



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

Reserved on: 24.02.2025

Pronounced on: 26.05.2025

+ **W.P.(C) 9370/2007**

SI/STENO DIGAMBER SINGH

.....Petitioner

Through: Mr.Rabindra Singh, Mr. Paran Aggarwal and Ms. Ekta Singh, Advocates

Versus

THE UOI & ANR.

.....Respondents

Through: Ms.Radhika Bishwajit Dubey, CGSC, Ms. Gurleen Kaur Waraich and Mr. Vivek Sharma, Advocates for R-1 and 2.
Mr.Hemandra Singh, DC (Law), BSF.

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 writ petition has been filed by the petitioner assailing the Order dated 27.05.2005 passed by the Director General (DG), Border Security Force (BSF)/Respondent No.2, whereby the penalty of "Severe Reprimand" awarded by the General Security Force Court (GSFC) was upheld, while the other two punishments, that are, the 'forfeiture of four years of service for the purpose of promotion' and the 'forfeiture of four years of past service for the purpose of pension', were set aside. The petitioner also seeks directions for the initiation of perjury proceedings



against Sh. B.L. Naik, Deputy Commandant (DC), for allegedly giving false evidence during the trial.

BRIEF FACTS:

2. The petitioner joined the BSF on 10.09.1999, in the rank of Sub-Inspector (SI) (Stenographer) as a direct entry. Upon successful completion of his Basic Training at the STC, BSF, Tekanpur, the petitioner was posted to the 98th Battalion BSF, with effect from 12.02.2000 till 19.04.2003. Thereafter, he was posted to Sector Headquarters, BSF Counter-Insurgency Operations-II (SHQ BSF CI Ops-II), Sanatnagar, Srinagar, on 20.04.2003. Upon joining SHQ BSF CI Ops-II, he was assigned the charge of Personal Assistant (PA) to the Deputy Inspector General (DIG).

3. On 20.06.2003, the petitioner was verbally instructed by the DIG and the Deputy Commandant (Operations) to remain in the office for the completion of an important task. However, at around 1800 hours, he left the office without intimating the DIG or the DC(Ops). The respondents averred that his conduct was argumentative, derogatory, defiant of command, and disrespectful towards senior officers. He was also in the habit of writing to the DIG on one pretext or another, offering unsolicited advice on administrative matters.

4. Due to his rude and indifferent attitude and evident lack of interest in his assigned responsibilities, the petitioner was directed to hand over the charge of PA to SI/Clerk C. Manoharan, and in turn, assume the duties of Training Clerk with effect from 20.06.2003. The petitioner, however, declined to take over the new charge on the ground that the said order was illegal and arbitrary, as he was a Stenographer by profession and, therefore,



could not be assigned the duties of a training clerk. Owing to such insubordinate conduct and disobedience of a lawful command, the petitioner was brought before the DIG on a Charge-Sheet under Section 21(2) of the Border Security Force Act, 1968 ('BSF Act').

5. After hearing the petitioner under Rule 45 of the Border Security Force Rules, 1969 ('BSF Rules'), a Record of Evidence (ROE) was directed to be prepared, by appointing Sh. Pramod Kumar Yadav, 2IC, 43rd Bn., BSF, *vide* SHQ BSK CI Ops-II Order dated 25.06.2003. Feeling aggrieved by the actions of the DIG, the petitioner appeared before the Inspector General (IG), Frontier HQ, BSF, Srinagar on 26.06.2003 for a personal interview, seeking redressal of his grievances. During the meeting, the petitioner apprised the IG of the DIG's conduct and expressed his apprehension of being falsely implicated by the DIG. A written representation dated 26.06.2003 was also submitted to the IG in this regard.

6. Upon completion of the above-mentioned ROE proceedings, a *prima facie* case was found to have been established against the petitioner. The ROE was, thereafter, submitted to the Commandant (Law), Frontier Headquarters, Srinagar, on 03.07.2003, for seeking pre-trial advice for convening a GSFC.

7. It is the case of the petitioner that later, on 09.07.2003, the petitioner received an Order dated 08.07.2003, directing him to shift his family from STC BSF Kashmir, as the permission to retain the family at the said location was expiring on 14.07.2003. In order to comply with the said order, the petitioner applied for one day's leave, along with the admissible weekly off, on 09.07.2003, to dispatch his family to his hometown.



8. In the morning of 10.07.2003, Sh. D.S. Rawat, Deputy Commandant (Administration), recommended the leave and provided the petitioner with a vehicle and escort for rail reservation. However, when the petitioner approached the Establishment Branch in the evening to collect his leave pass, he was informed that the leave had not been sanctioned and was advised to approach the DC (Adm). Upon doing so, the DC (Adm) disclosed that the leave had been denied on the instructions of the DC (Ops). The petitioner then approached the DC (Ops), who informed him that his leave was not considered due to a pending disciplinary case.

9. It is further the case of the petitioner that feeling harassed, the petitioner approached the officiating DIG on 10.07.2003, narrated the facts, and complained about the ill-treatment by the two officers. As nothing fruitful came out of the said visit, the petitioner filed a written complaint to the Sector DIG in this regard on 10.07.2003 itself.

10. Subsequently, on 12.07.2003, Shri B.L. Naik, DC(Ops), filed a complaint alleging that the petitioner had entered his office on 10.07.2003, without permission, while the former was in discussion with the DC(Adm), and uttered in an arrogant tone, *inter alia*, “*Aap kyon meri chutti Men Tang Ara Rahe Hain*” and “*Yadi DIG Ko Apna Kaam Ho to Apne Ko woh attach Kara Sakte Hain, Phir Muzhe Kyon roka Ja Raha Hai*” or words to that effect.

11. Consequently, on 22.07.2003, the petitioner was again brought before the DIG, CI Ops-II, Srinagar, on a Charge-Sheet under Sections 21(2), 20(c), and 19(a) of the BSF Act.

12. In light of these new developments, and for the purpose of recording



additional ROE, Sh. Ashwani Kumar Singh, Commandant, 96th Bn BSF, was detailed vide Order dated 22.07.2003 to prepare additional ROE. The Charge-Sheet listed the following three charges against the petitioner: -

“

CHARGE SHEET

The accused No. 990010728 SI/ Steno Digamber Singh of 6 BN BSF, is charged with:-

CHARGE 1st
BSF ACT
SEC 21(2)

DISOBEYING A LAWFUL COMMAND
GIVEN BY HIS SUPERIOR OFFICER

In that he

at SHQ BSF CI-Ops-II, Srinagar, on 03.07.03 having been ordered vide order No. Estt/31/Order/2003/9319,21 dtd. 03.07.03 to perform the duties of SI (Steno) of DC (Ops) and in addition look after the duties of Trg/Clk did not do so.

CHARGE 2nd
BSF ACT
Sec. 20 (c)

USING INSUBORDINATE LANGUAGE TO
HIS SUPERIOR OFFICERS

In that he

at SHO BSF CI Ops-II, Srinagar, on 10th July, 2003 at about 1700 hrs, entered in the office of DC (Ops) and stated arrogantly “Aap Meti Chutti Main Kion Tang Ara Rahe Hain”. “Jab DIG Ko Apna Kam Ho to Apne Ko who attaché Kara Sakte Hain, Phir Muzhe Kyon Roka Ja Raha Hai” or words to that effect.

CHARGE 3rd
BSF ACT
Sec. 19 (a)

ABSENTING HIMSELF WITHOUT LEAVE

In that he

at about 1130 hrs on 04.07.03 absented himself without leave from SHO BSF CI Ops. II Srinagar campus and voluntarily joined on 09.07.03 at 0930 hrs.”

13. Subsequent thereto, the ROE and the additional ROE were forwarded to the Frontier HQ, Srinagar, for pre-trial advice for the disposal



of the GSFC.

14. In the meanwhile, the petitioner, who was posted to 06th Bn BSF, was relieved on 21.11.2003.

15. Thereafter, a GSFC was assembled at the 06th Bn BSF, Headquarters, Gogoland, Srinagar (J&K), and held proceedings from 23.01.2004 to 03.02.2004, wherein the petitioner pleaded 'not guilty' to all the Charges. Thereafter, the Court proceeded with the trial and the same concluded on 03.02.2004, and the petitioner was found guilty on the second Charge alone. He was accordingly sentenced to:

- I. Forfeiture of four years of service for the purpose of promotion;
- II. Forfeiture of four years of service for the purpose of pension; and
- III. Severe Reprimand.

16. The findings and sentence were confirmed by the Confirming Authority and were duly promulgated to the petitioner by the Commandant, 06th Bn BSF, on 05.04.2004.

17. Thereafter, invoking Section 117(2) of the BSF Act read with Rules 167 to 169 of the BSF Rules, the petitioner submitted a post-confirmation appeal on 08.09.2004 against his conviction by the GSFC.

18. Upon a detailed and careful consideration of all relevant facts and circumstances, the Director General (DG) set aside the sentence of forfeiture of four years of service for both promotion and pension purposes, however, the sentence of 'Severe Reprimand' was upheld, as conveyed *vide* letter dated 27.05.2005.

19. Being dissatisfied, the petitioner has approached this Court against this Order dated 27.05.2005, seeking clean exoneration.



SUBMISSIONS ON BEHALF OF THE LEARNED COUNSEL FOR THE PETITIONER:

20. The learned counsel for the petitioner submitted that the GSFC failed to appreciate that the entire prosecution case rested on the untrustworthy testimony of interested witnesses, namely PW-5 [Sh. B.L.Naik, DC (Ops)] and PW-7 [Sh. D.S. Rawat, DC (Adn)], whose oral depositions, when tested against documentary evidence, fail to inspire confidence. It was contended that the complaint dated 12.07.2003 made by PW-5, Sh. B.L. Naik, DC, alleging insubordination by the petitioner, is nothing but an afterthought, motivated as a retaliatory measure against the petitioner's earlier complaint dated 10.07.2003 submitted to the DIG, wherein he had raised grievances of harassment at the hands of PW-5 and PW-7.

21. He submitted that a perusal of the situation reports reveals major contradictions in the testimony of the witnesses, and that such testimonies are in contradiction to the record. To highlight such contradictions, the learned counsel submitted that it stands conclusively established that the DIG concerned was away from headquarters from 04.07.2003 to 15.07.2003 and resumed duty only on 15.07.2003. The endorsement dated 16.07.2003 by the DIG, on the complaint dated 12.07.2003, affirms the said factual position. However, in contradiction, PW-5, Sh. B.L. Naik, had deposed under oath before the GSFC that the DIG had resumed office on 12.07.2003 and that PW-5 had personally handed over the said complaint to him, which subsequently formed the basis for the initiation of disciplinary proceedings against the petitioner.

22. While pointing towards the contradictions in the testimony of PW-5 and PW-7, he submitted that PW-7, Sh D.S. Rawat, DC (Adm), also made



a false statement before the GSFC to the effect that he did not recommend the petitioner's leave application. In contrast, PW-5 had specifically mentioned, in his complaint dated 12.07.2003, that the petitioner became annoyed and used insubordinate language after his leave application was subsequently cancelled. He submitted that the above-highlighted contradictions are material and sufficient to vitiate the conviction of the petitioner, as recommended by the GFSC.

23. He submitted that despite the overwhelming material on record justifying the initiation of perjury proceedings against PW-5, Sh B.L. Naik, the same has been conveniently ignored by the GSFC and the respondent no. 2. The authorities have failed to exercise the jurisdiction vested in them. It was further submitted that the Impugned Order has been passed in a cursory and casual manner, indicative of non-application of mind to the relevant facts and circumstances, and is therefore liable to be set aside.

SUBMISSIONS ON BEHALF OF THE LEARNED COUNSEL FOR THE RESPONDENTS:

24. On the other hand, the learned counsel for the respondents submitted that the petitioner was afforded all opportunities to defend himself, and the findings of the GSFC were based on evidence brought on record during the trial. The subsequent review modified the sentence, reflecting fair consideration by the Competent Authority.

25. He denied any *mala fides* or procedural irregularities and argued that the petitioner is essentially seeking a re-evaluation of facts, which fall outside the scope of judicial review under Article 226 of the Constitution of India.



26. Further, the learned counsel for the respondents submitted that PW-6 (Ct. Satyavir Singh) had categorically deposed that on 10.07.2003, at about 1700 hours, he saw the accused entering the office of Shri B.L. Naik, DC (Ops). He submits that it was further stated by PW-6, that after some time, upon entering the said office himself, he heard the accused saying, "*aap meri chhutti main taang kyon ada rahe ho.*". The learned counsel contended that PW-7 also corroborated the incident.

ANALYSIS AND CONCLUSION:

27. We have considered the submissions advanced by the learned counsels for the parties and perused the record as well as the digitized record of the GSFC proceedings.

28. We may begin by noting the settled position of law that the scope of interference by this Court in matters pertaining to disciplinary proceedings, such as held by the GSFC, is limited. This Court does not sit in appeal over the findings recorded by the disciplinary authority and cannot undertake a re-appreciation or re-evaluation of evidence. However, undisputedly, where the proceedings are vitiated by a breach of the principles of natural justice, or there is a manifest violation of the prescribed procedure, or where the delinquent has been denied a fair opportunity to defend himself, the Court would be justified in exercising its writ jurisdiction under Article 226 of the Constitution of India. In this regard, we may refer to the decision in ***Union of India and Ors v. P. Gunasekaran*** (2015) 2 SCC 610, the relevant extract of which reads as under:

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence



before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- (i) the finding of fact is based on no evidence.*

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) reappreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*
- (v) interfere, if there be some legal evidence on which findings can be based.*
- (vi) correct the error of fact however grave it may appear to be;*
- (vii) go into the proportionality of punishment unless it shocks its conscience.”*

29. From a perusal of the proceedings conducted by the GSFC, it



emerges that the petitioner had pleaded 'Not Guilty' to all the Charges levelled against him. Consequently, the trial proceeded on the basis of his plea of being 'Not Guilty'. It is further noted that the request made by the defending officer for an adjournment, on the ground that the accused intended to engage a civil counsel from Srinagar or Delhi, was duly considered and allowed by the GSFC. However, the accused subsequently conveyed his inability to engage a suitable civil counsel despite having made efforts to do so; he further expressed his willingness to proceed with the trial, stating that the presence of a senior and seasoned defending officer was sufficient to defend him in the matter.

30. Thereafter, the GSFC proceeded to record the statements of the prosecution witnesses, all of whom were cross-examined by the defending officer appointed for the petitioner, except for PW-8. It is noted that when the defending officer sought an adjournment of 30 minutes to prepare for the cross-examination of PW-7, the same was objected to by the prosecutor. However, the GSFC, upon consideration, allowed the request and accordingly adjourned the proceedings.

31. Subsequently, the petitioner's defence statement was recorded, and he was questioned thereon by the GSFC. When enquired whether he intended to produce witnesses in his defence, the petitioner expressed his desire to examine three defence witnesses. These witnesses were duly examined before the GSFC.

32. Thereafter, upon appreciation of the evidence on record, the GSFC found the petitioner guilty of the second Charge, and not guilty of the first and the third Charges, with reasons assigned for each finding.

33. Consequently, the petitioner was sentenced to: (i) forfeiture of four



years of service for the purpose of promotion; (ii) forfeiture of four years of service for the purpose of pension; and (iii) Severe Reprimand.

34. The petitioner then preferred a statutory petition under Section 117(2) of the BSF Act read with Rules 167 to 169 of the BSF Rules. The DG set aside the sentence relating to forfeiture of four years of service for both promotion and pension, however, the sentence of 'Severe Reprimand' was upheld, as conveyed *vide* letter dated 27.05.2005.

35. In the conspectus of the above, we find no infraction of the applicable rules or any breach of the principles of natural justice in the conduct of the proceedings.

36. Now coming to the grievance of the petitioner that the Charges levelled against him were fabricated, it is his primary contention that the complaint dated 12.07.2003, made by PW-5, Sh. B.L. Naik, DC, alleging insubordination, was a belated and motivated act, intended as a retaliatory measure to the petitioner's earlier complaint dated 10.07.2003 addressed to the DIG. The petitioner has further pointed to certain contradictions in the statements of PW-5 and PW-7 in support of this plea.

37. It is important to note, that since the petitioner was acquitted by the GSFC with respect to the first and the third Charge, thus, the evidence of PW-5, PW-6, and PW-7 remains relevant to be considered for the second Charge, with respect to which the petitioner is held guilty and convicted. In this context, let us examine the plea of the petitioner that the complaint made by Sh. B.L. Naik was merely an afterthought. In this regard, reference may be made to the statement of PW-6, who categorically stated that on 10.07.2003, at around 1700 hours, while he was performing duties as a runner to Sh. B.L. Naik, he saw the petitioner enter the office of Sh.



Naik. Thereafter, he was called inside by Sh. Naik, and upon entering, he heard the petitioner saying, '*Aap meri chhutti mein taang kyun ada rahe ho.*'. PW-6 further deposed that he then exited the office and was unaware of what transpired subsequently.

38. PW-7 also corroborated the incident, stating that he was present in the office of Sh. B.L. Naik, when the petitioner entered and said '*Aap meri chhutti mein taang kyun ada rahe ho.*'. Additionally, the petitioner stated, '*Agar DIG ko apna kaam ho to woh khud ko attach kara lete hain, phir mujhe kyun roka ja raha hai.*'. PW-7 stated that these words were uttered in a disrespectful and arrogant manner, displaying complete disregard towards a superior officer.

39. In view of the above, we find no merit in the petitioner's contention that the complaint by Sh. B.L. Naik was an afterthought or a motivated response to the petitioner's earlier complaint to the DIG. The testimony of PW-6 and PW-7, independently corroborates the incident in question, and supports the case of the prosecution.

40. Furthermore, it is relevant to note that from the testimony of PW-5, it is evident that although Sh. Des Raj, DIG was on leave with effect from 04.07.2003 to 15.07.2003, however, he resumed his duty on 12.07.2003. The petitioner has not rebutted the said part of the testimony of PW-5. More so, the alleged contradiction concerning the date on which Sh. B.L. Naik submitted his complaint to the Sh. Des Raj, DIG, does not have any material bearing on the second Charge for which the petitioner has been held guilty.

41. Likewise, there is no force in the submission made by the petitioner that PW-7, Sh. D.S. Rawat, DC, (Adm), made a false statement before the



GSFC with respect to not recommending the petitioner's leave application. There is nothing on record to establish that the leave sanctioning authority had recommended and sanctioned the one-day of Earned Leave as requested by the petitioner, which was subsequently cancelled, as alleged by the petitioner. Interestingly, the petitioner in his complaint to the DIG, had submitted that on getting an assurance/recommendation from the Staff Officer, he got his train ticket booked on 10.07.2003, but his leave was cancelled after recommendation by Sh. D.S. Rawat. Evidently, the petitioner was merely acting upon some assurance given by the Staff Officer that his leave may be sanctioned. However, the petitioner has failed to show that the said leave was actually sanctioned and thereafter, it was cancelled.

42. To clarify the position, the testimony of PW-7 Sh. D.S. Rawat is relevant, who has testified that he had not recommended the leave of the petitioner because his earlier case of absence without leave was pending. Therefore, the above contradiction pointed out by the petitioner is even otherwise not of such a nature as would vitiate the findings recorded by the GSFC.

43. Before parting, we deem it necessary to observe that we do not find any merit in the prayer raised on behalf of the petitioner seeking direction for the initiation of perjury proceedings against Sh. B.L. Naik, DC, for allegedly giving false evidence during the trial. The record reveals that the petitioner did not make any oral or written objection before the GSFC, which was the appropriate Forum, and has raised it for the first time before this Court, which, at this stage, is not maintainable.

44. In view of the foregoing discussion, and taking into account the fact



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that the sentence imposed upon the petitioner was duly considered and reduced upon the petitioner's statutory petition, we find no ground to interfere with the Impugned Order.

45. The present petition is, accordingly, dismissed.

SHALINDER KAUR, J

NAVIN CHAWLA, J

MAY 26, 2025/SK