



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

Date of decision: 15th DECEMBER, 2025

IN THE MATTER OF:

+ **W.P.(C) 7227/2010**

OM PRAKASH

.....Petitioner

Through: Mr. Vivek Narayan Sharma, Mrs Mahima Bharadwaj Kalucha, Mr. Akash Singh, Mr. Adhiraj Wadhera, Mr. Nikhil Mishra, Ms. Monalisa Singh, Mr. Nitish Kumar Mishra, Advs.

versus

UOI AND ORS

.....Respondents

Through: Mr. Bhagwan Swaroop Shukla with Mr. Sarvan Kumar, Mr. Pradyumn Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. The present writ petition under Article 226 and 227 of the Indian Constitution have been filed with the following prayers:

“a. pass an appropriate writ in the nature of mandamus/certiorari or any other appropriate writ/order/direction in favour of the petitioner and against the respondents thereby quashing/setting aside the impugned orders dated 17.11.2009: of dismissal of service passed by the respondent No.3 and also set-aside the order of rejection of appeal U/S 117(2) of the



Border Security Force Act dated 05.05.2010 passed by the respondent No.2 i.e. the Appellate Authority;

b. pass any other order(s)/direction(s) directing the petitioner to be re-instated in service with the Border Security Force alongwith payment and service/monetary benefits pay and allowances with effect from 23.04.2009 till date;

c. direct the respondents to allocate the petitioner equivalent clerical scale instead of posting at frontiers posting owing to his being patient of hepatitis B+ ve and bleeding piles.

d. pass any other/further order(s)/direction (s), which this Hon'ble Court may deem fit in the facts and circumstances of the case in favor of the petition and against the respondents.”

2. Shorn of unnecessary details, facts as noted from the petition are that the Petitioner was enrolled in the Border Security Force [BSF] as a Constable and was posted the 25th Battalion [Bn] at Chawlla (Najafgarh) on 03.03.1989 and completed basic training at Chura Chandpur from 03.02.1989 to 15.10.1989.

3. It is stated that from 16.10.1989 to 19.06.1994 the Petitioner was deployed at multiple locations along with the Bn. and served across various sensitive areas in the country. During the said period he was awarded a cash reward of 5,000/- for apprehending a terrorist barehanded in a terrorism affected zone in the country.

4. From 22.06.1999 to 16.01.2001, the Petitioner was posted with the 155th Bn at Patgaon, Guwahati, Assam and Mopat (Shillong), Meghalaya. In the year 2001, while he was posted at Mopat, the Petitioner contracted



Hepatitis B and developed piles. Thereafter, the Petitioner had to undergo treatment at the BSF Hospital and was later referred to Civil Hospital, Shillong for further treatment.

5. The Petitioner has averred that due to inadequate medical infrastructure at both these facilities he wrote to the Commandant of the 155th Bn, requesting that he be transferred to Delhi in order to undergo specialized treatment for his ailments. The request of the Petitioner was not acceded to and he was transferred to 182nd Bn at Entura, Meghalaya. The Petitioner has averred that despite his request for posting at a place that would facilitate access to proper medical treatment, he was transferred frequently.

6. From 12.08.2003 to 17.05.2007, the Petitioner was posted at BSF Hq. at Jalandhar, Punjab. He has averred that during the said posting he underwent treatment at his own expense at Guru Nanak Dev Hospital, Amritsar, Punjab. Thereafter, the Petitioner was posted at Jalalabad, Punjab with the 162nd Bn.

7. The Petitioner states that his repeated requests for financial assistance were rejected by Respondent No. 3 and his request for a personal meeting with Respondent No. 2 were also rejected by him.

8. On 01.07.2007, the Petitioner was posted with the 15th Bn, at Ramgarh, Rajasthan where he continued to work till dismissal. During this posting a medical board was constituted under the CMO, 15th Bn and the Petitioner was placed in lower medical category of S1H1A1P3(P)E1 for a period of two years w.e.f. 03.10.2008 to 03.10.2010.

9. Pursuant to the recommendations of the Medical Board, he was sent for treatment at Sector Hospital, Jaisalmer and Jodhpur, which were at a



distance of about 75 Km and 450 Km away from the place of his posting. The Petitioner has averred that at Jaisalmer, the Medical Officer at Shri Jawahar Hospital, Jaisalmer referred the Petitioner to a Higher Centre for treatment on account of his Hepatitis B infection.

10. The Petitioner has averred that during the relevant period his health deteriorated and that compelled him to overstay his leave for a period of 222 days. For the said offence, on 05.03.2009, the Petitioner was tried by the Summary Security Forces Court [SSFC] under Section 19(b) of Border Security Force Act, 1968 [the Act] and was sentenced to forfeit 2 years of service for the purpose of pension and 2 years of service for the purpose of increased pay. The Petitioner did not challenge the said sentence. Thereafter, the Petitioner proceeded on leave from 24.04.2009 to 22.06.2009.

11. It is the case of the Petitioner that since he was not provided with proper medical facilities, he proceeded to undergo treatment at his own expense at his native place. He has further submitted that upon reaching his native place, his condition worsened, whereafter he got himself treated from Community Health Centre, Dadri on 15.06.2009 and was advised complete bed rest for a period of 2 months. Thereafter, the Petitioner, heeding to the instructions of his doctor, was allegedly on bed rest w.e.f. 29.08.2009 to 22.09.2009. After regaining his strength, the Petitioner reached Jaisalmer on 25.09.2009 and resumed his duty.

12. On 12.11.2009 the Petitioner was placed under open arrest and tried under the SSFC. A trial was conducted and the Petitioner was dismissed from service *vide* order dated 17.11.2009 for committing an offence under Section 19(b) of the Act. Aggrieved by the order of dismissal, the Petitioner preferred a statutory appeal to the Director General, BSF under Section 119



read with Section 167 of the Act. The said appeal was rejected vide order dated 05.05.2010.

13. The Petitioner has now approached this Court seeking the quashing of the order of the SSFC dated 17.11.2009 and 05.05.2010 passed by office of the Director General, BSF [**impugned orders**] on the ground that the SSFC trial was vindictive, perverse and passed in ignorance of the principles of natural justice. It has also been submitted that the punishment of dismissal from service is excessively harsh and disproportionate. In support of his contentions the learned Counsel for the Petitioner has advanced the following arguments :-

- i. It has been submitted that the dismissal of the Petitioner from service is arbitrary and disproportionate and while passing the impugned order the SSFC did not take into account factors such as the Petitioner's long-standing medical condition, inadequacy of medical infrastructure at his posting location, and the due intimation sent by the Petitioner and medical documentation submitted by him.
- ii. It has been submitted that the proceedings conducted by the SSFC were in violation of the principles of natural justice. He has submitted that that the Petitioner was denied the right to produce oral evidence and medical documentation in his defence. He has further submitted that despite his protest, the Commandant arbitrarily appointed Mr Rishi Kumar as the Friend of the Accused, who acted at the behest of Respondent No. 3, thereby prejudicing the Petitioner's defence.



- iii. It has been submitted that the Petitioner had been punished previously on three distinct occasions, the penalties for which have already been served. He has averred that the invocation of past instances by the Respondents in the impugned proceedings amounts to double jeopardy, and such prior punishments cannot be used to substantiate the present order of dismissal.
- iv. It has been submitted that the Petitioner has been under consistent medical treatment for Hepatitis B and bleeding piles, as early as 2001. In the year 2008, he was medically downgraded to category S1H1A1P3(P)E1 for a period of two years (03.10.2008 to 03.10.2010).
- v. It has been submitted that the Petitioner had applied for and was granted 60 days of Earned Leave from 24.04.2009 to 22.06.2009 to undergo treatment at his native place due to the absence of medical facilities at his posting with the 15th Bn and during the period of leave, his condition worsened, and he was advised complete bed rest. He has averred that the Petitioner remained under treatment from 15.06.2009 to 23.09.2009 and was declared fit only on 23.09.2009.
- vi. It has been submitted that during the entire leave period, the Petitioner kept the authorities informed through letters dated 18.07.2009 and 19.08.2009 and also made telephonic communication regarding his deteriorating health and request for extension. Respondent No. 3 had advised him to join duty only upon being declared fit. He has placed reliance on prescription dated 15.06.09, 29.06.09, 29.07.09, 29.08.09



advising complete bed rest to the Petitioner and the same was presented during COI as mentioned in the impugned Order.

- vii. It has been submitted that the Petitioner resumed duties on 25.09.2009 and submitted his medical certificate, which was duly accepted. However, on 07.11.2009, he was arbitrarily served with a charge sheet under Section 19(b) of the BSF Act, 1968 for overstaying leave by 95 days. The Petitioner was placed under open arrest on 12.11.2009, and the SSFC summarily dismissed him from service on 17.11.2009.
 - viii. It has been submitted that the Petitioner informed Respondent No. 3 telephonically as well as through letters dated 18.07.2009 and 19.08.2009 about his deteriorating health and requested extension of leave. Infact, it was Respondent No. 3 who advised the Petitioner to undergo treatment and join on being declared fit.
 - ix. Petitioner previously (2004-2005) asked the department for Rs.2 Lakhs as advance for proper treatment – estimate forwarded by CMO, Sector Hospital, BSF, Amritsar.
14. Per contra, the learned Counsel for the Respondent has vehemently opposed the arguments which have been advanced by the learned Counsel for the Petitioner. The following submissions have been advanced:-
- i. In response to the contention of the Petitioner regarding lack of adequate medical Infrastructure for Petitioner's treatment at his place of posting i.e. 15 Bn. BSF Ramgarh, Jaisalmer Rajasthan, the learned Counsel for the Respondent has submitted that there were sufficient medical facilities available for treatment of the



illness of the petitioner i.e, Hepatitis B+ve and bleeding piles at Jaisalmer and Jodhpur as stated by DW-1/ Dr Shailesh Pandit, CMO SG during his statement before SSFC. He has further submitted that DW-1/ Dr Shailesh Pandit had deposed that although there was no specialist in BSF hospital SHQ Amritsar, the Petitioner could have been referred to specialist from there.

- ii. In response to the contention of the Petitioner that the Respondents had violated the principles of natural justice by not allowing the Petitioner to produce oral evidence and medical documents, the learned Counsel for the Respondents has submitted that all the procedure as laid down under BSF Act and Rules, and more particularly Chapter XI of BSF Rules have been complied with. He further submits that the Petitioner has deposed in his statement before COI, ROE (where he himself deposed that his previous statement given during COI may be taken on record) and during SSFC trial. Learned Counsel for the Respondent has also submitted that the Petitioner did not submit any medical document at any stage during the SSFC Trial, ROE Proceedings, COI Proceedings or at his arrival in the unit after staying OSL for 95 days, to justify his contention of having been advised complete bed rest, which he has raised as an afterthought while filing the instant writ petition.
- iii. The learned Counsel on behalf of the Respondent has also submitted that the Petitioner was provided sufficient opportunity to defend himself during all the stages of



investigation as well the SSFC Trial. He further submits that during COI, the Petitioner was given opportunity to avail the safeguard provided under Rule 173(8) of the BSF Rules, and during ROE opportunities were granted to the Petitioner as per Rule 48(2), (3) (4) and (5). Additionally, the Petitioner was provided the opportunity to defend himself during the SSFC trial by cross examining the witness, to give statement in his defence and to call Defence Witness.

- iv. In response to the contention advanced by the Petitioner that the Friend of the Accused, who was asked to assist the Petitioner during the proceedings was not one of the Petitioner's choice. Learned Counsel on behalf of the Respondents submitted that the Petitioner was given the choice of naming an officer/ Inspector/ SI available in the unit to be detailed as Friend of the Accused, in order to assist him during the SSFC Trial *vide* letter dated 07.11.2009 but the Petitioner *vide* his application dated 09.11.2009 intimated that the Authority may detail any of the available officer/ Inspector/ SI as a Friend of the Accused during the trial. It has also been submitted that the Friend of Accused was appointed in accordance with BSF Rules. Objections to his appointment was never made during the trial, and the Petitioner, therefore, cannot be allowed to challenge the proceedings on this ground.
- v. In response to the contention of the Petitioner that he was ill and therefore had been placed on bed rest, the learned Counsel for the Respondent has submitted that the Petitioner had



Hepatitis-B and bleeding piles, which doesn't require complete bed rest as stated by DW-1 during his statement before SSFC trial. Moreover, the Petitioner did not submit any medical document either during the SSFC Trial or at any pre- trial stages.

- vi. In response to the contention of the Petitioner that he was placed under open arrest during the Trial, learned Counsel for the Respondent has submitted that as per Rule 38 of the BSF Rules, it is mandatory to put an accused under arrest on commencement of Trial.
- vii. In response to the contention of the Petitioner that mentioning his previous conviction in SFC Trial amounts to double jeopardy, the learned Counsel for the Respondent has submitted that the previous convictions in respect of Petitioner were recorded on the first page before the sentence in accordance with the provision laid down under Rule 151 of BSF Rules and the same doesn't amount to double jeopardy. It has been further submitted that the Petitioner did not raise this ground in his Writ Petition and rather raised this ground at the stage of submitting his written submission.
- viii. In response to the contention of the Petitioner that the sentence of dismissal from service is harsh and disproportionate, the learned Counsel for the Respondent has submitted that the Petitioner was tried by SSFC on a charge under Section 19(b) of the Act, wherein the maximum punishment prescribed is an imprisonment for a term which may extend to 3 years. As per



section 48 of BSF Act, imprisonment for a term of life or any other lesser term excluding imprisonment for a term not exceeding 3 months in Force custody is a harsher punishment than dismissal, as provided under Section 48(2) which lays down that each of the punishment specified in Sub-section (1) of Section 48 shall be deemed to be inferior in degree to every punishment preceding it in the above scale.

- ix. In response to the contention of the Petitioner that he was given medical fitness certificate to undergo SSFC Trial despite being under low medical category as S1H1A1P3(P)E1 the learned Counsel for the Respondent has submitted that Medical Fitness required to undergo a SSFC Trial merely requires that the person facing the Trial is of a sound mind, has the ability to understand the charges levelled against him and is able to defend himself. Therefore, the Petitioner's ailments were not of a nature that would have rendered him medically unfit to stand an SSFC Trial.

15. Heard learned Counsels for the Parties and perused the material on record.

16. Before this Court adverts to the rival contentions, it would be necessary to reiterate the limited scope of judicial review of administrative action under Article 226 and 227 of the Indian Constitution. Under Article 226 the Court's evaluation is not directed at the decision itself but rather against the decision making process. The Court is allowed to intercede on behalf of the Petitioner only when the impugned order or action is illegal, irrational or suffers from procedural impropriety. It is trite law that this



Court, under its writ jurisdiction, cannot act as a second Appellate Authority or re-appreciate evidence or substitute the view arrived at by the competent authority. This jurisdiction is even narrower under Article 227 and this Court's supervisory jurisdiction is confined to ensuring that the subordinate Court or Tribunal has acted within the bounds of its jurisdiction and unless there is a manifest jurisdictional error, perversity or flagrant violation of the principles of natural justice, this Court would not intervene. Merely because an inferior Court or Tribunal came to a different conclusion or mere error of facts is not a ground to exercise this supervisory jurisdiction.

17. The Apex Court in Rajendra Diwan v. Pradeep Kumar Ranibala (2019) 20 SCC 143, has dealt with the scope of the extraordinary powers of this Court under Article 226 and 227. The relevant excerpts read as under:

85. The power of superintendence conferred by Article 227 is, however, supervisory and not appellate. It is settled law that this power of judicial superintendence must be exercised sparingly, to keep subordinate courts and tribunals within the limits of their authority. When a Tribunal has acted within its jurisdiction, the High Court does not interfere in exercise of its extraordinary writ jurisdiction unless there is grave miscarriage of justice or flagrant violation of law. Jurisdiction under Article 227 cannot be exercised "in the cloak of an appeal in disguise".

86. In exercise of its extraordinary power of superintendence and/or judicial review under Articles 226 and 227 of the Constitution of India, the High Courts restrict interference to cases of patent error of law which go to the root of the decision; perversity; arbitrariness and/or unreasonableness; violation of principles of natural justice, lack of jurisdiction and usurpation of powers. The High Court does not re-assess or re-analyse the evidence and/or materials on



record. Whether the High Court would exercise its writ jurisdiction to test a decision of the Rent Control Tribunal would depend on the facts and circumstances of the case. The writ jurisdiction of the High Court cannot be converted into an alternative appellate forum, just because there is no other provision of appeal in the eye of the law.

18. This jurisdiction is further circumscribed when it comes to review of disciplinary action taken against members of disciplined forces. The Apex Court in *Ranjit Thakur v. Union of India*, (1987) 4 SCC 611 has held as under:

*25. Judicial review generally speaking, is not directed against a decision, but is directed against the “decision-making process”. The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review. In *Council of Civil Service Unions v. Minister for the Civil Service* [(1984) 3 WLR 1174 (HL) : (1984) 3 All ER 935, 950] Lord Diplock said:*

“Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come



about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call ‘illegality’, the second ‘irrationality’ and the third ‘procedural impropriety’. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of ‘proportionality’ which is recognised in the administrative law of several of our fellow members of the European Economic Community;. . .”

19. In light of the aforementioned principles it would be imperative to determine whether the proceedings of the SSFC suffered from any procedural irregularity or violation of principles of natural justice, and more particularly whether the findings of the SSFC under Section 19(b) of the Act are perverse, irrational and unsubstantiated by evidence and whether the punishment imposed upon the Petitioner is so shockingly disproportionate that it would warrant the interference of this Court.

20. The principal contention advanced by the Petitioner is that the SSFC proceedings were conducted in violation of the principles of natural justice and that the Petitioner was denied adequate opportunity to defend himself. He has also contended that the Respondent ignored his precarious medical condition and the same would have amounted to sufficient cause for being absent from duty.



21. The Petitioner has been charged under Section 19(b) of the Act, for having overstayed his leave by a period of 95 days. Section 19 of the Act reads as under:

19. Absence without leave.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) absents himself without leave; or

(b) without sufficient cause overstays leave granted to him; or

(c) being on leave of absence and having received information from the appropriate authority that any battalion or part thereof or any other unit of the Force, to which he belongs, has been ordered on active duty, fails, without sufficient cause, to rejoin without delay; or

(d) without sufficient cause fails to appear at the time fixed at the parade or place appointed for exercise or duty; or

(e) when on parade, or on the line of march, without sufficient cause without leave from his superior officer, quits the parade or line of march; or

(f) when in camp or elsewhere, is found beyond any limits fixed, or in any place prohibited, by any general, local or other order, without a pass or written leave from his superior officer; or

(g) without leave from his superior officer or without due cause, absents himself from any school when duly ordered to attend there, shall, on conviction by a Security Force Court, be liable to suffer imprisonment



for a term which may extend to three years or such less punishment as is in this Act mentioned

(emphasis supplied)

22. This Court has gone through the material on record. The Petitioner actively participated in the Court of Inquiry, the Recording of Evidence and the SSFC. The record demonstrates that there was sufficient compliance with the BSF Rules at the Court of Enquiry and Recording of Evidence stage. The Petitioner has not been able to demonstrate anything that would show that the Petitioner was denied from producing documents before the competent authority.

23. As far as the contention of the Petitioner regarding appointment of the Friend of the Accused is concerned, the material on record demonstrates that the Petitioner was issued a letter dated 07.11.2009 inviting him to indicate the name of any Officer/Inspector/Sub-Inspector to act as in the capacity of Friend of Accused for him. The Petitioner, instead of proposing a specific individual of his choice, addressed a letter dated 09.11.2009 that the Authority may detail any of the available officers/ Inspectors/ SI as his friend of the accused during the trial. Pursuant to the aforementioned correspondence, the Friend of the Accused was appointed in accordance with the BSF Rules. It is also an admitted position that no objections were raised by the Petitioner to such an appointment at any stage prior to the filing of this Writ Petition.

24. Material on record indicates that the Petitioner had applied for 60 days of earned leave [EL] with effect from 24.04.2009 to 22.06.2009 vide leave certificate No. 1107-09 dated 23/04/2009 for shifting his family, admission of his child in school and seeking treatment for himself. And



accordingly, he was granted 60 days of EL, at the end of which the Petitioner was required to re-join his duty on 22.06.2009. However, he overstayed the same by over 95 days and resumed duties only on 25.09.2009.

25. Material on record also indicates that two office Letter No. 11819-20 and Letter No. 11821-24 both dated 25.06.2009, were sent to the Petitioner at his home address as well as SFA quarter address at SHQ Amritsar with information to SHQ BSF Amritsar. These were the two addresses that had been provided by the Petitioner while applying for leave at his unit. SHQ BSF Amritsar *vide* their Signal No.A/4813 dated 09.07.2009 informed the Respondents that the Petitioner along with his family had not been present at SFA quarter at Amritsar for the last one month. After getting no response from the Petitioner, another reminder was issued to him at SFA quarters address *vide* the unit Letter No.12433-34 dated 06.07.2009 with a copy to SHQ Amritsar. This letter was handed over to the Petitioner by SHQ, Amritsar and a receipt was obtained. However, no response was received from the Petitioner. Thereafter, a third reminder was issued to the Petitioner at both the aforementioned addresses Letter No. 13463 and Letter No. 13464 both dated 17.06.2009.

26. Material on record discloses that the Petitioner sent an application dated 18.07.2009 addressed to the Commandant 15th Bn. BSF which was received at the Office of the Respondent on 22.07.2009 from the SFA quarter address of the Petitioner, wherein the Petitioner sought an interview with the DG. In reply, the Respondent office sent a letter to the Petitioner at his SFA quarter, Amritsar address *vide* a Letter No.Estt/15 Bn/Disc/09/1983 dated 28/07/2009 in which it was mentioned that only 13 days EL was due



to him up to 30.06.2009 and therefore, he should join his duty forthwith. The Petitioner was also informed that since he was staying at SFA quarter at SHQ Amritsar, he should take treatment at MI Room, SHQ Amritsar and he was also directed to send all the documents to the unit for consideration of his extension of leave.

27. The Petitioner has not given any material to show that he was undergoing treatment. As noted in the impugned order, the documents which have been relied upon were never submitted before the disciplinary authority. DW-1 i.e. the Medical Officer has also stated in his deposition that Hepatitis-B and piles is not something that would ordinarily require prolonged bed rest or would render an individual immobile.

28. As far as the argument of the Petitioner regarding quantum of punishment is concerned, a perusal of the Act makes it manifestly clear that the SSFC is competent to impose any punishment specified under Section 48 of the Act for contravention of Section 19(b) of the Act. The maximum permissible punishment is for a period of 3 years. The punishment which has been awarded to the Petitioner is not grossly disproportionate so as to shock the conscience of this Court warranting interference.

29. It is in this context that it would be necessary to evaluate the argument of the learned Counsel for the Petitioner regarding double jeopardy. The learned Counsel for the Petitioner has submitted that the fact that the Petitioner was punished on three previous occasions should not come in the way of deciding the present petition. He has further submitted that the Respondent is trying to mingle two different issues by discussing the previous incidents.



30. In order to appreciate the rival contentions regarding double jeopardy better it would be apposite to peruse Rule 151 of the BSF Rules. Rule 151 reads as under :

151 (1) Where the finding on any charge is "Guilty" the Court may record of its own knowledge, or take evidence of any record, the general character, age, service, rank, and any recognised acts of gallantry, or distinguished conduct of the accused, and previous convictions of the accused either by a Security Force Court, or a Criminal Court, any previous punishment awarded to him by an officer exercising authority under Section 53, the length of time he has been in arrest or in confinement on any previous sentence, and any decoration, or reward of which he may be in possession or to which he may be entitled.

(2) Where the Court does not record the matters mentioned in this rule of its own knowledge, evidence on these matters may be taken in the manner directed in Rule 101 for similar evidence.

31. The prior conduct and record of the Petitioner was seen as is warranted in Rule 151 of the BSF Rules. The conduct of the Petitioner has been looked out only for the limited purpose of evaluating the sentence that has been awarded to the Petitioner. There is no second trial for the same offence. The principle of double jeopardy flowing from Article 20(2) has no application in the present case.

32. This Court is of the view that no case is made out by the Petitioner to warrant the intervention of this Court or to set aside the impugned orders. There is no illegality, irregularity or violation of principles of natural justice



in the conduct of the SSFC proceedings. Given the service record of the Petitioner and his previous convictions recorded in terms of Rule 151 of BSF Rules these factors are extremely relevant for assessing his antecedents and quantifying the punishment which has been accorded to him. The BSF is a disciplined force and overstaying leave for 95 days without adequate justification, coupled with the Petitioner's previous convictions, this Court does not consider it to be an instance where the quantum of punishment is so shockingly disproportionate so as to shock the conscience of the Court.

33. Resultantly, the Writ Petition along with pending applications, if any, is dismissed.

SUBRAMONIUM PRASAD, J

VIMAL KUMAR YADAV, J

DECEMBER 15, 2025

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