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

Date of decision: 10th SEPTEMBER, 2025

IN THE MATTER OF:

+ **W.P.(C) 9783/2009**

EX HC DWARIKA PRASAD

.....Petitioner

Through: Mr. Ramneek Mishra, Advocate

Versus

UOI & ORS

.....Respondents

Through: Ms. Sushila Narang, Advocate

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT (ORAL)

SUBRAMONIUM PRASAD, J.

1. The instant writ petition has been filed by the Petitioner with the following prayers:-

“i) Issue Writ, Order or Direction in the nature of certiorari quashing the S.S.F.C. proceedings, the Finding and Sentence dated 13.6.2007 and the Order dated 13.10.2007 by Respondent No. 2 rejecting Petitioner's statutory petition.

ii) Issue Writ, Order or Direction in the nature of mandamus commanding the respondents to reinstate the Petitioner with full wages and all consequential benefits.

iii) Issue any other Writ, Order or Direction deemed appropriate on the facts and circumstances of the case.



iv) Allow costs of this petition.”

2. Shorn of unnecessary details, the facts leading to the instant writ petition are as follows:-

- i. The Petitioner was working as a Head Constable in the Border Security Force (BSF) and he was posted in 57th Battalion, BSF in West Bengal.
- ii. It is stated that the Petitioner was discharging his duties as Post Commander at Border Out Post (BOP), Dighipara, which is situated at the border between India and Bangladesh.
- iii. It is the case of the Petitioner that there are three Border Check Posts called as *nakas* and each *naka* has a gate identified by its number. It is stated that the Gates are opened three times a day, i.e., 6:00-7:00 AM, 12:00-1:00 PM and 5:00-06:00 PM to facilitate farmers to cross over the Gates with their cattle.
- iv. It is the case of the prosecution that on 07.06.2007, HC Jayant Kumar Giri, got information regarding opening of Gate No.19 at about 7:00 AM and crossing of cattle for smuggling. It is stated that he reached the BOP Dighipara at about 8:00 AM and when he reached near the fencing Gate No.19 and checked the surrounding area, he found that the crops were damaged just in front of Gate No.19 and there were with hoof marks of cattle.
- v. It is stated that HC Jayant Kumar Giri directed his driver (Inder Kant Majhi) to go to the BOP Dihipara and call Head Constable Dwarika Prasad of the 57th Battalion, who was performing the duties of Post Commander. He enquired about the matter from the Petitioner herein and showed him the hoof marks of cattle in



front of Gate No.19 leading towards Gate No.19 from the paddy fields.

- vi. It is stated that when he enquired from the Petitioner that the hoof marks of the cattle were very large in numbers and very fresh, the Petitioner first refused stating that these hoof marks were of the cattle gone ahead of international border fencing with farmers for ploughing the fields. However, it is stated that when it was again asked to the Petitioner that the damage to the crops in the field just outside Gate No.19 could have been caused by large number of cattle crossing the Gate, Head Constable Dwarika Prasad, i.e., Petitioner herein, admitted his mistake and requested him not to report about this incident to the higher authorities. He also told that only 15 cattle were permitted to cross over to Bangladesh.
- vii. It is stated that the Petitioner was asked to bring the keys of Gate No.19 so that area ahead of Gate No.19 can be checked. On crossing Gate No.19, a large number of cattle hoof marks were found leading towards international border and Bangladesh near BP No.294/9-S and the estimate as well as information of HC Jayant Kumar Giri was that about 80 cattle have been smuggled to Bangladesh.
- viii. On the basis of the said report, chargesheet was issued to the Petitioner stating that the Petitioner herein facilitated cattle smuggling and opened fencing gate and over 15 cattle (as admitted by the Petitioner himself) had crossed over to Bangladesh through fencing Gate No.19.
- ix. The Petitioner pleaded 'Not Guilty' and his co-conspirator, i.e.,



Constable G G Goyary, who was directly under the Petitioner, pleaded 'Guilty' to the charge.

- x. A Summary Security Force Court (SSFC) was constituted and the trial proceeded on the plea of 'Not Guilty' against the Petitioner under the relevant rules. Seven prosecution witnesses were examined. The Petitioner and his co-accused, Constable GG Goyary, did not produce any defence witnesses.
 - xi. The SSFC after recording the evidence found the Petitioner and his co-accused (GG Goyary) 'Guilty' of the charges and *vide* Order dated 13.06.2007, sentenced both of them to be dismissed from service.
 - xii. A statutory petition was preferred by the Petitioner to the Director General, BSF. The Appellate Authority after perusing the entire proceedings of the SSFC and after considering the statutory petition, rejected the statutory petition *vide* Order dated 13.10.2007.
 - xiii. A review petition against the Order dated 13.10.2007 rejecting the statutory appeal, was filed by the Petitioner which was also rejected *vide* Order dated 16.11.2007 on the ground that there is no provision to entertain the second petition. The Petitioner has chosen to assail the said Orders in the instant writ petition.
3. Learned Counsel for the Petitioner draws the attention of this Court to Rule 46 of the Border Security Force Rules (*hereinafter referred to as the 'BSF Rules'*) to contend that the evidence that has been recorded suggests that the Commandant who had reached the place after the incident came to the knowledge could have been a witness and therefore he ought not to have dealt with the case and conducted the SSFC and could not have pronounced



the verdict against the Petitioner. He states that Rule 46 of the BSF Rules categorically provides that where the Commandant himself is a witness in a case against the accused, then he shall not deal with the case.

4. Learned Counsel for the Petitioner also places reliance on a Judgment passed by the High Court of Gauhati in W.P.(C) 1276/2008 which had been preferred by the co-accused (GG Goyary), wherein the learned Single Judge of the Gauhati High Court *vide* Judgment dated 15.08.2015 had remanded the case back to the Disciplinary Authority for considering the issue of punishment given to co-accused (GG Goyary), which was dismissal from service. It is stated that after the matter was remanded back to the Disciplinary Authority, the department had imposed the minor penalty and reinstated him back.

5. Learned Counsel for the Petitioner also points out to another Judgment dated 24.06.2024 passed by the High Court of Gauhati in W.P.(C)6575/2017 filed by co-accused (GG Goyary), wherein it was directed that the period from dismissal from service to the date of reinstatement in service had been regularized.

6. Learned Counsel for the Petitioner also contends that there is no eyewitness who would state that he saw the cattle passing through the gate. He also contends that the principles of natural justice have not been followed inasmuch as adequate opportunity has not been given to the Petitioner to defend his case.

7. *Per contra*, learned Counsel for the Respondent supports the punishment and contends that material on record shows that 15 cattle had crossed over to Bangladesh by opening fencing Gate No.19 from the BOP Dighipara, where the Petitioner was performing his duties as the Post Commander.



8. Learned Counsel for the Respondent states that the reason why High Court of Gauhati had in the writ petition being W.P.(C) 1276/2008 which had been preferred by the co-accused (GG Goyary), remanded the matter back since the role of the Petitioner and co-accused (GG Goyary) were totally different as GG Goyary opened the gate only under the directions of the Petitioner and it is on that basis, the High Court of Gauhati remanded the matter back to the Disciplinary Authority.

9. He states that the Petitioner has been found guilty of cattle smuggling and therefore it cannot be said that the punishment of dismissal from service is disproportionate to the offence committed by the Petitioner herein. He states that the Petitioner was afforded sufficient opportunities to defend himself as per the BSF Rules. He also states that the Petitioner has also not availed his right to examine his own witnesses.

10. Heard learned Counsel for the parties and perused the matter on record.

11. This Court has perused the proceedings before the SSFC. Seven witnesses have been examined. PW-1 is HC Jayant Kumar Giri, who on getting information reached the spot and found cattle hoof marks in front of Gate No.19. He also found that in the paddy fields in front of Gate No.19, crops having been damaged. He states that the Petitioner admitted his mistake then and there. He states that when he got the keys of Gate No.19 from the Petitioner, he opened the gate, he saw large number of cattle hoof marks which was leading to international border with Bangladesh. The evidence also reveals that when the Petitioner was asked by PW-1 as to who did it, he replied that the *Sentry* at the post, i.e., GG Goyary, opened the gate and allowed the cattle to go. He states that even when the Company Commander, Inspector Mohar Singh reached the place, the Petitioner



admitted his mistake. He had then informed the matter to the Deputy Commandant. The Assistant Commandant also reached the place and inspected the paddy field as well as the area ahead of fencing Gate No.19. The Petitioner has cross-examined the said witness.

12. PW-2, Mohar Singh, was the officiating Company Commander on that date. He states that he got a telephone call from the Petitioner himself who reported over telephone that HC Jayant Kumar Giri had come to the fencing Gate No.19 and that he had committed a mistake. He states that on receiving the phone call, he rushed to the spot where HC Jayant Kumar Giri informed about the fresh hoof marks of the cattle upto the fencing gate. He also saw hoof marks upto the international border. He informed the matter to the DC/Adjutant of the unit who also reached the spot for spot verification. He states that when he had enquired from the Petitioner, he admitted his guilt. He was cross-examined by the Petitioner and in the cross-examination also, PW-2, Inspector Mohar Singh states that the Petitioner had admitted that 15 cattle were permitted to cross over to Bangladesh for the purpose of smuggling.

13. Similarly, PW-3 Constable Inder Kant Majhi, also stated that he reached the BOP Dighipara and straight way went to fencing Gate No.19 and requested the Petitioner, who was the Post Commander to come to fencing Gate No.19. Thereafter, he checked the area near fencing Gate No.19 and the paddy field and he saw crops were damaged just near the fencing gate due to movement of cattle. It is stated that the Petitioner requested HC Jayant Kumar Giri not to inform everybody as only 15 cattle were permitted to go to Bangladesh during the night of 07.06.2007. He also reiterated that the Petitioner requested HC Jayant Kumar Giri that he had committed a mistake and he should not proceed with the matter further. The



Petitioner also declined to cross-examine PW-3.

14. PW-4, HC Raj Singh has also reiterated that when he went to fencing Gate No.19, he saw cattle hoof marks leading towards Bangladesh through fencing Gate No.19. PW-4 was cross-examined by the Petitioner and there was also a re-examination by the SSFC.

15. PW-5, Head Constable Sher Singh, has also deposed that there were cattle hoof marks which were fresh and Petitioner had confessed to the Inspector RK Sharma that he had done a mistake of cattle crossing and prayed for pardon.

16. PW-6, Neeraj Kumar, AC, has also reiterated what has been stated by PW-1 and PW-2.

17. PW-7, Head Constable Sunil Kumar, is a formal witness who produced GD Register and the duty allocation register.

18. Reliance placed by the Petitioner on Rule 46 of the BSF Rules, 1969 is unsustainable. Rule 46 of the BSF Rules reads as under:-

"46. Attachment to another unit.- The Commandant shall not deal with any case:-

(i) where the offence with which the accused is charged is against the Commandant himself; or

(ii) where the Commandant is himself a witness in the case against the accused ; or

(iii) where the Commandant is otherwise personally interested in the case, and the accused shall be attached to another battalion or unit for disposal of the case under the order of the Deputy Inspector General: Provided that a Commandant shall not be disqualified from hearing a charge merely because the offence was committed against the property of a Force Mess, band or institution of which the Commandant is a member or



trustee or because the offence is one of disobedience of such Commandant's orders."

19. In the present case, the Commandant RPS Malik is not a witness. The fact that the Commandant reached the spot before whom also the Petitioner had confessed is immaterial since the Petitioner had confessed his mistake before several officers. Since the Commandant was not going to be a witness himself, chance of him being a witness alone is not a sufficient ground to transfer this case to some other unit and Rule 46 is not applicable.

20. This Court is inclined to accept the argument of the learned Counsel for the Respondent that the role of the Petitioner and the role of GG Goyary, is entirely different. GG Goyary was under the Petitioner. The leniency given to GG Goyary need not be afforded to the Petitioner, who was in a supervisory capacity of GG Goyary and it was his duty that there is no smuggling of cattle. The personnel of BSF are required to maintain high level of discipline and integrity.

21. Material on record indicates that the Petitioner has been given sufficient opportunity to cross-examine the witnesses. He has not been able to point out as to which of the provisions of the BSF Rules have been violated.

22. A perusal of the proceedings of the SSFC shows that depositions of all the witnesses have been placed on record and after considering the material on record, the verdict has been passed. It is well settled that while giving a verdict, the SSFC need not give detailed reasons. [Refer to: S N Mukherjee v. Union of India, (1990) 4 SCC 594 and Union of India v. Dinesh Kumar, (2010) 3 SCC 161].

23. It is well settled that while exercising jurisdiction under Article 226 of the Constitution of India, writ courts do not act as an Appellate Authority



over the proceedings conducted by the SSFC and does not substitute its own conclusion to the one arrived at by the disciplinary authority in the proceedings.

24. While entertaining writ petitions, courts only see whether the procedure has been followed, whether there is any violation of principles of natural justice, or whether any extraneous material has been considered, or whether the findings arrived at by the disciplinary authority are based on the material placed before the Court or that the findings arrived at are perverse or contrary to the provisions of the relevant rules or that the punishment that is imposed is shockingly disproportionate to the alleged misconduct. This Court has also examined the evidence adduced before the SSFC. SSFC has not held the Petitioner guilty merely on his admission but has duly considered the evidence, the depositions and then only it has come to the verdict. This Court does not find any reason to interfere with the impugned Orders.

25. The petition is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

VIMAL KUMAR YADAV, J

SEPTEMBER 10, 2025

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