

**IN THE HIGH COURT AT CALCUTTA
(CONSTITUTIONAL WRIT JURISDICTION)**

APPELLATE SIDE

Present:

The Hon'ble Justice Partha Sarathi Chatterjee

WPA 8166 of 2023

Baldev Singh

-Vs.-

Union of India & Ors.

For the Petitioner : Ms. Punam Basu,
Mr. Amritansu Sengupta.

For the respondents : Mr. Debapriya Gupta.

Heard on : 20.02.2025

Judgment on : 12.03.2025

Partha Sarathi Chatterjee, J.:-

Prelude:

1. In questioning the justifiability of the order vide No. Estt/42 (Punish-Order)/82Bn/2022/1052-61, which imposed the punishment of dismissal from service upon the petitioner, as well as the order of the Appellate Authority vide No. Estt/42/Disc-Case/82 Bn/2022 dated 29.06.2022, affirming the final order of punishment, the present writ petition has been preferred.

Contents of writ petition:

2. Before addressing the issues involved in the writ petition, it would be appropriate to outline the essential facts, as presented in the petition, which are as follows:

- i) The petitioner was initially appointed as a Constable in the Border Security Force (BSF) in 1991. He was later promoted to the rank of Head Constable (GC). Subsequently, he was posted in 'C' Company at the Border Out-Post, Mahakhola, Nadia. On 9th October 2021, he was assigned the duties of the gate commander at OP Point No. 8, Border Fence Gate No. 3, from 12:00 hours to 18:00 hours.
- ii) On 10.10.2021, the petitioner was placed under suspension in contemplation of a disciplinary proceeding. On the same day, the respondent No. 6, vide his order No. Ops/(COI-SCOI)/82 Bn/2021/15374-75, directed respondent No. 7 to conduct a one-man Court of Inquiry against the petitioner and to conclude the inquiry by 20th October 2021.
- iii) The charges that were brought against him are as follows:
 - a) *“on 9.10.2021 while discharging the duties of gate commander, he permitted various suspicious items/ material on head load/ packets carried by criminal background personnel from India Side to BD Side village ahead of fence without proper checking;*
 - b) *He made illegal intraction with civilian lady namely Latifa Mondal for unusual duration and in suspicious manner at gate no. 3;*

c) *Violated the procedure/SOP of Gate Management.”*

iv) Upon completion of the Court of Inquiry and the Recording of Evidence, the order of suspension was revoked effective from 19.01.2022. The petitioner claimed that he had pleaded not guilty in both the Court of Inquiry and during recording of evidence.

v) However, by passing an order dated 19.01.2022, a Summary Security Force Court was directed to be held on 24.01.2022. Before the Summary Security Force Court, the petitioner pleaded guilty. Based on such plea, a punishment of dismissal of service was imposed upon him by an order dated 25.01.2022. Aggrieved by that order of punishment, the petitioner presented a statutory petition under Rule 167(2) of the BSF Rules read with Section 117 of the BSF Act. However, his statutory petition was dismissed by an order dated 29.06.2022.

3. The specific case sought to be made out in the writ petition is that the petitioner's plea of guilty was accepted without adhering to Rule 78 of the BSF Rules and without explaining to the petitioner the nature and consequences of pleading guilty. It was claimed therein that an order of dismissal from service was passed solely based on the plea of guilty. However, in imposing the punishment of dismissal, the authorities failed to consider several mitigating factors that should have been taken into account, as required by Rule 101 of the BSF Rules.

4. It was asserted in the petition that the CCTV footage was accepted as evidence without adhering to the procedural requirements set forth under Section 65B of the Evidence Act. Additionally, no incriminating material was

seized during the investigation. The entire conviction was based solely on the petitioner's plea of guilty, and it was not taken into account that the record of evidence included testimonies from certain interested witnesses. Although the credibility of such evidence was questionable, it formed the basis for the decision to convene a Summary Security Force Court.

Contents of affidavit-in-opposition:

5. The respondents contested the petition by filing an affidavit-in-opposition. The crux of the defence taken therein is that, while performing his duty at the gate, the petitioner allowed certain suspicious items to cross the border, which were later found to belong to a woman named Latifa Mondal. It was claimed that the petitioner had been conversing with her for a considerable amount of time, and the entire episode was captured by CCTV cameras. The petitioner was asked to explain the incident but failed to provide a satisfactory answer. As a result, a court of inquiry was ordered, and evidence was recorded. The respondents further contended that, based on the materials on record, a Summary Security Force Court was convened. The petitioner pleaded guilty, and consequently, he was dismissed from service. It was asserted that the entire investigation and disciplinary process was conducted fairly, in accordance with the provisions of the BSF Act and the rules framed thereunder, and that the punishment imposed was commensurate with the petitioner's guilt.
6. No affidavit-in-reply has been filed on behalf of the petitioner. Instead, the petitioner requested the court to proceed with the matter for final hearing.

Accordingly, the parties were invited to advance their arguments on the merits.

Arguments:

7. Ms. Basu, learned advocate for the petitioner, argued that the petitioner had initially pleaded 'not guilty' before the court of inquiry and during the process of recording of evidence. However, he later pleaded guilty before the Summary Security Force Court. She contended that the petitioner's plea of guilty was made under a misconception, believing that by pleading guilty, he would either be exonerated or receive a lesser punishment.
8. Inviting my attention to Sub-Rule 142, Rule 2, she argued that the Court was obligated to ascertain whether the accused understood the nature of the charge and the consequences of pleading guilty. Referring to Rule 143, she further contended that even after a delinquent employee pleads guilty, the concerned authority should have proceeded with a trial.
9. He submits that the authority concerned has placed undue reliance on the CCTV footage, but such evidence cannot be accepted due to non-compliance with the provisions of Section 65B of the Evidence Act. He further submits that, in imposing the punishment of dismissal from service, mitigating factors such as the petitioner's age, character, and the rewards he received during his service tenure were not considered. To support his arguments, she cited the following decisions, reported at *(2015) 2 SCC 610 (Union of India and Ors. vs. P. Gunasekaran)*, *(1995) 6 SCC 749 (BC Chaturvedi vs. Union of India and Ors.)*, and an unreported judgment delivered by a co-ordinate bench of the

Delhi High Court in WP (C) 4680/2006 (Constable Uma Shankaran vs. Union of India and Ors.).

10. *Per contra*, the learned advocate representing the respondents, argued that since the petitioner pleaded guilty, he cannot challenge the decision that held him guilty. He contended that the petitioner, being a member of a disciplined force, allowed the smuggling of suspicious items while performing his duties at the border and was seen engaging in a conversation with a suspected woman. He claimed that, considering the misconduct committed by the petitioner, it cannot be argued that the punishment is disproportionate to the conduct. The respondents' counsel further asserted that all procedures, including the court of inquiry, recording of evidence, and the proceedings in the court, were conducted in accordance with the BSF Act, BSF Rules, and established principles of law. He argued that there were no flaws in the decision-making process warranting interference by this Court. To buttress his arguments, he referred to the decision reported in (2022) SCC OnLine SC 567 (*Muzaffar Husain vs. State of Uttar Pradesh and Anr.*).

Analysis:

11. Notably, the scope of judicial review is based on the grounds such as illegality, irrationality (often referred to as Wednesbury unreasonableness), and procedural impropriety. The principle of reasonableness also gives way to the doctrine of proportionality. Judicial review of administrative actions aims to prevent arbitrariness, irrationality, unreasonableness, bias, and mala fides. The fundamental requirement under Article 14 is that the State must act with fairness. While the scope of judicial review is generally limited to the decision-

making process, if a decision is found to be perverse, irrational, or grossly disproportionate, it will fall within the scope of judicial review.

12. The basic concept of fair play in action is squarely applicable in administrative, judicial and quasi-judicial field. When an authority assumes jurisdiction to discharge quasi-judicial function, then such authority must act fairly, impartially and without any bias or pre-determined mind. If the court finds that authority has acted arbitrarily with closed mind and in violation of rules of natural justice and in derogation of the statutory rules, the Court can extend the compass of judicial review to render justice.
13. It is condign to note that the proceedings of a departmental enquiry are not bound by the strict rules that govern judicial proceedings, however, the principles of natural justice still apply. In disciplinary proceedings, the technicalities of criminal law cannot be strictly applied, nor should the rigorous standards of proof outlined in the Evidence Act be enforced. However, the fundamental rules of evidence, based on the principles of natural justice, must not be disregarded. Generally, a charge against a delinquent must be proven before any punishment can be imposed.
14. Reverting to the case at hand, it appears that the petitioner was charged with misconduct for allowing various suspicious items/materials, carried by individuals with criminal backgrounds, to cross the border from the Indian side to the Bangladeshi side without proper inspection. He was also accused of having an illegal interaction with a civilian woman, namely Latifa Mondal, for an unusually long and suspicious duration at Gate No. 3, and for violating the procedure/SOP of Gate Management.

15. The record reveals that a Court of Inquiry was held, and evidence was recorded. During the Court of Inquiry and the evidence recording process, the petitioner pleaded 'not guilty.' During recording of evidence, the petitioner cross-examined the prosecution witnesses and presented defence evidence. Subsequently, a Summary Security Force Court was convened. As noted earlier, before the Court, the petitioner pleaded 'guilty' to the first two charges. In the footnote on page 114 (Annexure-P/3 to the writ petition), it was recorded that, in compliance with the mandatory provisions of Rule 142(2) of the BSF Rules, the Court informed the accused, in a language he understood, about the general effect of his plea and the procedural differences that would follow as a result of his guilty plea. No evidence and/or materials have been presented on behalf of the petitioner to show that the petitioner was coerced or subjected to undue influence to extract plea of guilty.
16. Rule 78 of the BSF Rules deals with the provisions regarding the acceptance of a plea of guilty to a charge under either sub-rule (1) or sub-rule (2) of Rule 77, whereas Rules 142(2) and 143 pertain to the provisions relating to the plea of guilty before the Summary Security Force Court. Although the petitioner, in his statutory petition filed under Rule 167 of the BSF Rules, contended that the Court did not explain the nature and effect of the plea of guilty, there is no claim that the footnote on page 114 of the writ petition was subsequently incorporated or interpolated, nor that the plea of guilty was not recorded in accordance with the provisions of Rule 142(2) of the BSF Rules. Therefore, I am not persuaded by the submission that the Court did not explain the nature and effect of the plea of guilty.

17. It is axiomatic that when an employee admits guilt, there is no need to proceed further with the enquiry, and such an employee is also precluded from claiming that the enquiry violated the principles of natural justice. The relevant provisions of the BSF Rules allow the competent authority to accept a plea of guilty, subject to certain conditions. In the present case, the record indicates that the preconditions for accepting the guilty plea were duly fulfilled.
18. As previously noted, a disciplinary proceeding is of a quasi-criminal nature. In criminal trials, when an accused person pleads guilty and is subsequently convicted based on that plea, they are generally unable to challenge the conviction on appeal. However, they may contest the severity of the sentence. Similarly, in disciplinary proceedings, it is a well-established legal principle that an employee who pleads guilty cannot contest the order that holds them guilty of the charges brought against them. What the employee may challenge, however, is the appropriateness of the penalty imposed.
19. Given the specific facts of the present case, I find no valid reason to accept Mr. Basu's argument that the improper acceptance of CCTV footage, the questionable admission of oral evidence from interested witnesses, and the failure to seize any incriminating materials during the evidence recording process have invalidated the entire disciplinary action, including the convening of the Summary Security Force Court.
20. Ms. Basu, drawing my attention to the provisions of Rule 143 of the BSF Rules, argued that despite the petitioner pleading guilty, the competent

authority should have taken evidence to determine whether the charges levelled against him were substantiated. However, to provide a judicial response to this argument, it would be appropriate to quote the provisions of Rule 143(2)(a) of the BSF Rules, which are as follows:

“Rule 143(2)(a) After the record of the plea of ‘Guilty’ on a charge (if the trial does not proceed on any other charge) the Court shall read the record or abstract of evidence and annex it to the proceedings, or if there is no such record, or abstract shall take and record sufficient evidence to enable it to determine the sentence, and the reviewing officer to know all the circumstances connected with the offence.”

21. Therefore, a mere perusal of the aforementioned provisions reveals that if there is no record of an abstract of evidence, evidence must be recorded to enable the Court to determine the sentence. In the present case, however, a record of evidence already existed to determine the sentence. Placing reliance on an unreported decision titled as *Constable Uma Shankaran vs. Union of India & Ors. (supra)*, Ms. Basu argued that the process prescribed in Rule 143(2)(a) is not a mechanical exercise. The Court is expected to examine the evidence to determine whether the guilty plea is consistent with such evidence. Taking into account the facts and circumstances of the case, as well as the nature of the evidence, I am of the view that in the present case, the guilty plea was consistent with the evidence recorded during the evidence recording process. Consequently, Mr. Basu’s argument lacks merit.
22. Significantly, in service jurisprudence, it is for the disciplinary authority to decide the kind of punishment to be imposed. The Doctrine of

proportionality in the context of imposition of punishment in service law gets attracted when the punishment is found outrageously disproportionate to the nature of charge or to the proved misconduct that it shocks the conscience of Court and Court finds it totally unreasonable and arbitrary, that principle of proportionality becomes applicable.

23. In the present case, it is undisputed that the petitioner was a member of a disciplined force, and it was expected that he would maintain discipline and act in a befitting manner. A BSF personnel member, who was assigned the responsibility of securing our nation's borders, has admitted that, in collusion with individuals with criminal backgrounds, he allowed certain suspicious items to cross the border. Factors such as an unblemished service record, receipt of certain awards, and the absence of prior misconduct may be considered as mitigating circumstances. However, the gravity of the misconduct, the nature of the duties assigned to the individual, and the responsibility of the position the delinquent held must also be taken into account when determining the appropriate punishment.
24. Admittedly, dismissal from service, resulting in the forfeiture of benefits accrued from past service, is a harsh punishment that affects not only the employee but also his dependents. However, considering the conduct of the delinquent, it must also be assessed whether it would be appropriate to allow the individual to continue in service. In my view, a BSF personnel who admittedly allowed certain suspicious items to cross the border in collusion with individuals of criminal background should not be permitted to remain in service.

25. There is no scintilla of doubt regarding the binding precedent set by the other two decisions, namely *B.C. Chaturvedi (supra)* and *Union of India & Ors. vs. P. Gunasekaran (supra)*; however, those decisions will not aid the petitioner in the case at hand.
26. Therefore, based on the discussions made hereinabove, I am of the considered view that no interference is called for in this present writ petition.

Order:

27. Consequently, the writ petition is dismissed, however, without any order as to the costs.

(Partha Sarathi Chatterjee, J.)