



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

201

LPA-1935-2012 (O&M)

Decided on : 28.08.2025

EX. CONST. RAJESH KUMAR

. . Appellant

Versus

UNION OF INDIA AND ORS

. . . Respondents

**CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI
HON'BLE MR. JUSTICE VIKAS SURI**

PRESENT: Mr. Rajesh Narang, Advocate for
Mr. D. S. Kauntae, Advocate for the appellant.

Mr. Brijeshwar Singh Kanwar, Senior Panel Counsel
for respondents- UOI.

HARSIMRAN SINGH SETHI , J. (Oral)

1. In the present appeal, the challenge is to the impugned order dated 03.04.2012 passed by learned Single Bench by which, the writ petition filed by the appellant herein challenging the order passed by Summary Security Force Court, by which he has been dismissed from service, has been rejected, which is causing prejudice to the appellant.

2. Learned counsel for the appellant argues that the allegations levelled against the appellant were that he was in an inebriated state while he was performing the duties assigned to him and while performing his duties he had fired 13 rounds by using a fire arm without any plausible reason. Learned counsel for the appellant further submits that the proceedings initiated before the Summary Security Force Court a decision was reached upon, which decision was against the appellant but proper opportunity to defend the allegations was not given to appellant and the proceedings initiated against the appellant was reached upon at conclusion of finding him



guilty by the authorities concerned only on the ground that the allegations alleged against appellant were conceded by the appellant himself, whereas, the same was done in-violation of provisions of Rule 142 (2) of the Border Security Force Rules (for short the Rules).

3. Learned counsel for the appellant further argues that the material evidence which was brought on record against the appellant was supplied to him on 12.05.2009 i.e. only two days before from the initiation of the proceedings against him and the appellant was not given adequate time to prepare his case, whereas the same should have been furnished to him much prior to initiation of the proceedings so that the appellant can defend the allegations alleged against him.

4. Learned counsel for the appellant argues that keeping in view the judgment of the Division Bench of the Hon'ble High Court of Delhi at New Delhi in **Writ Petition (c) No. 10858 of 2009 titled as Prema Ram Ex BSF Constable versus Union of India, decided on 05.03.2025** wherein it has been held that unless and until the statements made by personnel concerned conceding guilt is signed by the delinquent concerned, the Rule 142 (2) of the Rules could not have been brought into operation.

5. Learned counsel for the appellant further argues that while imposing the punishment of dismissal from service upon the appellant, his 13 years of service, which he rendered in his credit, has not been kept in mind by the authorities concerned and the major punishment of dismissal from service had been imposed upon the appellant, which punishment is disproportionate to the charges alleged and proved against him.

6. Learned counsel for the respondents submits that all the pleas which are being raised by the appellant in the present appeal, have already been raised before the learned Single Judge and the same have already been



dealt with reasonably by the learned Single judge while dismissing the writ petition vide order dated 03.04.2012 and the said arguments are now being re-argued by the counsel for the appellant, which is not permissible under an appeal preferred against order of learned Single Judge.

7. Learned counsel for the respondents further submits that during the conduction of the proceedings against the appellant, he was given the benefit of assistance of Assistant Commandant, who was the friend of the appellant, and thereafter, keeping in view the fact that the charges levelled against the appellant were conceded by him and eventually an appropriate decision was reached upon by the competent Court of law, hence, the plea of the appellant that the proceeding conducted against the appellant was conducted in hasty manner and without giving enough time and opportunity to the appellant to defend his case, is incorrect and the appeal may kindly be dismissed.

8. We have heard learned counsel for the parties and have gone through the case file with their able assistance.

9. The argument which has been raised by learned counsel for the appellant that the material evidence which was brought on record against the appellant so as to hold him liable for his conduct in proceedings initiated against him was handed over to him just two days before the initiation of the said proceedings i.e. on 12.05. 2009 thereby curtailing his right to defend himself properly.

10. It may be noticed that in case the appellant contested the allegations alleged against him on merit, the said argument could have been considered. Once, the allegations alleged against the appellant have already been conceded by him, the fact that the material evidence which was to be used against him was given to him two days before the initiation of the



proceedings, will not make a much of a difference as the appellant never contested against the allegations alleged against him.

11. Further, the arguments of the learned counsel for the appellant is that he was not given the proper time to think as to whether, the conceding of allegations will lead to dismissal from service as well. The said argument of the learned counsel for the appellant has also been dealt with by the learned Single Judge while passing the order dated 03.04.2012.

The relevant findings of the learned Single Judge in the order dated 03.04.2012 is as under:-

“His plea that provisions of Section 142 (2) of the Rules were not complied with is again a bald assertion, which is belied by the record of proceedings. The certificate endorsed by the Commandant, which was duly signed by the Court, would be a testimony to this that the court had read and explained the meaning of the charges to the Petitioner, to which he had pleaded guilty. The Court had also ascertained if the Petitioner had understood the nature of charges, to which he had pleaded guilty. The court thereafter had informed him the general effect of plea and the difference in procedure that was required to be followed. Only after having satisfied in this manner, his plea of guilty was recorded and accepted, when the court was fully convinced that the accused understood the charges and the effect of pleading guilty. This is what is the requirement of Rule 142 (2) of the Rules, which is as under:-

"If an accused person pleads "Guilty", that plea shall be recorded as the finding of the court, but before it is recorded, the court shall ascertain that the accused understands the nature of the charge to which he has pleaded guilty and shall inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty, and of the difference in procedure which will be made by the plea of guilty and shall advise him to withdraw that plea if it appears from the record or abstract of evidence (if any) or otherwise that the accused ought to plead not guilty".



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Thus, the plea of the Petitioner that he had not pleaded guilty to the charge or that the provisions of Rule 142 (2) of the Rules were not complied with is totally false and frivolous and is rejected”

13. Learned counsel for the appellant has not been able to rebutt the fact and the findings of the learned Single Judge mentioned herein above so as to prove the same as perverse to the fact on record.

14. Once, the findings have been recorded by learned Single Judge that due opportunity was given to the appellant as is the requirement under Rule 142 (2) of the Rules, the same needs no reconsideration at the hands of this Court. Endeavour of the appellant is only to re-argue the same issue before the Court so as to convince this Court to come at a different conclusion than the one which has arrived at by the learned Single Judge which is not permissible unless and until the findings of the learned single Judge are proved as perverse to facts or law. Even otherwise nothing evident has been brought on record to show to this Court that the findings recorded by the learned Single Judge while passing the order dated 03.04.2012 are perverse either to the facts or evidence brought on record.

15. Further, another submission of the appellant is that the punishment of dismissal from service imposed upon the appellant is disproportionate to the allegations alleged and proved against him keeping in view the fact that the appellant had rendered 13 years of service in his credit. It may be noticed that as per the judgment of the **Hon'ble Supreme Court of India in Civil Appeal No.219 of 2023 titled as Union of India and others vs. Const. Sunil Kumar, decided on 19.01.2023**, the Court cannot interfere even if the punishment imposed upon an employee is disproportionate, the same is not permissible unless and until the punishment imposed is shockingly disproportionate to the charges alleged and proved.



The relevant paragraph of the said judgment is as under:-

“ 6.2 *Even otherwise, the Division Bench of the High Court has materially erred in interfering with the order of penalty of dismissal passed on proved charges and misconduct of indiscipline and insubordination and giving threats to the superior of dire consequences on the ground that the same is disproportionate to the gravity of the wrong. In the case of Surinder Kumar (supra) while considering the power of judicial review of the High Court in interfering with the punishment of dismissal, it is observed and held by this Court after considering the earlier decision in the case of Union of India Vs. R.K. Sharma; (2001) 9 SCC 592 that in exercise of powers of judicial review interfering with the punishment of dismissal on the ground that it was disproportionate, the punishment should not be merely disproportionate but should be strikingly disproportionate. As observed and held that only in an extreme case, where on the face of it there is perversity or irrationality, there can be judicial review under Article 226 or 227 or under Article 32 of the Constitution.*

6.3 *Applying the law laid down by this Court in the aforesaid decision(s) to the facts of the case on hand, it cannot be said that the punishment of dismissal can be said to be strikingly disproportionate warranting the interference of the High Court in exercise of powers under Article 226 of the Constitution of India. In the facts and circumstances*



of the case and on the charges and misconduct of indiscipline and insubordination proved, the CRPF being a disciplined force, the order of penalty of dismissal was justified and it cannot be said to be disproportionate and/or strikingly disproportionate to the gravity of the wrong. Under the circumstances also, the Division Bench of the High Court has committed a very serious error in interfering with the order of penalty of dismissal imposed and ordering reinstatement of the respondent.

6.4 *At this stage, it is required to be observed that even while holding that the punishment/penalty of dismissal disproportionate to the gravity of the wrong, thereafter, no further punishment/penalty is imposed by the Division Bench of the High Court except denial of back wages. As per the settled position of law, even in a case where the punishment is found to be disproportionate to the misconduct committed and proved the matter is to be remitted to the disciplinary authority for imposing appropriate punishment/penalty which as such is the prerogative of the disciplinary authority. On this ground also, the impugned judgment and order passed by the Division Bench of the High Court is unsustainable.”*

16. In the present case, the appellant was a member of BSF and was posted at Border, where indiscriminate and unnecessary firing done by the appellant without any sufficient cause has the possibility that the same may lead to serious international dispute between both two Countries. Further, firing unnecessary and that too under the influence of the liquor is



worse; the soldiers, who are posted at Border are required to maintain the required discipline in such sensitive area so that no nation is put under scrutiny on the basis of any unrequired, unnecessary and frivolous action. Hence, in the facts and circumstances of the present case, it cannot be said that the act done by appellant, which has been conceded by the appellant was of such nature to say that the punishment of dismissal from service imposed upon him is shockingly disproportionate to the such conceded action.

17. Further it may be noticed that the facts of the judgment which has been relied upon by the learned counsel for the appellant herein above, i.e. **Prema Ram Ex BSF Constable's case (supra)** are different from the facts of the present case. In the said case, before Hon'ble High Court of Delhi, the statement of accepting the guilt was signed only by the commandant and not by the accused or his next friend whereas, in the present case, the statement of guilt has been given by the appellant himself.

18. Though, it may be noticed that the statement should have been signed and said process would have been done but a bare reading of Rule 142 (2) of the Rules as it existed on the day of proceedings would show that no such requirement of the signatures existed in the rule book rather the said requirement was added in the rule on 25.11.2011. The said essential requirement signing of the statement has only been inserted as proviso to 142 (2) after the conclusion of the proceedings in the present case, hence, the procedure envisage under the Rule 142 (2) of the Rules has been rightly followed by the authorities concerned while dismissing the claim of the appellant.

18. Once, at the time when the proceedings were undertaken against the appellant, the signing of signature upon admission of guilt by the

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delinquent was not a mandatory condition under the rules, hence, non signing of the same cannot vitiate the proceedings especially when the said allegations stood conceded by the appellant himself especially when nothing has come on record that said statement has not been given by the appellant.

19. Hence, the order dated 03.04.2012 passed by learned Single Judge can only be interfered in case the same is perverse to the facts, evidence or settled principle of law whereas in the present case, no perversity has been shown to this Court qua the order dated 03.04.2012 passed by learned Single Judge that the same is contrary to the facts, evidence or the settled principle of law.

20. No ground is made out for any interference by this Court in the facts and circumstances of the present case.

21. Accordingly, the present appeal is dismissed.

22. Pending civil miscellaneous application, if any, stands disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

(VIKAS SURI)
JUDGE

28.08.2025

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Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*