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

+ **W.P.(C) 10438/2016**

RUPEN PRAKASH

.....Petitioner

Through: Mr. Tarun Kumar Agarwal,
Adv.

versus

UNION OF INDIA & ORS

.....Respondents

Through: Ms. Manisha Agrawal Narain,
CGSC with Mr. Nipun Jain and Mr. Sandeep
Singh Somaria, Adv.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

18.03.2025

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AJAY DIGPAUL, J.

1. The present petition has been filed by the Petitioner challenging the Order dated 15.03.2016 passed by the DIG (D & L), Border Security Force¹ and order dated 03.10.2015 passed by the Commandant 123 Bn, BSF whereby the petitioner has been dismissed from service.

2. The Petitioner seeks reinstatement into service with effect from 03.10.2015, along with all consequential benefits, or, in the alternative, a direction to the respondents to impose a punishment other than dismissal.



FACTS:

3. The petitioner was enrolled in the BSF as a Constable on 17.02.2005, whereafter he was posted in 123 Bn BSF.

4. The case against him was that on 14.09.2015, a complaint was lodged by one Constable Chandra Prabha of the Chhattisgarh Police, alleging that she had received SMS and blank calls from two mobile numbers, which upon verification, were allegedly linked to the petitioner. The matter was subsequently reported to the Unit Adjunct, and the petitioner was summoned to provide an explanation.

5. During the course of questioning, the petitioner allegedly/ purportedly expressed a preference to die rather than face allegations of misconduct.

6. The petitioner was thereafter placed under close arrest on 14.09.2015, and it was alleged that while in custody, he attempted to commit suicide by consuming mosquito repellent.

7. Pursuant thereto, the petitioner was charged with the following two charges as stipulated in the Charge Sheet dated 28.09.2015, issued by the Commandant 123 Bn BSF. The charges are set out as hereunder:

"FIRST CHARGE"
BSF ACT, 1968, U/S 40



AN ACT PREJUDICIAL TO GOOD ORDER AND DISCIPLINE
OF THE FORCE

In that he,

at Tac HQ 123 Bn BSF Antagarh, on 14.09.2015 at about 1100hrs. submitted the application to BASIM, wherein he mentioned that he is going to commit suicide.

SECOND CHARGE
BSF ACT 1968, U/S 41 (c)

ATTEMPTING TO COMMIT SUICIDE AND IN SUCH ATTEMPT
DOING AN ACT TOWARDS THE COMMISSION OF THE SAME

In that he,

at Tac HQ 123 Bn BSF Antagarh, on 14.09.2015 at about 1130 hrs, attempted to commit suicide by consuming Mosquito Repellent.”

8. In furtherance of the aforesaid charges, a Summary Security Force Court² was convened, during which six prosecution witnesses were examined. The petitioner was afforded an opportunity to nominate a ‘Friend of Accused’ to assist in his defence during his SSFC trial, and ACP Amit Kumar Singh was appointed in this capacity. Thereafter, the petitioner was tried by the SSFC by the Commandant 123 BN BSF on the aforesaid two charges. On being arraigned by the Court, the petitioner pleaded ‘Guilty’ to both the charges against him. Following the examination of the six prosecution witnesses, the petitioner was given an opportunity to make statement in reference to the charges or in mitigation of punishment. In response, he spoke thus:



Compliance of BSF Rule 48(3)

Accused No. 052543708 Ct Rupeen Prakash 123 Bn BSF is cautioned in the following terms.

"You may make a statement if you wish to do so, you are not bound to make one and whatever your state shall be taken down in writing and may be used in evidence".

Accused elects to make a statement as follows.

In the month of August 2015, at about 1030 hrs, I received a blank call on my mobile Number 096191588752. I called up back on that number which was disconnected from other side. I don't remember the number. In the first week of September 15, I received a call on my same mobile No. from a lady saying "कैसे हो ?" On this I asked her "आप कौन बोल रही हो ?" She did not reply and disconnect the phone. I rang up on that number which was again disconnected.

On 08 or 09 Sep 15, in between 10-12 AM, I again got a call on my same No. from a lady and she engaged in the conversation with me by saying "मैं आपको जानती हूँ, आप अच्छे इन्सान हो और मैं आपको पसन्द करती हूँ" On this I asked her, I am married, have child and please don't trouble me. On same day in evening, I got a short missed call thereafter I sent a SMS to her on incoming number texting "Battmeez, Baddimak, unfeelingness, go to hell".

On evening of 13 Sep 15, I was called by Sh Dimple Khari, DC(Adjt) to his office and also asked to bring my whats app mobile instrument. I was directed to call from my number on the Adjutant's number but due to network problem the call could not get through. I gave my number i.e. 09691588752 to him. After this adjutant informed me that a complaint has been lodged by a Lady in PS Antagarh against a Rupeen Prakash, "Are your Rupeen Prakash?" I said to him "हाँ मैं रूपिन प्रकाश हूँ, मैं ऐसा बन्दा नहीं हूँ, मुझे इन चीजों का शौक नहीं है" I was directed to keep both mobile numbers with me whenever called. In intervening night of 13 and 14 Sep 15, My mind was disturbed and distressed as I thought I was in big trouble being a lady case.

On 14 Sep 15, in morning, when I was called to the Adjutant's office, I carried a bottle of mosquito repellent liquid, Good night with me. In Office, I was asked to write down the period for which sim was used by me on board. I took a board pen to white on the Board.

I mistakenly sat on the sofa in the Adjutant's office and asked the lady saying "क्या आप मुझे जानती हो?" She lifted her face and did not reply. After this Adjt asked me to get up and go and write in other corner of the

Signature Not Verified

Signed By: SHU/PI
Signing Date: 29.03.2016
13:40:16





room. Lady present in the office asked Adjt how to write the letter on this Adjt asked her to write addressing it to Commandant 123 Bn BSF describing the details of vulgar text/calls. On hearing this I got more disturbed and wrote on a piece of paper that मुझ पर झुठा बेबुनियाद इजाम लगाया जा रहा है कि मैं किसी लड़की व औरत को फोन करता हूँ और गलत सलत बोलता हूँ जिस कारण मेरी आत्म सम्मान व शारिरिक मानशिक प्रतारना के कारण अपने आप को निदोष साबित करने के लिए यह कदम उठा रहा हूँ जो कि मेरे आत्म हत्या करने को सही समझा है। जिसके जिम्मेदार मेरा व परिवार का जिम्मेदार वो लड़की व औरत है जिसके कारण मुझे यह कदम उठाना पड़ रहा है।"

I had also asked from a male Constable sitting in the Adjts office about identity of Lady on this Sh KK Sharma, AC present in the Adjts office asked BASIM to take me out of office.

Thereafter I was marched in the Commandant's office where he asked me about my hand written paper about committing suicide saying "ए आपके द्वारा लिखा गया है" I replied in affirmative, Comdt ordered for my closed arrest. I was taken to prison cell where I had carried mosquito repellent liquid with me. So many questions were cropping up in my mind about family honor and dignity. On finding no answer and hope, I drank mosquito repellent liquid subsequently I vomited and had feeling of dizziness and stomach cramps. I was immediately taken to Unit hospital for my treatment thereafter I was shifted to the civil hospital in Antagarh. One investigation officer from Police station Antagarh had also come to enquire the case in the CHC Hospital Antagarh.

The above statement is read over and explained to the accused in the language he understands well i.e. Hindi, he signs it as correct."

9. Upon finding the petitioner guilty of both charges and considering his previous conviction, character, age, length of service, the SSFC, vide order dated 03.10.2015, imposed the sentence: "To be dismissed from service".

10. The findings and sentence of SSFC were promulgated to the petitioner on the same day. Accordingly, the petitioner was struck off from the strength of 123 Bn BSF w.e.f. 03.10.2015 (FN) and a formal order in this regard was issued vide order dated 03.10.2015, which reads thus:



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"2. No. 052543708 Constable Rupeen Prakash found "Guilty" by the Court on the above charges and Court passed sentenced "To be dismissed from Service" to said No. 0525443708 Constable Rupeen Prakash. The sentence of the Court have been promulgated to the accused on same day i.e. 03.10.2015 as per BSF Act & Rule.

3. No. 052543708 Constable Rupeen Prakash 'A' Coy is struck off the strength of this unit w.e.f. 03rd Oct 2015 (FN)."

11. Feeling aggrieved by the aforesaid dismissal order, the petitioner submitted multiple representations and a statutory petition dated 02.01.2016 addressed to the Director General (DG), BSF, challenging the punishment. The petitioner took a plea therein that he was not given any reasonable opportunity to defend himself and neither he nor his "*Friend of Accused*" were allowed to cross-examine impost witnesses i.e. PW-1, 4, 5 and 6 on a false ground that the petitioner himself had declined to cross examine them. Further, in the petition it was stated that the statement given by the petitioner was dictated to him and he signed the same under duress. However, the Reviewing Authority rejected the petition on 15.03.2016. It opined, *inter alia* that:

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"123 Bn BSF has written that before awarding the punishment, the Court has taken into consideration his previous record. Further, the perusal of trial proceeding reveals that the Court has recorded previous convictions, character and rewards etc. of petitioner on page-'I' of the trial proceedings. As per that, petitioner had put in 10 years, 07 months and 15 days of service with 02 summary punishments. He has not received any rewards. The offences u/s 40 & 41(c) of BSF Act carry maximum punishment upto 07 years imprisonment. However, the Court has taken a lenient view and awarded punishment "to be dismissed from service" which is lesser than the maximum punishment awardable for the said offences. The punishment awarded to the petitioner is very much commensurate with the gravity of the offences committed by him and does not warrant any interference.



4. As on the date of conviction i.e. 03.10.2015, the petitioner was 31 years, 01 months & 21 days old with 10 years, 07 months and 15 days service in BSF. In past he has been tried summarily twice. He has not earned any reward during his service in BSF.

5. In view of foregoing and after careful consideration of all the facts and circumstances of the case, DG BSF has rejected the petition being devoid of merit.”

12. Having unsuccessfully availed the departmental remedies and being aggrieved by the order dated 15.03.2016, the petitioner invoked the writ jurisdiction of this Court challenging the impugned orders as arbitrary, unjust, and contrary to the principles of natural justice.

13. The petitioner had earlier preferred a writ petition bearing no. W.P. (C) 6041/2016, which was disposed of as not pressed vide order dated 18.07.2016. The order dated 18.07.2016 is reproduced hereunder:

“1. As drafted, keeping in view the annexures filed with the writ petition it is apparent that the pleadings are contrary to the record.

2. Learned counsel for the petitioner states that after a petition was drafted the petitioner disclosed certain facts which are relevant and prays leave to be granted to withdraw the writ petition with right protected of the petitioner to file a fresh petition on the same cause of action.

3. Granting liberty as prayed for the writ petition is dismissed as not pressed.

4. No costs.”

14. The petitioner has now approached this Court, once again, challenging the order dated 15.03.2016, seeking redressal of his grievances.



SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER:

15. The learned counsel for the petitioner submits that the petitioner, enrolled as a Constable in the BSF on 17.02.2005, served diligently for over 10 years without any disciplinary issues. On 14.09.2015, a false complaint was filed by lady constable Chandra Prabha, alleging that she received SMS messages and blank calls from his number. When summoned, the petitioner denied the allegations and, under pressure, was compelled to write a statement suggesting suicidal intent, despite having no such intention. He was subsequently placed under arrest based on an unfounded assumption that he attempted suicide using mosquito repellent, without any eyewitnesses or medical proof.

16. The learned counsel for the petitioner submits that no inquiry was conducted into the initial complaint, and instead, *suo motu* proceedings were initiated against him under Sections 40 and 41(c) of the BSF Act, 1968.

17. He further submits that the disciplinary proceedings violated Rule 48 of the BSF Rules, 1957, as the petitioner was denied a fair opportunity to defend himself, and his right to cross-examine key witnesses was wrongfully recorded as waived. The punishment of dismissal was disproportionate, violating Articles 14 and 21 of the Constitution. The learned counsel for the petitioner relies on judicial precedents, including ***Bhagat Ram v State of Himachal***



*Pradesh*³, which emphasises that penalties must be commensurate with the misconduct; *Olga Tellis v Bombay Municipal Corporation*⁴, which affirms that deprivation of livelihood is a violation of the right to life under Article 21; and *Ranjit Thakur v Union of India*⁵, which underscored the principle of proportionality in disciplinary actions. Given these contentions, the petitioner seeks quashing of the dismissal order and reinstatement with all consequential benefits.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENTS:

18. On the other hand, the learned counsel for the respondents submit that the petitioner was dismissed from service after due compliance with the BSF Act, 1968⁶, and the BSF Rules, 1969⁷. The petitioner was tried by the SSFC and pleaded guilty to charges under Section 40 for conduct prejudicial to good order and discipline and Section 41(c) for attempting to commit suicide. The disciplinary proceedings were conducted in accordance with the prescribed procedure, and the petitioner was given an opportunity to cross-examine witnesses, which he partially exercised.

19. He further submits that the petitioner was not prosecuted under Section 309 of the Indian Penal Code, 1860⁸ but under the BSF Act, which governs the service conditions of BSF personnel. Given the

³ W.P.(C) 10438/2016

⁴ W.P.(C) 10438/2016

⁵ W.P.(C) 10438/2016

⁶ "BSF Act", hereinafter

⁷ "BSF Rules", hereinafter

⁸ "IPC", hereinafter



nature of the petitioner's conduct and his suicidal tendencies, his continuation in service posed a serious risk to himself and others, necessitating his dismissal. Reliance is placed upon Ex. Constable **Manjunath v Union of India**⁹ wherein it was held that:

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"10. That the past service record of the petitioner is satisfactory has been noted by the Appellate Authority who has returned a finding that notwithstanding the petitioner having a clean service record but the offence of attempt to commit suicide shows the suicidal tendency of the petitioner. It has been noted that being a Member of an Armed Force, the petitioner cannot function as a constable without being armed with arms and ammunitions. It has been held that under the circumstances it would be dangerous to retain the petitioner in service who would always be armed."

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20. Learned counsel for the respondents further places reliance on **Sachin Kumar v. Union of India & Ors.**¹⁰, wherein this Court opined that:

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18. We have opined hereinabove that millions in the past and thousands today and billions in the future would be the recipients of promises casually made but cynically broken i.e. persons with a broken heart. If committing suicide was a reasonable consequence of one's love being betrayed, one would have found millions and millions of persons committing suicide, but we find extremely stray cases which if reduced to a percentage would be less than a fraction of a fraction. What we seek to highlight is that in the case of a broken heart there has to be a suicidal tendency which triggers the reaction of the victim because this is not the normal reaction of most of the victims. If such a person is a Member of a Para-Military Force and his duties envisage arms and ammunitions to be issued to him, the concomitant duty of reasonable care would compel the decision maker to ensure that the petitioner no longer serves with arms and ammunitions."

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⁹ 2009 SCC OnLine Del 4032

¹⁰ 2011 SCC OnLine Del 1513



21. In view of the foregoing, the respondents pray for the dismissal of the present writ petition.

ANALYSIS AND FINDINGS:

22. Upon consideration of the submissions advanced by the parties and the material placed on record, it is evident that the scope of judicial interference in disciplinary matters concerning members of the Armed and Paramilitary Forces under Articles 226 and 227 of the Constitution is limited. This Court in ***Pawan Kumar Mathuri v Union of India & Ors.***¹¹, has categorically held that:

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“Even otherwise, as per trite law, we, under Articles 226 and 227 of The Constitution of India have extremely minimal scope of interference in matters of transfer, and that too only lest there are/is any element of arbitrariness, bias, mala-fide or likewise. [Re.: Major General J.K. Bansal v Union of India (2005) 7 SCC 227; SGT. Navneet Kumar Singh vs Union Of India & ORS 2022:DHC:3159-DB; Ajaypal vs Union of India 2024:DHC:2889-DB]”

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23. In the present case, the petitioner was subjected to a duly constituted SSFC, wherein he was afforded an opportunity to defend himself, and was provided with the assistance of a ‘*Friend of the Accused*’. The evidence was recorded in the presence of the petitioner, and six prosecution witnesses were examined during the proceedings. He was granted the right to cross-examination during the proceedings, however, he chose to cross-examine only two witnesses i.e. PW-2 and PW-3 while voluntarily declining to cross-examine the remaining witnesses. The entire proceedings were conducted in the presence of



an independent witness, and the petitioner voluntarily signed the proceedings. Furthermore, before the acceptance of his plea of guilt, the charges against the petitioner, the consequences of his plea, and the difference in the procedure to be followed were duly explained to him. The record unequivocally establishes that even at the stage of recording evidence, the petitioner himself admitted to having attempted suicide. Additionally, the petitioner was afforded an opportunity to make a statement in reference to the charges or in mitigation of punishment at the trial. His statement, as reproduced above, clearly reflects his submission that the act of writing a suicide note and attempting to commit suicide were mistakes on his part, for which he sought pardon. In view of the foregoing, it is difficult to accept the contention that the proceedings were vitiated by procedural infirmities or conducted in violation of the principles of natural justice.

24. The contention of the petitioner that he was deprived of a fair opportunity to defend himself and the trial was conducted in contravention of Rule 48 and other provisions of the BSF Rules is wholly untenable and devoid of merit.

25. At this stage, it is pertinent to refer to Rule 48 of the BSF Rules, which stipulates as follows:

“48. Record of evidence.- (1) The officer ordering the record of evidence may either prepare the record of evidence himself or detail another officer to do so.

(2) The witnesses shall give their evidence in the presence of the accused and the accused shall have right to cross-examine all witnesses who give evidence against him.



Provided that where statement of any witness at a court of inquiry is available, examination of such a witness may be dispensed with and the original copy of the said statement may be taken on record. A copy thereof shall be given to the accused and he shall have the right to cross-examine if he was not afforded an opportunity to cross-examine the witness at the Court of Inquiry.

(3) After all the witnesses against the accused have been examined, he shall be cautioned in the following terms; "You may make a statement if you wish to do so, you are not bound to make one and whatever you state shall be taken down in writing and may be used in evidence." After having been cautioned in the aforesaid manner what ever the accused states shall be taken down in writing.

(4) The accused may call witnesses in defence and the officer recording the evidence may ask any question that may be necessary to clarify the evidence given by such witnesses.

(5) All witnesses shall give evidence on oath or affirmation. Provided that, no oath or affirmation shall be given to the accused nor shall he be cross-examined.

(6) (a) The statements given by witnesses shall ordinarily be recorded in narrative form and the officer recording the evidence may, at the request of the accused, permit any portion of the evidence to be recorded in the form of question and answer. (b) Witnesses shall sign their statements after the same have been read over and explained to them.

(6A) The provisions of section 89 of the Act shall apply for procuring the attendance of the witnesses before the officer preparing the Record of Evidence.

(7) Where a witness cannot be compelled to attend or is not available or his attendance cannot be procured without an undue expenditure of time or money and after the officer recording the evidence has given a certificate in this behalf, a written statement signed by such witness may be read to the accused and included in the record of evidence.

(8) After the recording of evidence is completed, the officer recording the evidence shall give a certificate in following form:- "Certified that the record of evidence ordered by Commandant was made in the presence and hearing of the accused and the provisions of rule 48 have been complied with".



26. In the present case, the provisions of Rule 48 were strictly adhered to, and no procedural lapse has been demonstrated or found. A careful perusal of the testimonies of the prosecution witnesses establishes that the petitioner had indeed attempted to commit suicide. Notably, the evidence of Dr. Himadri Biswas (PW-5) categorically establishes that the petitioner ingested a poisonous substance. Furthermore, the statements/ utterances made by the petitioner, as deposed by the witnesses, further substantiate the charge of attempted suicide against him.

27. The issue before this Court is not one of sympathy or external pressures that may have influenced the petitioner's action but is of his suitability for service in a force entrusted with national security. The fact remains that the petitioner attempted suicide, a serious disciplinary and legal violation under (earstwhile) Section 309 of the Indian Penal Code, 1860.

28. The job of a BSF constable demands the highest degree of discipline, resilience, and mental fortitude. Personnel serving in the armed forces and paramilitary organizations are entrusted with safeguarding national security and are expected to uphold the highest professional standards. The ability to remain composed under pressure, make rational decisions in challenging circumstances, and maintain unwavering commitment to duty are non-negotiable attributes for individual in such roles.

29. Attempting suicide is not merely a personal lapse but a fundamental breach of professional responsibility. It reflects an



inability to withstand the pressures inherent in forces, thereby raising serious concerns about the petitioner's capability to discharge his duties effectively. A paramilitary personnel must demonstrate diligence, accountability, and emotional stability at all times. Any act of self-harm severely compromises the integrity and dependability required in the force.

30. The petitioner, as a BSF constable, was entrusted with arms and ammunition, and his conduct demonstrated an undeniable risk to himself, his colleagues, and the security establishment. The respondents were entirely justified in concluding that an individual who has displayed suicidal tendencies cannot be permitted to continue in service.

31. The doctrine of reasonable care requires that personnel in critical security positions must not pose foreseeable risks. The petitioner's conduct raises legitimate concerns regarding his psychological stability, cannot be compelled to retain an individual who as exhibited such tendencies.

32. The consequences of permitting the petitioner to continue service could be catastrophic. The possibility of another self-harming episode while being in possession of a firearm presents an unacceptable risk. The discipline and operational integrity of the BSF demand that such risks be eliminated.

33. The punishment awarded is well within the statutory framework of the BSF Act. Given the gravity of the petitioner's misconduct and



the potential security threat he poses, the penalty imposed is neither disproportionate nor excessive.

34. In the view of the foregoing, this Court finds no merit in the present petition. There is no illegality, arbitrariness, or procedural lapses in the impugned orders. The punishment awarded is justified and requires no interference under Articles 226 and 227 of the Constitution.

35. Accordingly, the present petition stands dismissed. There shall be no order as to costs.

AJAY DIGPAUL, J.

C.HARI SHANKAR, J.

MARCH 18, 2025

SSC

Click here to check corrigendum, if any