IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-
The Hon'ble Justice Madhuresh Prasad
And
The Hon'ble Justice Prasenjit Biswas

F.M.A.138 of 2024

HOSHIYAR SINGH

VERSUS

UNION OF INDIA AND OTHERS.

For the Appellant	: Mr. Debdutta Basu, Ms. Sayani Roy Choudhury.
For the UOI	:Mr. Nandalal Singhania, Ms. Sayani Roy Choudhury, Mr. Ashok Halder, Ms. Ayantika Paul.
Judgment on	: February 25, 2026.

Madhuresh Prasad, J.:

1. Heard the learned advocate for the writ petitioner/appellant as well as the learned advocate representing the Union of India.

2. The appellant/petitioner, a constable in the "*D*" Company of 108 of the Border Security Force, was proceeded against by a charge sheet dated 08.05.2008.

3. The charge sheet contained the following charges:

> *"The accused No. 882101295 HC Gyani Ram and No. 02145545 CT Hoshiyar Singh of 108 Bn BSF is charged with:-*

1ST CHARGE BSF ACT SEC-46

COMMITTING A CIVIL OFFENCE, THAT IS TO SAY CRIMINAL MISCONDUCT FOR HAVING BEEN A PUBLIC SERVANT BY ABUSING THEIR POSITION AGREES THEMSELVES FOR ANY PECUNIARY AUVANTAGE FOR AN OFFENCE SPECIFIED IN SEG 13 (1) (E) OF THE PREVENTION OF CORRUPTION ACT, 1988, PUNISHABLE U/S 13 (2) OF THE SAID ACT

In that they

on the intervening night of 09/10 Nov 07, when No. 882101295 HC Gyani Ram and No. 02145545 CT Hoshiyar Singh of 'D' Coy 108 Bn BSF who were deployed at addl ambush point No 4 of BOP Chapghati, connived with an un-identified civilian boy and agreed to accept Rs 7000/- per pair for crossing of cattle heads for themselves by abusing their position as a public servant for pecuniary advantage, while performing border ambush duty of said ambush point and allowed to cross over 12 to 15 pairs of cattle heads from India to Bangladesh side between 1930 hrs to 2000 hrs through their AOR.

2ND CHARGE BSF ACT SEC-40

AN ACT PREJUDICIAL TO GOOD ORDER AND DISCIPLINE OF THE FORCE

In that they.

on the night intervening of 09/10 Nov 07, while performing ambush duty at Addl. Ambush Point No.4 Ex-BOP Chapghati has allowed to cross 12 to 15 pairs of cattle heads from India to Bangladesh side between 1930 to 2000 hrs through their AOR with connivance of smugglers."

4. Upon conduct of a Summary Security Force Court (in short '*SSFC*') against the petitioner, he was awarded a punishment which he assailed by way of a writ petition. The writ petition was registered as W.P. 7572(W) of 2009 and was dismissed by an order dated 04.08.2023, by the Hon'ble Single Judge which is the subject matter of the present intra court appeal.

5. The learned advocate for the writ petitioner/appellant raised the following issues before the learned Single Judge so as to allege that the finding in the SSFC was unsustainable.

6. The appellant/petitioner raised an issue of discrimination in the matter of award of punishment to the petitioner. According to him, another member of the force, namely, Head Constable Gyani Ram, who was at the relevant point of time was on duty with the petitioner/appellant was proceeded against on common charges and the charge no.2, which was found proved in respect of the petitioner/appellant is the self-same charge for which Gyani Ram was also found to be guilty. Gyani Ram, however, had been awarded a much lesser punishment of reversion; whereas the petitioner/appellant has been dismissed from service.

7. In so far as the proceeding in the SSFC, he has raised following issues:

    - The findings are perverse and based on no evidence.
    - Petitioner's confession was recorded in the SSFC, without consent and under threat and duress.
    - The informant who brought the allegation to the notice of the authorities was a vital witness, but not examined in the proceeding depriving the petitioner an opportunity to cross-examine the informant.
    - The proceeding was based only on hearsay.

8. The Hon'ble Single Judge considered all the submissions and citations relied upon. Taking into consideration all the decisions, and upon going through the records, the Hon'ble Single Judge found that altogether there were 9 witnesses in respect of the alleged occurrence as per the charge memo.

9. Out of 9 witnesses, 6 deposed in the SSFC. The petitioner/appellant was given an opportunity to cross-examine the 6 witnesses, which he declined. The evidence of the 6 witnesses have been recorded in presence of the present petitioner/appellant and the fact that he declined to cross-examine the 6

witnesses has been recorded in the Enquiry Report.

10. The punishment was affirmed by the appellate authority within the force.

11. The Hon'ble Single Judge found that relying on evidence adduced in the SSFC the charges were held proved. Thus, there was no scope to look into the sufficiency or quality of such evidence by the writ court in exercise of its jurisdiction under Article 226 of the Constitution of India.

12. The Hon'ble Single Judge held that within the limited confines of judicial review in respect of a departmental proceeding/ disciplinary proceeding, the court is not required to sit in appeal over the decision of the authority. Since there is material in support of the charge and the finding is recorded based on such material, the Hon'ble Single Judge found no reason to interfere with the punishment.

13. In so far as discrimination in the matter of award of punishment, the said point was also rejected by the Hon'ble Single Judge in view of his consideration that the authorities have inflicted the petitioner with the severe punishment of dismissal taking into consideration the fact that petitioner has earlier suffered four convictions in service, within a span of six years. The Head Constable Gyani Ram, on the other hand, with whom the petitioner was claiming parity, had served a long tenure in the force, and had no prior conviction. Such consideration regarding alleged discrimination; and claim for parity, therefore, is founded on relevant factual and legal considerations.

14. The petitioner is not similarly situated as Gyani Ram. Having four prior convictions in service he cannot claim parity in award of punishment with Gyani Ram. Petitioner's four prior convictions constitute relevant

consideration to arrive at a conclusion that petitioners continuance in a para military force wherein discipline is paramount was not desirable. Such conclusion of the learned Single Judge is founded on a relevant consideration being made by the authorities so as to distinguish the case of the petitioner/appellant from the other accused.

15. It is trite law that the parity can be claimed only with equals and unequals cannot be treated as equals. Petitioner was not in a position to claim parity with Gyani Ram. The petitioner's claim for equality is founded merely on a consideration of the charges being one and the same against the petitioner and Gyani Ram. But that is not the only relevant consideration. The fact that the petitioner has four prior convictions in service; and that Gyani Ram does not have a single prior conviction in service distinguishes the petitioner from Gyani Ram. The Apex Court in this regard has stated in its judgment delivered in the case ***of Uttar Pradesh Power Corporation Limited vs. Ayodhya Prasad Mishra and Another*** reported in ***(2010) 8 SCC 139*** that though it is well settled that equals cannot be treated unequally, but it is well settled that unequals cannot be treated equally. The Apex Court has laid down the law in this regard that treating of unequals as equals would offend the doctrine of equality enshrined in Article 14 and 16 of the Constitution of India.

16. Insofar as petitioner's reliance placed on decision in the case of ***State of Uttar Pradesh and Others vs. Raj Pal Singh*** reported in ***(2010) 5 SCC 783*** we find that the petitioner's reliance placed on this decision is unsustainable. The Apex Court in this case was considering that when charges are same and identical in relation to one and the same instance, then to deal with delinquents differently, while awarding punishment could be discriminatory. In that case there was no

material based on which the delinquents would be dealt with differently. In the instant case, however, as noticed above, the petitioner's four prior convictions constituted relevant material distinguishing his case with that of Gyani Ram. The other judgment relied upon by the petitioner in the case of ***Akhilesh Kumar Singh vs. State of Jharkhand and Others*** reported in ***(2008) 2 SCC 74*** is also inapplicable to the facts and circumstances of the present case. In paragraph 15 of the judgment the Apex Court has stated that "*delinquent officers similarly situated should be dealt with similarly and, thus if the charges against the employee are identical, it is desirable that they be dealt with similarly*." As taken note of above the present petitioner is not similarly situated as Gyani Ram. The decision in the case of ***Akhilesh Kumar Singh*** (Supra), therefore, also does not help the writ petitioner's case.

17. Insofar as the submission regarding the informant not being examined the petitioner's learned Advocate placed reliance on a decision of a co-ordinate Bench of this Court in the case of ***Robert Xess Vs. The Union of India and Others*** in ***FMA 348 of 2010*** dated 18.07.2011 wherein also the appellant was proceeded against in an SSFC. The co-ordinate Bench took notice of the fact that the informant being a vital witness was not examined to deny opportunity to the accused (appellant) to cross-examine such a vital witness. The Division Bench found such lapse to be an illegality laying the premise for quashing the punishment inflicted on the appellant by the authorities. The judgment was affirmed by the Apex Court in SLP (Civil) Nos. 6079 of 2012 by an order dated 09.07.2012.

18. The judgment relied upon was delivered by the Co-ordinate Bench finding the conduct of SSFC to be illegal based on an admission recorded in the judgment.

The learned Advocate representing the border security force therein admitted that an explanatory memorandum was not attached to the proceedings. The Court, therefore, found non-compliance with the mandatory requirement of Rule 158 of the BSF Rules. In addition to such lapse the Co-ordinate Bench found that a vital witness, the informant was not examined. The Co-ordinate Bench relied upon these two lapses to arrive at a conclusion that the SSFC suffered from "*illegalities and/or irregularities*". On going through the judgment of the Co-ordinate Bench we find reference to no other evidence/ witness to support the finding of the charges being proved. In the instant case, however, as noticed above the finding is based on decision of six witnesses, whom the petitioner chose not to cross-examine. Thus, the decision was based on material considered during the enquiry. Also there is no other infirmity in the conduct of SSFC against the writ petitioner. Decision of the co-ordinate Bench in the case of ***Robert Xess*** (Supra), therefore, is distinguishable from the present case. The petitioner, therefore, cannot derive any benefit from decision of the Co-ordinate Bench in FMA 348 of 2010.

19. Insofar as the submission that confession was not free and, therefore, could not be taken into consideration, we find no force in such submission which was rightly considered by the learned Single Judge. Since six witnesses have supported the allegation against the writ petitioner we find no force in submission of the learned Advocate of the appellant that in the proceeding the appellant's confession has been recorded under threat and duress. The petitioner's confession is recorded in the proceeding bearing a signature of the petitioner, without raising any contemporaneous demurrer. However, even if we were to discard confession, the same would not enure to the petitioner's

benefit. Still there would remain unimpeached deposition made by six witnesses in the SSFC. Therefore, in this connection, decision in the case of ***Roop Singh Negi vs. Punjab National Bank and Others*** reported in ***(2009) 2 SCC 570*** and ***Raja Alias Ayyappan vs. State of Tamil Nadu*** reported in ***(2020) 5 SCC 118*** relied upon, also does not help the petitioner's case.

20. Having regard to the contours of scrutiny in exercise of judicial review laid down by the Apex Court in the case of ***Union of India and Others vs. P. Gunasekaran*** reported in ***(2015) 2 SCC 610*** we find no infirmity in the consideration accorded by the learned Single Judge. The learned Single Judge has sustained the punishment awarded to the petitioner which we find to be based on material/ deposition adduced during the SSFC. The material remained unrebutted as the writ petitioner/ delinquent chose not to cross-examine the witnesses. We, further find that prior to the present proceeding, the petitioner was found guilty of misconduct and was convicted four times before the SSFC in question. Taking into consideration the recurrent delinquency of the petitioner throughout his career, the disciplinary authority inflicted a punishment of dismissal. Since the petitioner is member of an armed force, expected to maintain a high degree of integrity and dedication towards duty observing a high standard of discipline, he was rightly considered liable for dismissal. There is no allegation regarding competence of the authority to conduct the SSFC. There is also no issue of *mala fide* of the authority conducting the SSFC. The findings being based on material are not perverse. The SSFC did not exclude any admissible material/ evidence.

21. The award of punishment and conduct of SSFC, therefore, does not come within the scope of judicial review as laid down in the case of ***P. Gunasekaran***

(Supra):

> "*12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:*
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> *(a) the enquiry is held by a competent authority;*
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> *(b) the enquiry is held according to the procedure prescribed in that behalf;*
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> *(c) there is violation of the principles of natural justice in conducting the proceedings;*
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> *(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
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> *(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
>
> *(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
>
> *(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
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> *(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
>
> *(i) the finding of fact is based on no evidence.*
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> *13. Under Articles 226/227 of the Constitution of India, the High Court shall not:*
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> *(i) reappreciate the evidence;*
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> *(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
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> *(iii) go into the adequacy of the evidence;*

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience."

22. We find no infirmity in the decision of the learned Single Judge.

23. The appeal is dismissed.

24. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Madhuresh Prasad, J.)

I agree.

(Prasenjit Biswas, J.)