IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

W.P.A. 13867 of 2009

Md. Rashid
-Vs-
Union of India & Ors.

For the Petitioner	: Mr. Kallol Basu Mr. Nilanjan Pal
For the Union of India	: Mr. Anirban Mitra
Heard on	: 14.01.2026
Judgment on	: 06.02.2026

<u>Ananya Bandyopadhyay, J.:-</u>

1. The petitioner enrolled as an Engine Driver in the Border Security Force on 20.08.1995 posted at different formations under the Frontier Headquarters, BSF, North Bengal. In June 2007, he was adjusted with 127 Battalion, BSF and Operational Sector described on record as highly sensitive from the stand-point of cross-border smuggling activities.

2. While so deployed, a written complaint was received from the Company Commander, Shri Pratap Singh, Assistant Commandant, alleging the petitioner had acted in connivance with the smugglers operating near the international border. It was alleged that on 17th October, 2007 while posted at BOP Gitaldah of 127 Battalion near Kashim Ghat on the banks of the

Dharla River, the petitioner along with Constable R.L. Kamath (co-accused) accepted illegal gratification of Rs.10,000/- and provided safe passage to smugglers for transporting 350 bottles of Phensedyl contained in seven packets from India to Bangladesh.

3. In view of the seriousness of the allegations, disciplinary action was initiated under the provisions of the Border Security Force Act, 1968 and the Rules framed there under. The petitioner was heard by his Commandant under Rule 45 of the BSF Rules, which contemplated hearing of the charge against an enrolled person on an offence report. Two charges under Section 40 of the BSF Act, 1968 relating to acts, prejudicial to good order and discipline of the force were framed against him. The petitioner pleaded not guilty to both charges.

4. Thereafter, a record of evidence was ordered to be prepared. The ROE was recorded in the presence and within the hearing of the petitioner. At this stage, he was afforded opportunity to cross-examine prosecution witnesses, to file a statement in his defence and to produce defence witnesses. The petitioner cross-examined the prosecution businesses but did not produce any defence witnesses. His verbal statement in defence was recorded in verbatim by the Recording Officer.

5. Upon consideration of the record of evidence, the Unit Commandant found a *prima facie* case against the petitioner and in exercise of powers under Rule 51 of the BSF Rules, directed the matter be tried by Summary Security Force Court (SSFC). The SSFC trial was conducted on 12^{th}, 14^{th}, 15^{th} and 18^{th} of July, 2008. During the trial, seven prosecution witnesses and five

court witnesses were examined. The petitioner again pleaded not guilty to the charges. He was afforded opportunity to defend himself, but did not induce any defence witnesses.

6. Upon appraisal of the oral and documentary evidence, the SSFC returned a finding of guilt against the petitioner and his co-accused on both charges. The sentence imposed was dismissal from service. The order of dismissal dated 18.07.2008, was issued vide order No. ESTT./127 BN/SSFC/SKS/08/11692-705 dated 19.07.2008.

7. The proceedings of the SSFC were thereafter counter-signed by the Deputy Inspector General, BSF, Cooch Behar Sector on 27.08.2008. Aggrieved by the finding and sentence, the petitioner preferred a statutory petition before the Director General, BSF, challenging both the findings of guilt and the punishment imposed. The said petition was examined at the directorate level and after consideration of the materials on record was rejected as devoid of merit. The rejection was communicated vide FHQ BSF (D&L) Brach L- No. 06/93/2008/SP/CLO (D&L)/2907-10 dated 26.05.2009.

8. The petitioner approached this Court seeking a writ in the nature of mandamus for rescission and setting aside the dismissal order dated 18.07.2008 and the Appellate rejection order dated 26.05.2009 and for reinstatement in service with all consequential financial benefits.

9. The matter, thus, arises out of disciplinary proceedings conducted under the special statutory framework governing the Border Security Force, culminating in the petitioner's dismissal for service, following conviction by

Summary Security Force Court and rejection of statutory representation by the competent authority.

10. The Learned Advocate representing the petitioner commenced his submissions by drawing attention to the petitioner and his otherwise unblemished service career. The petitioner was enrolled in the Border Security Force on 13th December, 1990 as a Constable and served under various formations including Tripura under 123 Battalion, Frontier Headquarters, BSF North Bengal. It was urged that for nearly 17 years prior to the alleged incident, no adverse entry or disciplinary blemish had been recorded against him.

11. It was submitted that in June 2007, the petitioner was adjusted with 127 Battalion BSF Sector described as sensitive from the standpoint of smuggling activities. The allegation against him arose from a written complaint which was entrenched with accusations, which were grave and stigmatic striking at the core of discipline within a border guarding force; yet, the evidentiary foundation of such allegation was tenuous. It was argued no recovery of bribe money was made from the petitioner nor was any contraband seized from his possession. The case against him, it was contended, rested substantially on testimonial assertions without independent corroboration.

12. It was further submitted the hearing under Rule 45 of the BSF Rules was conducted under a record of evidence. The petitioner was not afforded a fair and effective opportunity to defend himself while he cross-examined prosecution witnesses during the ROE and at the trial, he was placed in

circumstances where he could not meaningfully secure or produce defence witnesses. His verbal statement in defence, though recorded, was not adequately considered in the appreciation of evidence.

13. The Learned Advocate representing the petitioner emphasized during the Summary Security Force Court trial conducted on 12th, 14th, 15th and 18th of July, 2008 seven prosecution witnesses and five court witnesses were examined however, material contradictions and inconsistencies in the testimonies were not addressed. The finding of guilt, it was argued, did not disclose a reasoned evaluation of the evidence but rather a summary-cum-affirmation of the prosecution narrative.

14. It was contended the charge under Section 40 of the BSF Act, 1968 prejudicial to good order and discipline-required, clear and cogent proof of culpable conduct. In the present case, the Learned Counsel submitted the prosecution failed to establish conscious acceptance of illegal gratification or intentional facilitation of smuggling. The inference of connivance was, according to the petitioner, drawn without demonstrable proof.

15. The Learned Counsel submitted that the prosecution version suffered from inherent improbability. It was contended the bribe amount of Rs.10,000/- was only disproportionate and commercially incongruous when juxtaposed with the quantity and estimated market value of 350 bottles of Phensedyl. It was further argued if indeed, such a quantity of contraband was being transported across an international border, the payment of Rs.10,000/- to secure safe passage defy logic and common experience. This internal inconsistency, it was urged, rendered the allegation suspicious requiring

judicial scrutiny, which according to the petitioner was not undertaken. It was submitted the prosecution narrative rested substantially upon the version of persons apprehended in connection with the alleged smuggling of 350 bottles of Phensedyl. According to the Learned Advocate representing the petitioner, these individuals described as smugglers were themselves offenders apprehended in the course of anti-smuggling operations and therefore deeply interested witnesses whose testimony required cautious and independent corroboration.

16. It was further contended the conviction of the petitioner was premised upon statements of such apprehended persons, allegedly implicating him in having accepted Rs.10,000/- for permitting safe passage. It was urged that no independent, civilian witness, no contemporaneous, documentary record, and no recovery of money from the petitioner, supported the allegation. The case therefore was said to hinge on testimonial assertions of persons who stood exposed to penal consequences and whose statements were, in that context, inherently suspect. It was further submitted that the smugglers were not neutral witnesses, but individuals facing prosecution and there was every possibility of their seeking to mitigate their own culpability by attributing complicity to uniform personnel. It was argued that their statements were not corroborated by objective material evidence neither call records, no recovery of tainted money, nor civilians, documentations, nor any prior intelligence linking the petitioner to smuggling activities.

17. The Learned Advocate further submitted the punishment of dismissal from service was harsh, disproportionate and destructive of a career spanning

nearly two decades. The sentence it was urged did not reflect consideration of mitigating circumstances, including length of service, absence of prior misconduct and lack of direct recovery linking the petitioner to the alleged bribe.

18. It was also contended that the statutory petition preferred before the Director General, BSF was rejected by communication dated 26th May, 2009 without independent and reasons scrutiny of the grounds urged. The rejection order, according to the Learned Counsel did not close application of mind to the procedural, informative and evidentially deficiencies raised by the petitioner.

19. It was well settled that since documentary evidence carried greater weight and assurance than oral evidence, it was safer to rest a conclusion on documentary evidence rather than oral evidence which might sometimes be treacherously deceptive and difficult of correct evaluation*. [1975 (3) SCC 646 Shri Kanwar Lal Gupta Vs. Amar Nath Chawla & Ors.*, Para 51].

20. The Punishment Order was passed on 18.07.2008 thereby dismissing the petitioner from service. No finding was recorded in the said Order of dismissal and the Court of the SSFC Trial had reached the conclusion that the petitioner was "Guilty" solely on the basis of the statements and/or depositions of the said smugglers.

21. It was submitted that interference with the decision of departmental authorities could be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations

prescribing the mode of such inquiry or if the decision of the authority was vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, was wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. *[2000 (1) SCC 416-High Court of Judicature at Bombay, through its Registrar Vs. Shashikant S. Patil & Anr., Para 16].*

22. It was also submitted that judicial review was not an appeal from a decision but a review of the manner in which the decision was made. It was meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reached was necessarily correct in the eye of Court. *(2022 (13) SCC 329 (United Bank of India Vs. Biswanath Bhattacharjee) Para 18).*

23. The Learned Advocate representing the petitioner relied on following judgments:-

i. In ***Kanwar Lal Gupta v. Amar Nath Chawla & Ors.[1],*** the Hon'ble Supreme Court held as follows:-

> ***"51.*** *Now the material before us for estimating the expenditure which must reasonably have been incurred by the first respondent in connection with his public meetings is of two kinds; one consists of documentary evidence in the shape of Exs. PW 15/1-A, PW 15/1-B and PW 15/1-C and the other consists of oral evidence of witnesses. Since documentary evidence always carries greater weight and assurance than oral evidence and it is safer to rest a conclusion on documentary evidence rather than oral evidence which*

[1] (1975) 3 SCC 646

may sometimes be treacherously deceptive and difficult of correct evaluation, we would first examine the documentary evidence and see how far it helps us to determine the expenditure incurred by the first respondent. The petitioner called in evidence Permod Kumar (PW 15) and the docu-mentary evidence in the shape of Exs. PW 15/1-A, PW 15/1-B and PW 15/1-C was produced by this witness. This witness stated in his evidence that he carried on business of hiring out furnishings and electrical equipment and in course of his business he "hired out durries, stage, loudspeakers etc. to Respondent 1 during the election period". He produced from his Bill book carbon copies of three bills in respect of furnishings and electrical equipment hired out by him to the first respondent. One was Bill No. 263 dated February 20, 1971 for Rs 368, the other was Bill No. 270 dated February 24, 1971 for Rs 414.50 and the third was Bill No. 271 dated February 24, 1971 for Rs 360. He said that one or two days before the date of the first bill, the first respondent had come to him accompanied by Sat Prakash Makan and one other person whose name he did not remember and placed an order with him "with respect to all the three bills" and the furnishings and electric equipment mentioned in these three bills were supplied by him according to the order placed by the first respondent and the payment of the amounts of these three bills was made to him personally by the first respondent. The copies of these three bills were marked Exs. PW 15/1-A, PW 15/1-B and PW 15/1-C. The first respondent challenged the genuineness of these three bills and the learned Trial Judge felt serious doubt about the authenticity of these three bills and declined to act upon them. We do not think the learned Trial Judge was right in casting doubt on the genuineness of these three bills. There is absolutely no reason why these three bills should be regarded as unworthy of credibility. Permod Kumar (PW 15) who produced and proved these three bills is a completely independent witness who has no interest in one side or the other. It *was faintly suggested to him in cross-examination that he was a member of the Jan Sangh and he worked for Jan Sangh candidates in the election but this suggestion was stoutly denied by him and in fact there is nothing to show that he was in any way interested in the Jan Sangh. It was then put to him that he was a partner of one Padamchand Goel who was a member of the Delhi Municipal Corporation on Jan Sangh ticket. He admitted that there was a partnership between him and Padamchand Goel entered into in 1966 but that partnership was dissolved within three or four months after Padamchand Goel became a member of the Delhi Municipal Corporation. It does not follow merely because an erstwhile partner of this witness was a member of the Jan Sangh, that he too should be having interest in the Jan Sangh. It would be too much to presume that a person without any political affiliation cannot have any business relationship with a member of a political party, and if there is any business relationship, it must be presumed that both belong to the same political party. In fact we find from the carbon copies of bills Nos. 296 and 297 in the bill book Ex. PW 15/1 that this witness supplied material on hire even to the Youth Congress which is avowedly a Congress organisation. There is absolutely no reason suggested why this witness should have gone to the length of fabricating false documents for the purpose of supporting the case of the petitioner. The carbon copies of the bills Exs. PW 15/1-A, PW 15/1-B and PW 15/1-C find place in their proper serial order in a bound bill book and it is indeed difficult to appreciate how they could be subsequently introduced in the bill book unless of course the suggestion be that the whole of the bill book was fabricated for the purpose of this case. This was, however, not the suggestion made to the witness in cross-examination. In any event we have carefully gone through the whole of the bill book which is marked Ex. PW 15/1 and we do not find any indication in it which might betray that it is a subsequently got up bill book. Even the bill book for the* *immediately preceding period was produced by this witness and it is marked Ex. PW 15/2. That bill book contains carbon copies of bills commencing from No. 201 and ending with No. 250 and the bill book Ex. PW 15/1 starts from carbon copy of Bill No. 251 and ends with carbon copy of Bill No. 300. The carbon copies of the bills in both these bill books appear to be quite natural and regular and no valid reason has been suggested as to why we should regard them with suspicion. It is no doubt true that it was elicited in the cross-examination of this witness that he did not maintain any cash book or ledger or any other account book but that is not such an unusual circumstance as to lead us to believe that the carbon copies of the bills produced by him were not genuine. It is not at all improbable that the only record which the witness maintained was the bill book, because by the very nature of his business, the bill book would contain a complete record of the amount of hire received by him. The carbon copies of the bills not only show the names of the parties to whom materials are given on hire but also the dates and the particulars of the items and the hire charges in respect of the same. The witness also admitted in cross-examination that he did not maintain any receipt books but that is also not at all unusual. One does not need to have a regular receipt book. A receipt can always be given on the bill submitted to the customer. Then some minor discrepancies were sought to be shown in the carbon copies of one or two other bills in the bill book. One was in respect of Bill No. 256. It was pointed out to the witness that Bills Nos. 254 and 255 bore the date Feburary 15, 1971, while Bill No. 256 bore the date February 14, 1971 and he was asked how a later bill could bear an earlier date than the earlier bills. The witness pointed out that that was an obvious mistake and there is no doubt that it was so. It is apparent from the carbon copies of Bills Nos. 254, 255 and 256 that Bill No. 256 was in continuation of Bills Nos. 254 and 255, forming part of one single bill in the name of K.K. Bajaj, and since the latter* *two bills bore the date February 15, 1971, the former should also have been dated February 15, 1971, but through some obvious error the date came to be mentioned as February 14,1971. No point can be made of this obvious mistake. Then the attention of the witness was drawn to some bills in the bill books PW 15/1 and PW 15/2 which were shown as cancelled, and there was some cross-examination of the witness on this point. But we fail to see how this circumstance is of any help to the first respondent. It is clear from the bill bouks Exs. PW 15/1 and PW 15/2 that whenever a bill was cancelled, the original as well as the carbon copy were marked "cancelled" or crossed out. Now, there is nothing unusual in cancelling a bill if it is found that there is some mistake made while writing it out. This happens sometimes even to the most careful of men and is not a circumstance which should be regarded in any manner as suspicious. The important thing is that the originals as well as the carbon copies of the cancelled bills are retained in the bill books. That would show the regular manner in which the bill books are maintained by the witness. There are no blank bills in the bill books PW 15/1 and PW 15/2 which could have been utilised subsequently for the purpose of fabricating a bill as of an earlier date. The suggestion made in the cross-examination of course was that there were blank bills in the bill book PW 15/1 and these were utilised for the purpose of making out false bills in the name of the first respondent. But this suggestion is wholly unwarranted and is not supported by anything in the bill book PW 15/1 or PW 15/2. There are only three cancelled bills in the bill book PW 15/1. They are bills Nos. 253, 269 and 295. It will be seen that none of these three bills is blank. Each one of them has been made out in the name of some party or the other and then it has been cancelled. The same position obtains in regard to bills Nos. 207, 208 and 229 in bill book PW 15/2. It it apparent in the case of some of these bills that they were cancelled because of some mistake and then new bills* *were made out in the names of the same parties. Compare, for example, cancelled Bill No. 229 with Bill No. 231, cancelled Bill No. 208 with Bill No. 209 and cancelled Bill No. 253 with Bill No. 254. There is no reason why any blank unutilised bills should have been allowed to remain in the bill books. That is not done by people who maintain their accounts in the regular course of business. Permod Kumar (PW 15) could not have anticipated on February 20, 1971 that some blank bills might come in handy at a future point of time and he should, therefore, leave some blank bills in the bill books. It is also difficult to believe that there should have been a blank Bill No. 263 and again three continuous blank bills at Nos. 269, 270 and 271. We find it impossible to accept this theory of fabrication of bills Exs. PW 15/1-A, PW 15/ 1-B and PW 15/1-C by utilising blank bills in the bill book Ex. PW 15/1. Moreover, there is inherent evidence in these bills which indicates their genuineness. The charge for a complete stage of 12 feet × 10 feet size and 5 feet height with chuddar, durries and carpets is shown in the bill Ex. PW 15/1-A as Rs 40 per day. That appears to be quite reasonable compared to the ridiculously low figures given in the bills of Tandon Tent and Furniture House and Aggarwal Tent House. Similarly, the charge for one "loudspeaker service with five units and double mike with stand-by battery arrangements" is shown in the bill Ex. PW 15/1-A as Rs 90 and for one loudspeaker service with eight units and double mike with stand-by battery arrangements is shown in the bill Ex. PW 15/1-B as Rs 120 while according to the bills of Aggarwal Tent House and the receipt of Saini Electric Works, it would be only about Rs 6, because out of Rs 15 shown by them, a minimum amount of Rs 3 to Rs 4 would be taken up by cartage and labour charges and the hire of four floodlights at the rate of Rs 1.50 per floodlight would come to Rs 6. Is it possible to believe that in the year 1971 two microphones — even one, we may assume — with five loudspeakers and stand-by battery arrangements coupled with* *the services of an attendant to look after the unit could be available for Rs 6 for a period of about four hours in the city of Delhi? It is an insult to our intelligence to be told that the charge would be something as low as Rs 6 or for the matter of that, even Rs 15. Then again, it may be noticed that the bills Exs. PW 15/1-A and PW 15/1-B were in respect of hire charges for the material supplied at the public meetings at Tel Mandi on February 19, 1971 and Chuna Mandi on February 22, 1971. Both these public meetings were big public meetings which, according to the evidence, were attended by more than 2000 people and it is, therefore, quite reasonable to assume that a large number of durries must have been required at each of these two public meetings as mentioned in the bills Ex. PW 15/1-A and PW 15/1-B. The bill Exs. PW 15/1-C showing hire charges for sets of battery operated loudspeakers for announcing on scooter for two days is also quite natural because it is in evidence that announcements of public meetings were made from scooters and battery operated loudspeakers must have been utilised for the purpose. It is significant that the first respondent has not shown hiring of battery operated loudspeakers from any other party. We are, therefore, satisfied beyond doubt that the three bills Exs. PW 15/1-A, PW 15/1-B and PW 15/1-C are genuine and they correctly show the expenses incurred by the first respondent."*

ii. In ***High Court of Judicature at Bombay v. Shashikant S. Patil & Anr.***[2]**,** the Hon'ble Supreme Court observed as follows:-

"16. *The Division Bench of the High Court seems to have approached the case as though it was an appeal against the order of the administrative/disciplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the*

[2] (2000) 1 SCC 416

principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the enquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution."

iii. In ***United Bank of India v. Biswanath Bhattacharjee***[3]**, ,** the Hon'ble Apex Court held as follows:-

"18. *Apart from cases of "no evidence", this Court has also indicated that judicial review can be resorted to. However, the scope of judicial review in such cases is limited [T.N.C.S. Corpn. Ltd. v. K. Meerabai, (2006) 2 SCC 255 : 2006 SCC (L&S) 265] . In B.C. Chaturvedi v. Union of India [B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80] a three-Judge Bench of this Court ruled that judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eyes of the court. The court/tribunal in its power of judicial review does not act as an appellate authority; it does not reappreciate the evidence. The Court held that : (B.C. Chaturvedi*

[3] (2022) 13 SCC 329

case [B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749 : 1996 SCC (L&S) 80] , SCC pp. 759-60, paras 12-13)

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an enquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the enquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold enquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of the Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel [Union of India v. H.C. Goel, 1963 SCC OnLine SC 16 : (1964) 4 SCR 718 : AIR 1964 SC 364] , this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

24. On the cumulative strength of the submissions, the Learned Advocate prayed that this Court exercised its jurisdiction to set aside the order of dismissal dated 18th July, 2008 and the subsequent rejection of the statutory petition dated 26th May, 2009 and to direct reinstatement of the petitioner with all consequential benefits.

25. The Learned Advocate representing the respondents stoutly defended the disciplinary proceedings and the consequential orders of dismissal dated 18th July, 2008 and rejection of statutory petition dated 26th May 2009. It was submitted at the outset that the petitioner was an enrolled member of the disciplined arm force interested with the duty of regarding the international border and the allegations against him struck at the very root of institutional integrity.

26. It was contended that while posted with 127 Battalion, BSF at BOP Gitaldah and operationally sensitive area, vulnerable to cross border smuggling- credible information was received regarding the petitioner's involvement in

facilitating smuggling activities. A written complaint was lodged by the Company Commander after preliminary verification of the incident dated 17th October, 2007.

27. According to the Learned Advocate representing the respondents on the said date, the petitioner along with a co-accused, was found to have permitted smuggler to transport 350 bottles of Phensedyl across the border in exchange of illegal gratification of Rs.10,000/-. The respondent submitted that the quantity of contraband seized 350 Phensedyl bottles packed in seven bundles was substantial and the incident was not a trivial lapse, but a deliberate act prejudicial to good order and discipline within the meaning of Section 40 of the Border Security Force Act, 1968.

28. It was further emphasized that the proceedings were conducted strictly in accordance with the statutory framework of the BSF Act and Rules framed thereunder. Hearing under Rule 45 was duly conducted. The petitioner was informed of the charges and given opportunity to respond. Thereafter, a record of evidence was prepared in his presence and within his hearing. During the ROE, the petitioner was afforded full opportunity to cross-examine prosecution witnesses and to make a statement in defence. He did cross-examine the witnesses but chose not to produce any defence witness.

29. Upon consideration of the record of evidence, the Commandant found a *prima facie* case and ordered trial by Summary Security Force Court in terms of Rule 51. The SSFC trial was conducted over multiple dates in July, 2008. Seven prosecution witnesses and five court witnesses were examined. The petitioner again pleaded not guilty and was given opportunity to defend

himself. The proceedings, it was submitted, were in conformity with the principles governing military and paramilitary trials.

30. Addressing the petitioner's contention regarding reliance on the evidence of apprehended smuggler, the Learned Counsel submitted that the conviction was not based solely upon their statements but upon the cumulative assessment of oral testimonies, operational reports and surrounding circumstances. It was urged that members of the force who detected the smuggling attempt and other relevant witnesses corroborated the sequence of events. The evidentiary appreciation by the SSFC being a fact-finding authority under a special statute cannot be lightly interfered with.

31. With regard to the alleged absence of recovery of bribe money from the petitioner, the Learned Counsel submitted that recovery of tainted currency is not a *sine qua non* for establishing misconduct under Section 40 of the Act. The offence charged was one of misconduct, prejudicial to discipline, and the evidence on record sufficiently established connivance and dereliction of duty. The respondent contended that the amount of Rs.10,000/- was part of the evidence considered by the Court and the quantum of bribe whether large or small did not dilute the gravity of breach of trust by a border guard.

32. It was further submitted that the punishment of dismissal was proportionate to the seriousness of the misconduct, a member of a border guarding force, facilitating cross-border smuggling, compromise national security and institutional credibility. The respondents urged that in a disciplined force, integrity is non-negotiable and acts of corruption cannot

be viewed with leniency merely on the basis of length of service. It was further submitted that the statutory petition preferred by the petitioner was duly considered at the directorate level, the rejection dated 26th May, 2009 was issued after examination of the trial proceedings and findings and no procedural irregularity or miscarriage of justice was found warranting interference.

33. In conclusion, the Learned Advocate representing the respondent submitted that the disciplinary proceedings were conducted in strict compliance with the BSF Act and Rules. The petitioner was afforded full opportunity of defence. The finding of guilt was based on evidence duly recorded and the punishment imposed was commensurate with the gravity of the misconduct. It was therefore prayed that writ petition be dismissed.

34. The submissions advanced on behalf of the petitioner and the respondents travel along two distinct but intersecting trajectories.

35. The Learned Advocate representing the petitioner emphasised that the conviction rested substantially on statements of apprehended smugglers being interested witnesses facing penal consequences. No recovery of Rs.10,000/- was made from the petitioner. No marked currency, seizure memo, or independent documentary corroboration existed. The alleged bribe amount appeared economically incongruous when compared with 350 bottles of Phensedyl**.** Material inconsistencies in testimony were not reconciled in a reasoned manner. Log Book entries were not considered with regard to the presence of the petitioner on the alleged date and time of the

incident of connivance. The vital witnesses were not examined and the deposition was based on hearsay.

36. According to the Learned Advocate representing the respondents, departmental proceedings are not governed by strict criminal evidence standards. Testimony of smugglers found incredible is legally permissible. The conviction was based on cumulative appreciation of prosecution and other court witnesses not solely on smugglers' statements. Recovery of bribe money is not indispensable to establish misconduct under Section 40 of the Act. Integrity within a border force admits no compromise.

37. The respondents are correct that strict criminal standards do not apply. Yet the petitioner's contention regarding corroborative assurance cannot be dismissed as trivial. Where conviction relies substantially on testimony of accomplice like witnesses, prudential corroboration enhances reliability. The absence of recovery does not nullify misconduct, but strengthens the petitioner's plea that evidentiary articulation required greater depth.

38. The Court is conscious that the Border Security Force operates along thousands of kilometres of international border, a substantial portion of which remains vulnerable to narcotic and contraband trafficking. Statistical data placed in public domain by enforcement agencies indicate that seizures of Phensedyl and other codeine based cough syrup along Indo Bangladesh Border frequently run into tens of thousands of bottles annually. In such a theatre of operations, even a single instance of collusion by uniformed personnel has systematic ramifications.

39. The respondents have demonstrated as follows:-

i. A hearing under Rule 45 was conducted;
ii. A Record of Evidence (ROE) was prepared in the presence of the petitioner;
iii. Opportunity of cross-examination was granted;
iv. Trial by SSFC followed with examination of seven prosecution witnesses and five court witnesses;
v. A statutory petition was considered and rejected.

40. On the plane of a formal compliance, the process cannot be branded void.

41. Yet procedural compliance is the threshold of enquiry. The deeper question is whether the evidentiary appreciation and punishment determination reflect application of mind commensurate with the seriousness of dismissal.

42. The conviction rests significantly on testimonial evidence, including statements of apprehended smugglers. In disciplinary jurisprudence accomplice testimony is not inadmissible, however, long-standing principles of evidentiary prudence require corroborative assurance where testimony emanates from interested participants. The disciplinary proceedings are edificed on the concept of preponderance of probabilities rather than proof beyond reasonable doubt as in a criminal trial.

43. The following aspects, merits closer analysis:-

a. Absence of recovery of bribe money to be the alleged amount of Rs.10,000/-,
b. No recovery of tainted currency from the petitioner,
c. No marked currency operation,

d. No contemporaneous documents were seized i.e. seizure memo, call recording, transfer of bribe, documentary trial evidencing receipt.

44. In corruption related disciplinary matters across public services, empirical review of reported decisions indicates that recovery of tainted currency or demonstrably financial linkage significantly strengthens findings of guilt. While recovery is not indispensable, its absence heightens the need for corroborative strength elsewhere.

45. The allegation involved 350 bottles of Phensedyl. Assuming even a conservative black-market valuation, per bottle, the aggregate value of the consignment would substantial exceed the all amount of Rs.10,000/-. The Court does not intend to embark upon market speculation or nefarious activities. However, proportionality between alleged illegal gratification and scale of smuggling forms part of internal credibility analysis. Where an allegation presents economic improbability, reasoned articulation becomes essential.

46. The SSFC finding as reflected in the material materials does not indicate engagement with this aspect. Acceptance of the prosecution narrative appears conclusive rather than analytically reasoned.

47. It is settled that this Court shall not appreciate evidence as an appellate forum. Interference is warranted where findings are perverse, based on no evidence or without consideration of material factors.

48. The present case does not disclose absence of evidence. However, it reveals argument of inadequacy in articulation of how the evidence overcame the defence objections. The dismissal from service entails loss of livelihood, loss

of pensionary benefits, stigma affecting future employment, social and reputational consequences. The petitioner had rendered nearly 17 years of service prior to the incident. No misconduct has been cited.

49. The misconduct of alleged facilitation of smuggling is undoubtedly grave. In similar reported cases involving proven corruption in uniformed services, dismissal is commonly upheld. However, proportionality analysis requires that punishment correspond to the certainty of proof and surrounding circumstances.

50. Where evidentiary doubts though not sufficient to annul conviction, cast shadows upon the conclusiveness of guilt, a calibrated reconsideration of punishment is warranted.

51. This Court must avoid two extremes i.e. undermining institutional discipline by substituting its own factual conclusions and abdicating constitutional oversight in the face of procedural formality. This Court does not substitute its own factual conclusions, re-appreciate evidence as an appellate forum, dilute discipline within a uniformed force. However, constitutional oversight demands that punishment be anchored in reasoned evaluation, particularly where livelihood and reputation are adversely affected. Between outright annulment and uncritical affirmation lies a constitutionally balanced path.

52. The petitioner was appointed in the Border Security Force (hereinafter referred as “BSF”) as Engine Driver on 20.08.1995 at Rajasthan and Gujrat Frontier. In 2000, the petitioner was transferred at Assam Water Wing. Thereafter, the petitioner was posted at North Bengal Frontier Headquarter, Siliguri.

53. On 12.01.2008, Mr. Pratap Singh, A. C. Coy-Commander had submitted a report, i.e., Connivance case to the Commandant of 127 Battalion BSF.

54. On the basis of the aforesaid report, charge-sheet was issued upon the petitioner on 29.05.2008.

55. The Commandant, 127 Battalion BSF CBR (WB) had directed the Deputy Commandant of the Unit to prepare the Record of Evidence on 27.06.2008.

56. In the Record of Evidence, witnesses were examined and documents were exhibited. Seven persons were arranged as prosecution witnesses. Out of seven prosecution witnesses, three persons were smugglers. None of the witnesses could recollect the date of alleged incident, i.e. 17.10.2007. Prosecution Witness No. 5, Bhola Burman, one of the smugglers, stated he was present at the spot of the incident but he did not witness the exchange of money. Despite request, the Log Book was not exhibited and the questions asked by the petitioner were said to be irrelevant and not recorded during preparation of Record of Evidence.

57. At the time of preparation of Record of Evidence, first time, the petitioner came to know that on 08.01.2008, one of the smugglers, Milan Kumar Burman was detained on suspect movement near OP/NAKA No. 3 of BOP, Gitaldah by the Naka Party and on searching, nothing could be recovered from the possession of said Milan Kumar Burman. During the preliminary questioning, said Milan Kumar Burman had narrated the concocted story that on 17.10.2007, the petitioners had accepted bribe of Rs.10,000/- from smugglers and allowed them to carry 350 bottles of Phensedyl to Bangladesh. The said Milan Kumar Burman was released on the same day,

on 08.01.2008, on the basis of the assurance of the Prosecution Witness No. 3, Dinanath Burman, that all the smugglers would be present before the BSF authorities.

58. All five smugglers were present before the BSF authorities and signed letter dated 11.01.2008 in Bengali script, i.e. Exhibit "B", thereby specifically mentioning the date of incident, i.e. 17.10.2007. At the time of preparation of record of evidence and in trial before the SSFC, in both cases, only Milan Kumar Burman, Kartik Burman and Bhola Burman had deposed Dulal Burman and Profullo Burman had not been called for as witnesses. Profullo Burman was the only one person who knew Mahajan.

59. After preparation of the Record of Evidence, the Commandant of 127 Battalion BSF had passed an order thereby directing the petitioner to be tried by the Summery Security Force Court. The said trial commenced on 12.07.2008 and was completed on 18.07.2008.

60. At the time of Trial, the petitioner was further examined and statements were recorded. From the deposition of the smugglers, contradictions regarding the date of alleged incident and the statements recorded at the time of preparation of Record of Evidence were reflected.

61. The Log Book mentioned at page 12 of Affidavit-in-Reply, revealed on 16.10.2007 the boat point was Kashim Ghat and went to Badurkuti through Teen Bhagha River at 18.35 pm and returned to Kashim Ghat at 05.15 am and on 17.10.2007, the petitioner was not present at the place of occurrence, i.e., Kharja Gitaldah. The aforesaid Log Book and/or Naka Duty Chart of the Speed Boat was not considered in the Trial.

62. At the time of preparation of Record of Evidence as well as in the S.S.F.C., Trial, the smugglers stated that "Dhawa" was called by the petitioner. It was contended the petitioner had no power to call "Dhawa". There were three persons in the Speed Boat. The petitioner, R.L.Kamath, the petitioner in the writ petition being WPA No. 13868 of 2009 and Guard Commander. The said Guard Commander had the power to call "Dhawa". From the aforesaid Log Book, it was revealed that on 16.10.2007, the Guard Commander was J.D. Dung Dungand on 17.10.2007, the Guard Commander was Sukrip Singh and both the Guard Commanders had signed the said Log Book. Surprisingly, no Guard Commander was called for as witness in the S.S.F.C, trial and at the time of preparation of Record of Evidence the BSF authorities had declined the request of the petitioner to call the said Guard Commanders.

63. Mr. B. R. Burman and Mr. Viswa Kumar, Water Wing was also posted at the place of occurrence, i.e. Kharja Gitaldah, but they were not examined. Signature of the witnesses was not obtained on the deposition.

64. Constable Renjil K, witness called by the Court, specifically stated in the month of October, 2007, the water in the river was less and the motorized boat was not required. The distance of the Kashim Ghat and the place of occurrence, i.e. Kharja Gitaldah was more than one kilometer.

65. No money was recovered from the petitioner. As per Log Book, the petitioner was deployed at Kashimghat BOP on 17.10.2007. Except oral statements of the smugglers, no single document was submitted and/or exhibited by the BSF authorities thereby evidencing that the petitioner was present at Kharja

Gitaldah on 17.10.2007 and/or the smuggling was made on 17.10.2007. The phone call records and/or any investigation report was not exhibited.

66. The petitioner portrayed the dismissal as the culmination of a proceeding that though procedurally staged was substantively infirm resting upon interested testimony, non-citation and non-examination of independent witnesses, non-appreciation of logbook entries, unsupported by recovery of bribe money and marred by internal improbabilities concerning the alleged acceptance of Rs.10,000/- for facilitating smuggling of 350 bottles of Phensedyl.

67. The respondent in contrast projected the matter as one of institutional betrayal. A member of a disciplined border guarding force, compromising operational integrity in sensitive sector-where statutory procedure was meticulously followed and evidence, cumulatively appreciated, justified the severest penalty. The Court must examine where these narratives converge, and where they part.

68. The petitioner does not deny that Rule 45 hearing, preparation of record of evidence and SSFC trial, were conducted. His grievance is that these stages have been formalistic and the appreciation of evidence lacked depth and fairness.

69. The respondent emphasized that every statutory safeguard under the BSF Act and Rule was observed. The petitioner was informed of the charges, cross-examined witnesses, filed the defence statement and preferred a statutory petition. The process, they contended, satisfied procedural fairness.

70. On the face of the record, procedural steps were undertaken. The petitioner's challenge is thus not to the existence of process, but to its qualitative sufficiency, the distinction is material; procedural compliance in form does not foreclose judicial enquiry into whether findings were supported by reasoned consideration.

71. The disciplinary proceedings were conducted within statutory framework. However, considering the petitioner's challenge to reliance on interested testimony, non-examination of vital witnesses and proper appreciation of documents viz. log book etc., absence of recovery of alleged amount, need for articulated reasoning and internal coherence of allegation, the petitioner's long prior service and the irreversible nature of dismissal, the order of dismissal dated 8th July, 2008 as affirmed on 26th May, 2009 is set aside remitting the petitioner's case to the disciplinary authority based on the discussions and the opinion of this Court for reconsideration to be completed within 12 weeks from the date of communication of this order by the petitioner.

72. This direction preserves the autonomy of the force, reinforces discipline, and simultaneously affirm that punishment in a constitutional democracy, must reflect reasoned justice rather than unexamined severity.

73. Accordingly, the instant writ petition being WPA 13867 of 2009 stands disposed of. Connected application, if any, also stands disposed of.

74. There is no order as to costs.

75. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)