

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present :

**THE HON'BLE JUSTICE SUJOY PAUL
&
THE HON'BLE JUSTICE SMITA DAS DE**

**FMA 1178 of 2019
With
CAN 2 of 2018 (Old no.CAN 771 of 2018)
CAN 3 of 2019(Old no. CAN 6594 of 2019)
CAN 5 of 2023**

**UNION OF INDIA & ORS.
VS
No. 87250608 Head Constable Raj Kumar & Ors.
With
WPA 10263 of 2015
No. 87250608 Head Constable Raj Kumar & Ors.
Vs.
Commandant 125 Battalion BSF & Ors.**

For the appellants	:	Mr. D.N. Ray, Sr. Adv. Mr. Sunil Singhania, Adv.
For the respondents	:	Mr. Sardar Amjad Ali, Sr. Adv. Ms. Sucharita Roy, Adv.
Heard on	:	22.09.2025
Judgment on	:	25.09.2025

Sujoy Paul, J.

1. In this *intra* Court appeal, the challenge is mounted to the order dated 11.01.2017 passed by the learned Single Judge in WP 10263 (W) of 2015

whereby writ application was allowed and all show cause notices impugned therein and the basic order dated 01.03.2013 were set aside.

Factual background:

2. The appellant was working as constable in the Border Security Force. The second respondent issued a charge-sheet dated 20th May, 2011 to the respondent/employee under Section 46 of **Border Security Force Act, 1968 (BSF Act)**. The employee was committed to be tried by a General Security Force Court (GSFC). After examining the witnesses, the GSFC prepared its findings on 11.06.2011. In turn, the second respondent by order dated 22.06.2011 declared that the disciplinary proceeding against the employee has been finalized by the GSFC and employee has been acquitted from all charges.
3. Since, the said finding of GSFC was subject to confirmation under Section 103 and 107 of BSF Act, the matter was placed before the competent/confirming authority.
4. The Special Director General (East)/3rd respondent was the confirming authority who passed the orders dated 01.03.2013 and 01.05.2013.
5. On conclusion of revision proceeding, the revisional authority presided over by 5th respondent announced its findings subject to confirmation by competent authority. The revisional GSFC opined that it adhered to its earlier finding that employee is 'not guilty' of the charge. Since, finding requires a confirmation by the statutory authority, the said finding was presented for confirmation before 3rd respondent, the Additional Director General. The said authority opined that he does

not confirm the findings of the GSFC because it is against the weight of evidence. He further recorded that trial of accused person is inexpedient or impracticable as fresh trial for the said offence by another security force court is not permissible. However, on account of the misconduct as per available evidence on record, in his opinion, further retention of accused person was undesirable and detrimental to the discipline of the force. Hence, he directed commandant to take necessary action to terminate the services after observing prescribed procedure under Section 11 of BSF Act read with Rule 22 (2) of the Border Security Force Rules, 1969 (BSF Rules).

6. In purported compliance with the said order of Additional Director, a notice dated 15.04.2015 was issued by commandant 125th Battalion of BSF as to why services of employee should not be terminated because of alleged misconduct. This show cause notice along with other similar notices were called in question in WP 10263 (W) of 2015. The learned Single Judge set aside the basic order dated 01.03.2013 and all the impugned show cause notices. The present *intra* court appeal assails this order of learned Single Judge dated 11.01.2017.

Contention of appellant:

7. The first and foremost contention is that the Director General or any prescribed officer in exercise of power under Section 118 of BSF Act may annul the proceedings of Security Force court on the ground that they are illegal and unjust. Thus, in the instant case, the decision of confirming authority is in consonance with the BSF Act and Rules.

The first confirmation of GSFC is also within the purview of the Act. The Act nowhere provides an opportunity of hearing to the writ petitioner at that stage. The revision order passed by GSFC was also not accepted by the confirming authority and it rightly remanded the same for further revision. Heavy reliance is placed on Section 113 (1) of the BSF Act to submit that the confirming authority did not ask for additional evidence. The impugned notices were issued consequent upon the direction of the competent authority dated 01.03.2013 and 01.05.2013.

8. It is further urged that employee challenged the show cause notices whereas he could have filed reply and availed the remedy before the competent authority. The point raised by employee could have been considered by authority while not confirming the order of GSFC.
9. Rule 6 of BSF Rule deals with any matter not specifically provided in the rules. It gives immense power to competent authority to do such things or take such action as may be just and proper in the circumstance of the case. The impugned decision was taken by competent authority under Section 11 of the BSF Act read with Rule 26 of BSF Rules. The employee was given opportunity to submit his explanation against proposed punishment of dismissal from service and said action is inconsonance with the act and rules.
10. Furthermore, it is argued that no interference was warranted by learned Single Judge against show cause notices. A mere show cause notice or charge-sheet does not infringe any right of any one. Reliance is placed on two judgments of Supreme Court in **(2004) 3 SCC 440**

(Special Director & Anr. vs. Mohd. Ghulam Ghouse & Anr.) and (2006) 12 SCC 28 (UOI vs. Kunisetty Satyanarayana).

Contention of employee:

11. Learned Senior Counsel for the employee submits that learned Single Judge has rightly interfered with the matter. As per Section 43 of BSF Act, any finding or sentence of Security Force Court requires confirmation of the verdict. The confirming authority in the instant case was the Additional Director General who admittedly did not confirm the order under Section 113 of the BSF Act. The said authority opined that he is not confirming the findings of GSFC on the charge because it is against the weight of evidence. However, with a finding that employee's continuance in service is undesirable and detrimental to the discipline of force and therefore, he directed the commandant of accused persons to take necessary action to terminate his services as per provisions of act and rules. The learned Senior Counsel for appellant submits that there exists no enabling provision whereby the confirming authority can relegate the matter to a subordinate authority to take a decision as dictated by him in a case of this nature where competent authority did not agree with the findings of the GSFC.
12. No discordant note has been given to the appellant by the competent authority while disagreeing with the report of the GSFC. The matter for taking a definite action should not have been given to the subordinate authorities.

13. If confirming authority did not accept the order of lower authority, it was open to it to make a determination itself by following principles of natural justice.
14. After having recorded the conclusion that employee deserves to be dismissed from service, the other show cause notices issued by commandants were of no meaning and contrary to the principles of natural justice. The learned Senior Counsel supported the impugned order of learned Single Judge.
15. Both sides filed their written law notes. We have heard the parties at length and perused the records.

Analysis:

16. The facts are not in dispute in this case. The first GSFC tried the respondent between 26.05.2011 to 11.06.2011 and found that respondent is 'not guilty' of the charge. As per affidavit in opposition filed before the learned Single Judge, the said finding of 'not guilty' needs confirmation under Section 107 of BSF Act and accordingly, the findings were placed before special DG BSF (Eastern Command). The confirming authority remanded the finding of GSFC for revision on 09.04.2012 as per Section 113 of BSF Act, 1968.
17. In furtherance of the said order dated 09.04.2012, the revision GSFC trial was held from 17.04.2012 to 05.06.2012 at Murshidabad. The revisional GSFC after completing the trial came to hold that respondent is 'not guilty' of the charge. In turn, the matter was again placed before the Additional Director General HQ, BSF Kolkata

(Confirming authority) who did not confirm the findings of revisional GSFC.

18. The said authority passed the order dated 01.03.2013 which became subject matter of challenge before the learned Single Judge. This order reads thus:

*"I do not confirm the findings of the GSFC on the charge, it being against the weight of evidence. I am satisfied that further trial of the accused persons is in expedient or impracticable and a fresh trial for the said offence by another Security Force Court is not permissible and of the opinion that **on account of the misconduct as per available evidence on record, further retention of the accused persons in service is undesirable and detrimental to Force discipline and hence I direct Commandant of the accused persons to take necessary action to terminate their services administratively after observing due procedure prescribed under Sec-11 of the BSF Act, 1968 read with Rule 22 (2) of BSF Rules, 1969.**"*

Place: Kolkata
Date:-March 2013

(Banshidhar Sharma), IPS
Addl. Director General (East)
HQ Spl DG (East), BSF
Kolkata.
Confirming Authority."

(Emphasis Supplied)

19. The Additional Director General passed yet another order dated 01.05.2013 Annexure 'P-3' wherein he opined as under:

"9. There may not thus be direct evidence available to implicate the accused persons with regard to proportionate criminality and respective acts in relation to the charge, none-the-less it is admitted position that the deceased was apprehended by the accused persons and remained under the custody at BOP Bamnabad till his death. Surprisingly the medical evidence which would have been a vital piece of evidence corroborating the substantial circumstantial evidence available has not been given due consideration by the Court. It is settled proposition of law that there is no material difference in the direct and circumstantial evidence for the purpose of evaluation of the evidence and the maxim that "men may lie but the circumstances never do" is relevant in deciding such type of cases. The court did not address the issues raised in the Revision order properly and brief reasons recorded by the court in support of its finding have also been found wanting considering the evidence available on record. The Court should have also considered for the special finding on the basis of the circumstantial evidence available on record because there is no eye witness in this case but for the accused persons and even if the

deceased was apprehended in injured condition, available materials clearly suggested that due to negligence on the part of the accused persons and the Post Comdr they have added to the cause of death of the victim.

10. As such considering the entire facts and circumstances of the case in the light of evidence available on record **the finding of the GSFC is found to be against the weight of evidence.**

11. Hence, **I do not confirm the finding of the GSFC being against the weight of evidence.** In the interest of justice and fair play. Since the statutory provisions under the BSF & Rules mandate that the finding of the GSFC may be only revised and the finding of the Court have no validity until confirmed. It is therefore, considering the evidence available on record regarding the misconduct of the accused persons. I am satisfied that the trial of the accused persons is inexpedient or impracticable and of the opinion that their further retention in the service of the accused persons is not desirable in terms of Sec. 11 of the BSF Act, 1968 read with Rule 22 (2) of the BSF Rules, 1969.

(Emphasis Supplied)

20. In obedience of the direction given by Additional Director General the show cause notices under Rule 22 of BSF Rule were issued to the employee on 15.04.2015 and 25.04.2015. A plain reading of these show cause notices shows that the notices were founded upon the same allegation/charge which became subject matter of main GSFC and revision GSFC and employee was held to be 'not guilty'.
21. A careful reading of document dated 01.05.2013 shows that the learned Additional Director General did not confirm the finding of revision GSFC because the finding is found to be against the weight of the evidence. Thus, the confirming authority disagreed with the finding of 'not guilty' recorded by the two GSFCs.
22. Section 108 of BSF Act envisages power of the 'confirming authority' which reads as under:

“S.108. Power to confirm finding and, sentence of General Security Force Court. – The findings and sentences of General Security Force Courts may be confirmed by the Central Government or by any officer empowered in this behalf by warrant of the Central Government.”

(Emphasis Supplied)

- 23.** As per Section 108, the findings of GFSC deserves confirmation. This provision is silent about observance of principles of natural justice in the event findings of GSFC are in favour of the employee and confirming authority intends to disagree with it and inclined to impose punishment.
- 24.** Putting it differently, in a case of this nature, where two GSFCs have recorded their findings in favour of respondent as ‘not guilty’, the question is whether it was open to the confirming authority to come to the conclusion that further retention of respondents is undesirable and detrimental to the force discipline and accordingly direct commandant to take necessary action to terminate his services. More so, when he has not prepared any discordant note and not mentioned the basis to hold the respondent as guilty. Pertinently, in para 9 of the order dated 01.05.2013 the confirming authority recorded that – *“the Court should have considered for the special finding on the basis of the circumstantial evidence available on record because there is no eye witness in this case but for the accused persons and even if the deceased was apprehended in injured condition, available material clearly suggested that due to negligence on the part of accused persons and the post commander they have added to the cause of death of the victim.”*

(Emphasis Supplied)

- 25.** In the first portion of para 9 of the order dated 01.05.2013, the confirming authority found that GSFC could not get any evidence to hold the respondent as guilty. Thereafter it disagreed with the findings by holding that “available material clearly suggested” that respondent added to the cause of death of victim. The confirming authority has not mentioned with accuracy and precision as to which is that ‘available material/evidence’ which leads to the said ‘conclusion’. For twin reasons, we are unable to give our stamp of approval to the decision of disagreement by the confirming authority. *Firstly*, the reasons for disagreement are not spelt out with necessary clarity. When two GFSCs recorded their findings as ‘not guilty’, and confirming authority intended to disagree with the same, it was obligatory on his part to refer to the relevant evidence/material on the strength of which he opined that respondent added to the misery of the victim. In absence of ‘reasons’, ‘conclusion’ cannot sustain judicial scrutiny. *Secondly*, the respondent was not put to notice by the confirming authority about his proposed disagreement/non-confirmation of the findings of GSFC as ‘not guilty’.
- 26.** No doubt, Section 108 is silent about following the principles of natural justice and for putting the employee to notice in the event of disagreement by the confirming authority but this question is no more *res integra*. In ***Punjab National Bank vs. Kunj Behari Misra, (1998) 7 SCC 84*** the apex court dealt with a case where the disciplinary authority disagreed with the finding of enquiring authority

and acted under regulation 7 (2), whether principles of natural justice are to be followed or not was the point. It was poignantly held as under:

*“19. The result of the aforesaid discussion would be that the **principles of natural justice have to be read into Regulation 7(2)**. As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, **it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings**. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”*

(Emphasis Supplied)

27. In the case of **Punjab National Bank (Supra)** the court considered its previous judgment in **Ram Kishan vs. Union of India (1995) 6 SCC 157** wherein it was held as under:

*“10. The next question is whether the show-cause notice is valid in law. It is true, as rightly contended by the counsel for the appellant, that the show-cause notice does not indicate the reasons on the basis of which the disciplinary authority proposed to disagree with the conclusions reached by the inquiry officer. The purpose of the show-cause notice, in case of disagreement with the findings of the inquiry officer, is to enable the delinquent to show that the disciplinary authority is persuaded not to disagree with the conclusions reached by the inquiry officer for the reasons given in the inquiry report or he may offer additional reasons in support of the finding by the inquiry officer. **In that situation, unless the disciplinary authority gives specific reasons in the show cause on the basis of which the findings of the inquiry officer in that behalf is based, it would be difficult for the delinquent to satisfactorily give reasons to persuade the disciplinary authority to agree with the conclusions reached by the inquiry officer. In the absence of any ground or reason in the show-cause notice it amounts to an empty formality which would cause grave prejudice to the delinquent officer and would result in injustice to him. The mere fact that in the final order some reasons have been given to disagree with the conclusions reached by the disciplinary authority cannot cure the defect.**”*

(Emphasis Supplied)

- 28.** We find support in our view from the judgment of **Ram Kishan (Supra)** and **Punjab National Bank (Supra)** and therefore, inclined to hold that principles of natural justice must be read into Section 108 of BSF Act when confirming authority intends to hold an employee guilty by taking a different view than the view taken by GSFC.
- 29.** The learned Single Judge disapproved the order of confirming authority where he has not made any determination himself about the guilt of respondent by assigning reasons. We find no infirmity in the said finding.
- 30.** Another glaring illegality which is apparent on the face of record is also worth noticing. Admittedly, the Additional Direction General (East) is superior than the commandant who had issued the show cause notices dated 15.04.15 and 25.04.2015. The impugned order dated 01.03.2013 is crystal clear that commandant is directed to take necessary action to terminate their service by observing due procedure prescribed under Section 11 of BSF Act r/w Rule 22 (2) of the BSF Rules. Section 11 (2) of the Act gives power to the competent authority to dismiss or remove a person under his command but such power can be exercised subject to the provision of this act and rules. This is evident by a conjoint reading of Sub-section 1 and 4 of Section 11 of the Act.
- 31.** Rule 22 reads thus:

“22. Dismissal or removal of persons other than officer on account of misconduct.-(1) When it is proposed to terminate the service of a person subject to the Act other than an officer, he shall be given an opportunity by the authority competent to dismiss or remove him, to show cause in the manner specified in sub-rule (2) against such action:

Provided that this sub-rule shall not apply –

- (a) Where the service is terminated on the ground of conduct which has led to his conviction by a criminal court or a Security Force Court; or*
- (b) Where the competent authority is satisfied that, for reasons to be recorded in writing, it is not expedient or reasonably practicable to give the person concerned an opportunity of showing cause.*

(2) When after considering the reports on the misconduct of the person concerned, the competent authority is satisfied that the trial of such a person is inexpedient or impracticable, but, is of the opinion that his further retention in the service is undesirable, it shall so inform him together with all reports adverse to him and he shall be called upon to submit, in writing, his explanation and defence.

Provided that the competent authority may withhold from disclosure any such report or portion thereof, if, in his opinion, its disclosure is not in the public interest.

- (3) The competent authority after considering his explanation and defence if any **may** dismiss or remove him from service with or without pension:*

Provided that a Deputy Inspector-General shall not dismiss or remove from service, a Subordinate Officer of and above the rank of a Subedar.

- (4) All cases of dismissal or removal under this rule, shall be reported to be Director-General.”*

(Emphasis Supplied)

- 32.** Sub-Rule 2 of Rule 22 makes it obligatory for the competent authority to inform the delinquent official all adverse report and call upon him to submit in writing his explanation. Sub-Rule 3, in no uncertain terms, makes it clear that after considering the defence of the employee, a decision to dismiss or remove him *may* be taken. The law makers have employed the word “may” with a view to give discretion to the competent authority to take a decision whether or not the employee should be dismissed or removed. Importantly, such a decision needs to be taken in a judicious way by considering the explanation and defence of the employee. This legislative intent and *quasi* judicial discretion given to the authority is taken away in the

instant case by passing the order dated 01.03.2013 (reproduced in para 18 of this judgment). We say so because after issuing specific direction to terminate the service of respondent by a superior officer i.e. Additional Director General, it was no more open to the subordinate officer i.e commandant to take a different view.

- 33.** We are constrained to hold that after having taken the decision on 01.03.2013 to terminate the respondent, issuance of both the show cause notices dated 15.04.15 and 25.04.15 were nothing but a hollow public relation exercise, an empty formality and an eye-wash. In view of the fact that show cause notices were issued under dictate and were empty formality, the judgment of **Mohd. Ghulam Ghouse (Supra)** and **Kunisetty (Supra)** cannot be pressed into service. This glaring illegality is noticed and decided by this court in view of the judgment of the Supreme Court in ***Badrinath vs. Govt. of TN (2000) 8 SCC 395***. The commandants were bound to act “under dictate”. This was not only against the spirit and intention of Rule 22 (2) of BSF Rule, it violates the principles of natural justice as well. The Supreme Court in ***Commr. of Police vs. Gordhandas Bhanji (AIR 1952 SCC 16)*** opined that when power is vested with a particular authority, the said authority alone can exercise the said power and even a higher authority cannot take away his discretion. The same view is taken by ***Madhya Pradesh High court in Rashmi Rekha Mishra vs. State of MP (ILR 2024 MP 828)***. Hence, the learned Single Judge has rightly interfered with the impugned notices.

- 34.** To sum up, in our judgment, it was not open to the confirming authority to disagree with the findings of 'not guilty' recorded by GSFC without preparing a 'discordant note' and without assigning reasons therefor. The same could not have been done without putting the respondent to notice about the proposed disagreement with the findings of GSFC. The dictate issued to subordinate officer to follow section 11 and Rule 22 by the superior authority and terminate his services is like delivering a judgment before hearing commenced. Such dictate runs contrary to the principles of natural justice, mandate of the BSF Act and the Rules made thereunder. Thus, we are unable to give our stamp of approval to the order dated 01.03.2013 and impugned notices. Since, we interfered and opined about the illegality of basic order dated 01.03.13 itself which became foundation of all notices, the notices also became vulnerable. Although respondent has not filed any cross *intra* court appeal, against one line direction of the learned Single Judge for referring the matter to Central Government, we are inclined to hold that no such statutory provision could be shown to us where directions can be issued to Central Government for sending the matter to another confirming authority.
- 35.** In the peculiar facts and circumstances of this case, where the sword of disciplinary proceeding was hanging on the head of respondents since 2008 and where he has been found 'not guilty' by two successive GSFCs, in the fitness of things, it will not be proper to uphold the said direction of learned Single Judge for sending the matter to another

confirming authority. To give quietus to the matter, while confirming the order of the learned Single Judge dated 11.01.2017, we set aside the portion of the said order whereby matter was referred to the Central Government so that another confirming authority is appointed to deal with the matter.

- 36.** Resultantly, order of learned Single Judge dated 11.01.2017 is affirmed and interfered with by us to the extent indicated above. The *intra* appeal is **dismissed**.

(Sujoy Paul, J.)

I agree.

(Smita Das De, J.)