



2025:DHC:3615-DB



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

Reserved on: 12.02.2025
Pronounced on: 13.05.2025

+ W.P.(C) 768/2007

DESH RAJ

.....Petitioner

Through: Mr. Ishan Sanshi, Ms. Sagrika
Wadhwa and Ms. Poorvashi
Kalra, Advs.

versus

DIRECTOR GEN. B.S.F. & ANR.

.....Respondents

Through: Ms. Pratima N. Lakra, CGSC
with Mr. Chandan Prajapati and
Mr. Kashish G. Baweja, Advs.
for UOI.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J.

1. The present petition has been filed by the petitioner, assailing the Order dated 04.08.2006 passed by respondent no. 2, whereby the petitioner was dismissed from service. The petitioner has further challenged the Order dated 07.11.2006 passed by respondent no. 1, upholding his dismissal from the service.

BRIEF FACTS

2. The facts, as far as are relevant to the present petition, are that the petitioner was enrolled as a Constable in the Border Security Force ('BSF') on 25.04.1988. Upon completion of his basic recruitment



training at the 68th Battalion BSF, he was posted to the 34th Battalion BSF and joined the said Unit on 13.02.1989, where he was posted to "C" Company.

3. In March 2006, "C" Company of the 34th Battalion BSF was deployed along the Indo-Bangladesh border in the District of North Tripura, with its Company Headquarters at Border Outpost ('BOP') Heerachera and a Platoon post at BOP Magroli. The petitioner, being part of the Platoon, was performing duties at BOP Magroli.

4. At this stage, it may be noted that the allegation leveled against the petitioner is that between 08.03.2006 and 10.03.2006, while being deployed on duty at the Observation Post ('OP') Nos. 2 and 3, he abandoned his assigned posts without the permission of his superior officers, and illegally crossed into Bangladesh alone, carrying his personal weapon.

5. Based on the aforesaid allegation, a Court of Inquiry was conducted on 18.03.2006 to look into the incident. Whereafter, a hearing of Charge under Rule 45 of the Border Security Force Rules, 1969 ('BSF Rules') was conducted on 21.04.2006. Consequent to the said proceedings, the Commandant directed the preparation of the Abstract of Evidence. The Abstract of Evidence and then the Additional Abstract of Evidence were thereafter prepared in accordance with Rule 49 of the BSF Rules.

6. Following completion of the said proceedings, the matter was forwarded to the Sector Headquarters BSF Panisagar for pre-trial advice. The Sector Headquarters, *vide* communication dated



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04.07.2006, advised that the petitioner herein be tried by a Summary Security Force Court ('SSFC'). Accordingly, a Charge-Sheet was

The accused No. 886889346 Constable Desh Raj 'C' Coy

(now 'B' Coy) of 34 Bn BSF is charged with:-

CHARGE-I

BSF ACT 1968

Sec-16 (d)

LEAVING HIS PICQUET WITHOUT ORDERS

FROM HIS SUPERIOR OFFICER

issued to the petitioner under Rule 53 (2) of the BSF Rules, detailing six Charges, and a copy thereof was served upon him on 01.08.2006.

The Charges are reproduced as under:

In that he,

at 0630 hrs on 8th March 06, being on OP duty at OP point No.3 of BOP Magroli, 34 Bn BSF, left the said observation post without orders from his superior Officer.

CHARGE-II

BSF ACT 1968

Sec-16 (d)

LEAVING HIS PICQUET WITHOUT ORDERS
FROM HIS SUPERIOR OFFICER

In that he,

at 1200 hrs on 9th March 06, being on OP duty at OP point No.2 of BOP Magroli, 34 Bn BSF, left the said observation post without orders from his superior Officer.

CHARGE-III

BSF ACT 1968

Sec-16 (d)

LEAVING HIS PICQUET WITHOUT ORDERS
FROM HIS SUPERIOR OFFICER

In that he,

at 0630 hrs on 10th March 06, being on OP duty at OP point No.3 of BOP Magroli, 34 Bn BSF, left the said observation post without orders from his superior Officer.

CHARGE-IV

BSF ACT 1968

Sec-40

AN ACT PREJUDICIAL TO GOOD ORDER
AND DISCIPLINE OF THE FORCE

In that he,

While on OP duty at OP Point No. 3 of BOP Magroli, 34 Bn BSF, on 08 March 2006 at



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about 0630 hrs, illegally crossed over to Bangladesh with his personal weapon and visited house of Sajid Ali, resident of village Dastakki, Bangladesh, a known smuggler and returned to India at about 1030 hrs on the same day through BP NO. 1845/27-S.

CHARGE-V
BSF ACT 1968
Sec-40

AN ACT PREJUDICIAL TO GOOD ORDER
AND DISCIPLINE OF THE FORCE

In that he,

at about 1230 hrs, on 09 March 2006, approached Ashiq Mian, resident of village Magroli, PS-Kailashahar, Tripura (North) who was grazing his cattle ahead of border fencing, to call Gayasuddin, resident of Village Dastakki, Bangladesh, a known smuggler.

CHARGE-VI
BSF ACT 1968
Sec-40

AN ACT PREJUDICIAL TO GOOD ORDER
AND DISCIPLINE OF THE FORCE

In that he,

while on OP duty at OP Point No. 3 of BOP Magroli, 34 Bn BSF, on 10 March 2006, illegally crossed over to Bangladesh with his personal weapon and returned to India at about 0930 hrs on the same day through BP No. 1845/36-S.

7. The petitioner was thereafter tried by the SSFC between 03.08.2006 and 04.08.2006. The SSFC proceedings were presided over by the Commandant, 34th Battalion BSF. During this hearing, the petitioner pleaded "not guilty" to all the Charges, and the trial proceeded on his plea of not guilty. Upon conclusion of the trial on 04.08.2006, the petitioner was found guilty of the first, third and sixth



Charges, and the SSFC awarded the punishment of Dismissal from Service to the petitioner, *vide* Impugned Order dated 04.08.2006.

8. Aggrieved thereof, the petitioner submitted a Statutory Petition under Section 117(2) of the BSF Act before the respondent no.1. The statutory petition was, however, rejected as being devoid of merit, and the decision was communicated to the petitioner *vide* Order dated 07.11.2006.

9. Dissatisfied with the dismissal of the Statutory Petition, the petitioner has approached this Court and has invoked the writ jurisdiction, seeking quashing of the dismissal Order dated 04.08.2006 as well as the Order dated 07.11.2006 of the respondent no.1 and has prayed for reinstatement into service.

SUBMISSIONS OF THE PETITIONER

10. Mr. Ishan Sanshi, the learned counsel for the petitioner, submitted that disciplinary proceedings are to be set aside as the same display serious procedural defects. Apart from this, he submitted that the findings of the SSFC are not based on any evidence and that there exists no material on record to sustain the Charges leveled against the petitioner or the findings of guilt. More so, the disciplinary authority did not record any reasons in support of its finding of guilt against the petitioner on the Charges framed. In support he placed reliance on the judgement of the Supreme Court in ***Mohinder Singh Gill and Anr. v. Chief Election Commissioner, New Delhi & Ors.*** (1978) 1 SCC 405.

11. Drawing attention of this Court to Rule 148 of the BSF Rules, he submitted that the said Rule mandates that after hearing the



evidence for the prosecution and the defence, the Security Force Court is required to give its opinion as to whether the accused is guilty or not guilty of the Charge(s) and that such opinion must be supported by reasons. In support he placed reliance on the judgement of this Court in ***Nirmal Lakra & Anr. v. Union of India*** 102 (2003) DLT 415 (DB).

12. To elaborate upon the procedural irregularities, the learned counsel further submitted that the petitioner was not provided the assistance of a legal practitioner or any other competent person of his choice, and that the respondents had thrust upon the petitioner the services of Shri Bhupender Sharma, who did not provide any assistance to the petitioner. He submitted that the proceedings before the SSFC are, therefore, vitiated on this ground alone, as the petitioner was denied a reasonable opportunity to defend himself, in violation of Rule 157 of the BSF Rules.

13. He submitted that there has been a violation of Sub rule (3) of Rule 109 as well, which mandates that the court shall give reasonable facilities to the accused in making his defence, which, it is contended, the petitioner has been denied. He further submitted that as per Rule 49 of the BSF Rules, the accused is to 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. He submits that that, however, in violation of Rule 49 of the BSF Rules, the petitioner did not get sufficient time to prepare for his defence.



14. To further show that a right of fair trial was not accorded to the petitioner, the learned counsel submitted that on 04.08.2006, after completion of the cross-examination of all prosecution witnesses, the petitioner was produced before the SSFC at 0900 hours and, as a result, he had no reasonable opportunity to arrange witnesses for his defence, in view of the additional evidence led by the respondents.

15. In support of his submissions, the learned counsel has placed reliance on the judgment of the Gauhati High Court in **Director General, Border Security Force and Ors. v. Iboton Singh (KH)** 2007 SCC OnLine Gau 419.

16. Even on merits, the learned counsel submitted the conviction cannot be sustained as there were material contradictions in the statements of Shri Jagdish Singh, Manohar Ali, and Kalid Mian (Witnesses No. 7, 3, and 1 respectively) as recorded during the Court of Inquiry and in the proceedings before the SSFC.

17. The learned counsel submitted that the disciplinary authority failed to acknowledge an important fact that whenever any person, irrespective of rank or status, is regulated through the fence gate, an entry is mandatorily required to be made in the gate In-Out register. He pointed out that, admittedly, no entry was made to the effect that the petitioner had crossed ahead of the fencing in any gate In-Out register, which is admitted by the PW1, 2 and 3. He submitted that the respondents, thus, have miserably failed to establish that the petitioner had crossed the border unauthorizedly and illegally as alleged by them.



18. He, therefore, prayed that the writ petition be allowed, and the respondents be directed to reinstate the petitioner with all consequential benefits.

SUBMISSIONS OF THE RESPONDENTS

19. Ms. Pratima N. Lakra, the learned CGSC for the respondents, at the outset, while seeking dismissal of the petition, submitted that in matters relating to Court Martial proceedings, the scope of judicial interference is limited and can be exercised only where there is a complete absence of evidence, an error apparent on the face of the record, or a violation of principles of natural justice or any statutory provision, and since none of these have transpired, the present petition is not maintainable.

20. While disputing any procedural irregularities, the learned CGSC submitted that the petitioner was afforded a fair opportunity to defend himself during the SSFC trial and the trial was conducted in accordance with the provisions of the BSF Act and the BSF Rules, and the principles of natural justice were duly followed. The petitioner had cross-examined the witnesses produced by the Department and declined to produce any witness in his defence. More so, the petitioner did not raise any plea regarding the alleged contradictions in the testimony recorded during the pre-trial proceedings as also the trial, and that the said submission has been made before this Court as an afterthought.

21. The learned CGSC further emphasized that the SSFC, after due consideration of the material and evidence on record, found the



petitioner guilty of three Charges and he was also equitably discharged for the other three charges. He was awarded the punishment of ‘dismissal from service’, which is proportionate to the gravity of the offences proved against him and is perfectly justified.

22. She submitted that a Departmental Proceeding is not like a criminal trial, and the SSFC is not required to furnish reasons for its findings. In support placed reliance on ***Union of India & Anr. v. Dinesh Kumar***, (2010) 3 SCC 161.

23. To conclude her submissions, the learned CGSC urged that the competent authority had carefully examined the material and evidence on record while rejecting the Statutory Petition filed by the petitioner as being devoid of merit. She submitted that, therefore, no infirmity can be attributed to either the order of the SSFC or to that of the competent authority. Thus, the writ petition filed by the petitioner is devoid of merit and is liable to be dismissed.

ANALYSIS AND CONCLUSION

24. We have considered the submissions made by the learned counsels for the parties and carefully perused the record as well as the original record of the SSFC proceedings produced before us by the respondents.

25. Before opining on the conflicting claims as raised by the parties, it is relevant to note the settled position in law that the proceedings before the SSFC are not open to be reviewed by this Court in the manner of an appellate forum. The scope of interference of this Court under Article 226 of the Constitution of India is



circumscribed. We may quote the relevant extract from the **Director General, Border Security Force** (supra), which reads as under:-

“12. Since the entire procedure of a trial by SFC is provided in the BSF Act and the Rules made thereunder and since the provisions contained therein require that the findings reached, and the sentence passed, against and accused by a SFC, be considered by a competent authority for the purpose of confirmation thereof, such confirmation of the findings and sentence by such an authority shall be final and shall not be, ordinarily, interfered with by invoking the power of judicial review under article 226. Though it is true that notwithstanding the finality attached to the proceedings of a SFC, which stands confirmed by a competent authority, the High Court shall not, ordinarily, exercise its power of judicial review by invoking article 226, the fact remains that constitutionally, there is no limitation, on the power of the High Court, to examine, under article 226, if there has been any infraction of the provisions of the relevant enactments resulting into miscarriage of justice. Thus, for the limited purpose of determining if the proceedings of a SFC have been conducted in accordance with the requirements of the law, the High Court's power, under article 226, would always remain available. The power, under article 226, will also be available to find out if there has been violation of the principles of natural justice, while conducting the trial and whether such violation has vitiated the entire proceedings. The power of judicial review, so exercisable, does not, however, empower the High Court, if one can point out, to sit on the findings of a SFC or on the proceedings of a SFC as an appellate authority and re-appreciate the findings for the purpose of determining if the evidence were sufficient for the conclusion reached. However, when the



findings reached are found to be perverse and/or contrary to, or in violation of, the provisions of the law relevant thereto and if such infraction has resulted, in the opinion of the High Court, failure of justice, it becomes the duty of the High Court to step in under article 226 and undo the wrong. If the High Court sits over the findings of a SFC as if it is sitting as an appellate authority, then, such an approach of the High Court would amount to overstepping its jurisdiction.”

26. From the aforesaid decision, it thus emerges, that while exercising power under Article 226 of the Constitution, this Court cannot act as an Appellate Court, and it is not within its purview to re-appreciate the evidence; the extraordinary jurisdiction can be exercised where the findings recorded are manifestly perverse or unsupported by any evidence on record, or where the procedure adopted suffers from violations of the principles of natural justice or mandatory statutory provisions, or where the punishment imposed is so grossly disproportionate to the offence as to shock the conscience of this Court.

27. In view thereof, it is to be determined whether in the present case, the SSFC had followed the procedure as per law and whether the SSFC committed any omission that has prejudiced the petitioner's right to a fair trial. Further, it is to be determined if the evidence led by the respondents is insufficient or contradictory, leading to perverse finding of 'Guilty'.



28. As far as the submission of the learned counsel for the petitioner on lack of reasons, it is apposite to refer to Rules 148 and 149(1) of the BSF Rules, which are reproduced as under:-

*“148. **Verdict.**- The Court shall after the evidence for prosecution and defence has been heard, give its opinion as to whether the accused is guilty or not guilty of the charge or charges.*

*149. **Finding.**- (1) The finding on every charge upon which the accused is arraigned shall be recorded and except as mentioned in these rules shall be recorded simply as a finding of ‘Guilty’ or of ‘Not Guilty’.*

(2) When the Court is of opinion as regards any charge that the facts proved do not disclose the offence charged or any offence of which he might under the Act legally be found guilty on the charge as laid, the Court shall find the accused ‘Not Guilty’ of that charge.

(3) When the Court is of opinion as regards any charge that the facts found to be proved in evidence differ materially from the facts alleged in the statement of particulars in the charge, but are nevertheless sufficient to prove the offence stated in the charge, and that the difference is not so material as to have prejudiced the accused in his defence, it may, instead of a finding of ‘Not Guilty’ record a special finding.

(4) The special finding may find the accused guilty on a charge subject to the statement of exceptions or variations specified therein.

(5) The Court shall not find the accused guilty on more than one of two or more charges laid in the alternative, even if conviction upon one charge necessarily connotes guilty upon the alternative charge or charges.”



29. In this regard, we may note the decision of the Supreme Court in **Dinesh Kumar** (supra), wherein the Supreme Court has held as under:

“23. In this backdrop, it is clear that the provisions for the SSFC and the appellate authority are pari materia, more particularly in case of Rule 149 and Section 117(2) of the Act, with the provisions which were considered in both the above authorities. Therefore, there cannot be any escape from the conclusion that as held by the Constitution Bench, the reasons would not be required to be given by the SSFC under Rule 149 or by the appellate authority under Section 117(2) of the Act. This position is all the more obtained in case of SSFC, particularly, as the legislature has chosen not to amend Rule 149, though it has specifically amended Rule 99 w.e.f. 9-7-2003. It was pointed out that in spite of this, some other view was taken by the Delhi High Court in Nirmal Lakra v. Union of India [(2003) 102 DLT 415] . However, it need not detain us, since Rule 149 did not fall for consideration in that case. Even otherwise, we would be bound by law declared by the Constitution Bench in S.N. Mukherjee v. Union of India”

30. We may also quote the decision in **S.N. Mukherjee v. Union of India**, (1990) 4 SCC 594, where the Supreme Court interpreted Rule 66(1) of the Army Rules, 1954, to observe that no reasons are required to be recorded and held as under:-

“44. From the provisions referred to above it is evident that the judge-advocate plays an important role during the course of trial at a general court martial and he is enjoined to maintain an impartial position. The court martial records its findings after



the judge-advocate has summed up the evidence and has given his opinion upon the legal bearing of the case. The members of the court have to express their opinion as to the finding by word of mouth on each charge separately and the finding on each charge is to be recorded simply as a finding of “guilty” or of “not guilty”. It is also required that the sentence should be announced forthwith in open court. Moreover Rule 66(1) requires reasons to be recorded for its recommendation in cases where the court makes a recommendation to mercy. There is no such requirement in other provisions relating to recording of findings and sentence. Rule 66(1) proceeds on the basis that there is no such requirement because if such a requirement was there it would not have been necessary to make a specific provision for recording of reasons for the recommendation to mercy. The said provisions thus negative a requirement to give reasons for its finding and sentence by the court martial and reasons are required to be recorded only in cases where the court martial makes a recommendation to mercy. In our opinion, therefore, at the stage of recording of findings and sentence the court martial is not required to record its reasons and at that stage reasons are only required for the recommendation to mercy if the court martial makes such a recommendation.”

31. From the above, it emerges that the SSFC is not required to provide detailed reasons for its findings, but has to give its opinion as to whether an individual is ‘guilty’ or ‘not guilty’ of the Charges framed against him. Thus, what needs to be determined is that whether, to arrive at its verdict and findings, the SSFC has followed the procedure prescribed under the BSF Act and Rules.



32. In the present case, as would be manifest from the original record of the SSFC proceedings, the SSFC initiated the Trial on 03.08.2006. After providing a friend of the accused, all the witnesses were directed to withdraw from the Court and thereupon, the petitioner was queried whether he had any objection to the appointment of ASI (Min) M. Prabhakaran, 34 Bn, BSF as the Stenographer of the Court, to which the petitioner replied in the negative. Thereupon, the Charge-Sheet was read over (translated) and explained to the petitioner. The prosecution examined seven witnesses and three additional witnesses, and the petitioner was duly given an opportunity to cross-examine them. Some of the witnesses were also re-examined.

33. The provision of Rule 90 of the BSF Rules was followed, as the evidence of the witnesses was read over to the petitioner. Further, the Court had intended to examine additional prosecution witnesses to adduce additional evidence, which was not contained in any Abstract of Evidence given to the petitioner. Following Rule 85 of the BSF Rules, the petitioner was given copies of the exhibits and reasonable time before the evidence was adduced by the aforesaid witnesses, and after considering the prayer of the petitioner, the matter was adjourned for 04.08.2006. Thereafter, the prosecution evidence was closed, and the petitioner was given an opportunity to lead evidence in defence. Although the petitioner declined to examine any witness in defence, however, he submitted a written statement in his defence. After the defence was closed, the findings of the Court were given. It is



pertinent to note that the petitioner, at no stage during the proceedings, objected to the procedure being followed, nor did he raise any contention regarding inadequate opportunity to present his defence.

34. From the proceedings of the SSFC, we may note, that the procedure as provided under BSF Act and Rules was duly followed. In compliance with Rules 148 and 149(1) of the BSF Rules, the SSFC gave its opinion that the petitioner was guilty of the first, third and sixth charges and not guilty of the second, fourth and fifth charges.

35. Moving on to the next contention raised by the petitioner regarding the alleged violation of Rule 109(3) of the BSF Rules, it becomes necessary to examine the said provision, which reads as under:

“109. Power of Court over address of prosecutor and accused.-

XXXXX

(3) The Court shall give reasonable facilities to the accused, in making his defence; the accused must abstain from any remarks contemptuous or disrespectful towards the Court, and from coarse and insulting language towards others, but he may for the purpose of his defence impeach the evidence and charge other persons with blame and even criminality, subject, if he does so, to any liability which he may thereby incur. The Court may caution the accused as to the irrelevance of his defence, but shall not, unless in special cases stop his defence solely on ground of such irrelevance.”

36. As already noted hereinabove, that the petitioner duly cross-examined the witnesses cited by the prosecution. Upon the conclusion of the recording of statements of all prosecution witnesses, the petitioner was afforded an opportunity to produce witnesses in his



defence, which he declined. However, he submitted a written statement in support of his defence.

37. Furthermore, during the stage of the hearing of Charge as well, the petitioner was specifically asked whether he wished to cross-examine the witness, which he declined. He was also informed of his right to make a statement in his defence, whereupon his statement was recorded verbatim and appended to the proceedings. In view of the aforesaid, it cannot be said that the petitioner was not afforded a reasonable opportunity to defend himself, and this plea of the petitioner also falls flat.

38. In his rejoinder, the learned counsel for the petitioner contended that the Abstract of Evidence should have been provided to the petitioner at least 24 hours before the trial, a requirement which, according to the petitioner, was not met. However, we find no merit in this plea. A perusal of the record clearly shows that the petitioner duly signed the receipt for the copy of the Abstract of Evidence on 28.04.2006. Furthermore, the petitioner also received the additional Abstract of Evidence well in advance, as evidenced by his signature on the receipt dated 25.05.2006. It is noteworthy that the trial by the SSFC commenced on 03.08.2006. Therefore, the plea raised by the petitioner regarding the non-compliance of the said provision is without merit.

39. One of the contentions raised by the learned counsel for the petitioner is that the petitioner was not afforded the assistance of a legal practitioner or a competent person of his own choice, and that



the services of Shri Bhupender Sharma were imposed upon him by the respondents. However, the petitioner has neither placed on record any communication requesting the assistance of any other person of his choice, nor has any material been brought forth to show that such a request, if made, was denied by the respondents. Moreover, the petitioner has been unable to demonstrate how the representation provided was inadequate or prejudicial to his defence. In the absence of any supporting material, this contention remains a bald assertion, devoid of any substance. Thus, we do not find merit in the said plea.

40. Hence, in view of the above, it is evident that, in the present case, the essential procedural safeguards ensuring fairness of the procedure so as to obviate arbitrariness in the proceedings, were duly followed by the SSFC.

41. The next submission of the learned counsel is that the present matter is a case of no evidence, as the evidence adduced is alleged to be perfunctory and contradictory.

42. Upon a careful examination of the original record placed before this Court, it emerges that PW-4 has categorically stated that on 08.03.2006, when the petitioner was at Gate No. 4, he opened the said gate and proceeded beyond the fencing. PW-4 called him to come inside, as the petitioner had moved ahead of the fencing alone. In response, the petitioner stated that he was going to check the fencing and the area ahead. Approximately ten minutes later, the petitioner returned and re-entered through the same gate. Furthermore, in his re-examination, PW-4 stated that, as per the gate management drill, it is



mandatory to make an entry in the In-Out register whenever any person, proceeds through the gate. No such entry was made by the petitioner. He further deposed that whenever an OP, Naka or Patrolling Party is sent from the BOP, a proper briefing is given by the Post Commander. In the present case, no such permission was granted by the Post Commander to the petitioner for leaving the OP point.

43. The statement of PW-5 reveals that on 10.03.2006, he observed the petitioner approaching Gate No. 3 along the fencing area and noted that the petitioner was alone. Upon inquiring as to why the petitioner was moving on the other side of the fence, the petitioner replied that while checking the fencing area, he had reached Gate No. 3 and thereafter continued walking towards the houses situated beyond the fencing itself.

44. PW-6 deposed that he had received information that the petitioner was frequently crossing the International Border and visiting Bangladesh, which was confirmed to him by a civilian residing on the other side of the fencing near Gate No. 3. During his re-examination by the Court, PW-6 categorically stated that no permission was ever granted by him to the petitioner to cross the International Border. He clarified that patrolling or search operations between the border fencing and the International Border are carried out in an organised manner, comprising a minimum strength of 5 to 6 personnel. Checking of the fencing is not permitted to be carried out alone, particularly not from the other side of the fencing.



45. The testimony of PW-7 is also relevant, who deposed that on 10.03.2006, at around 0630 hours the petitioner had opened Gate No. 4 and proceeded ahead, after handing over the key to PW-7, who thereafter locked the gate. At about 0900 hours the petitioner did not return and thereafter he came from Gate No. 4. As per the testimony of PW-7, when he inquired about the petitioner's whereabouts, the petitioner did not provide any specific response and evaded the question. It was further stated that the petitioner had not made any entry in the In-Out register on that day.

46. Importantly, PW-3 deposed that on 10.03.2006, at around 0900 hours, he saw a BSF personnel in uniform and carrying a weapon moving towards the International Border, and during the proceedings, he identified the petitioner as that individual. He saw the petitioner returning from Bangladesh between Border Pillar No. 1845/27-S and Border Pillar No. 1845/36-S.

47. From the bare perusal of the evidence as examined during the SSFC proceedings, we find that there exists sufficient evidence on record to justify the finding of 'Guilty' against the petitioner in respect of the Charges which were held to be proved against him. We may further reiterate the settled position of law that in departmental proceedings, the standard of proof required is that of preponderance of probability, and it is not incumbent upon the disciplinary authority to establish the case beyond reasonable doubt as is required in a criminal trial.



48. Insofar as the plea raised by the petitioner that no entry was made in the In-Out register to the effect that he had crossed ahead of the fencing, is concerned, manifestly it supports the case of the respondents that the petitioner deliberately and without permission crossed the International Border while carrying an official weapon. The absence of such an entry reasonably leads to the inference that the petitioner was attempting to move covertly, with the intention of avoiding detection or accountability for his actions, amounting to serious breach of security. The BSF is entrusted with the responsibility of safeguarding our international borders, and any unauthorized crossing, particularly while carrying an official weapon, constitutes not merely a disciplinary infraction but a potential threat to national security. Such conduct, if condoned, would undermine the very discipline and protocol that are essential for the effective functioning of a border guarding force.

49. On an overall consideration of the above, there is no tangible reason forthcoming to doubt the evidence on record, thus, we find no irregularity in the proceedings before the SSFC, and no violation of the principles of natural justice has been established. Upon reviewing the original record, we are satisfied that there was sufficient evidence for the SSFC to conclude that the petitioner was guilty of Charges 1, 3, and 6. Moreover, considering the serious nature of the petitioner's conduct, specifically, his crossing over the International Border while carrying his official weapon, the same constitutes a grave misconduct.



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Therefore, the sentence of ‘dismissal from service’ does not warrant interference.

50. Accordingly, the present petition is dismissed.

SHALINDER KAUR, J

NAVIN CHAWLA, J

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Click here to check corrigendum, if any