



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 24.02.2025
Pronounced on: 26.05.2025

+ **W.P.(C) 6245/1999**

SATBIR SINGH

.....Petitioner

Through: Mr.Anil Hooda and
Mr.Satendra Singh Baghel,
Advs.

versus

UOI & ANR

.....Respondents

Through: Ms.Monika Arora, CGSC for
UOI with Mr. Subrodeep Saha,
Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J

1. The petitioner has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorari for quashing the proceedings conducted by the General Security Force Court (GSFC) convened by the Border Security Force (BSF), including the Conviction and Sentence imposed upon him therein. The petitioner also seeks all consequential reliefs, including reinstatement into service and payment of back wages.

2. The brief factual matrix as emerging from the record is that the petitioner was initially enrolled as a Constable in the BSF, and later



promoted to the rank of Sub-Inspector. In the year 1997, the petitioner was posted as a Platoon Commander at the Border Out Post (B.O.P.) Maratha Hill under the 122nd Battalion of the BSF, located along the Rajasthan border.

3. It is the case of the petitioner that, on the night of 14.02.1997, one Constable Ishwar Bhai, who had been detailed for sentry duty at the B.O.P. from 2100 hours to 2300 hours, was found to be absent from his assigned post. Upon search, the Guard Commander, Head Constable Ram Swaroop, located Constable Ishwar Bhai in an inebriated state lying under a blanket in one of the empty rooms of the post. The incident was reported to the petitioner, who, upon personally observing the condition of the said Constable, directed that he be transferred to his bed in the barracks. Thereafter, on the following morning i.e., on 15.02.1997, the Company Commander, Shri S.B. Paliwal, visited the B.O.P. and summoned Constable Ishwar Bhai. However, at that time, Constable Ishwar Bhai did not raise any complaint or grievance against any individual. The Company Commander is stated to have made further enquiries from HC Ram Swaroop and the cook, Om Prakash, neither of whom reported any untoward incident having occurred the previous night. After a lapse of three days, Constable Ishwar Bhai submitted a written complaint to the Company Commander, alleging that the petitioner had committed an act of sodomy upon his person during the intervening night of 14th-15th February, 1997.

4. Consequent upon the said complaint, the statements of the victim/Ishwar Bhai and other relevant witnesses were recorded. The



petitioner was produced before the Director General on 19.02.1997, and a Chargesheet was served upon him.

5. Thereafter, the Director General ordered for Record of Evidence (ROE) which was then concluded.

6. Pursuant thereto, a GSFC was convened for the trial of the petitioner, who was Charged under Section 24(a) of the Border Security Force Act, 1968 (for short, 'the BSF Act'), for the offence of committing sodomy.

7. Following the trial, wherein evidence was led and arguments were heard, the GSFC convicted the petitioner for the charged offence. By way of Order on Sentence dated 06.03.1999, the petitioner was dismissed from service. The said sentence was subsequently confirmed by the Inspector General (HQ), BSF, on 20.04.1999.

8. Dissatisfied by the Conviction and Sentence, the petitioner preferred a statutory appeal on 09.06.1999 before the Director General, BSF, which came to be rejected *vide* communication dated 17.08.1999.

9. Aggrieved by the dismissal of his statutory appeal, the petitioner preferred the present petition before this Court.

SUBMISSIONS ON BEHALF OF THE PETITIONER

10. The learned counsel for the petitioner, Mr. Anil Hooda, submitted that the petitioner, who served the BSF with distinction for over thirty-three years without blemish, has been falsely implicated in a case involving an allegation of commission of sodomy on the person of Constable Ishwar bhai.



11. He submitted that the impugned GSFC proceedings, culminating in the conviction and dismissal of the petitioner, are vitiated by fundamental infirmities, legal irregularities, and procedural lapses, as the foundational requirement of medical examination of the alleged victim was admittedly not undertaken. Moreover, no scientific analysis of the undergarments of either the complainant or the petitioner was carried out. In a proceeding based on allegations of commission of sodomy, the absence of medical corroboration, he submits, strikes at the root of the case.

12. The learned counsel raised suspicion upon the correctness and truthfulness of the complaint, and submitted that the complaint was made belatedly on 17.02.1997, three days after the alleged incident of 14.02.1997, thus, the incident was manipulated. Further, the Company Commander had visited the BOP on 15.02.1997, but no complaint was made at that time, which also creates a doubt on the genuineness of the complaint. This delay, coupled with the absence of any contemporaneous reporting or medical corroboration, thus, suggests that the complaint was a result of inducement and not voluntary or genuine.

13. He submits that, in addition, the proceedings stand vitiated on account of violation of the principles of natural justice and denial of protection against bias, as Shri S.K. Sood, who presided over the GSFC, had earlier served as the Staff Officer to the DIG, during which tenure he had dealt with the case at a preliminary stage. This prior involvement, he submitted, necessarily entailed application of mind to the facts of the case and thereby compromised his impartiality,



rendering him ineligible to act as the Presiding Officer of the GSFC.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

14. *Per Contra*, the learned counsel for the respondents, Ms.Monika Arora, learned CGSC, submitted that the disciplinary proceedings were conducted in strict compliance with the applicable provisions of the BSF Act and the Rules, and all principles of natural justice were duly followed.

15. The petitioner was commanding a platoon at the B.O.P. Martha Hill at the Rajasthan border, when the incident occurred on 14.02.1997. Subsequently, the complainant/victim submitted a written complaint alleging that the petitioner had compelled him to consume alcohol, rendering him unconscious, and had then committed an unnatural offence upon him. She submitted that the Company Commander visited the B.O.P. on 17.02.1997, on receipt of complaint against the Complainant/victim, that he was found sleeping while on sentry duty. It is on the visit of the Company Commander at B.O.P. on 17.02.1997, when the Complainant narrated the alleged incident to him. Subsequent thereto, the statements of the witnesses were recorded by the Company Commander. She submitted that the date reflecting as 15.02.1997 in the statement of PW-6, that is, the Company Commander, in the GSFC trial is a mere clerical/typing mistake.

16. The learned CGSC submitted that the B.O.P. was situated in a remote area with no accessibility to a hospital, because of which the medical examination could not be carried out. Nevertheless, the case



was based on the direct complaint of the victim and the corroborative statements of witnesses, all of whom were examined before the GSFC.

17. She further contended that the petitioner was given ample opportunity to defend himself and cross-examine the witnesses. The trial, therefore, met the test of procedural fairness and evidentiary sufficiency.

18. She submitted that Shri S.K. Sood had not participated in the investigation or preliminary stages of the proceedings. Moreover, the petitioner had explicitly recorded his no-objection to being tried by the Court so constituted. Having failed to raise any objection at the relevant stage, the petitioner is estopped from challenging the constitution of the GSFC at a belated stage, merely because the verdict went against him.

19. The learned CGSC, while placing reliance on the judgment of the Supreme Court in ***Union of India & Ors. v. P. Gunasekaran***, (2015) 2 SCC 610, and of a Division Bench of this Court in ***Ex. Subedar R.K. Sharma v. UOI & Ors.***, W.P.(C) 13629/2004, submitted that under Articles 226 and 227 of the Constitution, this Court has limited power of judicial review, as it cannot act as an appellate forum and re-assess evidence or question the adequacy thereof.

ANALYSIS AND FINDING

20. We have carefully considered the submissions addressed on behalf of the parties, and perused the record as also the original record produced before us by the respondents.

21. Before delving into the merits of the submissions of the parties,



we may note, under Article 226 of the Constitution of India, the scope of judicial review exercised by this Court does not ordinarily extend to a re-evaluation of the evidence adduced in departmental proceedings. The scope of judicial review is circumscribed, and the Court should refrain from interfering with the same, unless there is gross illegality or perversity that cannot be ignored. More so, the Court should not re-assess the factual matrix or substitute its own judgment for that of the Disciplinary Authority.

22. The ambit of judicial review is, therefore, confined to examining the correctness of the decision-making process and the fairness of the procedure adopted, as has been held by the Supreme Court in ***B.C. Chaturvedi v. Union of India & Ors.***, (1995) 6 SCC 749, the relevant portion of which reads as under:

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion



receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.”

23. Having noted the jurisdiction of this Court under Article 226 of the Constitution of India, we may now deal with the merits of the case.

24. Upon receiving the complaint submitted by Ishwar Bhai/victim, a preliminary inquiry was initiated, culminating in the issuance of a Chargesheet to the petitioner. The petitioner was thereafter produced before the Commandant on 19.02.1997, whereupon a Charge under Section 24(a) of the BSF Act was framed against him. The relevant portion of the Charge reads as under:

“

25, Feb, 99

CHARGESHEET

The accused No. 66287275 Sub-Inspector Satbir Singh of 122 BN BSF is charged with:-

BSF ACT **DISGRACEFUL CONDUCT OF AN UN-**
SECTION 24(a) **NATURAL KIND**

*In that he,
at BOP Maratha hill, on 14.02.97, committed*



2025:DHC:4390-DB



*sodomy on the person of No. 90183920 Constable
Ishwar Bhai of the same Battalion.*

	-SD-
Place: Tatto ground	(A R GHOSH)
(Srinagar)	COMMANDANT
Date: 29.Jan,98	122 BN BSF

<i>To be tried by General Security Force Court.</i>	
Place:	-SD-
Date:	Inspector General <i>Border Security Force”</i>

25. Upon hearing the petitioner on the Charge, the Commandant directed that a ROE be prepared. Following the recording of the ROE, GSFC was convened by the respondents.

26. At the initiation of the proceedings before the GSFC, the plea of the petitioner, regarding the charge framed against him, was recorded, wherein he pleaded ‘Not Guilty’. He was also granted an opportunity to raise objections, if any, to the constitution of the GSFC or to being tried by any particular member, including the Presiding Officer. The record bears out that the petitioner expressly declined to raise any such objection.

27. Furthermore, at the request of the petitioner, the GSFC proceedings were adjourned for two days, as the petitioner had raised an objection that the documents furnished to him were in English, which needed to be translated into Hindi to enable him to prepare his defence. All relevant documents were supplied to him during this period. Following this, the examination of prosecution witnesses commenced.

28. During the proceedings of GSFC, the prosecution examined a total of 8 witnesses, and the petitioner has duly cross-examined the



said witnesses. More so, the petitioner was also afforded the opportunity to produce defence witnesses, however, he declined to do so. Upon conclusion of the proceedings, and after granting the petitioner adequate opportunity to present his defence, the GSFC returned a finding that the charge under Section 24(a) of the BSF Act stood proved. Consequently, the petitioner was dismissed from service pursuant to the findings of the GSFC.

29. We now proceed to examine the contention raised by the petitioner that the conviction of the petitioner is based on no evidence, as, in absence of medical examination of either the petitioner or the complainant/victim and scientific analysis of the undergarments of both, the GSFC could not have concluded that sodomy was committed by the petitioner upon the complainant.

30. Needless to state, that it is trite law that the procedural framework applicable to the disciplinary proceedings stands on a footing distinct from that which governs criminal trials. The rigours of the Indian Evidence Act, 1872, and the procedural safeguards mandated in criminal jurisprudence, do not apply with equal force to departmental proceedings. The standard of proof in such proceedings is not that of proof beyond reasonable doubt, but one of preponderance of probabilities. In this regard, it is apposite to refer to the opinion of the Supreme Court in the case of ***Union of India and Others vs Dalbir Singh***, (2021) 11 SCC 321, wherein, it has held as under:

*“24. This Court in **Ajit Kumar Nag v. Indian Oil Corpn. Ltd.** held that the degree of proof which is necessary to order a conviction is different from the degree of proof*



necessary to record the commission of delinquency. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused “beyond reasonable doubt”, he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of “preponderance of probability”. It was held as under:

“11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused “beyond reasonable doubt”, he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of



“preponderance of probability”. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside.”

(Emphasis Supplied)”

31. In this background, the initiation of proceedings in the present case was founded upon a direct complaint by the alleged victim, supported by corroborative witness statements, which constituted adequate material to sustain the Charge for the purposes of departmental proceedings. More so, the respondents have explained that the medical examination of the petitioner and the complainant could not be conducted as the B.O.P. was situated in a remote area having no accessibility to a Hospital. Thus, the overwhelming evidence on the record negates such plea raised by the petitioner.

32. Another submission made by the petitioner is that Shri S.K. Sood, who presided over the GSFC, since he had previously served as the Staff Officer to the DIG and dealt with the case at a preliminary stage, could not have presided over the GSFC as it compromised his impartiality to hold GSFC resulting in violation of principles of natural justice.

33. On the other hand, the learned CGSC for the respondents submitted that Mr. S. K. Sood did not participate in the investigation or preliminary stages of the inquiry, thus, the question regarding any bias does not arise.



34. It is to be noted that there is no material on record to indicate that Mr. S. K. Sood played any substantive role in the framing of Charge, collection of evidence, or in any investigative or prosecutorial capacity. Significantly, at the commencement of the GSFC proceedings, the petitioner did not raise any objection to the appointment of Shri S.K. Sood as the Presiding Officer; on the contrary, the petitioner is shown to have expressly recorded his no-objection when specifically queried on the issue at the outset of the proceedings. In view thereof, the submission of the petitioner appears to be an afterthought. Additionally, no material has been placed on record to suggest that Shri S.K. Sood, during the course of proceedings, exhibited any pre-disposition adverse to the petitioner. Thus, there is no merit in the submission of the petitioner that impartiality of Shri S.K. Sood was compromised, only as previous to being appointed as the Presiding Officer, he served as a Staff Officer to the DIG at the preliminary stage of trial.

35. Another plea of the petitioner was that the Law Officer in the GSFC proceedings misguided the Court by expressing his opinions on crucial questions of fact. Having perused the record of the GSFC, we find that the Law Officer in his report has summed up the evidence of the entire proceedings before the GSFC and has also provided his insights on the questions of law involved. In no manner does the report of the Law Officer appear to be in violation of Rule 126 of the BSF Rules.

36. The next plea of the petitioner pertains to the alleged delay in the making of complaint by Constable Ishwar Bhai. The petitioner



alleges fabrication and inducement on the ground that no complaint was made when the Company Commander visited the B.O.P. on 15.02.1997, and that the written complaint emerged only on 17.02.1997. He submits the delay of 3 days in making the complaint, in the present case, reflects that the complaint of the victim/Ishwar Bhai was fabricated and the alleged incident was manipulated.

37. The learned CGSC, on the other hand, submitted that the Company Commander came to B.O.P. on 17.02.1997, on which day, the complainant submitted his complaint to him, thus, there was no delay on the part of the complainant to submit his complaint.

38. The incident in question is claimed to have occurred in the intervening night of 14-15.02.1997, and a number of force personnel became aware about the occurrence of the incident and the intimation about it was also conveyed to the Superiors. The record reveals that there appears a minor contradiction pertaining to the date when the incident was reported to the superiors i.e., on 15.02.1997 or on 17.02.1997. As per the petitioner, he had informed the Company Commander that on the intervening night of 14th-15th February, 1997, a sentry was found sleeping on duty in an inebriated state, and on the following morning i.e., on 15.02.1997, the Company Commander came to the B.O.P., however, neither the complainant nor any other witness reported any untoward incident, which is sufficient in itself to conclude that the allegations made against the petitioner are fabricated. To the contrary, it the case of the respondents, that the Company Commander came to the B.O.P., for the first time, on 17.02.1997, when the complainant/victim handed over the written



complaint and narrated the incident to him. The Company Commander further enquired the matter from the witnesses and statements were then recorded regarding the incident.

39. In the present case, the PW-6, Company Commander, has given two contrary versions i.e., one by stating that on 16.02.1997, the petitioner informed him that a written complaint has been received against a sentry being found sleeping on the duty. Following which, he informed the petitioner that he will come to the B.O.P. on 17.02.1997 to make enquiry into the matter. Subsequently, he arrived at the B.O.P. on 17.02.1997, where he discovered that an unnatural offence has been committed on the complainant by the petitioner. On the contrary, before the GSFC, he deposed that following the receipt of information received on 15.02.1997 regarding some crossing having taken place at the border, he arrived at the B.O.P. on 15.02.1997, wherein he was apprised about the occurrence of the said incident of sodomy being committed on the complainant. This, however, in our opinion, is a minor discrepancy.

40. From the foregoing, it is evident that the intimation pertaining to the incident was conveyed to the superiors, and on 15.02.1997, one of the superiors had arrived at the B.O.P. and was apprised about the commission of the said offence on the person of the complainant. Following which, on 17.02.1997, upon the arrival of the Company Commander at the B.O.P., the complainant handed over a written complaint to him and narrated the details of the alleged incident. The complainant also stated before the GSFC that on following morning of the occurrence of the incident, on 15.02.1997, the complainant was



directed to report to the tent post. Upon his return after the completion of the assignment, he commenced drafting the complaint, which he finalized after a preliminary enquiry into the matter was concluded by the Inspector General.

41. Be that as may be, many force personnels were having the knowledge of the commission of the incident of sodomy on the person of the complainant on the intervening night of 14th-15th February, 1997. It is imperative to note that no inquiry was initiated against the complainant that he was found sleeping in an inebriated state during the duty.

42. From this, it is reflected that when the superior came to know about the act of sodomy being committed, the enquiry was made from various personnels and thereafter, the complainant made a written complaint to the Company Commander on 17.02.1997. The stand taken by respondents further gets strengthened from the cross-examination of the complainant before the GSFC, wherein, he deposed that he suffered from severe psychological stress following the incident.

43. In the light of the aforesaid circumstances, it becomes evident that the delay cannot be attributed to any deliberate inaction on the part of the complainant. The record indicates that the delay, if any, has been duly explained by the respondents.

44. At this stage, it is relevant to note from the evidence on record that, PW-1, namely, Ishwar Bhai, the complainant/victim, in his testimony before the GSFC, narrated the incident in detail. He deposed that the petitioner had asked him to accompany him to his



room, compelled him to consume liquor while on duty, and that the drink appeared to have been spiked as he lost consciousness thereafter. He further deposed that the petitioner then forcibly took him to the adjoining VIP room and committed an unnatural act upon him. During cross-examination, the complainant testified that he suffered from severe psychological distress following the incident.

45. The version of events as narrated by PW-1 was corroborated by other witnesses. Notably, PW-2, Om Prakash, the Cook, deposed that he had seen the petitioner and the complainant sitting together in the petitioner's room and consuming liquor. Growing suspicious, he returned to the area and, finding them missing, went to the rear of the VIP rest house, where he overheard a voice, identified as of the complainant, saying "*Chhod do, bahut dard ho raha hai,*" to which another voice, identified as the petitioner's, responded, "*Kuchh nahin hota.*" He further stated that upon hearing PW-3 call out for the complainant, he informed him that he had last seen the complainant with the petitioner.

46. Furthermore, PW-2, Om Prakash, the Cook, PW-3, HC Ram Swarup, and PW-4, NK Thakur Prasad consistently stated that upon discovering the absence of the complainant from his duty post, they conducted a search and found him lying in the dark inside the VIP room, covered with a blanket. Upon removing the blanket, they discovered him lying in a half naked condition, under the influence of alcohol. They reported the matter to the petitioner, who directed them to take the complainant to his barracks.

47. Moreover, PW-6, namely, Sh. S. B. Paliwal, the Company



Commander, deposed that he received a complaint from PW-3 regarding the complainant being found under the influence of alcohol while on duty. Upon arriving at the B.O.P., he was apprised of an unnatural offence being committed by the petitioner on the person of the complainant. Subsequent thereto, upon making enquiries from the complainant, petitioner, and other witnesses, he concluded that a *prima facie* case existed. He further stated that the demeanour and evasiveness of the petitioner during the enquiry led him to believe that the petitioner was attempting to conceal the offence, thereby reinforcing his suspicion regarding the involvement of the petitioner.

48. It is imperative to note that the record further reflects that the petitioner was given ample opportunity to cross-examine all witnesses and wherever any clarification was deemed necessary, the Court itself posed questions to the witnesses, whose responses were consistent with their prior statements and supportive of the complainant's version. Moreover, despite cross-examining the prosecution witnesses, the petitioner failed to elicit any material contradictions or inconsistencies that could impeach their credibility or undermine the prosecution's case.

49. While perusing the original record, this Court notes that the petitioner was afforded full opportunity to participate in the proceedings, to cross-examine the prosecution witnesses, and to present his defence, thus, there is no procedural irregularity or illegality while conducting the proceedings of the GSFC. The complainant, in his testimony, has narrated the incident in detail and also stood the test of the cross-examination in establishing the incident



of sodomy being committed on him. The version of the complainant was duly corroborated by all witnesses produced by the prosecution and the testimony of the complainant with the other witnesses is impeccable. In view of the above, the plea raised on behalf of the petitioner that the petitioner has been dismissed from service on incomplete evidence is not tenable.

50. In view of the foregoing discussions, we do not find any procedural infirmity/illegality or violation of principles of natural justice or any Rules that would justify the interference with the Impugned Order under Article 226 of the Constitution of India. Also, in the GSFC proceedings, there has been overwhelming evidence to support the version of the complainant.

51. Accordingly, the writ petition is dismissed.

52. The original record of the GSFC proceedings is returned herewith by the Court Master to the respondents.

SHALINDER KAUR, J.

NAVIN CHAWLA, J.

MAY 26, 2025
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[Click here to check corrigendum, if any](#)