



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

LPA-113-2020 (O&M)
DATE OF DECISION: 30.01.2026

Union of India and others

...Appellants

Vs.

Kulbir Singh

...Respondent

**CORAM: HON'BLE MR. JUSTICE ASHWANI KUMAR MISHRA
HON'BLE MR. JUSTICE ROHIT KAPOOR**

Present: Ms. Puneeta Sethi, Advocate, Senior Panel Counsel, UOI with
Mr. Y.S. Thakur, Advocate, Senior Panel Counsel, UOI
for the appellants.

Mr. Varindra Pratap Singh, Advocate and
Mr. Gurman Singh, Advocate for the respondent.

ROHIT KAPOOR, J.

1. The appellants have assailed the judgment and order dated 31.05.2019 passed by the learned Single Judge in CWP-1034-2017, whereby the writ petition filed by the respondent-petitioner has been allowed and the orders dated 16.11.2015 and 13.02.2016, dismissing him from service and rejecting his statutory appeal, have been set aside and directions have been issued to the appellants to reinstate the writ petitioner with continuity of service and ancillary benefits. The learned Single Judge has however held that the respondent-petitioner shall not be entitled for back wages during the period he remained out of service.

2. The facts involved lie in a narrow compass. The respondent was enrolled in the BSF (Border Security Force) as a Follower (Cook) with effect



from 12.07.2000 and further re-mustered as a Constable on 28.11.2003. While posted on 90BN BSF Abohar, Punjab in the year 2015, he got the unfortunate news that his mother-in-law had passed away on 17.10.2015. It is claimed that since his wife was a disabled person, she could not handle the arrangements for the last rites by herself, and therefore, the respondent requested for leave, which was not acceded to. The last rites took place on 18.10.2015, in his absence. It is claimed by the respondent that while he was performing his duty at the sentry post near the officers' quarters in the late evening of 18.10.2015 itself, he got a call from his wife, and he got emotional and started crying. The Deputy Commandant of the Battalion came out of his residence and got furious on account of the respondent displaying such weak behaviour.

3. On the contrary, it is the case of the appellants that the respondent-petitioner was found by the superior officers in an inebriated condition, and he used threatening/abusive language qua his superiors in such drunken state.

4. It transpires that the respondent was taken in custody, however, undisputedly no medical examination was got conducted. An offence report was prepared on 19.10.2015 and the respondent was charged under Section 20(b) and Section 40 of the Border Security Force Act, 1968 (*in short*, '*Act of 1968*') for using '**insubordinate language**' to his superior officer and for committing an act prejudicial to good order and discipline of the force, since he had allegedly consumed illegally procured liquor from a civil wine shop, while proceeding on sentry duty. The respondent is alleged to have pleaded guilty to the second charge of consuming liquor and not guilty to the first charge. Record of evidence ('*ROE*') was ordered to be recorded under Rule 48 of The Border Security Force



Rules, 1969 (*in short*, 'Rules of 1969') and as per the appellants, a statement of the respondent under sub Rule 3 thereof, was recorded on 05.11.2015. A copy of the ROE along with Charge-sheet was alleged to have been supplied to the respondent on 09.11.2015.

5. The trial by the Summary Security Force Court ('SSFC') was held on 16.11.2015 and vide his verdict of an even date, the Commandant held the respondent guilty of both the charges and dismissed him from service. The respondent filed statutory appeal against the said order, which was rejected by the appellate authority vide order dated 13.02.2016, primarily on the ground that the respondent had been punished fifteen times in the past and had also overstayed his leave period and was a habitual indisciplined person.

6. Aggrieved by the aforementioned orders, the respondent approached the writ Court, which allowed his petition by *inter alia* observing as under:-

"17. It is evident that the respondents violated the provisions, ibid. Rule 134 of BSF Rules, 1969 clearly mandates that when any evidence is given in a language which the Court or the accused does not understand, that evidence shall be translated to the Court or accused, as the case may be, in a language which it or he does understand and for this purpose the Court shall either appoint an interpreter, or shall itself take the oath or affirmation prescribed for the interpreter at a Summary Security Force Court. No explanation has been rendered in the present case as to why the proceedings were not conducted in the language understood by the petitioner i.e. Hindi or why the translator was not provided. The purpose of such beneficial service rules is defeated if an employer is not following it and benefit thereof is denied to the employee.

18. Furthermore, there was violation of rule 49 ibid by the respondents inasmuch as there is nothing on record to show compliance of the proviso to Rule 49 ibid, which mandates that the accused shall be given reasonable time, which shall in no case be less than 24 hours after receiving the abstract of evidence, to make his statement. As stated, the evidence was recorded in English, a language not understood by the petitioner, the petitioner, therefore,



deserved adequate reasonable time to revert. Noncompliance of this mandatory requirement would obviously prejudice his defence.

19. *The respondents did not adhere to the provisions contained in Rule 122, *ibid*, as the petitioner was also denied opportunity of being heard with a friend during Summary Security Force Court proceedings. Thus, the very basic principles of natural justice in adducing the evidence were overlooked as the petitioner was not given a fair and effective chance to cross-examine the witnesses whose testimony forms the basis of holding the petitioner guilty. It is nowhere disputed that the petitioner did not know the English language. Yet record does not show if as per Rule 134 of the BSF Rules, 1969, the evidence adduced in English language in Summary Security Force Court proceedings was read-over in vernacular and explained to the petitioner.*

20. *In the course of arguments as also in the pleadings an emphatic stand has been taken that the petitioner is a habitual offender and during his entire service career has been held guilty as many as 15 times and, therefore, the order awarding him the punishment of dismissal from service has been rightly passed. However, a perusal of the charge-sheet as also the punishment order (Annexure P-10) reflects that there is not even a whisper in respect of the past service record of the petitioner. No doubt, if the charge-sheet contained an allegation of petitioner being habitual offender, he would have had an opportunity to defend himself qua the same and the respondent-BSF was entitled to agree or disagree with the said defence and proceed accordingly. Not only the charge-sheet even the punishment order (Annexure P-10) does not mention the past service record of the petitioner i.e. being a habitual offender to be the ground of his dismissal from service. This omission in the initial punishment order (Annexure P-10) negates the contention that the past conduct of the petitioner justified the said order. It is settled position that the punishment order should speak for itself and the case cannot be improved upon by the appellate order or on the basis of pleadings filed in the Court. The stand of habitual offender only in the impugned appellate order (Annexure P-11) and in the return filed by the respondents in response to the present writ proceedings has, therefore, to be disregarded.*

21. *I am also of the view that the charge of the petitioner having been found inebriated is also to be viewed with certain suspicion in the absence of any medical examination having been carried out upon the petitioner. If found intoxicated during duty hours, having regard to the nature of job of combat services, the delinquent employee, without any manner of doubt, would not deserve the sympathy either of the employer or of this Court. The same is, however, subject to certain safeguards to be observed keeping in view the basic human rights of an employee. The conclusive proof of intoxication cannot, therefore, be mere levelling of the charge or*



word of mouth of witnesses produced at the instance of the employer. Concrete and reliable proof thereof can only be the medical examination which is based on cogent scientific findings which are more or less irrefragable given the scientific precision of this day and age.

*22. Learned counsel for the respondents has laid emphasis on the admission of the petitioner qua the delinquency of his having been found in intoxicated state. I have gone through the said confession which has been recorded in English and was recorded in the presence of Second Commandant who enjoyed position of superior authority and dominance over the petitioner in the hierarchy. The petitioner was/ is merely a Cook/ Constable and he would dare not disobey any direction of his superior and would sign on the dotted lines, without even flinching an eye-lid, regardless of the fact, whether the same was in Hindi or English. As already noted above, the petitioner does not know and understand English language. Had the confession been recorded in Hindi, it might have been a possibility, but only a possibility and nothing more, that he would have gathered the courage of raising an objection, either at the time of signing the confession or later on, during Summary Security Force Court proceedings. That situation did not arise at all for the petitioner, owing to the respondents non-compliance of the BSF Rules, *ibid*.*

*23. Even otherwise, awarding of major punishment of dismissal from service is akin to economic death penalty for a delinquent employee and it has to be resorted with extra caution. Not only it is loss of livelihood for the employee, but the entire family is reduced to live in penury and made to suffer consequences for rest of their lives. Owing to the stigma attached, it is impossible for a person to get any employment elsewhere. Reliance can be placed on **Union of India & Ors. Vs. Sri Sankar Prosad Ghosh & Anr. 2008(5) SLR 170**, wherein it has been held as under:-*

*“13. It would be naive to say as on today, that livelihood is not a part of right to life. By this time, by a large number of decisions, it has been held by the Hon'ble Supreme Court as well as High Courts in this country that livelihood is an integral facet of right to life. In this connection, a decision of the Hon'ble Supreme Court rendered in the case of *State of Himachal Pradesh v. Raja Mahendra*, reported in AIR 1999 SC 1786. may be remembered.*

14. Dismissal from services undoubtedly is taking away the livelihood of a person at an advanced stage because at that stage, it is impossible for a person to get any employment elsewhere as the order of dismissal will be treated as a disqualification. Loosing a job in an establishment amounts to a civil death, as the concerned person will not be in a position



to earn livelihood at the advanced stage, when all his energies and endeavours have almost come to a diminishing stage.”

24. As a result of the above discussion and the reasons contained therein, the writ petition is allowed. Impugned orders dated 16.11.2015 (Annexure P-10) and 13.02.2016 (Annexure P-11) are hereby set aside. Consequently, the respondents are directed to reinstate the petitioner with continuity of service and other ancillary benefits. However, the petitioner shall not be entitled for back wages during the period he remained out of service.”

7. The learned Senior Panel Counsel, appearing on behalf of the Union of India (in short ‘*UOI*’) has at the very outset argued that the learned Single Judge has misconstrued the provisions of the Act of 1968 and Rules framed thereunder. It is contended that Rule 49 of the BSF Rules, mandates giving of a minimum twenty-four hour notice to the accused after receipt of Abstract of Evidence (‘*AOE*’), to make his statement. It is submitted that in the instant case, what was ordered was an ROE under Rule 48 and not an AOE under Rule 49, and as such no such minimum time period of twenty four hours, was required to be given to the respondent, before recording his statement under sub rule (3) of Rule 48. It is further contended that the findings of the learned Single Judge like the charge-sheet not containing the allegations of misconduct and the respondent being denied the opportunity of a ‘friend of the accused’, are against the record. It is submitted that in fact a fair opportunity was provided to the respondent to cross examine the witnesses, which was declined.

8. It is urged that the respondent did not raise any objections during the proceedings of the ROE and SSFC, and thus could not have been permitted to raise such grounds in the writ petition. It is further argued that the respondent did not request for translation of the statements in Hindi or any other language, and in any case the same were read over and explained to him in Hindi, and the said fact



was duly acknowledged by him by appending his signatures. As regards the issue regarding conducting medical examination for the purpose of ascertaining whether the respondent had consumed liquor, it is argued that the respondent had himself pleaded guilty to the said charge, and therefore there was no such requirement. Lastly, it was argued with vehemence, that the respondent was found guilty on fifteen earlier occasions, and there was no place for such habitual offenders in a disciplined force like the BSF.

9. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in **'Union of India and others vs. Dev Singh, (2007) 15 SCC 709**, to contend that objections regarding correctness of preliminary proceedings as well as non-compliance of mandatory provisions of law, could have only been taken at the initial stage of the proceedings. Further reliance has been placed on **Avtar Singh and others vs. Gurdial Singh and others, (2006) 12 SCC 552** and **Mritunjoy Sett vs. Jadunath Basak (D) by Lrs, (2011) 3 SCC 402** to contend that admissions are the best form of evidence against the maker.

10. *Per contra*, learned counsel appearing on behalf of the respondent while controverting the submissions made on behalf of the appellants, has argued that perusal of the records would reveal that the entire proceedings leading to the punishment of the respondent were conducted in a biased and premeditated manner, in complete derogation of the statutory provisions and principles of natural justice, and without providing any real opportunity to the respondent to defend himself. It is contended that the respondent was only frustrated on account of his inability to attend the last rites of his mother-in-law, which was taken as an act of weakness by the superior officers and the extremely harsh



punishment of termination from service was awarded to him on the basis of unsubstantiated allegations by misuse of the dominant position of the superior officers. It is submitted that the charge-sheet and the ROE were not supplied to the respondent prior to the SSFC hearing, and his signatures were taken on the acknowledgement sheet, without appending the same. It is further contended that the entire record and evidence was prepared in English language, which was not understood by the respondent, who was merely a matriculate, and therefore the proceedings stood vitiated being in direct violation of Rule 134 of the Rules of 1969. Learned counsel has pointed out several other procedural lapses such as failure to appoint an ‘**independent**’ friend of the accused; to conduct medical examination for ascertaining the charge regarding intoxication; and lack of opportunity to lead proper evidence. It is argued that the premise of earlier offences and unauthorized absence could not have been taken as a ground for the first time during appellate proceedings, since the same never formed the basis of the charge nor the respondent was given any opportunity to offer any explanation or defend himself in this regard. It is submitted that even otherwise the alleged period of overstaying the leave, stood extended/regularized by the Unit and could not be a consideration for awarding punishment under Section 20(b) and Section 40 of the Act of 1968.

11. Learned counsel for the respondent has placed reliance on two judgments rendered by Hon'ble Division Benches of the Delhi High Court in the cases titled as **Kaushal Kishor Rai and another vs. Union of India and others, (2014) SCC On Line Del 852** and **Balwinder Singh vs. Union of India and others, (2010) SCC On Line Del 2209**. The first case deals with the issue regarding



necessity of conducting medical examination, where there is a charge of intoxication, while on duty, while the latter deals with the effect of procedural lapses on part of the Court, while delivering punishment to the accused.

12. We have heard the learned counsel for the parties and have perused the material available on record.

13. Before proceeding further, it would be apposite to refer to some of the relevant statutory provisions, which are extracted hereunder:

I. BSF Act, 1968:-

“20. Striking or threatening superior officers.—Any person subject to this Act who commits any of the following offences, that is to say,—

- (a) uses criminal force to or assaults his superior officer; or*
- (b) uses threatening language to such officer; or*
- (c) uses insubordinate language to such officer;*

shall, on conviction by a Security Force Court,—

(A) if such officer is at the time in the execution of his office or, if the offence is committed on active duty, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

(B) in other cases, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned:

Provided that in the case of any offence specified in clause (c), the imprisonment shall not exceed five years.

xxx... xxx... xxx...

40. Violation of good order and discipline.—Any person subject to this Act who is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and discipline of the Force shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.”

II. BSF Rules, 1969:-

“40. Rights of a person under arrest.- (1) (a) Any person placed under arrest shall, at the time of being placed under arrest, be given



in writing by the officer effecting the arrest the particulars of the charges against him.

(b) The said particulars shall be rendered in simple language and also explained to the accused.

xxx... xxx... xxx...

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 xxx... xxx... xxx...]

(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 whatever 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) xxx... xxx... xxx...

(7) xxx... xxx... xxx...

(8) xxx... xxx... xxx...

49. Abstract of evidence.- *(1) An abstract of evidence shall be prepared either by the officer ordering it or an officer detailed by him.*

(2) (a) The abstract of evidence, shall include;

(i) signed statements of witnesses wherever available or a precis thereof;

(ii) copies of all documents intended to be produced at the trial.

(b) Where signed statements of any witnesses are not available a precis of their evidence shall be included.

(3) A copy of the abstract of evidence shall be given by the officer making the same to the accused and the accused shall be given an opportunity to make a statement if he so desires after he has been cautioned in the manner laid down in sub-rule (3) of Rule 48: Provided that the accused shall be given such time as may be reasonable in the circumstances but in no case less than twenty four hours after receiving the abstract of evidence to make his statement.

xxx... xxx... xxx...



122. Defending Officer, Friend of Accused and Counsel:- (1) *At any General or Petty Security Force Court an accused person may be represented by a counsel or by any officer subject to the Act who shall be called "the defending officer" or assisted by any person whose services he may be able to procure and who shall be called "the friend of the accused".*

(2) *The defending officer shall have the same rights and duties as appertain to a counsel under these rules and shall be under the like obligations.*

(3) *The friend of the accused may advise the accused on all points and suggest the questions to be put to the witnesses, but he shall not examine or cross-examine the witnesses, or address the Court.*

XXX...

XXX...

XXX...

134. Evidence when to be translated.- (1) *When any evidence is given in a language which the Court or the accused does not understand, that evidence shall be translated to the Court or accused as the case may be in a language which it or he does understand.*

(2) *The Court shall for this purpose either appoint an interpreter, or shall itself take the oath or affirmation prescribed for the interpreter at a Summary Security Force Court.*

(3) *When documents are produced for the purpose of formal proof, it shall be in the discretion of the Court to cause as much to be interpreted as appears necessary.*

14. Perusal of the Rules of 1969, would show that necessary safeguards are provided therein, as regards the rights of an accused and the manner in which the trial is to be conducted. Harmonious reading of the same would show that the accused is required to be given a fair and real opportunity to defend himself, keeping in view the principles of natural justice.

15. However, what emanates from the gamut of facts is that the respondent was not given a fair opportunity in breach of the statutory scheme and principles of natural justice. It is undisputed that the respondent was a simple matriculate and was not well conversant with the English language, yet the ROE, Statement under Rule 48 (3), entire proceedings during the hearing of the SSFC, were conducted in a language he did not understand. Despite there being a Medical Officer attached with the Unit, the respondent was neither medically



examined on the evening when he was arrested, nor on the subsequent day, to ascertain the allegations regarding the alleged illegal consumption of liquor. There is no material available on the record to substantiate the alleged purchase of alcohol from a civil wine shop before proceeding for sentry duty, which forms the basis of the second charge. Although, it so recorded that an opportunity to cross-examine the prosecution witnesses was in fact provided, however records would reveal that the respondent is alleged to have declined the opportunity of cross-examination at the time of recording of evidence (ROE) as well as during the course of trial. The necessary requirement of providing a 'friend of accused' as mandated under Rule 122, was not carried out in its true letter and spirit, as three pre-selected names were provided, rather than permitting the respondent to choose an independent person to assist/defend him in the proceedings. There is nothing on record that the said 'friend of accused' advised the respondent and assisted him in the manner required under the said Rule.

16. What is shocking to note is that although, the copy of the ROE and charge-sheet were allegedly supplied to the respondent on 09.11.2015, after taking his signatures on the acknowledgement, however, perusal of the charge-sheet would reflect that the same was in fact dated 12.11.2015, which clearly reflects that the entire proceedings were in fact a farce, and the said fact alone lends credence to the finding of the learned Single Judge, that the respondent was made to sign on dotted lines, and it is a case of abuse of dominant position.

17. Several other incoherences are reflected from perusal of the record such as the fact that while offence report mentions the first offence as one under Section 20(b) of the Act of 1968, however, it is described as "*using insubordinate*



language to his superior officer”, while in the charge-sheet it is alleged that he used ‘*threatening language*’ to his superior officer i.e. Sh. Surender Tokas, DC/ADJT. Interestingly, the first persons who are stated to have met the respondent at the time of alleged incident, as per the ROE are Sh. Gurnam Singh, DC (MT), SHQ, Abohar and Sh. Anil Kumar Singh Tomar, DC 90 BN, BSF, who have both not mentioned anything as regards the use of any offensive/threatening/abusive language, by the respondent.

18. Coming to the rival contentions made on behalf of the parties, we find that the argument of the learned counsel for the UOI, regarding there being no requirement of giving any minimum time, as envisaged under proviso to Rule 49(3), in matters pertaining to record of evidence under Rule 48, is misconceived. The provisions of the Rules have to be read keeping in view the object thereof, which require providing sufficient opportunity to an accused to understand the nature of allegations and material brought against him/her, and to provide a fair opportunity to prepare his/her defence. It cannot be the legislative intent that such opportunity is only provided to the accused in matters pertaining to recording of abstract of evidence. The second argument regarding the findings of the learned Single Judge as regards failure to appoint ‘friend of accused’, being against the record is also misconceived, in as much as, the so called opportunity was a mere eye wash, as observed by us hereinabove. The argument regarding past offences/misconduct of the respondent, can also not be accepted, when the same was not a ground taken in the punishment order nor the respondent was provided an opportunity to defend himself in that regard. The judgments cited by the appellants, would not come to their aid, as the principles enunciated therein,



would not be applicable in the peculiar facts and circumstances involved in the present matter, as noticed hereinabove.

19. We find force in the arguments of the learned counsel for the respondent-petitioner that the failure to conduct medical examination; to translate the statements of the prosecution witnesses; the ante-dated acknowledgement receipt etc. would all be factors, which would shake the very edifice of the entire SSFC trial proceedings.

20. We find ourselves in respectful agreement with the learned Single Judge that the trial proceedings stood vitiated on account of denial of fair opportunity and non-compliance of the mandatory statutory provisions, and therefore the impugned orders cannot be sustained.

21. In that view of the matter and for the reasons recorded above, we do not find any merit in the present appeal, which is dismissed, with no order as to costs.

22. The pending applications, if any, shall stand disposed of accordingly.

(ASHWANI KUMAR MISHRA)
JUDGE

(ROHIT KAPOOR)
JUDGE

30.01.2026
mohit goyal/raj

<i>Whether speaking/reasoned :</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable :</i>	<i>Yes</i>	<i>No</i>