



2025:DHC:697-DB



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

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***Reserved on: 06.11.2024
Pronounced on: 06.02.2025***

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W.P.(C) 3127/2018

EX CONSTABLE PARMAR MAHENDRA KUMAR

KONABHAI

..... Petitioner

Through: Mr. S.M. Dalal, Adv.

versus

THE UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Vijay Joshi, Mr. Shubham
Chaturvedi & Mr. Hemant
Goyal, 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 present petition has been filed by the petitioner, who was enrolled in the Border Security Force (BSF) on 15.04.2008 as a Constable and was dismissed from service on 10.02.2017, assailing the Order dated 15.09.2017, whereby his Statutory Petition under Section 117(2) of the BSF Act, 1968, filed before the Director General (DG), BSF against the Order of dismissal from service dated 10.02.2017, passed by the Summary Security Force Court (SSFC),



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was dismissed. The petitioner has also prayed for setting aside of the SSFC proceedings, the findings thereof, and the sentence imposed on the petitioner.

2. The petitioner has impleaded the Union of India as respondent no. 1, the Director General, BSF, New Delhi as respondent no. 2, the Commandant 5th Battalion (Bn.), BSF, Amritsar, Punjab, and Inspector S.S. Bhosle from 5th Battalion (Bn.), BSF, Amritsar, Punjab, as respondent no. 3 and 4, respectively.

BRIEF FACTS

3. To set the stage for adjudication, it will be apposite to first elucidate the factual framework of the present case. The petitioner joined the BSF as a Constable on 15.04.2008. In November, 2013, he was posted to the 5th Bn. at Dantiwada, Gujarat. On 28.03.2016, while on leave, he met with an accident and sustained a fracture in the '*Right Olecranon*'. The petitioner underwent surgery for the aforesaid injury at the Civil Hospital, Ahmedabad, however, the same was not completely successful. As the petitioner was not fit for SHAPE-I Medical Category, he was placed in the Low Medical Category S1H1A2(U)(T-14) P1E1 (for six-months) with effect from 28.06.2016 till 15.12.2016.

4. Thereafter, in September 2016, the said Bn. of the petitioner moved to Khasa near Amritsar, Punjab. It is the case of the petitioner that his treatment was ongoing and the Orthopaedic Surgeon had booked his appointment for operation on 15.11.2016 in Civil Hospital, Ahmadabad, however, he was not granted leave in this regard and he



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was not transferred to Ahmadabad despite his request. Later, on 11.12.2016, due to the extreme cold weather, he experienced acute pain in his right hand elbow and requested the Coy Commander for an interview with Inspector General (IG) with respect to his request for transfer to Ahmadabad, Gujarat, which was denied. Further, it is his case that the Coy Commander told him that he was merely faking it and that he had no such illness and abused him. Nonetheless, on 12.12.2016, the petitioner was allowed to go to the Composite Hospital at the Frontier Head Quarter (HQ), Jalandhar. However, no medical officer was available, due to it being a gazetted holiday, thus, the petitioner returned and informed the Coy. Commander accordingly.

5. The petitioner further claimed that on 12.12.2016, despite the respondents being fully aware of his persistent pain in his right elbow, he was assigned to perform sentry duty from 1300 hrs to 1900 hrs at Tower No. 6 within the premises of Frontier Headquarter, Jalandhar. The petitioner was not issued with his personal weapon and ammunition, as he was not able to handle the weapon. He was asked to take over the post from the previous sentry. The petitioner managed to reach the place of duty at 1300 hrs and stood there for some time. However, when the pain became unbearable, he called the Inspector S.S. Bhosle on his mobile phone and requested to be relieved, and in response, the Inspector started shouting and abusing the petitioner and told him that he would teach him a lesson for malingering.



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6. It was further claimed by the petitioner that Inspector S.S. Bhosle came to the Tower No. 6 and took the 5.56 mm INSAS Rifle, which was kept by the previous sentry- Constable Shriniwash Singh, and cocked it, consequent to which, one round was loaded in the chamber of the rifle. The Inspector, then called the Coy Commander-Assistant Commandant (AC) Ram Singh Bhadoria, and Assistant Sub-Inspector (ASI) Meer Singh, and fabricated a false case stating that the petitioner had cocked his rifle and used threatening language against his superiors by stating that “*MERI RIFLE KE CHAMBER MEIN ROUND HAI AUR MAI KHUD BHI MAR JAUNGA AUR DO KO AUR MARUNGA*” and also falsely claimed that the petitioner was intoxicated. This, the petitioner alleged, was a conspiracy to remove him from service.

7. Thereafter, the petitioner was taken to the Composite Hospital, BSF, Jalandhar for a medical examination. However, no medical test was carried out to prove that the petitioner was intoxicated and instead the Duty Medical Officer referred the petitioner to the Civil Hospital, Jalandhar, wherein the petitioner was administered some injection but no medical examination was carried out in the said hospital. The petitioner was then dispatched to the HQ 5th Bn BSF, Kharsa, Amritsar on the same day.

8. On 12.12.2016, the Frontier HQ, BSF Punjab directed the Commandant of the 5th Bn, *vide* Signal No. 0/4585, to take strict disciplinary action against the petitioner. Pursuant thereto, on 16.12.2016, the hearing of Charge proceedings was conducted by the



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Commandant, respondent no. 3, against the petitioner under Rule 45 of the BSF Rules, which the petitioner claimed was held in an arbitrary manner.

9. The Commandant, 5th Bn BSF, respondent no. 3, ordered Deputy Commandant Sh. Durgesh Shukla (Recording Officer) to prepare the Record of Evidence (ROE) on 16.12.2016 against the petitioner for offences committed under Section 20(b) and 26 of the BSF Act. The Additional ROE was ordered on 05.02.2017.

10. The Recording Officer submitted the ROE and Additional ROE on 01.02.2017 and 05.02.2017, respectively.

11. Parallely, since the petitioner's operation was not successful and his pain in right hand persisted, he was referred to PGI, Chandigarh by Guru Nanak Dev Government Hospital, Amritsar. On 28.12.2016, the petitioner was sent to PGI, Chandigarh through HQ Spl DG (WC), Chandigarh, where he remained until 18.01.2017.

12. The petitioner was tried *via* a Summary Security Force Court (SSFC), presided over by respondent no. 3, held on 09.02.2017 and 10.02.2017, on two charges. The First Charge was laid under Section 40 of the BSF Act for 'An act prejudicial to good conduct and discipline of the Force' and Second Charge was under Section 26 of the BSF Act for 'intoxication'. The petitioner pleaded not guilty to the First Charge but pleaded guilty to the Second Charge under the promise that he would be left lightly. The trial that proceeded with the First Charge lasted only two days. Consequently, the petitioner was



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found guilty on both the Charges and was awarded the sentence of 'dismissal from service', *vide* the Impugned Order dated 10.02.2017.

13. Being aggrieved by his dismissal, the petitioner filed a Statutory Petition on 22.05.2017 under Section 117(2) of the BSF Act before the Director General (DG), BSF, who rejected his petition *vide* the Impugned Order dated 15.09.2017.

14. Aggrieved thereof, the petitioner has preferred the present petition under Article 226 of the Constitution of India invoking the writ jurisdiction of this Court.

15. During the course of the proceedings, respondent nos. 2 and 3 filed the Counter Affidavits, which was adopted by the respondent no. 1, as recorded in the Order dated 10.01.2019. Neither anyone entered appearance on behalf of the respondent no. 4, nor any Counter Affidavit was filed despite opportunities granted by this Court, accordingly, his right to file the same was closed.

CONTENTIONS

16. Mr. S.M. Dalal, the learned counsel for the petitioner submitted that the ROE proceedings were conducted in the most casual manner and during the same, the petitioner was not given an opportunity to defend himself.

17. The learned counsel for the petitioner submitted that there are multiple procedural irregularities pertaining to holding of the SSFC against the petitioner. Beginning with the institution of SSFC proceedings itself, which was initiated after a lapse of 60 days from the date of incident in question that took place on 12.12.2016. He



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submitted that this indicates that there was no urgency in the matter so as to warrant holding SSFC, which had assembled on 09.02.2017, and the trial was hurriedly concluded on 10.02.2017. Rather, a Petty Security Force Court could have been held, which would have afforded the petitioner a fair opportunity to defend himself. Reliance placed upon the decision in the case of *Union of India vs. Vishav Priya Singh*; (2016) 8 SCC 641.

18. On merits, the learned counsel for the petitioner submitted that the respondent no. 4 was the star witness of the prosecution. However, despite having been given ample of opportunities by this Court to file a Counter Affidavit, the same has not been filed. Therefore, in terms of the settled law, whatever is imputed against him stands admitted by respondent no. 4. As a result, the disciplinary proceedings against petitioner falls flat on the said ground.

19. The learned counsel for the petitioner submitted that it was incumbent upon the respondents to call records of both the mobile phones, that is, of Inspector S.S. Bhosle/respondent no. 4 (examined as PW-2) and the petitioner, which were not produced. The statement of PW-2 alone cannot be relied upon unless corroborated by such call records. He submitted that the Inspector S.S. Bhosle had two mobile phones and he did not even remember the mobile number of the phone on which the alleged call was made by the petitioner and neither were the said mobile phones produced before the Court. Evidence of PW-1 and PW-3 in this regard is mere hearsay, and cannot be relied upon. Further, he submitted that evidence of PW-2 that he confiscated the



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rifle from the petitioner and ejected the round from the chamber, cannot be relied upon as no finger prints on the round, magazine, and rifle were taken to establish the veracity of the statement of PW-2.

20. Further, he submitted that neither rifle butt no. 283 was issued to the petitioner, nor the ammunition, as signatures of the petitioner are not present in the Kote register and against his name, false signatures have been made. Rifle is not an area weapon and is issued to each constable in his name. Moreover, he submitted that the weight of the 5.56 mm INSAS rifle filled with magazine was 4.3 kgs, and it was not possible for the petitioner to lift the rifle and cock it due to the severe pain in his injured right elbow. Thus, he submitted that the First Charge fails and the prosecution's story is fictitious.

21. The learned counsel for the petitioner submitted that the Second Charge of intoxication also fails against the petitioner as the source from where the petitioner obtained liquor while standing on duty at Tower No. 6 within the campus, was not proved. The statement of the doctors was not recorded to prove the OPD slip of the Civil Hospital, Jalandhar. To prove this Charge, clinical reports of blood test, urine test, and of breath analyser are required; in this case, none of the above reports were produced. Only on a verbal direction of Coy Commander, the hospital staff wrote 'intoxication' without conducting any corroborative tests. On the other hand, the medical officer of the Civil Hospital, Jalandar, had referred the petitioner for a complete Psychiatric Evaluation of GTB Medical College. Instead of sending



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the petitioner to the aforesaid evaluation, the respondents falsely charged the petitioner with intoxication.

22. He contended that had the petitioner been under the influence of alcohol, the same would have been noticed by PW-1 and PW-5. Surprisingly, even PW-3 did not notice that the petitioner was intoxicated, though the petitioner had come in close contact with him. Furthermore, if the petitioner was intoxicated, it is doubtful as to why he was allowed to go to the Tower Post for duty. Had the petitioner been in an inebriated state, the petitioner would have smelled of alcohol, and as alleged by PW-3 that he was not able to talk properly, then the PW-5 would have also noticed the same, however, there is no evidence of him to that effect, making it evident that the petitioner was falsely implicated. Nonetheless, the petitioner was coerced into pleading guilty on a false pretext of being let off with a slap on the wrist.

23. The learned counsel vehemently submitted that the DIG was biased against the petitioner because of an incident wherein the petitioner had made a video on his mobile phone regarding poor quality of food being served in the mess, thus, he was falsely implicated and a fabricated incident was created to board the petitioner out of the job.

24. He submitted that the present matter is a case of no evidence as the evidence produced by the prosecution was neither cogent nor reliable.



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25. The learned counsel for the petitioner submitted that the punishment is too harsh and disproportionate as the effect of the said punishment has extended economic loss to the petitioner's entire family. He stated that on account of the stigma surrounding the Court Martial proceedings, the petitioner has not able to secure any job and has been rendered without any source of livelihood. The petitioner had served the Force for almost 9 years with utmost dedication and determination, and his work had been appreciated by his superiors along with various rewards for excellent performance, thus the punishment, in totality of the circumstances, was too harsh and disproportionate.

26. He submitted that the petitioner could not set up a defence on account of his family problems and divorce. Therefore, the present petition be allowed and the Impugned Orders, theirs findings and the sentence by the SSFC, be quashed.

27. On the other hand, Mr. Vijay Joshi, the learned counsel for the respondents submitted that the petitioner was on earned leave with effect from 29.02.2016 to 08.04.2016, when he sustained the fracture to his right elbow on account of a quarrel with his neighbour in his hometown. He submitted that the petitioner was permitted to visit the hospital whenever he requested. On 12.12.2016, he was detailed for duty at Tower No. 6 to replace Constable Shrinivas Singh from sentry duty. The petitioner made a call to the Inspector S.S Bhosle on his mobile phone stating that he has one round loaded in the chamber of his rifle and that he would kill himself as well as two others, if he is



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not replaced from the duty. He submitted thereafter, the Coy 2IC reached at Tower No. 6 and cleared the rifle held by the petitioner in presence of Coy Commander, a live round ejected from the chamber of the rifle of the petitioner, and the petitioner was also found in a state of intoxication at the duty point, which is a grave offence being a member of a disciplined Force.

28. The learned counsel submitted that the petitioner was brought to the Composite Hospital, Jalandar, for medical examination. However, the petitioner remained violent and argued with the Medical Staff and refused medical examination. The petitioner also insisted that if he is examined, he will videograph the same. Moreover, the on-duty Doctor had endorsed remarks in the reference form, noting that the case be reviewed at the Composite Hospital, Jalandar, but the patient did not allow examination as he was aggressive and intoxicated. Thus, the on-duty Doctor referred the petitioner to the Civil Hospital, Jalandhar for medical examination. Thereafter, he was taken to the said hospital in a Maruti gypsy with a guard. The petitioner continued to misbehave by shouting and was being violent even at the Civil Hospital and did not co-operate with the medical staff, and persisted with his request to videograph the process. After significant efforts by the on-duty Doctor, the medical examination was carried out and it was opined that the petitioner was in a state of intoxication.

29. He submitted that when the petitioner was sent to PGI Chandigarh, he did not exhibit any abnormal behaviour related to psychiatric problems. He remained admitted there for 22 days on



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account of his injury on his right elbow. He stated that the petitioner had not even reported about any psychiatric issues even at the Unit Hospital, which makes it evident that he was not suffering from any such psychiatric problems.

30. On 30.12.2016, the petitioner, while being at HQ Spl. DG (WC), Chandigarh, was again found to be under the influence of alcohol, and on the same day, he misbehaved with the mess staff and made some video recording of the Other Ranks' (ORs') mess. The petitioner reported back to the Unit on 19.01.2017, and the petitioner made a video recording of the Jawans in the ORs' Barrack at the HQ of the Unit, which is prohibited. He also made an audio recording of his telephonic conversation with DIG (Adm.) BSF, SPL DG (WC) regarding his act of indiscipline on 30.12.2016, which was further shared on social media by the petitioner. During the above conversation, the petitioner also admitted that he remains under the influence of liquor for 24 hours.

31. He submitted that the Recording Officer who was detailed to conduct the ROE, he recorded statements of six witnesses and the petitioner was given an opportunity to cross examine the witnesses, which he refused and the same bears his signatures. He was also afforded an opportunity to make a statement in his defence or call any witness in his defence, to which he declined again, and his signatures are appended to this statement.

32. Moreover, he submitted that the ROE and the additional ROE were conducted as per the BSF Act and Rules, and the Recording



Officer recorded the statements of all essential witnesses and examined the relevant documents in the presence and hearing of the petitioner to his entire satisfaction. The Commandant after perusing the ROE and the additional ROE, found sufficient evidence against the petitioner. Accordingly, disciplinary action was taken against the petitioner after giving him all the opportunities as envisaged in the BSF Act and Rules. Thus, a fair and free trial was conducted and there was no pressure from HQs.

33. The learned counsel concluding the submissions urged that the service profile of the petitioner as on 10.02.2017, that is, the date of conviction, was that the petitioner was 29 years old and during his short span of service, was punished twice for overstayed leave on 04.04.2014 and 25.06.2016, and was awarded 14 and 7 days of rigorous imprisonment in the Force Custody, respectively. Besides his overstay of leaves twice, which were regularized, the petitioner was also habitual of consuming liquor, confronting seniors with an argumentative tone, overstaying leaves and recording unauthorised videos/audios etc. The petitioner was, thus, an indisciplined employee and the punishment awarded to the petitioner was proportionate to the gravity of the Charges levelled against him.

34. He contended that the petitioner submitted a Statutory Petition dated 22.05.2017 addressed to the DG, BSF, requesting his reinstatement in service, which was, after careful consideration of the gamut of facts and circumstances, rejected by *the* Competent Authority as being devoid of merits, *vide* the Impugned Order dated



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15.09.2017. He prays that the writ petition being meritless, be dismissed.

35. In rebuttal, the learned counsel for the petitioner submitted that the petitioner had neither consumed liquor while on duty on 12.12.2016 nor did he cock the rifle, which was left behind by the previous sentry. He stated that the said story is fabricated by the Coy 2IC to falsely implicate the petitioner. Further, the petitioner did not share the video as alleged; the petitioner had made a video of the Jawans sleeping in verandha, and since it was raining outside, their beds had become wet. The learned counsel for the petitioner also denied that the petitioner was habitual of consuming liquor, stating that had that been the case, the petitioner would have been punished by the department, however, the record shows that he was never punished for the offence of intoxication.

DISCUSSION

36. To begin with, we may note that the scope of jurisdictional power under Article 226 of the Constitution of India is limited while reviewing a departmental proceeding and it is impermissible to re-appreciate the evidence, which had been considered by the Inquiry Officer, Disciplinary Authority, and the Appellate Authority, unless the conduct of the departmental inquiry is tainted by any procedural illegality or irregularity. In this regard, we may refer to the decision of the Supreme Court in *B. C. Chaturvedi vs. Union of India and Ors.*, (1995) 6 SCC 749. Paragraphs 12 and 13 of the Judgment are reproduced 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 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 re- appreciate 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.



13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co- extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel [(1964) 4 SCR 781], this Court held at page 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.”

37. From the aforesaid decision, it is evident that in the judicial review of decision of the SSFC, this Court will not take over the functions of SSFC and re-appreciate evidence by assuming the role of an Appellate Authority. It cannot interfere with the findings of the fact arrived at by the SSFC except in the case of *malafides* or perversity or if its finding is without objectivity.

38. The learned counsel for the petitioner has primarily contended that a fair trial was not conducted by SSFC as the respondents had exhibited strong bias against him since the petitioner had made a video on his mobile phone with respect to poor quality of food that was being served to the Force personnel in the Mess. Moreover, as per statutory Rules, the SSFC was not conducted immediately after the incident, which in itself shows that there was no urgency. Thus, the trial of the petitioner should have been before the Petty Security Force Court, and that this has led to violation of principles of natural justice.



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In this background, the learned counsel has raised the concern that the proceedings of the SSFC stand vitiated.

39. In the present case, the controversy pivots around the procedural lapse that the SSFC can be legitimately convened only when there is grave and imminent cause for taking immediate action, which would be defeated if delayed while waiting to hold a Petty Security Force Court.

40. In this regard, we may refer to the kinds of Security Force Courts in the BSF Act that are convened to hold trials of BSF personnel. Section 64 of the BSF Act provides for three kinds of Security Force Courts, which are, (a) General Security Force Court, (b) Petty Security Force Court, and (c) Summary Security Force Court. The composition of all the three Courts is distinct. A General Security Force Court consists of not less than five Officers, each of whom has held the post of Deputy Superintendent of Police for not less than three whole years. A Petty Security Force Court comprises of not less than three Officers, each of whom has held the post of Deputy Superintendent of Police for not less than two whole years. A Summary Security Force Court is held by a Commandant of any Unit of the Force and he alone constitutes the Court. Therefore, apart from the Commandant, no other person is part of the decision making process in the SSFC proceedings. The proceedings, however, are attended throughout by two other persons, who are Officers or subordinate Officers or one of the either but are not sworn or affirmed. Certainly, the Act has given drastic powers to the Commandant of a



Unit, who individually constitutes the SSFC. Reflecting the importance of the SSFC that it is to be convened to maintain discipline amongst the Force personnel, therefore, the Unit Commandant has been instilled with special powers.

41. Section 74 of the BSF Act empowers the SSFC to try any offence punishable under the Act. However, a Security Force Court is required to ensure that the trial conducted is fair, just, unbiased, and that due process is followed.

42. In this background, the SSFC should be convened only in cases where immediate and compelling circumstances which necessitate expeditious decisions exist, keeping in view that the individual tried by the SSFC loses his/her valuable right of proper defence.

43. The issue regarding holding of Summary Court Martial (SCM) under Section 120 of Army Act, 1956, which is akin to holding of SSFC under Section 74 of BSF Act, 1968, was considered in detail by the Supreme Court in the case of ***Union of India and Ors. vs. Vishwa Priya*** (supra). The Supreme Court has held as under:-

“3. While allowing these Writ Petitions, the High Court in Paragraphs 20, 22, 23 and 24 of its judgment observed as under:

“20. An SCM can legitimately be convened where there is grave and compelling cause for taking immediate action which would be defeated if reference to a District Court Martial or Summary General Court Martial is made. In other words, holding of an SCM is the exception and not the rule. From the multitude of possible offences it is only those envisaged in Sections 34, 37 and 69, that can be tried by an SCM, further fortifying the



exceptional and extraordinary character of an SCM. We think it necessary to underscore that it is not proper to convene an SCM merely because the offence(s) with which a sepoy of the force is charged finds mention in the enumeration contained in these three Sections. What is of pre-eminence in convening an SCM is that it should be found imperative that immediate action is manifestly necessary. Therefore, it is essential that this factor, viz. need to hold a trial immediately, is articulated and reasoned out in writing in the order convening the SCM. Failure to do so would create good reason to quash the SCM itself. Routinely, and certainly far too frequently, the sentence passed by SCMs violates the spirit of Regulation 448(c) (supra) thereby taking away the sepoys' livelihood without affording them the normal procedural protections of law."

44. It was further held:-

"35. In the premises, we hold that it is not imperative that an SCM be convened, constituted and completed by CO of the Unit to which the accused belonged. It is competent and permissible for the CO of the Unit to which the accused was attached or sent on attachment for the purposes of trial, to try such accused by convening, constituting and completing SCM in a manner known to law i.e. strictly within the confines of Sections 116 and 120 of the Act and other Statutory provisions. We fully endorse and affirm the view taken by the High Court that SCM is an exception and it is imperative that a case must be made out for immediacy of action. The reasons to convene an SCM must be followed by well articulated reasons or the record itself must justify such resort."

45. The Supreme Court also took note of Ministry of Defence Report of 2015 at page 172, and wherein it was observed as under:-



“36..... the Committee recommends that the environment may be sensitized that the provision of SCM should be used sparingly and exceptionally and preferably only in operational areas where resort to a regular trial is not practicable or when summary/administrative action would not meet the requirements of discipline. It may be emphasized that SCM is an exception and not the rule and was not even originally meant to be a peace-time provision or regular recourse. In the times to come, the desirability of even having such a provision on the statute book may be examined with the suitability of a replacement by amore robust system meeting the aspirations of judiciousness and Constitutional norms. We may however caution that we are not, in any manner, underestimating the requirement of discipline in the uniformed services but are simply stating that SCM may not be treated as a routine recourse when other effective tools of enforcing discipline are available.”

(emphasis supplied)

46. To sum up the legal position, we may note that a SSFC should be convened when there is a requirement of an ‘immediate action’ and only after recording the reasons to justify the holding of such SSFC.

47. A review petition was filed before the Supreme Court to seek review of the aforesaid Judgment by the respondents therein, and the Supreme Court while dismissing the same, held as under:-

“5. It is submitted inter alia in the review petition, that neither the Army Act nor the Army Rules obligate recording of reasons for convening Summary Court Martial.

6. Relying principally on Section 120 of the Army Act, and the other relevant provisions and so also the judgment of High Court of Delhi, which was under appeal, this Court in



the Judgment and Order dated 05.07.2016 had made aforesaid observations in paragraphs 20 and 33. We do not find any error apparent on record, calling for any intervention in our review jurisdiction.

7. However, it is observed, that the requirement, as stipulated in aforesaid paragraphs 20 and 33, of recording reasons for convening Summary Court Martial, shall apply on and with effect from the date of the Judgment namely from 05.07.2016. Except for this clarification, we are satisfied, that no case for review of the judgment dated 05.07.2016 has been made out.

(emphasis supplied)''

48. It is clear from the above that the recording of reasons for convening SCM under the Army Act, 1956 shall apply with effect from 05.07.2016, even though there is no specific provision either in the Army Act or the Army Rules requiring such reasons to be recorded for convening SCM.

49. In the present case, the SSFC was ordered to be convened on account of misbehaviour on part of the petitioner. The following Charges under two heads were framed against him, and he was tried by the SSFC on 09.02.2017 and 10.02.2017 under Section 26 and 40 of the BSF Act. The Charges read as under:-

“ BSF ACT- 1968 SEC-40

**AN ACT PREJUDICIAL TO GOOD ORDER
AND DISCIPLINE OF THE FORCE**

in that he,

at FTR HQ BSF Punjab, Jalandhar on 12th Dec, 2016 at about 1400 hrs made phone call to No. 791022382 Inspr Sambhaji Shamrao Bhosale 'C Coy 5 Bn BSF over mobile phone and said "MERI RIFLE KE CHAMBER MEIN ROUND HAI AUR MAI



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KHUD BHI MAR JAUNGA AUR DO KO AUR MARUNGA" and words to that effect.

BSF ACT- 1968 SEC-26

INTOXICATION

in that he,

while performing sentry duty at OP Tower No. 6 at FTR HQ BSF Punjab, Jalandhar on 12th Dec, 2016 at about 1420 hrs, when checked by No. 791022382 Inspr Sambhaji Shamrao Bhosale and Sh Ram Singh Bhadoria, AC, IRLA No. 11219576 found in a state of intoxication."

50. The SSFC proceedings were held at HQ 5th Bn, BSF, Khasa, Punjab by Sh. Sajjan Singh Panwar, Commandant, 5th Bn., BSF. Sh. Om Prakash Jatav, Deputy Commandant, 5th Bn., BSF was appointed as the 'friend of the accused' to assist the petitioner, and on arraignment, the petitioner pleaded guilty to Charge no. 2. However, he claimed trial regarding Charge no. 1., Thereupon, the SSFC proceeded to hold the trial with respect to Charge no. 1 as per Rule 143(5) of the BSF Act.

51. In all, the prosecution examined six witnesses, the petitioner declined to examine any witness in his defence or to make statement in defence. The SSFC, *vide* the Impugned Order dated 10.02.2017, passed the sentence of 'Dismissal' of the petitioner from the service.

52. At this stage, it is crucial to address the challenge raised on behalf of the petitioner with respect to the procedural defects whilst convening and holding of the SSFC. The main grievance of the petitioner is that the respondents have conducted the trial by SSFC



despite the absence of any impeding or grave situation warranting such proceedings.

53. We have perused the original record of the SSFC proceedings produced before us by the respondents. The incident for which the petitioner was Charge-sheeted has occurred on 12.12.2016. Mr. Durgesh Shukla, Deputy Commandant of 5th Bn., BSF, Kharsa, Amritsar, was detailed on 16.12.2016 to prepare the ROE against the petitioner for offences committed under Section 20(b) and 26 of the BSF Act. The ROE proceedings were initiated on 23.01.2017 and were concluded on 01.02.2017, the report of which was forwarded by Mr. Durgesh Shukla, Deputy Commandant on the same day to the Commandant, 5th Bn., BSF. An additional ROE proceeding was ordered on 05.02.2017, which was concluded on the same day, and its report was submitted on 05.02.2017. However, the SSFC was convened on 09.02.2017 and concluded its proceedings on 10.02.2017. Thus, it is evident that the SSFC was conducted after 59 days of the incident.

54. It is noticeable that the SSFC was convened after much delay, clearly indicating that there was no exigency requiring an immediate action for convening the SSFC. Even though, the SSFC is also convened in accordance with the Statute, following the concept of fair trial, still there is less adherence to Due Process of law as is followed by a Petty Security Force Court or a General Security Force Court. In the present case, the respondents have failed to bring on record any compelling cause for holding of the same. More so, in the absence of a



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recorded justification, the need for taking an action through the SSFC was obliterated. The original record merely states that the proceedings of SSFC would be held on 09.02.2017, but has not recorded any reason for holding the same at a belated stage, as an emergent situation, if any, would have ceased to exist after expiry of 59 days from the date of incident..

55. At this juncture, we may highlight that the SSFC has been conducted in a perfunctory manner as a mere formality. Even though, the record indicates that the Inquiry Officer had followed the laid down Rules but the same do not seem to have been complied by him in true spirit. Needless to say, Section 145(2) provides an opportunity to the accused to call any witness in his defence as well as to give statement in defence. Even though the petitioner has pleaded that he could not set up defence due to his matrimonial problems, still he was not granted a fair opportunity to lead defence. The proceedings recorded on 10.02.2017 though reveal that the petitioner, after closure of prosecution evidence was asked whether he intended to call any witness in his defence or whether he wanted to make statement in his defence, to which he declined ,however, neither his statement refusing to call witness in defence, nor his statement for not recording defence, has been signed by the petitioner or his next friend; it merely bears the signatures of the Inquiry Officer.

56. Furthermore, in respect of Charge no. 2, for which the petitioner has allegedly pleaded guilty, again his statement in refusal with reference to the said Charge or in mitigation of punishment, does not



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bear his signatures or of his next friend. So much so, even for the statement of Ct. Gabriel Edward, called as a witness to character by the petitioner, the signatures of the witness are not appended to his depositions. Therefore, evidently, Rule 90 of the BSF Rules, which provides for reading over of evidence, was not followed.

57. It is further surprising that in view of Section 101(4) of the BSF Rules, while pronouncing the Verdict of the Court on both the Charges simultaneously, the petitioner was not afforded an opportunity to address the Court in mitigation of punishment in respect of Charge no. 1 and was granted this opportunity only with respect to Charge no. 2.

58. This brings us to the submission raised by the petitioner that the petitioner that he pleaded Guilty to Charge no. 2 on being allured that he would be left with lesser punishment in case he pleads guilty to the Charge. We find merit in the said argument advanced on behalf of the petitioner.

59. We may note that the original record reveals that the petitioner pleaded 'Guilty' to Charge no. 2, thereupon the SSFC recorded that it had explained to the petitioner the meaning of the charge to which he has pleaded Guilty and ascertained that the accused understood the nature of the charge(s) to which he has pleaded guilty. The SSFC also informed the accused in the language he understood, the general effect of that plea and the difference in procedure which will be followed consequent to the said plea. The SSFC having satisfied itself that the accused understands the charge and the effect of his plea of guilty,



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accepted his plea and records the same. It further records that ‘the provisions of Rule 142 (2) are complied with’.

60. From what has been noted hereinabove, it is clear that ‘Plea of Guilty’ was recorded first and thereafter, the petitioner was perhaps informed about what was laid down in Rule 142(2). Had the petitioner been told that there is a difference in procedure, which will be followed consequent to such plea, probably, the petitioner may have considered pleading ‘not guilty’ to the Charge.

61. Insofar as the submission of the learned counsel for petitioner with respect to the proceedings of the ROE, we do not find merit in the said submission. Upon perusal of the original record, we find that the petitioner was granted opportunity to cross-examine the witnesses to which he declined and same has been signed by the petitioner as well.

CONCLUSION

62. While analysing the above discussion and examining the surrounding circumstances, we are constrained to hold that the ‘Plea of Guilt’ of the petitioner was not voluntary. We find that convening the SSFC after considerable delay and without recording any reasons for convening the SSFC over Petty Security Force Court, the SSFC proceedings were conducted in most casual manner, which has violated the right of the petitioner to have a fair trial before the Petty Security Force Court and he has been condemned unheard without following the principles of natural justice.



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63. In light of the above, we have no hesitation in holding that the SSFC proceedings are liable to be set aside including the award of 'dismissal' from service to the petitioner.

64. We, accordingly, allow the writ petition and set aside the Impugned Orders dated 15.09.2017 and 10.02.2017. We, accordingly, direct the respondents to reinstate the petitioner in service with effect from the date of his dismissal from the service, that is, with all consequential benefits, however, without back wages.

65. We make it clear that taking into account the nature of Charges levelled against the petitioner, the respondents are at liberty to conduct a *de-novo* trial on the basis of the ROE already conducted by them.

66. Before parting away with the present petition, we may note that that the SSFC proceedings are being held in the utmost lackadaisical approach violating the laid down procedures and rules, which had opened the floodgates to litigation challenging the SSFC orders of dismissal. This Court in its earlier decision in ***Rajneesh vs Union of India*** in W.P.(C) 3294/2023 dated 28.08.2024 had flagged the concern that the SSFC proceedings are being held in a routine manner without adherence to the procedure established under law, which not only causes harassment to the Force personnel but also burden the Court with litigation and sometimes end up resulting in an exercise in futility causing more harm to the object of maintaining discipline in the Force rather than protecting it. We hereby reiterate the directions and guidelines passed in ***Rajneesh*** (supra) and direct that the same be scrupulously carried out.



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67. With the above observations, the petition is hereby disposed of.

SHALINDER KAUR, J

NAVIN CHAWLA, J

FEBRUARY 06, 2025
SU/KM

Signature Not Verified

Digitally Signed
By: NEELAM
Signing Date: 06.02.2025
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