



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

129

CWP-1207-2025 (O&M)

Date of decision: 17.01.2025

Jagpal Sharma

...Petitioner

VERSUS

Union of India and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Rahil Mahajan, Advocate for the petitioner.

VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present petition is to the proceedings dated 27.02.2014 conducted by the PETTY Security Force Court as well as to the dismissal order dated 12.02.2015; the order dated 10.07.2015 as well as the order dated 13.01.2024 vide which the competent authority rejected the case of the petitioner.

2. Learned counsel appearing contends that the petitioner was appointed as a General Duty Constable with 32nd Battalion, Border Security Force (BSF) on 20.08.1998 and served as such for a period of approximately 16 years. On 17.02.2014, the petitioner was served a charge-sheet by the Commandant, 32nd Battalion, BSF, in which two charges were levelled against him, which are extracted hereunder:-

“xxxxx

First Charge BSF
Act, 1968 Sec. 46

Committing a Civil Offence that is
to say using assault or criminal
force to a woman with intent to



outrage her modesty punishable u/s 354 of RPC. in that he,

at Bn. HQ. 32 Bn BSF, Akhnoor, J&K at about 2230 hrs on 17 Oct'13, used criminal force to Smt. Kusum Barala wife of No.051910365 Const. Nabin Barala, 32 Bn BSF, intending to outrage her modesty by such criminal force.

Second Charge BSF Act, 1968 u/s 46

Committing a Civil Offence that is to say house trespass punishable u/s 448 RPC. in that he,

at Bn. HQ. 32 Bn BSF, Akhnoor, J&K at about 2230 hrs on 17 Oct'13, house trespassed the quarter No.30, Type-I at BSF Campus Akhnoor allotted to No.051910365 Const. Nabin Barala, 32 Bn BSF.

xxxxx”.

3. Learned counsel contends that an inquiry was conducted against the petitioner for which he appeared before the PETTY Security Force Court constituted under the Border Security Force Act. The trial of the petitioner commenced wherein he submitted his statement which was exhibited as Ex. ‘O’, to the effect that he was on duty till 8:30 pm on 17.10.2013 and a photocopy thereof was placed on record. He also placed on record the photocopy of the vehicle in-out Register (logbook). However, the petitioner was still found guilty and it was held by the Court that the charges against him were proved. He thereafter, received an order dated 12.02.2015 vide which his name was ordered to be struck-off from 32nd Battalion, BSF from the same date.

4. Aggrieved thereof, the petitioner filed a petition under Section



117 of the BSF Act against the punishment order imposed upon him. The appellate authority viz. the Director General, BSF, rejected the petition vide order dated 10.07.2015 being devoid of merits.

5. Learned counsel appearing on behalf of the petitioner contends that a grave miscarriage of justice was inflicted upon the petitioner and he was dismissed from service without affording a reasonable opportunity of hearing. Notwithstanding that no witness supported the allegations levelled against him coupled with the fact that the petitioner was on duty till 8:30 p.m. on the relevant day, yet, his defence was not taken into consideration. The petitioner hence approached this Court by way of CWP No. 19694 of 2015 seeking quashing of proceedings conducted by the PETTY Security Force Court and order of dismissal dated 12.02.2015 and the subsequent order dated 10.07.2015 dismissing the appeal preferred by the petitioner against his dismissal. The said petition was disposed of by this Court by setting aside the order dated 12.02.2015 and order dated 10.07.2015 to the extent of quantum of punishment awarded and the matter was remanded to the competent authority to pass a fresh order on quantum of punishment after considering facts of the case as well as the judgment of the Hon'ble Supreme Court in the matter of '**B.S. Hari Commandant Vs. Union of India and others**'.

6. Pursuant to the directions passed by this Court, the petitioner claimed to have appeared before the competent authority but notwithstanding the directions issued by this Court, the claim of the petitioner was rejected by passing an unreasoned and non-speaking order



dated 06.09.2023. The petitioner approached this Court yet again by filing CWP No.22457 of 2023, wherein notice was issued for 14.11.2023. On the said date of hearing, the respondent-authority informed the Court that the order dated 06.09.2023 passed by them had already been withdrawn and they sought liberty to pass a fresh order, in terms of the directions issued by this Court in its order dated 03.07.2023. The said writ petition was accordingly disposed of with liberty to the respondents to pass a fresh order within a period of two months. In compliance thereto, the respondents passed a fresh order thereby rejecting the case of the petitioner. It is contended that the judgment of **B.S. Hari Commandant Vs. Union of India and others**, reported as **2023 INSC 369** was not taken into consideration by the competent authority and as such, the impugned order imposing the penalty of dismissal of service was improper and unduly harsh. The petitioner has thus approached this Court yet again impugning the same.

7. Learned counsel for the petitioner contends that the authorities have failed to consider the contradictions in the statement of the complainant, who had earlier averred that she was alone in the official quarter and her husband had gone at border and that the petitioner had come to her quarter at around 7.00 p.m., however, he was on duty till 8:30 pm. This fact stands established from the in-out register as well as the log-book of the vehicle. The PETTY Security Force Court had not taken the same into consideration. He further contends that all the witnesses who appeared as prosecution witnesses were hearsay witnesses and had not seen the occurrence. It is also submitted that the numerous material discrepancies in



the statements of the complainant as well as of the witnesses have not been appropriately examined and that there was also no medical evidence to corroborate the version of the complainant. He thus contends that the punishment of dismissal of service imposed upon the petitioner was excessive and disproportionately harsh and was not called for in the present case.

8. I have heard the learned counsel appearing on behalf of the petitioner at length and have gone through the documents available on record with his able assistance.

9. It is evident from a perusal of the same that the petitioner was charged for having committed a civil offence i.e. of assault or criminal force to a woman with intent to outrage her modesty punishable u/s 354 of RPC against Smt. Kusum Barala wife of a fellow Constable. He trespassed into their quarter with a lusty intent. The matter was put up before the PETTY Security Force Court where the proceedings were undertaken. The complainant herself stepped into the witness box and reiterated her statement. The statement of Smt. Kusum Barala is extracted as under:-

“ I Smt. Kusum Barala w/o CT Nabin Barala of B'Coy of 32 Bn RSF having been duly affirmed states that

I got married with CT Nabin Barala on 14th Feb 2012 and came to Akhnoor (J&K) in the month of June 2013 My husband was allotted Govt. Quarter No.30 (Type-1).

On 17th Oct 2013 at about 2000 hrs to 2100 hrs CT/DVR Jagpal Sharma came to my quarter in absence of my husband



and asked for Green Chilly and then inquired about my husband and said that did he made any calls. I replied that my husband has gone on duty. Then, I gave some Green Chilly to the accused and then he left for his quarter which is opposite to mine. After sometime he again came with a "Katora" in his hand with some vegetable and said that he wants to watch the News on TV. I told him that I don't know from which channel the News Channel starts, after sometime I switched the New channel in the meantime, the accused asked whether my husband has left with the bedding. I told him "Yes" he left with the bedding. At that time, I prepared tea for the accused and after having tea he told me that you are "small" and will have problem in picking up the cup. The accused said "let me put the cup in the kitchen" and left my quarter.

Again the accused came back to my quarter with cooked vegetable in a bowl (Katora) and then left the quarter.

At about 2200 hrs, the accused knocked the door of my quarter. I was sleeping after having my dinner. The accused knocked the door again and again and I got up and opened the door of my quarter I asked him what happened. The accused.(CT/DVR Jagpal Sharma) told me that there is heavy firing going on in the border and I want to see the News. I told him that I am feeling sleepy, he insisted upon watching the news for some time and then he came in for watching the News.



In that period he saw my right hand in which there was a burn mark. The accused held my hand and I said leave my hand and go away I am feeling sleepy. The accused then locked the door and then gripped me from front side of my body. I shouted loudly when the accused covered my mouth with his hand and in that tussle the nose ring fell down. I also received blister on my lips due to this happening.

After that the accused threw me on the bed and then again covered my mouth with his hand. I again shouted loudly, the accused got frightened and he ran away from my quarter and pulled the door from outside.

After sometime, some of my neighbor came to my quarter and asked me what has happened. I caught hold of one of the "Bhabi" and told her by pointing towards the quarter of CT/DVR Jagpal Sharma that "This Bhaiya is not good".

No.981540379 CT/DVR Jagpal Sharma (accused) is afforded an opportunity to cross examine the witness if he wishes to do so and the accused proceeds to cross examine the witness.

Q.1) Madam, have I ever visited your quarter before this incident regarding watching TV or asking for anything?

Ans. No, but your wife and daughter used to come often to my quarter for asking things i.e. ration item.

Q.2) Did, I ever looked at you or talked to you in an indecent



manner whenever I met you before going or coming from duty?

Ans. I have not talked to you or seen you properly when you are going or coming from duty.

Q.3) How many times I visited your quarter on the night of this incident?

Ans. You visited my quarter 05 times on the night of the incident.

Q.4) At what interval did I visited your quarter at the night of incident?

Ans. You visited my quarter at an interval of almost 05 to 10 minutes that night.

Q.5) How many times did I gave you the vegetables, and in what utensil?

Ans. You have given vegetables two times in Katora.

Q.6) Since, I was not close to your family, then why did you allow me to enter your quarter again and again?

Ans. I opened the door in the good faith of being a neighbor...

Q.7) Can, you show me the marks that I made on you that night?

Ans. Right now there is no wound marks on my face and body but on the 18th Oct. 2013 the wound marks was there and my neighbor saw it also.

Q.8) During the tussle, did you receive may damage in your



bangles etc.?

Ans. At that time my nose ring fell down on the ground.

Q.09) Can, I see the nails of your finger, and its size?

Ans. Yes, the nails of my left hand are 01 inch

Q.10) Have you noticed any scratch or marks on my body or face?

Ans. No, I haven't noticed any scratch or marks."

10. Sub-Inspector Ram Lakhan Sharma also appeared as a prosecution witness No.2. Even though the said witness is not an eye-witness to the incident, however, his evidence is relevant since he was an officer on duty and reached the spot after the incident, hence, it is an evidence post the incident and in a quick succession. The narration of the incident as stated by the complainant stands corroborated by the said witness who had also been cross-examined by the petitioner. The version of PW-2 is supported by PW-3:ASI GD; PW-4: Debasis Mallick as well. Similar evidences in corroboration of the circumstances is also borne out from the testimony of PW-5/ Anita Devi wife of Constable Ravinder Singh as well, who was the first to reach the house on hearing the shouts of the complainant. She has duly supported the version on various material counts.

11. Even though the learned counsel appearing on behalf of the petitioner has vehemently argued that he had placed on record photocopy of the in-out register/Log Book, however, it is evident that no evidence was led by the petitioner in his defence to prove the said document. In the absence of the document having been proved in a manner known to law it cannot be



held that a mere submission of the alleged in-out register, should be accepted as a gospel truth.

12. The PETTY Security Force Court considered all the issues under the BSF Act and upon consideration of the evidence and testimony led by the petitioner herein, came to a conclusion that the charges against the petitioner stood fully proved. The operative part of the findings recorded by the PETTY Security Force Court are as under:-

“

FINDINGS

**Court is
Closed**

The Court is closed for the consideration on the findings.

The Court finds that No. 981540379 Ct./Dvr Jagpal, MT Platoon, 32 Bn BSF is found "Guilty" of both the charges.

**BRIEF REASONS IN SUPPORT OF
FINDINGS**

**FIRST ISSUE OF THE FIRST
CHARGE**

That on 17th Oct 2013 at about 2230 hrs, the accused was present at HQ 32 Bn BSF, Akhnoor, J&K.

The fact regarding the presence of accused at HQ 32 Bn BSF, Akhnoor, J&K on 17th Oct, 2013 at about 2230 hrs is undisputed.

The Court believes the prosecution version and relies on the testimony of various prosecution witnesses. Almost all



the witnesses deposed that in the night of 17th Oct 2013 the accused was present at HQ 32 Bn BSF, Akhnoor, J&K.

The defence have not disputed the fact regarding the accused presence at HQ 32 Bn BSF, Akhnoor, J&K on 17th Oct 2013 at about 2230 hrs. The accused in answer to a Court question under BSF Rule 93 has admitted that he returned to Bn HQ Akhnoor at 2030 hrs and after that he was present at the Bn HQ.

In the light of above this issue is not under conflict and the Court finds that on 17th Oct 2013 at about 2230 hrs, the accused was present at HQ 32 Bn BSF, Akhnoor, J&K.

Hence, Court takes this issue as 'proved'.

SECOND ISSUE OF THE FIRST CHARGE

That on 17th Oct 2013, at about 2230 hrs, the accused, at Bn HQ 32 Bn BSF, Akhnoor, J&K, used criminal force to Smt. Kusum Barala w/o No.05190365 Constable Nabin Barala, 32 Bn BSF.

The Court believes the prosecution version and relies on the statement of Smt. Kusum Barala (PW-1) w/o No. 051910365 Ct Nabin Barala, that on 17th Oct 2013 at around 2000-2100 hrs the accused came to her quarter No. 30 type-1 thrice for



different reasons as stated by her during her testimony before the Court. The Court further believes her that at about 2200 hrs on 17th Oct 2013 the accused again came to her quarter and started knocking on the door repeatedly. She opened the door and asked him as to what had happened. The accused told her that on the border the firing was going on and he wanted to watch news on the television. She said that she was feeling sleepy and asked him to go to his quarter. He again and again insisted her to switch on the television and on his insistence she switched on the television. While watching news, the accused held her left hand and asked as to what had happened to her hand, as her hand was having a small burn mark on it. She told him to leave her hand and go to his quarter. Then, the accused stood up and bolted the door of her quarter from inside. He advanced towards her and grabbed her from the front side of her body. As PW-1 raised the alarm by shouting, the accused threw her on the bed by applying force on her body. She was screaming and he held her mouth with his hand. She tried to free herself from his hold but he used his power to tighten his grip on her face. Then with her full ability she freed herself from his grip and shouted "Bhabi idhar aa jao" for her neighbour Smt. Anita Devi (PW-2) w/o



Ct Ravindra Singh, for help. When the accused grabbed her mouth and she tried to free herself from his grip, in the tussle, her nose ring fell down and a mark of his fingers impressed on her face, also her lips got hurt. Then the accused ran away by shutting the door from outside. During the tussle with the accused her nose ring fell down and 1 or 2 drops of blood came out from her nose, but she did not get any first aid or other treatment as it was a minor injury.

The Court also believes the version of PW-2 Smt. Anita Devi (PW-2) that on 17th Oct' 2013 at about 2230 hrs she heard sound of shouting and told her husband about the same. When PW-2. Ct Ravindra Singh (not examined). Ct M S Saravana (PW-6) and other neighbours went upstairs to the quarter of PW-1, in the same building, and the door of her quarter was kicked and opened by PW-6 and PW-1 ran towards PW-2 and hugged her tightly, she was crying and her body was trembling. PW-2 asked her as to what had happened. Pointing towards the quarter of the accused she said "yeh bhaiya achha nahi hai" and when PW-2 asked about what he did, PW-1 replied that he misbehaved with her. They took PW-1 down stairs, in front of the quarter of PW-2 and made her sit there and gave



her a glass of water. PW-2 noticed that the nose ring of PW-1 was missing and the blood was there on her nose, lips and teeth. There were small scratch marks on her nose and lips and both her lips were swelling.

The Court also believes the statement of SI Ram Lakhan Sharma (PW-3) and SI Debasis Mallick (PW-4) that at about 2335 hrs on 17th Oct 2013 PW-4 informed PW-3 that the accused had entered in the quarter of Ct Nabin Barala. When they along with ASI Sham Sunder Sharma (PW-7) and SI/MT Man Singh (not examined) reached at the quarter of Ct Nabin Barala they found that PW-1 was sitting in front of quarter No. 29, type-I and she was crying. On inquiry PW-1 told that the accused had entered in her quarter. They took her upstairs along with two other ladies. On inquiry PW-1 told in Bangla language, which was translated by PW-4 into Hindi, that the accused had come to her quarter. On further inquiry she told that the accused came to her quarter & held her hand & threw her on the bed & when she shouted the accused left her & ran away from there. When they further inquired if the accused had done anything else, she did not reply. When PW-3 met PW-1 there was a little blood on her lower lip and her nose ring was missing. Later on, she



showed them the nose ring lying on the floor of the sitting room of her quarter.

The Court also believes Ct M S Saravana Kumar (PW-6) that on 17th Oct 2013 at about 2230 hrs he heard a sound of "Bhaiya bachao-bachao" from Quarter No. 30 type-1. When he went to the said quarter along with other neighbour and PW-2 asked PW-1 about what had happened, pointing towards quarter No. 32 in the same building she said "is bhaiya ne mere se chhedkhani kiya".

The Court does not believe the defence version that on 17th Oct 2013 the accused did not enter in the quarter of Ct Nabin Barala and the prosecution witnesses have given false statement against the accused. Also Court does not believe that there is some conspiracy by someone against the accused to evict him from the quarter allotted to him to accommodate some Bangali families.

Taking the facts and the circumstances of the case into the consideration the Court takes this issue as 'proved'.

THIRD ISSUE OF THE FIRST CHARGE

That the accused used such criminal force with intent to outrage the modesty of Smt. Kusum Barala w/o No.05190365 Constable Nabin Barala, 32

***Bn BSF.***

The Court is of view that the accused repeatedly went to the quarter of No.05190365 Constable Nabin Barala, 32 Bn BSF with ill intention towards Smt. Kusum Barala. He inquired from her about the where about of her husband and came to know that her husband was away on duty at border and had gone with the beddings. As a Constable of the force who had served for about 15 years the accused was having knowledge that once Ct Nabin Barala had gone for duty with the bedding he was not possibly coming back to his quarter in the night. Also it is fact before the Court that on 17th Oct 2013 the accused was alone in his quarter and the doors of quarter No. 30 and 32 are facing each other on the same floor of the same building in type-1 quarters' block. Repeated visits of the accused to the quarter of Ct Nabin Barala, where Smt. Kusum Barala was alone. and his behaviour towards her removes all doubts regarding his intention.

The Court has no doubt that, in the light of evidence brought before it by the prosecution witnesses and the circumstances and also the behaviour of the accused after the incident when he did not come out of his quarter while all his neighbours gathered on hearing the



shouting of Smt. Kusum Barala and when inquired he told PW-3 that he was not aware of any happening in the neighbourhood and his asking PW-3 to let him sleep at a time when he was blamed for his misconduct. the accused used criminal force to Smt. Kusum Barala w/o No.05190365 Ct Nabin Barala, 32 Bn BSF with intent to outrage her modesty.

In view of above the Court finds that the accused used such criminal force with intent to outrage the modesty of Smt. Kusum Barala w/o No.05190365 Ct Nabin Barala, 32 Bn BSF and conclude that third issue of the charge as well as the charge is proved.

FIRST ISSUE OF THE SECOND CHARGE

That on 17th Oct 2013, at about 2230 hrs, the accused at Bn HQ 32 Bn BSF, Akhnoor, J&K, entered into the quarter No. 30, type-1 at BSF Campus Akhnoor which was allotted to No. 05190365 Constable Nabin Barala, 32 Bn BSF.

The Court believes the prosecution version and relies on the statement of Smt. Kusum Barala (PW-1) that on 17th Oct 2013 the accused came to the quarter No. 30 type-1 at BSF Campus Akhnoor between 2000 and 2100 hrs with different reasons, as brought out by her before the



Court and discussed in the second issue of the first charge. The Court further believes PW-1 that at 2200 hrs on 17th Oct 2013 the accused again came to her quarter and started knocking on the door repeatedly. She opened the door and asked him as to what had happened. The accused told her that on the border the firing was going on and he wanted to watch news on the television. She said that she was feeling sleepy and asked him to go to his quarter. He again and again insisted her to switch on the television. On his insistence she switched on the television.

The Court also believes the statement of St Debasis Mallick (PVW-4) who was performing the duties of BHM at HQ 32 Bn BSF Akhnoor. J&K that during the month of Oct 2013 quarter No. 30 type-1 at BSF Campus Akhnoor was allotted to No. 05190365 Constable Nabin Barala, 32 Bn BSF and he was living in that with his wife.

The Court also believes the version of Smt. Anita Devi (PW-2), Ct M S Saravana Kumar (PW-6) that quarter No. 30 type-1 at HQ 32 Bn BSF was of Ct Nabin Barala and they came to know threw PW-1 that the accused entered in her quarter during that night.

The Court do not believes the defence version that on 17th Oct 2013 the



accused reached his quarter at 2100 hrs and after that he was in his quarter and did not go to the quarter of Ct Nabin Barala that is quarter No. 30 type-1 at HQ 32 Bn BSF, Akhnoor. The Court finds the behavior of the accused unnatural when he did not come out of his quarter in a situation when other neighbours, even from across the road, gathered after hearing the shouting of Smt. Kusum Barala (PW-1). Also Court finds it unnatural for a person to ask somebody to let him sleep when he was blamed for an offence against a woman. Even the defence has not countered the facts that quarter No. 30 type-1 was allotted to C1 Nabin Barala and he was living in that quarter with his wife Smt. Kusum Barala.

In the light of the circumstances involved in the case the Court finds the testimony of PW-1 sufficient to believe that the accused entered in quarter No. 30 type-1 in which she was residing since June 2013.

In view of above the Court finds this issue proved.

SECOND ISSUE OF THE SECOND CHARGE

The said act of the accused amounts to house trespass punishable u/s 448 RPC.

The Court relies upon the version of



Smt. Kusum Barala (PW-1) that on 17th Oct 2013 the accused came to her quarter between 2000 and 2100 hrs thrice for different reasons, as discussed while discussing the second issue of the first charge. The Court further believes that again at about 2200 hrs the accused came to the quarter of PW-1 and repeatedly knocked on the door. When PW-1 opened the door and asked him as to what had happened he said that on the border the firing was going on and he wanted to watch news on television. When PW-1 told him that she was feeling sleepy and asked him to go to his quarter he insisted her to switch on the television and said that he would watch news for some time only. On his insistence she switched on the television. While watching television the accused held her hand and asked her as to what had happened to her hand, as it was having a small burn mark on it. When PW-1 asked the accused to leave her hand and go to his quarter he stood up and bolted the door from inside and grabbed her from the front side of her body. Then she shouted and he threw her on the bed by applying force on her body. Also he held her mouth with his hand and pressed her face. In the tussle, her nose ring fell on the floor and the blood came out of her nose, also his fingers marks impressed upon the



face of this witness. As she freed herself from his grip, by using her full ability. and shouted "Bhabhi idhar aa jao" for her neighbour Smt. Anita Devi (PW-2) the accused ran away by shutting the door from outside. During cross examination PW-1 has brought out that when the accused told her that on the border the firing was going on she got a little concerned, as her husband was also on the border, and allcwed him to watch news on the television in her quarter.

The Court also believes the statement of Smt. Anita Devi (PW-2), that at about 2230 hrs on 17th Oct 2013 she heard PW-1 shouting "Bhabhiji upar aao" She along with her husband Ct Ravindra Singh (not examined) and other neighbours went upstairs to the quarter of Ct Nabin Barala. When the door of the quarter was opened by Ct MS Saravana (PW-6) PW-1 ran towards PW-2 and hugged her. On inquiry PW-1 said to her, pointing towards the quarter of the accused, "yeh bhaiya achha nahi hai" and told that the accused misbehaved with her. PW-1 also told PW- 2 that during that night the accused came to her quarter thrice. Also she noticed that Smt. Kusum Barala's nose ring was missing and the blood was there on her nose, lips and teeth. There were small scratch marks on



her nose and lips and both her lips were swelling.

The Court also believes the statement of SI Ram Lakhan Sharma (PW-3) SI Debasis Mallick (PW-4) ASI Sham Sunder Sharma (PW-7) that on 17th Oct 2013 when they visited the quarter of Ct Nabin Barala they were told by Smt. Kusum Barala (PW-1) that the accused came to her quarter and during his last visit he held her hand and threw her on the bed and when she shouted the accused left her and ran away from there. When PW-3 met PW-1 there was a little blood on her lower lip and her nose ring was missing. Later on, she showed the nose ring lying on the floor of the sitting room of her quarter.

Taking into consideration the facts discussed above the Court finds that though the accused entered in the quarter of Ct Nabin Barala with the permission of Smt. Kusum Barala on his repeated insistence for watching news on television but later on he outraged the modesty of Smt. Kusum Barala thereby his remaining there at quarter No. 30 type-1 at BSF Campus Akhnoor amounts to house trespass punishable u/s 448 RPC and conclude that second issue of the charge as well as the charge is proved.

**ANNOUNCEMENT OF FINDINGS**

Court is re-opened

The Court being re-opened, the accused is again brought before it. The findings and brief reasons in support of the findings are read in open Court, and findings are announced as being subject to confirmation.

Signed on this the 27th day of February, 2014 at HQ 32 Bn BSF. Akhnoor, (J&K)”

13. It is also not in dispute that against the aforesaid order passed by the PETTY Security Force Court an appeal was preferred by the petitioner before the Appellate Authority which also stands dismissed. In the proceedings that were so undertaken, the finding of conviction recorded against the petitioner was affirmed. Further, it is evident that the petitioner had approached this Court challenging the said order in which Hon’ble Court remanded the matter to competent authority to pass a fresh order on the limited extent of quantum of punishment. Hence, it is not open to the petitioner at this juncture to dispute the findings of fact that had been recorded by the PETTY Security Force Court and to re-agitate the issue on merits once challenge to the same does not survive, the claim having been given up.

14. Moreover, the entire claim of the petitioner is based on he being at duty till 8.00 P.M. However, notwithstanding that the argument is not available to the petitioner but still the same does not advance the case of the petitioner. The testimony of the witnesses shows that the petitioner had



gone to the house of complainant between 2000 hrs to 2100 hrs (i.e. 8:00 p.m. to 9:00 p.m.), hence, it was after the duty hours. The later incidents are timed around 10:00 p.m. Thus, the best defence of the petitioner does not seek to advance the case of the petitioner any more. The witnesses include the victim herself and neighbours who were first to arrive at the scene as well as the other officials who had no axe to grind against the petitioner. The minor discrepancies can't be overblown to discredit the testimony of all those witnesses. However as there was only a limited remand, hence, all other issues thus come to a halt and are not open to re-appreciation.

15. The issue thus pertains only to the aspect of quantum of punishment and as to whether the punishment of dismissal from services is excessively harsh or disproportionate to the offence for which the petitioner has been charged. Reliance in the present case, to plead his liability for a lesser punishment has been placed on the judgment of the Hon'ble Supreme Court in the matter of **B.S. Hari Commandant** (supra), which has been perused.

16. Undisputedly, in the above said case of **B.S. Hari Commandant** (supra), the charges against the Commandant had already been dropped and the same had not been established. Per contra in the present case, the charge stands fully established against the petitioner and the conviction already stands affirmed as per the order dated 03.07.2023 passed by this Court in CWP-19694-2015 titled as 'Jagpal Sharma Vs. Union of India and others'. Further, the above judgment had also been considered by the Inspector General, Border Security Force, Paloura Camp,



Jammu. The operative part of the appellate order dated 13.01.2024 (Annexure P-10) reads thus:-

“5. During the personal hearing, the petitioner made his verbal submission that he was falsely implicated in the case. He has a wife and three grown-up daughters to look after and his elder daughter is suffering from a permanent illness. He is living a difficult life with very mean sources of income like cattle rearing and a temporary driving job to look after his family. Considering his past service, he prayed for mercy and requested to commute his sentence of 'dismissal from service' to any in-service punishment or he may be allowed pensionary benefits.

Delinquent with clean service record and has received various awards including Police Medal from Hon'ble President of India. He was found guilty' only because some smuggling activities happened under his command. He was implicated by another under command BSF person, from whose area of responsibility actually the smuggling activities took place. The search of the house of Sh. B. S. Hari, Comdt, did not result in the recovery of any incriminating documents/articles Such non recovery acted to his benefit. The Hon'ble Supreme Court further found that B. S. Hari, Comdt was convicted for an extreme and absurd extension of the principle of dereliction of duty and/or active connivance,



in the absence of overwhelming material establishing guilt or at the very least, negating the probability of this innocence.

7. *Whereas, the petitioner does not has a clean record of service and has been an indiscipline soldier, as in the past he was punished with 60 days RI by the Summary Security Force Court (SSFC) for committing serious offences U/S 20(a) of BSF Act for the offence of 'Assaulting a superior officer' and U/S 20(c) of BSF Act for the offence of 'Using threatening language to his superior officer' of BSF Act. In the present case, during Petty Security Force Court (PSFC), there was sufficient direct and cogent evidence against the petitioner. The petitioner has been found 'guilty' of house trespass and outraging the modesty of the wife of his colleague, who was out for duty at the border. Offences committed by the petitioner are highly immoral unvirtuous and perverted. Hence, the judgement passed by Hon'ble Supreme Court in the case of BS Hari was passed under entirely distinguishable facts and circumstances. The conduct of the petitioner is highly deplorable and deserves to be dealt strictly in the belt forces like BSF where very high standards of discipline and morality are expected. In this case, the sentence of dismissal duly commensurate the gravity of the offences committed by the petitioner. There is no justifiable mitigating circumstance in favour of the petitioner. Hence, the sentence awarded was*



appropriate and proportional to gravity of the offences committed by the petitioner.

8. *I, being the Competent Authority, after considering the plea of the petitioner, the evidence on record of PSFC proceedings, the severity of the sentence passed by the PSFC and the complete service record of the petitioner, find that the said misconduct of the petitioner is against the high level of discipline and moral integrity expected from a soldier. In the armed forces high morality and discipline are bed rock of the Force. Such misconduct as committed by the petitioner are to be strictly dealt with. None of pleas of the petitioner are justified enough to warrant any interference with the punishment meted out to him by the PSFC. The sentence awarded by the PSFC is appropriate and proportional to gravity of the offences committed by the petitioner. The submissions of the petitioner made during personal interview lacks any merit as there are no justifiable mitigating circumstance in favour of the petitioner. Hence, the prayer of the petitioner to commute his punishment of dismissal from service with any In-service punishment or allow him pensionary benefits is hereby rejected, being devoid of merits.”*

17. It is evident that the competent authority took into consideration the established charge of the petitioner of using criminal force to a woman



with an intent to outrage her modesty and also trespassing into the house of a fellow Officer. It was also taken into consideration that the petitioner does not have a clean record of service and has been an in-disciplined soldier. He was punished with 60 days RI by the Summary Security Force Court on an earlier occasion for committing serious offence under Section 20(a) of the BSF Act for the offence of Assaulting a Superior Officer and under Section 20 (c) of the BSF Act for the offence of using threatening language to his Superior Officer. The offence of forcible trespassing into the house with an intent of outraging the modesty of wife of a fellow service-man is definitely a case of serious abrasion and has seriously compromised the suitability of the petitioner to be retained in service.

18. Nothing has been brought on record by the counsel for the petitioner to submit as to why disciplinary proceedings be not taken against a member of the Disciplined/Uniformed services, who attempts to outrage the modesty of wife of his fellow/colleague, at a time when he is aware that such fellow is discharging his duties at a Border Post. It would be highly unbecoming of him to take advantage of a situation when his fellow is discharging duties in the service of Nation instead of taking responsibility for safety and security of the families of such fellow colleagues. The petitioner thought it as an opportunity to make inroads and to commit an offence which is un-condoned. Such acts have to be dealt with gravity and pride and honour of women needs to be kept in high esteem. The incident cannot be said to be a minor abrasion, considering that the petitioner has a record of disobedience and also using abusing language against the



Superiors and he having already been punished for such offences as well.

19. Even otherwise, the power of judicial review in disciplinary matter would not authorize a complete re-examination of the evidence and to substitute the opinion for that of the competent authority.

20. It was held by the Hon'ble Supreme Court in the matter of **"Lucknow Kshetriya Gramin Bank v. Rajendra Singh"** reported as **(2013) 12 SCC 372** that the Court cannot assume the function of disciplinary or departmental authority and to decide the quantum of punishment, which is within the jurisdiction of the competent authority.

21. It was further held by the Hon'ble Supreme Court in the matter of **Deputy Commissioner, Kendriya Vidyalaya Sangthan and ors. vs. J. Hussain**, reported as **2013 (10) SCC 106** that the Court should not be guided by misplaced sympathy. All cases dealing with removal ensure hardship but the same cannot be the basis to interdict for awarding a lesser punishment. The same has to be shockingly disproportionate to the judicial conscience. For a Court of law to assume that the attempt to outrage modesty of wife of a fellow serviceman would not be a grave offence, the possibility is weak. Such an unbecoming proven misconduct cannot always be a factor to be ignored more so when the proven service record of the petitioner does not inspire any credibility or confidence either.

22. Learned counsel for the petitioner is not able to justify why a lenient view ought to be taken against the petitioner and as to how the punishment for his proven misconduct can be said to be excessively harsh.

23. In view of the facts as aforesaid and settled position in law that



the High Court, while sitting as a Court of judicial review, does not supplant its opinion for that of the punishing authority, I do not find that any such circumstances exists in the present case that would warrant interference with the impugned orders.

24. The present writ petition is accordingly *dismissed in limine*.

(VINOD S. BHARDWAJ)
JUDGE

17.01.2025

Mangal Singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No