

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 840 of 2024

Md. Farhad Zaman
Vs.
Union of India & Ors.

For the writ petitioner	:-	Mr. Ujjal Ray, Adv. Sk. Abdur Rahim, Adv. Mr. Atreya Chakraborty, Adv.
For the Union of India	:-	Mr. Kalyan Kumar Chakraborty, Adv. Mr. Uttam Basak, Adv.
Heard on	:-	24.03.2026
Judgment on	:-	09.04.2026

Amrita Sinha, J.:-

1. The petitioner was a member of the Border Security Force (BSF). He has been dismissed from service by the Commandant of his battalion vide order dated 2nd December, 2023 with effect from the said date. The petitioner has been found to be involved in getting illegal gratification from job aspirants during the detailed medical examination for declaring them 'fit' for recruitment of Constable (general duty) examination-2018 in CAPFs, NIA, SSF and Assam Rifle along with other BSF persons and civilians in Malda in the month of January-February, 2020.

2. He was charged under various provisions of the Indian Penal Code and the Prevention of Corruption Act, 1988, as amended. Proceeding against him is sub judice before the Court of the learned Special Judge (CBI), Siliguri. The petitioner was issued a show cause notice as to why he should not be dismissed from service on account of misconduct. Not being satisfied with the explanation provided by the petitioner, he has been dismissed from service. The Commandant was of the opinion that as CBI investigation was ongoing and as several civilians were involved in the offence, his trial under the BSF Act and Rules is inexpedient.
3. The petitioner is aggrieved by the same and has challenged the order of dismissal in the instant writ petition.
4. Submission of the petitioner is that subjective satisfaction of the Commandant has not been recorded that the petitioner was actually involved in the allegation of obtaining illegal gratification. As the petitioner is yet to be convicted in the criminal case that is pending, accordingly, the authority ought not to have passed order for his dismissal.
5. It has been submitted that the petitioner ought to have been tried by the Security Force Court so that he could have got the opportunity to put forth his evidence in support of his defence.

6. It has been submitted that though the petitioner was served with a show cause notice, but the documents enclosed with the said notice were never served upon him.
7. It has been contended that no reason has been recorded in the impugned order as to why it will not be expedient to try the petitioner before the Security Force Court. In the absence of a proper finding recording reason as to why a member of the Force will be dismissed without a proper trial, the order of dismissal suffers from procedural irregularity.
8. It has been argued that the authority passed order of dismissal without proper application of mind, by overlooking the provisions of the Act and the corresponding Rules.
9. Prayer has been made to set aside the impugned order of dismissal and further directing reinstatement of the petitioner along with all back wages and notional seniority.
10. In support of the aforesaid prayer learned advocate for the petitioner relies on the judgment delivered by the Hon'ble Supreme Court in the matter of **Baldeb Raj Chadha vs. Union of India & Ors.** reported in **(1980) 4 SCC 321** wherein the Court held that when an order is challenged and its validity depends on it being supported by public interest, the State must disclose the material to satisfy the Court that the order is not bad for want of any material to sustain the ground of 'public interest' justifying forced retirement of a public servant.

11. According to the petitioner, no material has been placed before the authority or before this Court to justify that retention of the petitioner in the Force is undesirable. In the absence of any such material, the capital punishment of dismissal from service ought not to have been passed.
12. Reliance has also been placed on the judgment delivered by the Delhi High Court on 19th October, 2006 in **WP (C) No. 4796/1998** in the matter of **Sat Pal Singh vs. Union of India & Ors.** wherein the Court held that it is an obligation of the respondent authority to act strictly in compliance with Rule 22 of the BSF Rules and record proper satisfaction as contemplated. It has been argued that as proper satisfaction of not retaining the petitioner in the Force is not recorded, the impugned order of punishment be set aside.
13. Reliance has also been placed on the judgment delivered by the Delhi High Court on 1st September, 1996 in **CW 1809/1993** in the matter of **Sees Ram vs. Union of India** wherein the Court was not satisfied with the manner in which the incumbent was dismissed from service and was pleased to set aside and quash the order of dismissal.
14. The respondents oppose the submission and prayer of the petitioner.
15. Reliance has been placed on the affidavit filed by the Deputy Inspector General-in-charge wherein it has been disclosed that in the year 2020 the petitioner was deployed at Dhanakgiri, Meghalaya where he got in

touch with one Dr. Lokeshwar Khajuria, Senior Medical Officer posted in the same battalion.

16. The petitioner approached the aforesaid medical officer through WhatsApp message and finalized a deal of rupees two lakh to get a 'fit' certificate for a job aspirant in the detailed medical examination scheduled on 31st January, 2020 to secure a job in the Force. As per the deal, Rs.80,000/- was transferred by the candidate into the non-salary account of the petitioner. The said money was further transferred by the petitioner into the bank account of a civilian referred to by the medical officer. As the deal was finalized, the candidate faced no hurdle and was declared fit.
17. The medical officer deposed that the petitioner contacted him from the mobile number of the candidate and asked him to intimate the names of other candidates who wanted a 'fit' certificate in lieu of money. A separate candidate who was declared 'unfit' by a different medical officer was provided a 'fit' certificate by Dr. Lokeshwar Khajuria in lieu of rupees two lakh. The transfer of money stood corroborated by the bank statements of the said candidates. It was detected that the WhatsApp chat was deleted from the mobile of the petitioner by a civilian claiming himself to be the brother of Dr. Khajuria.
18. The affidavit further discloses that several civilians managed to obtain 'fit' certificate by bribing the petitioner and the medical officer. The petitioner was found to be actively involved in obtaining illegal

gratification from the candidates with the aid and assistance of the doctors making deals through telephonic messages. The petitioner also went to the extent of threatening the candidates and their families not to disclose such illegal activities.

19. Based on a complaint filed against the petitioner, Special Crime-II, CBI, New Delhi registered a criminal case under Sections 120 B/ 420 IPC and Sections 7, 7A, 8 of the Prevention of Corruption Act, 1988, as amended, against the doctors and also against the petitioner. Several other civilians including unknown private persons were also impleaded in the said criminal case.
20. As investigation in the subject case will not be complete without proceedings being drawn up against the members of the Force along with the civilians, accordingly, the authority found it inexpedient to try the petitioners under the BSF Act and the Rules.
21. It has been submitted that the petitioner has been made known of the charges levelled against him and was given proper opportunity to disclose his defence. The explanation provided by the petitioner was not found satisfactory for which the authority was left with no other alternative but to dismiss him from service.
22. It has been argued that there has been no violation of the principle of natural justice and the Act and the Rules were strictly followed for imposing the punishment upon the petitioner.

23. Learned advocate for the respondents relies on the decision of the Hon'ble Supreme Court in the matter **Union of India & Anr. vs. Tulsiram Patel & Ors.** reported in **(1985) 3 SCC 398 : AIR 1985 SC 1416** wherein the Court held that prior to imposition of penalty the incumbent should be made known of the charges levelled against him and opportunity ought to be given to him to explain his stand.
24. It has been submitted that as the petitioner was granted opportunity to disprove the allegations levelled against him but he failed to provide satisfactory explanation to the charges levelled against him, he has rightly been dismissed from service.
25. Prayer has been made to dismiss the writ petition.
26. I have heard and considered the submissions made on behalf of both the parties and have perused the materials on record.
27. From the documents available on record, it appears that there are specific allegations made against the petitioner. The evidences and the documents in support of the charges are also mentioned in the show cause notice issued to him. Preliminary investigation revealed the money trail where the petitioner has been found to be involved. Not one, but names and descriptions of various civilians and medical officers have been found to be involved in the criminal offence which is presently pending disposal before a criminal court. The amount of money involved has also been disclosed.

28. According to the report, certain amount of money was also returned to the unsuccessful candidates who were declared 'unfit' in the detailed medical examination. The authority opined that BSF is an Armed Force of the Union which is raised for maintaining the security of the borders of India. Highest standard of discipline is required from the members of the Force at all times to carry out the paramount task of defending the borders. Employing unfit candidates in lieu of money would jeopardize the security of the nation.
29. The Border Security Force Act and the Rules is applicable only in respect of the members of the Force. The Act and the Rules cannot be invoked for trying a civilian, who is not a member of the Force. As investigation and trial of the case cannot be done in a piecemeal manner, accordingly, the authority was of the view that trying the petitioner before the Security Force Court would not only be inappropriate but also impracticable.
30. For either proving or disproving the charges brought against the petitioner evidence of several persons, including civilians, will be required to be taken. Evidence of civilians cannot be taken before the Security Force Court. The very purpose of the trial will be defeated if proper evidence cannot be adduced. It is only for this purpose that the authority opined that trying the petitioner before the Security Force Court will be inappropriate and impracticable.

31. The submission of the petitioner that subjective satisfaction of the authority has not been recorded in the impugned order of dismissal does not appear to be proper. Enough evidence is available on record to at least suggest involvement of the petitioner in a conspiracy with the doctors of the Detailed Medical Examination Board and the civilian candidates aspiring to get a job in the Force.
32. Retaining a person in the Force against whom such grave allegations are pending trial, will certainly be undesirable. All members of the Force ought to maintain the highest level of honesty and integrity as their duty is to secure the borders of the country. Even the minimum act of dishonesty ought not to be tolerated. The same will dampen the spirit of the Force and will interfere with the safety and security of the nation. The same cannot be permitted to be done.
33. In *Baldeb Raj Chadha (supra)* the Court, inter alia, held that the Court must be satisfied that the order impugned is not bad for want of material and sufficient to sustain the ground of public interest. Judicial review is restricted only to examine the material to see whether a rational mind may conceivably be satisfied with the punishment imposed.
34. In the instant case there are materials galore suggesting involvement of the petitioner and other civilians in the illegalities complained of. No prudent man with rational mind would agree to retain a uniformed officer in service charged with the allegation of accepting gratification

in lieu of obtaining 'fit' certificate to secure job in the Force. Any sympathy or leniency shown to this type of member is bound to send out a wrong signal to the Force and the society at large. Illegality of such nature cannot be accepted in the Force at all and the same is to be dealt with an iron hand as soon as the same is detected.

35. Sat Pal Singh (supra) was a case of a deserter who was dismissed from service on account of unauthorized absence without conducting any independent proceeding. Under such circumstances the Court was of the opinion that there has been violation of principle of natural justice and the order of dismissal was passed upon non application of mind.
36. In the instant case, the petitioner was granted an opportunity to reply to the show cause disclosing the allegations against him. As involvement of several civilians was found, the authority decided not to proceed for trial against the petitioner. The criminal case is sub-judice before the trial court. Trying the petitioner alone will not lead to proper adjudication of the charges levelled against him.
37. It will be highly demoralizing for the Force to retain a member against whom there are charges of accepting illegal gratification in lieu of job in the Force. Till the member gets himself absolved of the allegations and charges levelled against him, it will neither be desirable nor proper to retain him in the Force. The same will be against the interest of the country.

38. In *Sees Ram (supra)* the Court was of the opinion that the procedure prescribed under law was not followed at the time of passing the order of dismissal on the ground of illegal absence. The Court opined that the petitioner's service should not have been dispensed with in exercise of powers under Section 11(2) of the Act merely by serving a show cause notice. The Court held that had the impugned order of dismissal proceeded on the line in which show cause notice was issued, then there would have been no occasion to interfere with the matter.
39. In the present case, the show cause notice and the order of dismissal are on the same lines. Both records the allegations of criminal conspiracy on the part of the petitioner along with several other unknown civilians. The authority opined that trial of the petitioner by the Security Force Court will be inexpedient and impractical. Both found that the service of the petitioner in the Force is undesirable.
40. In *Tulsiram Patel & Ors. (supra)* a Five Judge Bench of the Hon'ble Supreme Court held that an opportunity of hearing to be given prior to dismissal. Here, the petitioner was afforded an opportunity to submit his defence by way of response to the show cause issued to him. The petitioner availed the opportunity and did file his reply to the show cause, which was considered by the authority and was found to be unsatisfactory.

41. In view of the discussions made herein above, the Court is not inclined to interfere in the instant matter.
42. The writ petition fails and is hereby dismissed.
43. No costs.
44. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)