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

+ **W.P.(C) 4342/2019**

EX. CT/GD MANOJ KUMARPetitioner

Through: Mr. A.K. Trivedi, Adv.

versus

UNION OF INDIA AND ORS.Respondents

Through: Mr. Thakur Virender Pratap
Singh Charak, Ms. Shubhra Parashar,
Mr. Pushpender Singh Charak, Mr. Amal
Shukla and Ms. Aditi Singh Advs. for UOI

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

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19.05.2025

AJAY DIGPAUL, J.

1. The relevant facts that emerged from the pleadings are as follows:

Manoj Kumar/petitioner was enrolled in the Border Security Force¹ on 15.12.2001 as a Constable/Driver and served for over 16 years. However, it is not in dispute that the petitioner had earlier been awarded summary punishment of fourteen days' rigorous imprisonment for improper and indecent behaviour resulting in public disturbance.

2. The facts leading to the petitioner's dismissal are elaborated here:

¹ hereinafter "BSF"



- a. On 14.07.2018, the petitioner was deputed to Agartala, Tripura, in connection with the servicing of a government vehicle. Having reached Agartala a day prior, the petitioner completed the servicing task and, upon receiving further instructions, stayed overnight with the mandate of picking up Deputy Commandant Shri K.K. Sharma from Agartala Airport on the following day. No specific timing for the pickup was communicated to him at that stage.
- b. On 15.07.2018, the petitioner reached the airport at around 0700 hours and waited for nearly two hours before learning that the officer's arrival was scheduled for 1900 hours. The petitioner then returned and later, while having his dinner, received a call from Deputy Commandant Sharma. He apprised the officer that he was eating and would report at the gate shortly. It is alleged that the officer verbally abused him for not being present at the pickup point.
- c. Upon reaching the pickup location, a verbal altercation ensued between the petitioner and the officer. The petitioner contends that he was subjected to abuse and, in a moment of anger and hunger, retaliated by striking the officer. It is further alleged that both the petitioner and the officer sustained injuries in the incident.



d. Following the incident, the petitioner left the site in the government vehicle, a Tata Xenon (Vehicle No. TR-08-A-1533), along with his service-issued 5.56 mm INSAS Rifle (Butt No. 117, Body No. 16434275), one magazine, and 20 rounds of live ammunition. He proceeded to a nearby hospital for medical examination and thereafter returned to the company headquarters where he deposited the weapon and ammunition.

3. Thereafter, the petitioner was tried by the Summary Security Force Court² on 01.09.2018 under the Border Security Force Act, 1968 on the following charges:

- a.** Under Section 20(a): for having used criminal force against his superior officer, Deputy Commandant K.K. Sharma, at Agartala Airport, Tripura on 15.07.2018 at approximately 1915 hours, allegedly without any provocation; and
- b.** Under Section 32(a): for making away with government property entrusted to him, specifically:
 - i. Tata Xenon Vehicle bearing No. TR-08-A-1533,
 - ii. One 5.56 mm INSAS Rifle (Butt No. 117, Body No. 16434275),
 - iii. One magazine with 20 rounds.

4. The SSFC proceedings were conducted on 01.09.2018. The petitioner pleaded guilty to both charges. The Court also relied upon



CCTV footage purportedly capturing the incident at the airport and recorded the statements of relevant prosecution witnesses, including the victim officer.

5. Upon conclusion of the trial, the petitioner was found guilty on both charges and sentenced to dismissal from service with immediate effect.

6. The petitioner subsequently submitted a statutory petition dated 26.09.2018 to the Director General, BSF, challenging the validity of the SSFC proceedings and the penalty imposed. This petition was rejected by a reasoned order dated 08.02.2019.

7. Aggrieved by this, the petitioner has filed the present writ petition on 23.04.2019, wherein the following reliefs are sought:

“(i) Call for the complete records of the case.

(ii) Quash and set aside the Impugned order dated 01/09/2018 and 08/02/2019 including the SSFC proceedings imposing the penalty of Dismissal from service, which is too severe, harsh and disproportionate to the alleged misconduct.

(iii) Direct the respondents to re-instate the petitioner in service wef the date of his dismissal i.e. 01/09/2018 and the petitioner may be entitled for all consequential benefits accruing therefrom including pay and allowances for intervening period and seniority.”

8. It is pertinent to note that the validity of the charges framed against the petitioner is not in dispute. The petitioner has admitted to

² hereinafter “SSFC”



the incident and pleaded guilty during the SSFC proceedings, and the same was reiterated before this Court.

9. However, the petitioner alleges that his plea of guilt was not voluntary and was made under coercion, upon an assurance that it would lead to a lenient punishment. He further avers that the proceedings were vitiated due to the denial of opportunity to cross-examine the prosecution witnesses and the non-compliance with Section 65B of the Indian Evidence Act, 1872, in relation to the CCTV footage that was relied upon in support of the prosecution's case.

10. On the other hand, the respondents have contested the writ petition, stating that the SSFC proceedings were conducted strictly in accordance with the applicable BSF Rules and that the petitioner had voluntarily pleaded guilty to the charges. It is further submitted that the act of assaulting a superior officer in the course of duty and then leaving the place of occurrence with government property, including arms and ammunition, constitutes gross misconduct and a serious threat to discipline and security.

11. The respondents also placed reliance on the contemporaneous CCTV footage and the testimonies of prosecution witnesses, which they contend clearly establish the petitioner's culpability. They deny that there was any procedural impropriety in the conduct of the SSFC or any violation of the principles of natural justice.



12. This Court is, at present, exercising its jurisdiction in *certiorari*, and not sitting in appeal over the decision of the SSFC. The scope of judicial review is confined to examining the legality and procedural fairness of the impugned disciplinary proceedings and the proportionality of the penalty imposed and we find that there appears to be no cogent ground to set aside the petitioner's dismissal as far as any infirmity is concerned in terms of the principles of natural justice, which leaves us now with the consideration of the grant of his alternate prayer.

13. We further note that the petitioner has placed reliance on the judgment of the Hon'ble Supreme Court in ***Ram Kishan v Union of India & Ors.***³, wherein the Court considered a case involving use of abusive language by a constable towards his superior officer. In that case, though the charge was established and the punishment of dismissal from service had been imposed, the Court held that the imposition of such a harsh punishment was disproportionate to the gravity of the misconduct alleged. It was held that stoppage of two increments with cumulative effect would have been an appropriate penalty in the facts of that case. The petitioner submits that the present matter is on similar footing, and dismissal from service, depriving him of his pensionable benefits, constitutes a penalty excessive to the conduct proven.

14. Furthermore, reliance has also been placed on the judgment of the Hon'ble Supreme Court in ***Delhi Police, Through Commissioner***

³ (1995) 6 SCC 157



*of Police v Sat Narayan Kaushik*⁴, wherein the circumstances were comparable. The Court upheld the conversion of dismissal into compulsory retirement, holding that the punishment of dismissal was unduly harsh. The petitioner urges that the ratio of the said judgment squarely applies to the present case, particularly where the petitioner has served for over 16 years, had an otherwise clean service record, and the incident occurred in the heat of the moment due to provocation. It is submitted that denial of pension and benefits after long, honest service violates the principle of proportionality and therefore, calls for reconsideration.

15. We deem it appropriate to reproduce the relevant paragraphs of *Sat Narayan Kaushik* for better understanding and clarity:

“15. Coming to the first two submissions of the learned counsel for the appellant, we are of the view that the High Court, in exercise of its writ jurisdiction, has power to interfere with the quantum of punishment imposed by the appointing authority in an appropriate case provided the High Court has taken into consideration the totality of the facts and circumstances of the case such as nature of charges levelled against the employee, its gravity, seriousness, whether proved and, if so, to what extent, entire service record, work done in the past, remaining tenure of the delinquent left, etc. In other words, it is necessary for the High Court to take these factors into consideration before interfering in the quantum of the punishment.

16. In this case, we find that the learned Judges of the High Court did apply their mind to some of the factors for coming to a conclusion that this is an appropriate case where interference in the quantum of punishment is called for and accordingly converted the punishment of dismissal into punishment of compulsory retirement.

17. In our view, the finding on this issue appears to be just and proper and does not call for any interference in our appellate jurisdiction. We accordingly reject the first and second

⁴ (2016) 6 SCC 303



submissions.”

16. Applying the principles laid down in the aforementioned judgment to the present case, we find that several mitigating factors deserve serious weight. The petitioner had served for over 16 years and 8 months in the BSF prior to the impugned dismissal. His record reveals that he had earned twelve commendation rewards, including those from the I.G., DIG, and multiple Commandants, and had no significant blemishes other than one minor disciplinary punishment imposed in 2006.

17. The incident in question appears to have been triggered not by malice or premeditation but by a sudden outburst in the heat of provocation. The petitioner had reportedly been waiting since early morning at Agartala Airport without proper instructions. In the moment of frustration and fatigue, the petitioner lost control and struck the officer. It is also pertinent to note that no loss to the Government occurred in respect of the weapon or vehicle as both were returned intact to SI Murari Lal.

18. While these acts cannot be condoned, it also cannot be ignored that the petitioner’s conduct was not premeditated but rather a spontaneous reaction in a moment of frustration. Having taken this view, we refrain ourselves to enter into the controversy regarding the petitioner’s allegation i.e. plea of guilt secured through coercion.

19. Further, the petitioner’s economic and familial vulnerability cannot be overlooked. It is undisputed that he has two minor children,



no other source of income, and was removed from service with no pensionary or terminal benefits. The DG BSF, in the rejection order of 08.02.2019, did take note of these circumstances but declined to show leniency. In our view, this approach fails the test of proportionality of punishment, particularly given the petitioner's long and commendable tenure of service.

20. We are conscious of the discipline required in the armed forces, and the importance of obedience to superior officers. However, discipline cannot operate in a vacuum, disregarding the totality of service and the circumstances leading to it. We are persuaded that the punishment of dismissal, in the facts of this case, is excessive and merits the Court's interference.

21. For the aforesaid reasons hereinabove, we reduce the punishment from removal to compulsory retirement. Let the resultant the benefits be disbursed to the petitioner within a period of four weeks from today.

22. The writ petition is partly allowed to the aforesaid extent.

23. Accordingly, the writ petition stands disposed of along with all the pending applications, if any.

AJAY DIGPAUL, J.

C.HARI SHANKAR, J.

MAY 19, 2025/AS

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