



2025:DHC:2808-DB



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

Reserved on: 27.01.2025
Pronounced on: 22.04.2025

+ W.P.(C) 10912/2022

NARENDER KUMAR

.....Petitioner

Through: Mr. Gaurav Arora, Mr. Vishal
Dogra, Ms. Ishna Vaid, Advs

versus

UNION OF INDIA THROUGH SECRETARY, MINISTRY OF
HOME AFFAIRS & ORS.

.....Respondents

Through: Mr.T.P. Singh, SPC

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 present petition has been filed by the petitioner challenging the Order dated 05.06.2009 *vide* which the petitioner was dismissed from service. He has also challenged the Order dated 19.07.2010, by which the Director General, Border Security Force (BSF) rejected the petitioner's statutory petition as being devoid of merit.

BACKGROUND

2. The facts and circumstances giving rise to the present petition are that the petitioner joined the BSF on 15.07.1987 as a Constable (General Duty). After completing his Basic Training, he was posted to the 51st Battalion (Bn) with effect from 15.03.1988. During the



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deployment of the 51st Bn in the SB Frontier from March, 2004 to June, 2006, a large number of Force personnel were found to be involved in sending bank drafts of amounts disproportionate to their known sources of income.

3. *Vide* Order dated 11.06.2007, the FHQ Pers. Directorate (Vigilance Sec) forwarded a list of 1126 bank drafts prepared by the personnel of 51st Bn BSF to Ftr HQ BSF Srinagar, directing that a Staff Court of Inquiry (SCOI) be conducted in this regard. In response, Ftr HQ BSF Srinagar ordered an SCOI, *vide* the Order dated 18.06.2007, and detailed Mr. U.M. Subramani, Commandant, 5th Bn BSF, as the Presiding Officer (PO) to find out the identity of the personnel involved and to determine whether the remitted amounts were disproportionate to their known sources of income.

4. Upon completion of the SCOI, the PO submitted his findings to the Ftr HQ BSF Srinagar. As per the SCOI proceedings, the petitioner was found to have prepared 14 bank drafts in favour of his wife- Smt. Kailash Kumari, amounting to Rs. 3,19,000/- during the period from 23.11.2004 to 13.03.2006, and the amount received by him towards his pay and allowances during this period came to be Rs. 1,18,883/-.

5. Based on these findings, the petitioner was attached to the 90th Bn BSF, *vide* Order dated 07.10.2008, for the initiation of a disciplinary action against him. He was relieved on 01.12.2008 from his earlier Bn and was subsequently heard by the Commandant, 90th Bn BSF on 15.01.2009 under Rule 45 of the BSF Rules, 1969 (BSF Rules).

6. Following this, a Record of Evidence (ROE) was ordered on



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15.01.2009, and Mr. Prem Vishwas, Assistant Commandant (T) of the 90th Bn BSF was detailed to conduct the said proceedings. Thereafter, a Charge-Sheet was prepared by the Commandant on 24.04.2009 under Section 46 of the BSF Act, 1968, (BSF Act) for committing a civil offence, that is, being in possession of pecuniary resources disproportionate to his known sources of income, for which the petitioner could not satisfactorily account for.

7. The particulars of the Charge were that while deployed at Murshidabad, West Bengal, in the 51st Bn BSF, the petitioner had arranged to send 14 bank drafts amounting to ₹3,19,000/- in favour of his wife during the period from 23.11.2004 to 13.03.2006, which was deemed disproportionate to his known sources of income.

8. Subsequently, the Summary Security Force Court (SSFC) proceedings were conducted from 01.06.2009 to 05.06.2009, during which the petitioner pleaded '*not guilty*'. However, after considering the evidence, the SSFC found him '*guilty*' of the Charge. The Commandant, 90th Bn BSF, *vide* Order 05.06.2009 awarded the punishment of Dismissal from Service.

9. Thereafter, the petitioner filed a Statutory Petition under Section 117(2) of the BSF Act, challenging the said dismissal order. However, the Director General, BSF rejected his petition on 19.07.2010 as being devoid of merit.

10. Aggrieved by this decision, the petitioner filed a Writ Petition before the High Court of Jammu and Kashmir at Jammu on 21.12.2010. However, the High Court dismissed the same stating that it lacked territorial jurisdiction, while granting him liberty to approach



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the appropriate High Court for further legal recourse, thus, leading to the filing of present petition before this Court.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER

11. Mr. Gaurav Arora, the learned counsel for the petitioner submitted that the respondents failed to adhere to the Rule 45 of the BSF Rules in its letter and spirit and thus the subsequent proceedings, including the SSFC proceedings, stand vitiated. Both, the Preliminary Hearing under Rule 45 of the BSF Rules and the SSFC proceedings were presided over by same Presiding Officer, thereby violating the principles of natural justice. Further, the Preliminary Hearing was conducted within a mere 12 minutes.

12. He submitted that the petitioner was not served with the copies of the ROE and the Charge-Sheet in a timely manner in accordance with the Rule 63(4) read with Rule 63(6) of the BSF Rules, which adversely affected his ability to prepare an adequate defence and to engage a legal practitioner. He contended that the Commandant had already decided to dismiss the petitioner from service during the Preliminary Hearing itself, and provided the copies of the ROE and the Charge-Sheet only on 01.06.2009, that is, the day of the Trial.

13. The learned counsel further submitted that there was lack of incriminating evidence before the SSFC, and no material witnesses were examined to support the Charge against the petitioner. Additionally, the same prosecution witness, ASI(M) Ritu Sharma, who was the sole witness examined during the Preliminary Hearing, was again called to testify as PW-1 during the SSFC Trial. He contended



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that the evidence presented by PW-1 was inadmissible, as it consisted of photocopies rather than the true copies. Moreover, the PO verified these photocopies without comparing them with the original documents. Also, PW-2 and PW-3 did not state any incriminating facts against the petitioner and the PO declined to cross-examine or re-examine them.

14. The learned counsel contended that the petitioner provided a satisfactory and detailed explanation regarding the money in question and its source. In such a situation, it was the responsibility of the respondents to prove that the source stated by the petitioner is false, and the respondents should have proved the allegations beyond a reasonable doubt, as the petitioner had pleaded '*Not Guilty*'. Additionally, preparing bank drafts with one's own money and sending them to one's own joint bank account is not an offence. He submitted that the petitioner had prepared 14 drafts, of which 11 were in his name, and only 3 were prepared using the names of PW-2 and PW-3, as the petitioner was occupied with duty on some occasions when money was needed at home.

15. He further contended that the Charge is under the Prevention of Corruption Act, 1988 and according to the said Act, the prosecution has to prove that the accused acquired the money through illegal means. However, the PO did not call any prosecution witness who could establish the claim made in the Order dated 07.10.2008, which listed 97 personnel who supposedly prepared bank drafts of amounts exceeding their known sources of income, which they allegedly earned by engaging in smuggling activities or in connivance with the



smugglers while being deployed at the International Border at Murshidabad between years 2004 and 2006. Therefore, in the absence of any material evidence, the petitioner cannot be convicted solely based on a mere suspicion.

16. He further contended that in terms of Section 48(1)(h), imposition of fine can be the only punishment in respect of the civil offences. Furthermore, the petitioner's service record is exemplary, with various rewards, including cash rewards, which makes the punishment imposed on the petitioner disproportionate. Thus, in these circumstances, the petition be allowed and the Impugned Orders be quashed and the petitioner be reinstated in service.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENTS

17. On the other hand, while refuting the pleas of the petitioner, Mr. T.P Singh, SPC, submitted that there are no deficiencies in the hearing conducted by the Commandant under Rule 45 of the BSF Rules. The petitioner was heard by the Commandant on a proper offence report, where he pleaded '*Not Guilty*'. The record shows that during the hearing, the statements of witnesses from the SCOI were read over to the petitioner, and he was given the opportunity to make a statement in his defence, to which he declined. He was also afforded an opportunity to cross-examine the prosecution witnesses. Further, he submitted that it is well-established that any pre-trial affirmatives do not invalidate the trial proceedings. The petitioner's conviction was based on the evidence presented during the SSFC trial, and thus, no prejudice was caused to him.



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18. He contended that the SSFC proceedings show that the trial of the petitioner commenced on 01.06.2009 and concluded on 05.06.2009, during which three prosecution witnesses were examined. The petitioner was given ample opportunity to defend himself at all the stages of the disciplinary proceedings and he availed these opportunities during the ROE and SSFC proceedings, and the provisions of BSF Act and Rules were duly complied with.

19. He submitted that according to Appendix 'A' attached to the letter dated 30.05.2009, which was served by the respondent No. 3 and received by the petitioner on 31.05.2009, and on the same day, the petitioner gave his consent to appoint Shri P.C. Rai- Deputy Commandant as his friend of the accused during the trial, thus, the averment that the petitioner was not given reasonable opportunity as required under law to defend himself is baseless.

20. The learned counsel contended that the petitioner has not disputed the facts presented by the ASI(M) Ritu Sharma (PW-1) regarding the non-drawl of any amount from the General Provident Fund (GPF) and taking of a loan from the Bn Loan Fund, among other details. Furthermore, the petitioner has not produced any evidence to support his claim that he brought money from his home in November, 2005 for the purchase of a pistol, nor has he substantiated the sale of a gold ring in December 2005. Similarly, he failed to provide evidence to back his statement about the loan given to the Constable Pan Singh, which he claimed was paid back to him in 2003. The petitioner also did not offer an explanation as to why he was holding such a large amount of money in the Border area since 2005. Therefore, in the



absence of supporting evidence in his defence, the SSFC did not believe the petitioner's statement. Thereafter, upon thoroughly reviewing the sufficient evidence against him, and after due application of mind, and given the serious nature of the Charge for which the petitioner was found guilty, the SSFC passed the sentence of dismissal from service. Thus, he prayed that the present petition be dismissed, as it lacked merit.

ANALYSIS AND DISCUSSION

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

22. Before considering the submissions put forth by the parties, it is essential to emphasize that under Article 226 of the Constitution of India, the scope of judicial review by this Court does not ordinarily extend to re-evaluate the evidence presented in departmental proceedings. The Court should not function as an appellate forum to re-assess the facts or substitute its own judgment in place of the disciplinary authority's. Nonetheless, judicial intervention is warranted in cases where the conclusions drawn are such that no reasonable person would arrive at such a deduction, or where the proceedings suffer from procedural irregularities or violations of the principles of natural justice. The scope of judicial review by the Courts is confined to examining the correctness of the decision-making process and the fairness of the proceedings, 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:



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“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. Against this backdrop, let us now examine the contentions raised by the petitioner, the first being that the principles of natural justice have been violated, as both the Preliminary Hearing and the SSFC proceedings were presided over by the same officer. In this



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regard, we find no merit. The Commandant of the concerned Bn was fully competent and authorized under the BSF Rules to hear the petitioner under Rule 45 of the BSF Rules and to preside over the trial. In this reference, it would be apposite to refer to Rule 45 of the BSF Rules, which is reproduced as under:

“45. Hearing of the charge against an enrolled person.- (1) The charge shall be heard by the Commandant of the Accused:-

(a) The charge and statements of witnesses if recorded shall be read over to the accused. If written statements of witnesses are not available, he shall hear as many witnesses as he may consider essential to enable him to determine the issue;

(b) the accused shall be given an opportunity to cross examine the witnesses and make a statement in his defence.

(2) After hearing the charge under sub-rule (1), the Commandant may:-

(i) award any of the punishments which he is empowered to award; or

(ii) dismiss the charge; or

(iii) remand the accused, for preparing a record of evidence or for preparation of an abstract of evidence against him; or

(iv) remand him for trial by a Summary Security Force Court.”

24. From the above Rule, it is evident that the Commandant shall hear the accused and the Charge and the statement of the witness(s) shall be read over to the accused, and he shall be given an opportunity to cross-examine the said witness(s) and make a statement in his defence. Upon hearing the Charge, the Commandant may remand the accused for preparing ROE.

25. Further, upon perusal of the original record, it is evident that the petitioner was afforded an opportunity to cross-examine the witnesses



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and make a statement in his defence, both of which were declined by the petitioner. Thus, the proceedings were initiated as the procedure prescribed. Furthermore, there was no impediment on the Commandant to preside over the SSFC, as neither the allegation of bias has been substantiated nor it has been alleged that the Commandant was an interested party.

26. Another plea raised by the petitioner is that the evidence presented by the PW-1 was inadmissible as it consisted of photocopies of the SCOI proceedings and Order dated 07.10.2008, rather than the original copies and also, the PO verified these photocopies without comparing them with the original documents. Needless to state, it is a well settled position of law that the procedure applicable to the disciplinary proceedings differs significantly from that of a criminal trial. In such proceedings, strict adherence to the rules of evidence and procedural requirements as mandated in a criminal trial is not required. Moreover, the standard of proof in disciplinary matters is that of a preponderance of probability. In the present case, the documents placed before the SSFC included a complete set of the SCOI proceedings conducted by the BSF itself. Additionally, duly attested copies of the SCOI proceedings were produced. The same, therefore, for purposes of the Disciplinary proceedings, stood proved. The petitioner seems to have taken a hyper technical objection and the proceedings cannot be vitiated on this hyper technical interpretation of the Rules.

27. Furthermore, the petitioner has not refuted the fact that he had remitted 14 bank drafts totaling Rs. 3,19,000/- in favour of his wife



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during the period from 23.11.2004 to 13.03.2006, whereas his total pay and allowances for the said period amounted to Rs. 1,18,883/-. The petitioner has also not contested the other assertions made by ASI (M) Ritu Sharma (PW-1), particularly with respect to the alleged non-drawl of any amount from his GPF account and the claim of not availing any loan from the Bn Loan Fund. The amount remitted over the said period is disproportionate to the petitioner's known source of income. To justify this discrepancy, as reflected in the original record, the petitioner made a statement in his defence wherein he stated as under:

"Whatever money other than the pay & allowances sent by me to my home address was already with me. I brought Rs. 60,000/- from my home in Nov 2005 for purchase of one Pistol for bonafide personal use. I sold one ring and one chain of five Tolas gold during Dec' 2005 from which I received Rs. 49,000/- . In year 2003, Late Constable Pan Singh refunded me Rs. 1,00,000/- which I had given him on loan. As such, I have not illegally earned any money by indulging myself in smuggling activities / connivance with the smugglers."

28. Apart from this statement, the petitioner had not produced before the SSFC any evidence to substantiate his claim about the source of money. Even otherwise, such periodic remittances over a period of 15 months cast a doubt about the justification given by the petitioner. Additionally, as discussed in the Order dated 19.07.2010 *vide* which the petitioner's Statutory Petition was dismissed, the petitioner has also not explained as to why he was keeping such an amount with him in the border area. Thus, the said justification by the petitioner appears to be an afterthought in order to evade adverse



consequences which might arise as a result of disciplinary proceedings against him.

29. The plea of the petitioner that in terms of Section 48(1)(h) of the BSF Act, only a penalty of fine can be imposed on him, is also without merit. The allegation against the petitioner is of misconduct and dishonesty in discharge of his duties for which punishment of dismissal of service as provided under Section 48(1)(c) of the BSF Act has been imposed on him.

30. Also, the plea of the petitioner that the Charge under Prevention of Corruption Act, 1988 as leveled against him cannot be sustained as that the respondents did not prove his involvement in smuggling activities, is not tenable. In this regard, the observations of the Supreme Court in the decision of ***Hindustan Petroleum Corporation Ltd. v. Sarvesh Berry***, (2005) 10 SCC 471, are as under:

“13. It is to be noted that in cases involving Section 13 (1)(e) of the P.C. Act, the onus is on the accused to prove that the assets found were not disproportionate to the known sources of income. The expression 'known sources of income' is related to the sources known to the authorities and not the accused. The Explanation to Section 13(1) of the P.C. Act provides that for the purposes of the Section, "known sources of income" means income derived from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant. How the assets were acquired and from what source of income is within the special knowledge of the accused. Therefore, there is no question of any disclosure of defence in the departmental proceedings. In the criminal case, the accused has to prove the source of acquisition.....”



31. It is clear from a plain reading of the above that the onus lies on the accused to prove that the assets found were not disproportionate to the 'known sources of income', which means that the income is derived from any lawful source. This onus has not been discharged by the petitioner.

32. Lastly, in order to appreciate the averment of the petitioner that he was supplied with the copy of the ROE and the Charge-Sheet on the day of the trial by the SSFC, that is, 01.06.2009, we may note the relevant provision of the BSF Rules, which reads as under:

"63.

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(4) as soon as practicable after a decision has been taken to place the accused on trial and in any case not less than four days before his trial he shall be given:

(a) a copy of the charge-sheet;

(b) an unexpurgated copy of the record or abstract of evidence showing the passages (if any), which have been expurgated in the copy sent to the senior member;

(c) notice of any additional evidence which the prosecution intends to adduce; and

(d) if the accused so requires, a list of the ranks names and units of the members who are to form the Court and of any waiting members."

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(6) the provisions of sub-rules (2) and (3) shall not apply in relation to a trial before a Summary Security Force Court and in relation to such a trial the period of four days referred to in sub-rule (4) shall be construed as twenty four hours."

33. The petitioner had argued that it is evident from Appendix 'A' to the letter dated 30.05.2009 served by the respondents to the petitioner,



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that he received the copies of the ROE and Charge-sheet on 01.06.2009. The relevant portion of which reads as under:

“I, No. 87004747 HC Narender Kumar 51 Bn BSF (attached with 90 Bn BSF) do hereby acknowledge the receipt of following documents served upon me at HO 90 Bn BSF, 6 Roshanbagh (WB) on 01 June 2009 so as to enable me to prepare my defence relating to my Summary Security Force Court trial on the charge u/s 46 of BSF Act to be held at Bn HQ 90 Bn BSF Roshanbagh (WB) on 01 June 2009 at 1130 Hrs by the Commandant 90 Bn BSF.”

34. Upon reviewing the record, we find that the said letter bears the signature of the petitioner with the date of 31.05.2009, in his own handwriting. Therefore, the plea that the petitioner received the documents on 01.06.2009 is without any merit. The date of 01.06.2009 as mentioned in the text of the Appendix ‘A’ to the said letter appears to be a typographical error.

35. Having considered the above, we do not find any procedural irregularity or any transgression of Rules, warranting our interference with the Impugned Orders.

36. Consequently, the present petition is dismissed.

37. The original record of the SSFC proceedings is returned herewith by the Court Master to the respondents.

SHALINDER KAUR, J

NAVIN CHAWLA, J

APRIL 22, 2025/SK

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