded in conformity with Rule 142 (2) of the BSF Rules as well as the mandate of the Supreme Court in ***Jogeshwar Swain (supra)***, inasmuch as, there is nothing in the proceedings to show that the SSFC had informed the accused/petitioner in his vernacular language about the nature and meaning of the charge which he may have to face, as well as, he was also not informed about the broad consequences that he may have to suffer once he pleads guilty. In other words, the petitioner was not informed that in case he pleads guilty, the consequence could be his dismissal from the service.

45. It is clear from perusal of paragraph 35 of the judgment of the Supreme Court in ***Jogeshwar Swain (supra)*** that strict compliance of Rule 142 (2) of the BSF Rules becomes important as the same ensures that confessions do not become an easy way out for deciding cases where marshalling of evidence to prove the charge becomes difficult.

46. In fact, it is the case of the petitioner and also recorded by the respondents in answer to question No.5 put to the petitioner during the SSFC trial proceedings which is reproduced as under:-



Q-5. Do you wish to make any statement in reference to the charge or in mitigation of Punishment?

Ans. I wish to make statement, I wish to serve the force. I be given one more opportunity and I will not do any mistake again. I wish to serve again for the sake of my family I be given one more opportunity as I am the only earning member of my family. The mistake which I have done be pardoned and I will not do it again.

47. Perusal of the same would reveal that the petitioner has pleaded guilty to all the charges with an intent that he may be given one more opportunity to continue in the respondents' force and it was also stated by the petitioner that if the mistake he has done be pardoned, he will not repeat it again as he has family to support being the only earning member of his family.

48. Therefore, it is clear to us, that the SSFC has not informed him about the consequences of pleading guilty. In fact, it appears that he was under the *bona fide* impression that if he pleads guilty, he may be able to secure his job. If that be so, the respondents have only for the sake of formality adhered to the provision of Rule 142 (2) of the BSF Rules and as such, dismissed the petitioner from the service, simply on the basis of the so-called 'guilty plea' in respect of all the three charges. Hence, the proceedings being not in accordance with Rule 142 (2) of the BSF Rules and as well as the law laid down by the Supreme Court in *Jogeshwar Swain (supra)*, the same is not sustainable in the eyes of law.

49. This we also say, for the reason that the DIG himself while reviewing the SSFC trial proceedings under Rules 160 and 161 of the



BSF Rules, has clearly held that there is non-compliance of mandatory provisions of Rule 142 (2) of the BSF Rules in respect of charge No.1. It is not understandable to us that when the plea of guilty was with respect to all the three charges, how the findings of the SSFC in respect of the same plea of guilty against the First Charge only is not in conformity with Rule 142 (2) of the BSF Rules. It is to be stated here that if the plea of guilty in respect of the First Charge is in violation of Rule 142 (2) of the BSF Rules, the same conclusion must also hold good with regard to the Second and Third Charges.

50. Though, it can be stated that with regard to the First Charge, there was no cogent evidence to hold the petitioner guilty, but that would not meet the requirement of compliance of the procedure as stipulated for pleading guilty under Rule 142 (2) of the BSF Rules. The fact that the petitioner, despite there being no evidence, has pleaded guilty qua the First Charge, makes it clear that the petitioner has pleaded guilty with regard to the said Charge, though there was no evidence to prove his guilt only with an intent that he may be able to secure his job. Surely, the intent being so and the respondents having not explained the consequences/ effect of pleading guilty, surely the mandate of Rule 142 (2) of the BSF Rules, has been violated. The necessary consequence is that the SSFC proceedings held against the petitioner which resulted in his dismissal only on the ground of him pleading guilty shall be unsustainable and the dismissal of the petitioner stands vitiated on this ground only.

51. Though other grounds have been urged by Mr. Inayati to challenge the dismissal of the petitioner from the service of the



respondents' Force, we do not see any reason to advert to those pleas as we have set aside the impugned action of the respondents on the ground that the mandate of Rule 142 (2) of the BSF Rules has not been followed while dismissing the petitioner from the service.

52. Accordingly, the impugned dismissal order dated December 30, 2021 and the order of the respondents dated September 27, 2022 dismissing the statutory appeal are set aside. The petitioner shall be reinstated in the service of the respondents' Force with all the consequential benefits including back wages to be paid with interest @ 6% per annum.

53. The writ petition is disposed of in above terms. No costs.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

APRIL 24, 2024/aky