



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

Judgment Reserved on: 13.08.2024
Judgment Pronounced on: 28.08.2024

+ W.P.(C) 3294/2023
RAJNEESH

.....Petitioner

Through: Mr. Vinod Dahiya, Mr. Saaranish
Sharma and Mr. Vandana Dahiya,
Advts.

versus

UNION OF INDIA

.....Respondent

Through: Mr. Rishabh Sahu, SPC with Mr.
Sameer Sharma, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J

1. The present petition under Article 226 of the Constitution of India emanates from the Summary Security Force Court (SSFC) proceedings which convicted the petitioner on the basis of his purported 'plea of guilty' for his alleged role in smuggling of 'phenesdyl' from Bangladesh to India and consequently, awarded him dismissal from service vide the impugned order dated 19.01.2022, against which a statutory petition filed by him before the Inspector General, Border Security Force (BSF) came to be dismissed vide the other impugned order dated 05.04.2022. Thus, the



petitioner has sought quashing of the impugned orders besides praying for reinstatement in service with all due benefits accruing to him.

2. Brief facts are such, the petitioner joined the BSF as a Constable (General Duty) on 15.05.2012. While being posted to perform his duties at 158th Battalion, BSF at Border Out Post (BOP) in Khararmath, he was, on the night of 2/3rd October, 2021, detailed for 'Ambush Cum Patrolling' (ACP) between 0001 to 0600 hours at duty point 36A at BOP, Khararmath. During the said period, an incident of smuggling took place, wherein the petitioner has been alleged to have facilitated in the act of smuggling of phenesdyl syrup from Bangladesh to India.

3. Based on this incident, a Record of Evidence (ROE) was held, upon consideration whereof, the Commandant notified the petitioner on 17.01.2022 that he would be tried by the SSFC under Sections 70 and 74 of the BSF Act, 1968 on a Charge under Section 40 of the BSF Act for acts 'prejudicial to the good order and discipline of the Force'. A copy of the Charge-Sheet was served on the petitioner on 18.01.2022 and the SSFC proceedings were thereafter held on 19.01.2022. Upon conclusion of trial, the petitioner was held guilty of the Charge on the basis of a 'plea of guilty' and was consequently dismissed from service without pensionary benefits.

4. It is the case of the petitioner that on 20.01.2022, when he was instructed to put his signatures on certain documents before receiving the copy of the SSFC's order, it was the first time that he came to know that he had been held guilty under Section 40 of the BSF Act and had been dismissed from the service. The petitioner upon learning about his dismissal, filed a statutory petition against the said order of dismissal on 04.02.2022 under Rule 28A of the BSF Rules before the Inspector General (IG),



Frontier Headquarter, BSF, South Bengal. However, the IG, BSF dismissed his petition vide order dated 05.04.2022, in the meanwhile Deputy Inspector General (DIG) SHQ, Kolkata, BSF, had confirmed the sentence during the pendency of the first appeal before the IG.

5. Dissatisfied with the aforesaid order, the petitioner on 09.05.2022 submitted an application/request letter for a personal hearing to the Director General (DG), BSF, Delhi, seeking a fresh fair trial and his reinstatement in service. However, this application/request letter came to be dismissed on 14.06.2022, leading to the filing of the present petition.

SUBMISSIONS OF THE PARTIES

6. Mr. Vinod Dahiya, learned counsel for the petitioner contended that even though the findings of the SSFC have also been assailed on merits, the same are liable to be set aside on the sole ground of procedural defects itself. The SSFC proceedings, he contended have been conducted without complying with the BSF Act and Rules. In fact, even the ROE proceedings of the SSFC were also vitiated, having been completed after an inordinate delay. The ROE, he submitted, was to be completed on 05.12.2021 but was completed only on 24.12.2021.

7. To point out the defects further, the learned counsel submitted that there was a blatant violation of Rule 63(6) of the BSF Rules, a copy of the Charge-Sheet was not supplied to the petitioner 24 hours before the commencement of the trial by the SSFC as contemplated under the said Rule. Therefore, non-compliance with Rule 63(6), he contended, had led to gross injustice, thereby impairing the right of the petitioner to have sufficient time to prepare his defence.



8. He submitted that the petitioner was not given any opportunity to prove his defence, instead the Commandant coerced him to plead 'guilty'. Even though, the signatures of the petitioner were obtained on the said plea of 'guilty', he was not made aware of its contents and therefore, the SSFC proceedings ran contrary to Rule 142(1) and (2) rendering the said plea of 'guilty' invalid. Moreso, the SSFC completed the trial in barely 50 minutes on 19.01.2022, which in itself is sufficient to establish that the trial was conducted hastily and in a mechanical manner thereby giving a complete go-bye even to the rules of natural justice, leading to miscarriage of justice. Additionally, the petitioner was denied an opportunity to appoint 'friend of the accused' during the SSFC trial, as required by the BSF Rules and was instead forced into accepting Inspector Ram Khilari Yadav as the 'friend of the accused'.

9. The learned counsel asserted that even Rule 134 of BSF Rules was violated as evidence was not recorded or explained in a language that the petitioner understood, whereas it was incumbent upon the Commandant to enquire from the petitioner about the language he was conversant with so as to enable him to understand the evidence on record. He contended that the findings of SSFC were based on no substantial evidence and there is no material on record to sustain or corroborate the Charge leveled against the petitioner. He, therefore, urged that the punishment awarded to him by the SSFC, which was conducted not only in blatant violation of the mandatory statutory provisions but also without giving the petitioner an opportunity to prove his defence, be set aside.

10. Mr. Dahiya further submitted that to assail the findings of the SSFC, the petitioner filed a statutory appeal to IG, which was also decided in a



casual manner by simply relying on the order of the SSFC without appreciating the facts of the case, the material on record and the testimony of the witnesses, which would have shown that the petitioner had been erroneously charged and held guilty. Further, the DIG, SHQ, BSF, Kolkata, he contended, had confirmed the sentence without even considering the fact that the petitioner's appeal before the IG was pending. Moreso, his request letter to the DG was also rejected in a mechanical manner without going through the facts and circumstances of the case.

11. Learned counsel finally submitted that the respondent miserably failed to acknowledge that the petitioner had received 12 'Good' decoration rewards with no adverse remarks in his service of 9 years 8 months and 5 days. Based on his outstanding service record, the punishment of dismissal imposed on him was even otherwise disproportionate.

12. Learned counsel by citing the following decisions, contended that in these facts and circumstances, the petitioner's 'dismissal' was unjust and warrants quashing by this Court:

i. Constable Uma Shankaran v. Union of India and Others: 2019 SCC OnLine Del 7739.

ii. Ex. Head Constable Moti Singh v. Union of India and Ors.: 2017 SCC OnLine Del 7523.

13. On the other hand, while refuting the pleas of the petitioner, Mr. Rishabh Sahu, learned counsel for the respondent contended that there was overwhelming evidence on record to prove the involvement of the petitioner in cross border smuggling of 'phensedyl'. Moreover, during the ROE which was conducted with utmost due diligence, the petitioner was afforded an opportunity to make a statement in his defence to which he declined. Thus,



after examining the ROE, the Commandant decided to hold the SSFC. The entire disciplinary process was conducted by scrupulously following the provisions of BSF Act and Rules and there were no procedural deficiencies, whatsoever.

14. Learned counsel further submitted that the petitioner had received the copy of the Charge-Sheet and the ROE well before 24 hours from commencement of the trial as required by Rule 63(6) of BSF Rules. The petitioner was given ample opportunities to defend himself at every stage and the Court of Inquiry had also been conducted fairly wherein the petitioner was found blameworthy for being involved in smuggling having connived with a civilian.

15. Learned counsel submitted that the SSFC proceedings were initiated on 19.01.2022 and during the trial, the Charge-Sheet was read over to the petitioner in the language, he understood. Thereupon, the Court explained to the petitioner, the meaning of the Charge and ensured that he understood the nature of Charge to which he voluntarily pleaded guilty. He was also briefed about the difference in procedure, if he did not plead guilty. Moreso, his signatures and that of his friend were taken in compliance of provision of Rule 142(2) of BSF Rules. Accordingly, the SSFC trial was based on the petitioner's voluntary plea of 'guilty', which was concluded in a short time, only on account of him having pleaded guilty.

16. In addition to the above, the learned counsel contended that the petitioner had failed to point out any irregularity in the procedure that was followed by the ROE and the SSFC or how the sentence awarded to him did not commensurate with the gravity of the offence he was charged with, to which he pleaded guilty. He submitted that merely having a clean record



could not ameliorate the severity of the offence and does not absolve the petitioner of the serious Charge proved against him. The petitioner, as a member of the Armed Forces deployed to combat trans-border crimes including smuggling, failed in his duties by colluding with the smugglers and also attempted to involve fellow personnel in these illegal activities. This conduct violated the highest standards of discipline and morality expected from a BSF personnel. He, therefore, prayed that the present petition be dismissed, being devoid of merits.

ANALYSIS AND CONCLUSION

17. We have carefully considered the submissions addressed on behalf of the parties and perused the record submitted before us.

18. At the outset, we may deal with the contention of learned counsel for the respondent that under Article 226 of the Constitution of India, the High Court does not function as an Appellate Court to re-evaluate the evidence and may only review the decision-making process to determine if any infirmity existed that would invalidate the decision of SSFC. It is the respondent's plea that as no such infirmity exists in the present case, there was no occasion to exercise the extraordinary jurisdiction under Article 226 of the Constitution of India.

19. In order to appreciate the plea of the respondent, it would be apposite to note that though the scope of interference in exercise of extraordinary powers vested in the High Courts under Article 226 of the Constitution of India is limited, the exercise of these powers is certainly warranted in cases where there is an error of jurisdiction or violation of principles of natural justice or if any manifest error of law apparent on the face of record as also in a case where the order impugned has been passed malafidely or with a



bias. This Court is conscious of the fact that military and paramilitary personnel are governed by Special Statutes, which are complete Codes in themselves and the procedure prescribed therein is to be followed in cases governed by these statutes. The same, in our considered opinion, does not place an embargo on this Court to exercise its powers under Article 226 where a case is found to be squarely covered by the aforesaid parameters, as held in a catena of decisions of the Hon'ble Supreme Court as well as Co-ordinate Benches of this Court.

20. In this background, the issue that we are required to adjudicate is whether the petitioner has been fairly tried by the SSFC with due compliance of BSF Act and Rules particularly, when the petitioner disputes to have pleaded 'guilty'.

21. Before us, the learned counsel for the petitioner strenuously urged that the petitioner was placed under open arrest on 18.01.2022 and was in the evening provided with incomplete copies of the ROE and Charge-Sheet and that the SSFC commenced its proceedings at 1200 hours on the very next day i.e. on 19.01.2022, within less than 24 hours of him being provided with the copies of the aforesaid. Thus, making it extremely difficult for the petitioner to understand the nuances of the Charge as also the procedure and to appear before SSFC to adequately defend himself in this limited period of time, the learned counsel emphasized that the SSFC proceedings be set aside on this ground alone.

22. It is not in dispute that on 29.11.2021, the Commandant ordered for preparing the ROE, which was forwarded to him on 25.12.2021, the said record is running into 29 pages with 9 witnesses having been examined on behalf of the respondent. On 17.01.2022, the petitioner was conveyed vide a



written communication that he would be tried by SSFC on 19.01.2022 at 1030 hours on the Charge leveled against him under Section 40 of the BSF Act. The said communication, apart from intimating the petitioner to furnish the name of the person to be appointed as his 'friend of accused' and granting him a liberty to engage a legal practitioner to assist him for his defence, also records that a copy of the Charge-Sheet as also the ROE were enclosed therewith. However, according to the petitioner, not only incomplete copies of the ROE and Charge-Sheet were provided to him but he was also not given full 24 hours' time for examining the said documents leading to clear infraction of Rule 63(6).

23. In this regard, we may notice that the provision regarding the preparation of defence by the accused person is prescribed under Rule 63 of BSF Rules which, inter-alia, includes the procedure to be followed by SSFC while holding the trial. Rule 63 (1) reads as under:

“(1) An accused, who has been remanded for trial, shall be afforded proper opportunity for preparing his defence and shall be allowed proper communication with his defending officer or counsel and with his witnesses.”

24. Rule 63(4) further reads:

“(4) as soon as practicable after a decision has been taken to place the accused on trial and in any case not less than four days before his trial he shall be given:

(a) a copy of the charge-sheet;

(b) an unexpurgated copy of the record or abstract of evidence showing the passages (if any), which have been expurgated in the copy sent to the senior member;

(c) notice of any additional evidence which the prosecution intends to adduce; and

(d) if the accused so requires, a list of the ranks names and units of the members who are to form the Court and of any waiting members.”

25. Rule 63(6), in particular, lays down:-



(6) the provisions of sub-rules (2) and (3) shall not apply in relation to a trial before a Summary Security Force Court and in relation to such a trial the period of four days referred to in sub-rule (4) shall be construed as twenty four hours.

26. Having perused the aforesaid extract of Rule 63 of the BSF Rules, we find substance in the submission of the learned counsel for the petitioner that copies of the Charge-Sheet and ROE proceedings were not furnished to the petitioner 24 hours before the commencement of the trial. No doubt, as per the record of the SSFC, the petitioner was provided with a copy of the Charge-Sheet and ROE on 18.01.2022, but no time is specified therein as to when the said documents were furnished to him on the said date. It is also not in dispute that the SSFC proceedings commenced on 19.01.2022 at 1200 hours, even though the petitioner on 17.01.2022 itself had been informed that the SSFC shall commence at 1030 hours on 19.01.2022. The respondent has not furnished any explanation as to why despite opportunity to provide the aforesaid documents to the petitioner on 17.01.2022 itself, when he was informed that he would be tried by the SSFC, they waited till 18.01.2022. In any event, the respondent has failed to show that they had furnished the copy of the Charge-Sheet and ROE to the petitioner more than 24 hours before the commencement of the SSFC. Even though, as per Rule 63, the said documents were mandatorily required to be provided to the petitioner atleast 24 hours before commencement of the trial.

27. We also find merit in the petitioner's plea that it would not have been possible for him, in such a short time, to prepare his defence after going through the statements of all the witnesses and the documents running into 29 pages but the respondent seemed to be in a hurry to conclude the trial and



pronounce the sentence thereby implying that holding of SSFC was merely an empty formality.

28. It is well settled that a disciplinary inquiry / trial by the Security Force Court is not meant to be conducted mechanically as a mere formality, but should be held in accordance with the principles of natural justice and the laid down procedure, so as to enable the disciplinary authority to take an informed decision. The entire purpose of issuance of a Charge-Sheet is to enable the noticee to respond to the allegations on the basis of which, action against him is proposed. In these circumstances, we are of the considered view that the respondent had acted in violation of the Rules by not providing copies of the Charge-Sheet and the ROE to the petitioner atleast 24 hours before the trial.

29. Coming to the next submission of the petitioner that he was coerced by the Commandant to plead 'guilty' to the Charge, who without explaining him about the contents of the Charge, had made him sign the 'plea of guilty'. Further, even his 'friend of accused' was not one of his choice.

30. We find that Rule 142 provides for recording of the plea of 'guilty' or 'not guilty' of an accused and lays down the elaborate procedure regarding the manner in which this plea has to be recorded. It provides that on the accused pleading guilty before a finding of guilt is recorded, the Court is essentially required to ascertain whether the accused understands the nature and meaning of the Charge to which he has pleaded guilty; he must also be informed of the general effects of that plea and of the difference in procedure to be followed upon taking the plea of 'guilty'. Additionally, if it appears from the record or the abstract of evidence that the accused ought to have pleaded 'not guilty', the Court is required to advise the accused to



withdraw that plea of ‘guilty’ and proceed with the trial after recording a plea of ‘not guilty’.

31. In this regard, reference may be made to a recent decision of the Apex Court in the case of *Union of India and Others vs. Jogeshwar Swain*, (2023) 9 SCC 720, wherein the Apex Court emphasized upon compliance of procedure as provided under Rule 142(2) before accepting the ‘plea of guilty’ of the accused. The relevant observations thereof read as under:-

*“42. Before acting on the plea of guilty, compliance of the procedural safeguards laid down in sub-rule (2) of Rule 142 is important as it serves a dual purpose. **First, it ensures that before pleading guilty the accused is aware of not only the nature and meaning of the charge which he has to face but also the broad consequences that he may have to suffer once he pleads guilty.** This not only obviates the possibility of an uninformed confession but also such confessions that are made under a false hope that one could escape punishment by pleading guilty. **The other purpose which it seeks to serve is that it ensures that confessions do not become an easy way out for deciding cases where marshalling of evidence to prove the charge becomes difficult.** It is for this reason that sub-rule (2) of Rule 142 requires an SSFC to advise the accused to withdraw the plea of guilty if it appears from the examination of the record or abstract of evidence that the accused ought to plead not guilty. Since, the procedure laid in sub-rule (2) of Rule 142 serves an important purpose and is for the benefit of an accused, in our view, its strict adherence is warranted before accepting a plea of guilty.”*

(Emphasis supplied)

32. To sum up the legal position, we may note that Rule 142 is to be strictly adhered to, by the officer holding the SSFC. In the present case, it emerges from the record that the SSFC was convened on 18.01.2022 wherein the Commandant, 158th BN, BSF was the Presiding Officer of SSFC with Inspector Ram Khilari Yadav having been appointed as a ‘friend of accused’ of the petitioner. The proceedings of SSFC commenced on 19.01.2022 in the presence of the petitioner. The Charge, after being



translated, was explained to him and the Presiding Officer enquired from the petitioner whether he pleads 'guilty' or 'not guilty' to the Charge against him. The answer of the petitioner is recorded in the proceedings as follows:-

“Ans. Guilty”

33. Further, we have also perused the original records of the SSFC proceedings that were produced before us from which it appears that the proceedings were conducted in a most slipshod manner with the Commandant, who was the Presiding Officer, having prepared the record of the SSFC proceedings in advance, which is evident as all the pages of the proceedings were pre-typed. Only some blanks were left to be filled for recording the answer of the petitioner to plead guilty/not guilty which alone were during the proceedings filled in 'Pen'.

34. Interestingly, from the original record, it also emerges that the Commandant's signatures were placed on each page of the proceedings at the 'bottom right corner' reflecting a pattern. The said signatures are undated and appear uniformly on all the pages of the proceedings at the very same place on each page. Further, what is particularly unusual is that these signatures of the Commandant are also appearing on another set of the proceedings, which too were evidently prepared in advance, apparently to deal with a situation where the petitioner would have pleaded 'not guilty'.

35. It is further surprising that even on the proceedings sheet on which the plea of 'guilty' of the petitioner has been recorded, the undated signatures of the Commandant, like in the previous sheets, appear. However, the Commandant has again signed on the said sheet with the date after recording the purported plea of 'guilty' of the petitioner, which also bears the signatures of the petitioner and his next friend with date. Notably, on some



proceeding sheets, the signatures of the Commandant are also not affixed immediately beneath the contents of the proceedings but are appearing at the same place i.e. bottom right corner.

36. From the aforesaid, it clearly emerges that the signatures of the Commandant were appended before the start of the SSFC proceedings, and the proceeding sheets were all pre-typed having been prepared in advance. Though, it is seriously disputed by the petitioner, even if, we were to accept the respondent's plea and assume that he had pleaded 'guilty' it is evident that the procedure as prescribed by Rule 142(2) was not followed in its true letter and spirit, thereby making the recording of the plea of 'guilty', a mere formality. We seriously doubt that the petitioner understood the contents of the Charge and consequences thereof, as well as those of his pleading guilty to the same.

37. Thus, in view of the above, the SSFC proceedings/sheets, though claimed to be conducted in the presence of the petitioner, had actually been prepared in advance and merely the plea of 'guilty' was recorded in the presence of the petitioner on 19.01.2022. Moreso, as far as the award of sentence proceeding is concerned, the same is also pre-typed, leaving the blanks to be filled in the proceeding sheet.

38. It is further relevant to note that after recording the plea of 'guilty', the Commandant by borrowing the language contained in Rule 142(2) made a note at page no. 5 of the SSFC, which reads as under:-

"The accused having pleaded Guilty to the charge, the Court read and explains to the accused the meaning of the charge to which he has pleaded Guilty and ascertains that the accused understands the nature of the charge to which he has pleaded Guilty. The court also inform the accused in the language he understands, the general effect of that plea and the difference in procedure which will be followed



consequent to the said plea. The Court having satisfied itself that the accused understands the charge and the effect of his plea of guilty and satisfied from the record/abstract of evidence or otherwise that there is no need for the accused to withdraw his plea of guilty, accepts his plea and records the same.

The provisions of Rule 142(2) are complied with.”

39. From what has been noted hereinabove, it is clear that the plea of ‘guilty’ was recorded first and thereafter the petitioner, was perhaps informed about what was laid down in Rule 142(2). The manner in which the plea of ‘guilty’ was recorded in the trial, when examined in the light of other surrounding circumstances, we are constrained to hold that either the petitioner never pleaded ‘guilty’ to the Charge or his plea of ‘guilty’ as recorded by the Court was not voluntary. We are, therefore, of the considered view that the right of the petitioner to have a fair trial before the SSFC has been violated and he has been condemned unheard without following the principles of natural justice.

40. In the light of the aforesaid, we have no hesitation in holding that the SSFC proceedings including the award of sentence of ‘dismissal from service’ awarded to the petitioner are vitiated. At this stage, we may also note that the SSFC without indicating any reasons or referring to any evidence proceeded to conclude as under:-

“VERDICT OF COURT

I am of the opinion on the evidence before me that accused No. 124519398 CT/GD Rajneesh of 158 Bn BSF is guilty of the charge.”

“SENTENCE BY THE COURT

Taking all these matter into consideration. I, now sentence the accused No. 124519398 Rank CT/GB Name Rajneesh of 158 Bn BSF to “be dismissed from service”

41. For the foregoing reasons, the SSFC, having been conducted in blatant violation of Rule 63(6) and Rule 142(2) of BSF Rules, is liable to be



set aside. **We, accordingly, allow the writ petition and set aside the impugned orders dated 19.01.2022 and 05.04.2022.** We direct the respondent to reinstate the petitioner in service w.e.f. the date of his dismissal from service i.e. 19.01.2022 with all consequential benefits. However, taking into account the nature of Charge leveled against the petitioner, we grant the respondent liberty to conduct a *de novo* trial and direct that the same be concluded within three months.

42. Having dealt with the claims raised in the present petition, we may also note that this Court has been coming across a number of cases where the SSFC proceedings are being conducted in a lackadaisical and perfunctory manner by disregarding the rules and procedures laid under the BSF Act and Rules. It is also being noticed that despite there being no urgency, SSFC proceedings are being conducted in almost every case as a matter of routine. The provisions providing for other kinds of Security Force Courts which lay down more elaborate procedure for trial are very rarely being resorted to. This raises a serious concern as any deviation from the Rules and the laid down procedure during the trial not only compromises the rights of the accused but also results in grave injustice especially in cases where the trials, pertaining to misconduct committed by the Force personnel, ends with an award of a major penalty of dismissal from service. Such a harsh penalty can have a lifelong implications not only for the officer involved but for this entire family.

43. It, thus, becomes incumbent upon the Officers conducting the SSFC proceedings to be properly trained and sensitized of the manner in which the SSFC proceedings ought to be conducted, i.e. by giving due regard to the rules and procedures outlined in the BSF Act and Rules. The Presiding



Officers holding the SSFC must understand that these trials are not just mere formalities but are a fundamental aspect of ensuring justice and maintaining discipline in the Force by following the prescribed procedure. The Presiding Officers have to be sensitized on these matters in order to safeguard the rights of the accused as well as the commitment of the Force in upholding the rule of law and maintaining the highest standards of discipline within its ranks. Failure thereof, will only result in miscarriage of justice, for both the individuals as well as the Force.

44. We, therefore, direct the respondent that Officers, who hold SSFCs, be provided mandatory regular trainings on the subject of conducting the SSFC proceedings in accordance with law. Copy of this order be sent to DG, BSF, BSF Hqtr, CGO Complex, New Delhi.

(SHALINDER KAUR)
JUDGE

(REKHA PALLI)
JUDGE

AUGUST 28, 2024/ss/km