

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

RVW 18 of 2025

With

IA No.: CAN 2 of 2025

Union of India & Ors.

Vs.

Md. Asif Baba @ Md. Asif

in

MAT 1623 of 2024

Md. Asif Baba @ Md. Asif

Vs.

Union of India & Ors.

For the Review Applicants : Mr. Rajdeep Majumdar, Ld. DSG & Sr. Advocate
Ms. Anamika Pandey, Advocate
Mr. Ghanshyam Pandey, Advocate

For the Respondent/Appellant/: Mr. Pratik Majumder, Advocate
Writ petitioner Mr. Snehasish Dey, Advocate

Heard & Judgment on : April 23, 2025

MD. SHABBAR RASHIDI, J.:-

1. The review application is at the instance of the Union of India seeking a review of the judgment and order dated September 4, 2024 passed in MAT 1623 of 2024.
2. By the impugned judgment and order, we set aside the order of dismissal of the writ petitioner. We, however, did not find any reasons for the initiation of the disciplinary proceeding against the writ petitioner. We also granted liberty to the authorities to proceed with the charge as against the appellant from the stage just right to the order of dismissal issued by the Summary Security Force Court or from any other stage prior thereto as the disciplinary authority may deem fit and proper.
3. The writ petitioner was a constable posted in 193 Battalion of Border Security Force deployed at Kalyani in the year 2007. On February 6, 2007, the Commandant of the Battalion received an information from the company Commander with regard to recovery of unaccounted money from the possession of the writ petitioner. After receiving such an information, an offence report was prepared under Rule 43 of the Border Security Force Rules, 1969 for commission of an offence under Section 46 of the Border Security Force Act, 1968 read with Section 13(1)(e) of the Prevention of Corruption Act, 1988. Charge sheet was issued against the writ petitioner. The writ petitioner accordingly tried

for the aforesaid offences before a Summary Security Force Court and was found guilty of the offences charged against. He was dismissed from service. The petitioner carried an appeal to the Appellate Authority designated under the Border Security Force Act against such order of holding guilty and dismissal from service. However, the appellate authority concurred with the findings of the Summary Security Force Court.

4. Initially, the writ petitioner challenged the order of the Appellate Court by filing a writ petition before the High Court of Jammu & Kashmir. The learned Single Judge allowed the writ petition setting aside the order of conviction and dismissal from service. An appeal was preferred against such order passed by the learned Single Judge. In the appeal, the Division Bench of the High Court of Jammu & Kashmir set aside the order passed by the learned Single Judge on the ground of lack of territorial jurisdiction by the learned Single Judge.
5. Later on, the writ petitioner filed a writ petition before the Single Bench of this Court challenging the order of dismissal from service passed by the disciplinary authority. The aforesaid writ petition was dismissed by the learned Single Judge having found no ground for interference with the order passed by the disciplinary authority. The order passed in the writ petition by the learned Single Judge was challenged in an appeal in MAT 1623 of 2024 which resulted in the impugned order.

6. The review application has been preferred by the Union of India on the ground that the impugned order suffered from errors apparent on the face of the record.
7. According to the petitioner, at the time of passing the impugned order, the provisions contained in Rule 149 was not placed before this Court. It was also contended that, the impugned order ascribed a reason that the order holding the writ petitioner guilty of the offence and subsequently dismissing him from service was not supported by reasons. It was further contended that, Rule 9 of the Border Security Force Rules, 1969 will not apply to the Summary Security Force Court. For the aforesaid reasons, the impugned judgment and order under review was passed on erroneous considerations.
8. Learned Advocate appearing for the review applicants has submitted that, the authority concerned acted in a strict compliance of Rule 159 of the Rules of 1969. The said provisions were not brought to the notice of this Court at the time of the passing of the impugned judgment and order under review. In support of their contention, the review applicants rely upon **(2022) 16 SCC 456 (Union of India (UOI) and Ors. Vs. Mudrika Singh)**.
9. On the other hand, it is submitted on behalf of the learned Advocate appearing for the writ petitioner that, the findings arrived at by the disciplinary authority do not contain reasons which result in the violation of the principle of natural justice.

10. It is further submitted on behalf of the learned Advocate appearing for the review applicants that, the action based on subjective opinion of the satisfaction is amenable to judicial review.
11. Learned Advocate appearing for the writ petitioner in support of his contention relies upon **(2023) 9 Supreme Court Cases 720 (Union of India and Others vs. Jogeshwar Swain)** and **2022 SCC OnLine SC 881 (Amarendra Kumar Pandey vs. Union of India and Others)**.
12. Hearing the rival contentions and going through the impugned judgment and order under review dated September 4, 2024, we set aside the disciplinary proceeding holding that any order, be it administrative or judicial is required to be informed with reasons unless a Statute expressly dispense with the same. We also noted in our judgment that, our attention was not drawn to any provision of any Statute permitting the Summary Security Force Court or the appellate authority not to ascribe any reason for the decision that they have arrived at in the proceeding under the Act of 1968. We also held in the impugned judgment and order under review that the order of dismissal and the order of the appellate authority both were uninformed with reasons. On such considerations, we asked the impugned judgment and order under review directing the concerned authorities to restart the disciplinary proceeding from a particular stage.
13. It is the specific contention on behalf of the learned Advocate appearing for the review applicants that, the provisions of Rule 148 was not

brought to the notice of the Court at the time of passing of the impugned judgment and order under review.

14. Rules 148 and 149 of the Rules of 1969 are as follows:

“148. Verdict.- *The Court shall after the evidence for prosecution and defence has been heard give its opinion as to whether the accused is guilty or not guilty of the charge or charges.*

149. Finding.- *(1) The finding on every charge upon which the accused is arraigned shall be recorded and except as mentioned in these rules shall be recorded simply as a finding of “Guilty” or of “Not Guilty”.*

(2) Where the Court is of opinion as regards any charge that the facts proved do not disclose the offence charged or any offence of which he might under the Act legally be found guilty on the charge as laid, the Court shall find the accused “Not Guilty” of that charge.

(3) When the Court is of opinion as regards any charge that the facts found to be proved in evidence differ materially from the facts alleged in the statement of particulars in the charge, but are nevertheless sufficient to prove the offence stated in the charge, and that the difference is not so material as to have prejudiced the accused in his defence, it may, instead of a finding of “Not Guilty” record a special finding.

(4) The special finding may find the accused guilty on a charge subject to the statement of exceptions or variations specified therein.

(5) The Court shall not find the accused guilty on more than one of two or more charges laid in the alternative, even if conviction upon one charge necessarily connotes guilt upon the alternative charge or charges.”

15. Rule 148 specifically provides that the Summary Security Force Court, after taking all the evidence of the prosecution as well as the defence shall give its opinion as to whether the accused is guilty or not guilty. Similarly, Rule 149 provides that the finding of other charge upon

which the accused is arraigned shall be recorded and except as mentioned in the Rules shall be recorded simply as a finding of “Guilty” or of “Not Guilty”.

16. It may not be out of place to mention here that it transpires from the documents of the proceeding placed before us. A charge was framed and read over and explained to the writ petitioner whereupon the writ petitioner pleaded guilty. Nevertheless, the Summary Security Force Court proceeded to record evidence of the prosecution witnesses. There are documents to show that, the record of evidence was duly read over and explained to the writ petitioner. The record goes to show that the minutes of the proceeding of the disciplinary proceedings were prepared and were duly handed over and explained to the writ petitioner. The verdict of the Court was recorded. The disciplinary authority that is the Commandant took into consideration the previous service backlog of the writ petitioner and thereafter went on to record the punishment of the dismissal from service of the writ petitioner.
17. In **Mudrika Singh** (supra), the Hon’ble Supreme Court held that

“28. After advertng to the principles enunciated by the Constitution Bench in S.N. Mukherjee (supra) and Som Datt Datta (supra), this Court in Dinesh Kumar (supra) in the context of Rule 149 of the BSF Rules 1969, held:

23. In this backdrop, it is clear that the provisions for the SSFC and the appellate authority are pari materia, more particularly in case of Rule 149 and Section 117(2) of the Act, with the provisions which were considered in both the above authorities. **Therefore, there cannot be any escape from the conclusion that**

as held by the Constitution Bench, the reasons would not be required to be given by the SSFC Under Rule 149 or by the appellate authority Under Section 117(2) of the Act. This position is all the more obtained in case of SSFC, particularly, as the legislature has chosen not to amend Rule 149, though it has specifically amended Rule 99 w.e.f. 9-7-2003. It was pointed out that in spite of this, some other view was taken by the Delhi High Court in *Nirmal Lakrav. Union of India* [MANU/DE/1491/2002: (2003) 102 DLT 415]. However, it need not detain us, since Rule 149 did not fall for consideration in that case. Even otherwise, we would be bound by law declared by the Constitution Bench in *S.N. Mukherjee v. Union of India* [MANU/SC/0346/1990: (1990) 4 SCC 594: 1990 SCC (Cri.) 669: 1991 SCC (L&S) 242: (1991) 16 ATC 445].”

18. It was specifically laid down by the Hon’ble Supreme Court that the reasons should not be required to be given by the Summary Security Force Court in terms of Rule 149 or by the appellate authority under Section 117 (2) of the Border Security Force Act. In the case at hand as well no reason was required to be passed by the Summary Security Force Court in accordance with Rule 149 of the Rules of 1969. In the order under review, our attention was not drawn to Rule 149 of the Rules of 1969 which specifically provides that no reason was required to be written in so many words for arriving at the verdict.
19. The decision in **Jogeshwar Sawain** (supra) was rendered by the Hon’ble Supreme Court in the context that the proceedings recording the plea of guilty by the Charged Officer was not signed by the disciplinary authority. On such consideration, in the given case, the

Hon'ble Supreme Court was pleased to set aside the dismissal of the Charged Officer in following terms:-

"46. In light of the discussion above and also taking into account that the minutes of the proceedings recording the plea of guilty did not bear the signature of the original petitioner, in our considered view, the High Court was justified in finding the dismissal of the original petitioner on the basis of the plea of guilty unwarranted and liable to be set aside in exercise of powers under Article 226 of the Constitution of India. The High Court was also justified in not reopening the proceeding from the stage where the error crept in by noticing that it would serve no useful purpose as there was hardly any evidence on record and nearly a decade had passed since the date of the incident."

20. The ratio laid down in **Jogeshwar Swain** (supra) is not at all applicable in the facts and circumstances of the present case. In **Amarendra Kumar Pandey** (supra), the Hon'ble Supreme Court noted that the action based on the subjective opinion or satisfaction would be judicially reviewed, first to find out the existence of the facts and circumstances on the basis of which authority is alleged to have been found the opinion. We are in respectful agreement with the principles laid down by the Hon'ble Supreme Court. However, in the facts and circumstances of the present case, the specific provision of the Rules of 1969 provides for forming an opinion without assigning any reason in the so many words so far as Summary Security Force Court is concerned.

21. Therefore, with the discussions above and considering the judgment and order under review, we find no ground to interfere with the judgment and order passed by the learned Single Judge dated December 8, 2023 passed in W.P.A. 18958 of 2017.
22. The review application being **R.V.W. 18 of 2025** and the connected application are disposed of without any order as to costs.

(Md. Shabbar Rashidi, J.)

23. I agree.

(Debangsu Basak, J.)