



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

% Judgment Reserved on: 08.01.2026
Judgment delivered on: 10.03.2026
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+ **W.P.(C) 3872/2022**

MURARI KUMAR SINGHPetitioner
versus
UNION OF INDIA & ANR.Respondents

Advocates who appeared in this case

For the petitioner : Mr. Mahboob Inayati and Mr. Shoaib Khan, Advocates

For the Respondents : Mr. Nirvikar Verma, SPC with Mr. Varun Kumar, Advs. alongwith Mr. Paramveer Singh, D.C.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

V. KAMESWAR RAO, J.

1. This writ petition has been filed challenging the order dated 21.06.2021 passed by the Summary Security Force Court ('SSFC', for short) dismissing the petitioner from service. The prayer of the petitioner in this writ petition is as under:-

"a) Pass an order/writ/direction setting aside impugned orders dt 21.06.2021 & 26.12.2021.



b) Pass an order/writ/direction reinstating the petitioner with continuity in service from the date he was dismissed from the service with full salary.”

2. The facts as noted from the writ petition are that the petitioner enrolled in Border Security Force (‘BSF’, for short) as Constable on 31.03.2008. During his service, he was awarded commendation certificate for operational achievement in Anti Naxal Operations. In September 2016, the petitioner completed CI-CDO Course (Counter Insurgency-Commando) training in Hazaribagh, Jharkhand.

3. On 29.04.2021, the petitioner had accidentally fired 01 (one) round of 5.56 mm from INSAS rifle/his personal weapon without any provocation. On the same day, the Commandant BSF passed the order appointing Rakesh Kumar Paliwal, DC, Adjutant (‘Adj’t’, for short) to record evidence and submit the report by 06.05.2021.

4. On 30.04.2021, Rakesh Kumar Paliwal, DC, Adj’t prepared a detailed report, before recording evidence of witnesses, alleging that the petitioner had fired 01 round on 29.04.2021 without any provocation and that the petitioner was in state of intoxication at the time of the event. On 03.05.2021 to 11.05.2021, the Record of Evidence (RoE) of prosecution witnesses was recorded by Mr. Paliwal.

5. On 18.06.2021, the Commandant after going through the RoE ordered the SSFC to assemble on 21.06.2021 at 11:00 Hrs. The petitioner vide same order was placed under ‘open arrest’ with effect from 10:00 Hrs on 20.06.2021 till conclusion of trial. On 21.06.2021, the petitioner was made



to appear before the Commandant and his signature was taken on papers. On the same day, he was informed that, he has been held guilty of charges under Section 40 of the BSF Act, 1968 for firing 01 round without any provocation and under Section 22(e) of the Act for being in the state of intoxication while on duty. Pursuant to the finding of the SSFC, the petitioner, on 21.06.2021, was dismissed from service and was handed over some documents including RoE.

6. Aggrieved by the impugned order, the petitioner filed the statutory appeal before the Inspector General ('IG', for short). On 26.12.2021, the IG dismissed the statutory appeal by upholding that the petitioner had plead 'guilty' of the charges, which according to the petitioner, he did not plead guilty. Hence, the present petition has been filed challenging the order of dismissal and the rejection of the appeal with a prayer to reinstate him in the service.

7. It is the submission of the learned counsel for the petitioner, Mr. Mahboob Inayati that, the petitioner was informed in the morning of 20.06.2021 that the Commandant had placed him under 'open arrest' and he would be tried by the SSFC on 21.06.2021.

8. According to the counsel, the evidence was recorded without affording reasonable opportunity to the petitioner. The petitioner was not allowed to take the assistance of any counsel or competent officer or 'friend of the accused' to assist him in cross examination of witnesses. It is also his case that the evidence was recorded in English which the petitioner does not understand.



9. Another contention of the counsel is that, Mr. Rakesh Kumar Paliwal, DC, Adj. recorded the evidence beyond 06.05.2021 without being granted any extension from the Commandant. At the time of the SSFC, the petitioner was under 'open arrest' in the campus and he was not allowed to move out of the campus and was put under strict surveillance.

10. He submitted that the petitioner was not given a fair and proper opportunity to defend himself, in contravention to Rule 63(1) BSF Rules, 1969, i.e., the 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 counsel/officer.

11. He submitted that the decision of the Commandant to initiate SSFC against the petitioner vide order dated 18.06.2021 and to place him under 'open arrest' from 20.06.2021 at 10:00 hrs till conclusion of trial, has curtailed the petitioner's opportunity to prepare defence, to communicate with his defending officer and witnesses. He also stated that the petitioner was informed that, he can appoint the counsel at his own expense or 'friend of the accused' by the next day, but the Commandant despite knowing the fact that the Battalion is in isolation and it would not be possible for the petitioner to engage any counsel within 24 hours, had ordered the trial to move forward.

12. He submitted that the '*friend of the accused*'/ Sanjay Anuj Panna, Deputy Commandant, nominated by the petitioner was on the advice of the Commandant, himself. During the trial, Mr. Panna did not render any assistance to the petitioner. He also submitted that Mr. Panna did not even



discuss the matter with the petitioner or made any submission on behalf of the petitioner before the SSFC.

13. He submitted that the petitioner was arrested 24 hours prior to the beginning of trial, in contravention to Rule 38(1) of BSF Rules, i.e. the accused shall remain under arrest during the trial. The 'open arrest' of the petitioner just one day after intimation about the commencement of the trial and 25 hours before the trial, deprived the petitioner from getting a fair opportunity to prepare his defence and has caused stress and trauma.

14. Mr. Inayati contended that the evidence of the witnesses and other proceedings were recorded in English language and the petitioner has no command on English language and the same were not translated to the petitioner, which is in violation of Rule 134 of BSF Rules. He also contended that, a fair trial cannot be expected when the accused does not even understand the evidence and record, because of the language in which the evidence was recorded. He also submitted that the whole trial was conducted in biased and arbitrary manner.

15. It is the submission of Mr. Inayati that, on 29.04.2021 i.e. on the day of incident, the Commandant passed the order appointing Mr. Paliwal, DC, Adjt., to record evidence and to submit the same by 06.05.2021. Mr. Paliwal, DC, Adjt. prepared a report dated 30.04.2021 i.e. before recording evidence of witnesses alleged that the petitioner had fired 01 round on 29.04.2021 without any provocation and that the petitioner was in an intoxicated state. He submitted that, Mr. Paliwal should not have been allowed to record the evidence of the witnesses as he was the officer who



preponed the report and would be influenced by the report dated 30.04.2021, making him partial and prejudiced against the petitioner. He also submitted that, it is the RoE which is taken into account by the Commandant under Rule 51 of the BSF Rules to decide whether the charges should be dismissed or the accused should be tried.

16. He submitted that the judgment of this Court in *Balwinder Singh v. Union of India & Ors in W.P.(C) No.7875/2007*, had set aside the order of dismissal when the accused was not provided fair opportunity to defend. He also submitted that the impugned order has been passed in violation of principles of natural justice and statutory mandate of Rule 163(1) & Rule 157 of BSF Rules as the petitioner was not provided legal assistance or 'friend of the accused' to assist the petitioner in preparing his defence to the charges and allegations levelled against him.

17. Mr. Inayati submitted that the plea of 'guilty' was wrongly recorded despite the fact that the statement of the petitioner and the record of the evidence shows that the petitioner did not understand the plea of 'Guilty'. He submitted that this Court in the case of *Banwari Lal Yadav v. Union Of India & Anr in W.P.(C) 10446/2004*, has upheld the decision of the DIG, who had altered the plea of 'guilty' to 'not guilty' wherein the accused had pleaded 'guilty' in his statement for mitigation of punishment, wherein the accused had stated that he had committed the offence unintentionally as his mental condition was not proper.

18. Another submission of Mr. Inayati was that the petitioner in his statement has for mitigation of punishment stated that, *'I will not commit*



mistake again’ which shows that the petitioner did not intend to plead ‘guilty’ rather wanted to convey that the incident occurred due to a mistake and it was inadvertent and unintentional on the part of the petitioner.

19. He submitted that, it has been the case of the petitioner throughout that, 01 round got fired accidentally without any criminal intention or knowledge and if an accidental fire has happened in his 13 years of service, the dismissal of the petitioner would be disproportionate, unjustified and unreasonable.

20. He also submitted that the Rule 143(4)(a) of the BSF Rules, categorically state that, if from the statement of the accused, or from the record of evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of ‘Guilty’, the Court shall alter the record and enter a plea of ‘Not Guilty’ and proceed with the trial.

21. With regard to the issue of intoxication, Mr. Inayati submitted that the same is false and frivolous as there was no blood test taken from the petitioner to prove that the petitioner was intoxicated and as per the statement before the doctor, the smell was of the drink he had consumed last night.

22. He seeks prayers as made in the petition.

23. On the other hand, Mr. Nirvikar Verma, Senior Panel Counsel for the respondents would submit that the petitioner along with Head Constable Shamsher Chand (Guard Commander), Constable (GD) Ashok Lava and Constable (GD) Dhojen Choudhary was detailed to perform Magazine



sentry duty at Bn HQ 174 Bn BSF, Maheshpur, Raiganj West Bengal from 19:00 hrs on 28.04.2021 to 19:00 hrs on 29.04.2021, turn by turn.

24. On 29.04.2021 at about 03:57 hrs, the petitioner drew his personal weapon 5.56 mm INSAS Rifle, Butt No. 335, Body No. 16844395 and 01 Magazine along with 20 rounds from the Kote and took over the charge of Unit Magazine Guard Duty at about 04:00 hrs. At about 04:50 hrs, the petitioner fired 01 round from his personal weapon inside the premises of Unit Quarter Guard without any provocation. On hearing the sound of firing, Main Sentry and Guard Commander of Quarter Guard reached the spot and snatched the rifle from the petitioner and unloaded the magazine.

25. The matter was reported to the superior authorities, who then reached the place of occurrence and analysed the situation and found the petitioner in the state of intoxication. The Guard Commander of Quarter Guard informed the incident to superior officials telephonically. Accordingly, the ASI/ Adjutant of the Unit immediately reached the place of occurrence and analysed the matter and found the petitioner in an intoxicated condition lying on his bed at Quarter Guard room. After few minutes, the Unit Adjutant also reached the Quarter Guard and carried out immediate spot verification.

26. A disciplinary action was initiated against the petitioner and on 29.04.2021, the petitioner was heard under Rule 45 of the BSF Rules for committing two offences i.e. the first charge under Section 40 of the BSF Act, 1968 for '*An act prejudicial to good order and discipline of the Force*' and the second charge under Section 22(e) of the BSF Act, 1968 for



'Neglects to obey any general, local and other order'. After conducting hearing, the Unit Commandant ordered for preparation of RoE against the petitioner on the aforementioned two charges vide Order No. Estt/174 Bn/BSF/ROE/21/7786-90 dated 29.04.2021. The RoE was conducted strictly as per the provisions of Rule 48 of the BSF Rules, wherein the petitioner was afforded all the opportunities for his defence.

27. Mr. Verma, as a preliminary objection, submitted that this court lacks the territorial jurisdiction to entertain this writ petition, as according to him, the offence under the BSF Act, 1968 and the dismissal from service by the sentence of a SSFC, was held at Bn HQ 174 Bn BSF, Maheshpur, Raiganj, West Bengal and office of the Appellate Authority is also situated in the State of West Bengal i.e. outside territorial jurisdiction of this Court. He seeks the dismissal of the petition on this ground only.

28. He submitted that the petitioner has wrongly impleaded the Secretary, Ministry of Home Affairs/Union of India as respondent No.1, even though, he is neither the Disciplinary/Appellate Authority nor is he concerned with day to day working of BSF.

29. Mr. Verma submitted that the impugned orders would reveal that respondent No.1 in the said matter has no role to play, especially in the present context, in the matters relating to service conditions of the BSF employees/personnels. He also submitted that the petitioner does not disclose any procedural irregularity during conduct of the trial of the petitioner in the SSFC, necessitating judicial review by this Court. In support of his submission, he has relied on the judgment of the Supreme



Court in the case of *Union of India & Others v. Major A. Hussain (IC-14827) (MANU/SC/0874/ 1998)*, wherein, the Court held that, though Court Martial proceedings are subject to judicial review by the High Court under Article 226 of the Constitution but the Court Martial is not subject to the superintendence of the High Court under Article 227 of the Constitution of India.

30. Mr. Verma submitted that the question of maintainability of petition under Article 226 of Constitution of India was also decided by the Supreme Court in *Coal India Ltd. & Anr v. Mukul Kumar Choudhary & Ors.*, on 24.08.2009 in *Civil Appeal Nos. 5762-5763 of 2009*. Further, this Court in *WP (C) No. 5878/2011 in Ex-Constable/GD Rana Pratap Singh v. Union of India & Ors.*, decided on 13.09.2011, has held that:- “*while examining the correctness of finding and sentence of the Court Martial/Security Force Courts, in exercise of its power under Article 226 of the Constitution of India, the jurisdiction of the High Court is limited to finding out only whether there exists an error of jurisdiction or is it a case of total lack of evidence. It is not open to the High Court to re-evaluate the evidence on record or whether the evidence on record is sufficient to sustain the finding of the Court Martial/Security Force Court or to substitute its opinion for that of the Court Martial/Security Force Court.*”

31. He submitted that the RoE against the petitioner was conducted strictly as per the provisions of Rule 48 of the BSF Rules, wherein the petitioner was afforded all the opportunities for his defence and nowhere was he prejudiced in his defence. After completion of the RoE and having



gone through the same, the Commandant, 174 Bn BSF, exercised his discretion under Rule 51 of the BSF Rules, and decided to dispose of the disciplinary case against the petitioner by holding a SSFC.

32. He submitted that, before conducting the SSFC trial *vide* 174 Bn BSF letter No. Estt/174 Bn/SSFC-MKY/2021/10624 dated 18.06.2021, all the requisite documents i.e. copy of RoE proceedings alongwith its exhibits, charge sheet etc., were provided to the petitioner in advance, in terms of Rule 63(4) read with Rule 63(6) of the BSF Rules, to prepare his defence and the same was duly explained to the petitioner-in-person as provided under Rule 63(5) of the BSF Rules, 1969 in the chamber of the Commandant, on 18.06.2021.

33. He submitted that, it is in terms of Rule 157 of the BSF Rules, 1969, the petitioner was intimated to engage a counsel at his own expense, if he desires. The petitioner was also asked to nominate name any of officer to be detailed as his 'Friend of Accused' during the trial and at his request Mr. Panna, DC of 174 Bn BSF was appointed as his 'Friend of Accused'. The petitioner was also asked to give name of his defence witnesses.

34. He submitted that the SSFC was constituted in terms of Section 70 of the BSF Act on 21.06.2021 by the Commandant, 174 Bn BSF on two charges. On being arraigned, the petitioner himself unequivocally pleaded 'Guilty' to both the charges against him. Accordingly, the SSFC as per the provisions of Rule 142(2) of the BSF Rules, obtained signature of the petitioner and 'Friend of the Accused' thereon.



35. He submitted that the SSFC after finding the petitioner ‘Guilty’ of both the charges against him and by taking into consideration the previous conviction, character, age, length of service etc. and he had earned 11 rewards with 10 punishments to his credit since his enrolment in BSF, the SSFC assessed the petitioner’s general character as ‘bad’ and thereafter, sentenced him to be dismissed from service. He also submitted that the SSFC trial of the petitioner has been conducted strictly as per the provisions of BSF Act and Rules, wherein he was afforded all the opportunity to defend himself and neither any of the rights of the petitioner have been infringed nor he was prejudiced in his defence in anyway.

36. Mr. Verma submitted that the petitioner thereafter submitted statutory appeal dated 17.08.2021 to the Inspector General, BSF, North Bengal Ftr against the punishment awarded to him. After consideration of all the facts and circumstances of the case, the appeal was rejected by the Competent Authority being devoid of merit and the outcome was conveyed to the petitioner vide Order dated 26.12.2021.

37. He submitted that the contention of the petitioner that 01 round got fired accidentally during checking of the Rifle is far from the truth and further his calling intentional firing as accidental fire is also absolutely wrong as it is not possible to fire a round from INSAS Rifle without loading the cartridge into the chamber of the Rifle and adjusting the safety catch to firing position. He also submitted that other than the trial by SSFC, the petitioner was awarded the following punishments:-

“i. He was tried summarily on 08.07.2011 for committing an



offence under Section 19(b) of the BSF Act, 1968 for "Without sufficient cause overstaying leave granted to him" in that he, having been granted 10 days Earned Leave from 26.01.2011 to 04.02.2011, failed without sufficient cause to re-join at Bn HQ on the expiry of said leave and rejoined voluntarily on 09.04.2011 (AN) (total period of absence- 64 days) and awarded the punishment of '14 day's pay fine', to be deducted from his salary.

ii. He was tried summarily on 13.10.2011 for committing an offence under Section 19(b) of the BSF Act, 1968 for "Without sufficient cause overstaying leave granted to him" in that he, having been granted 10 days Earned Leave w.e.f. 25.07.2021 to 03.08.2011, failed without sufficient cause to rejoin at Bn HQ on the expiry of said leave and rejoined at Bn HQ on 01.09.2011 (total period of absence- 28 days) and awarded the punishment of '07 day's pay fine' to be deducted from his salary.

iii. He was tried summarily on 09.01.2016 for committing an offence under Section 19(b) of the BSF Act, 1968 for "Without sufficient cause overstaying leave granted to him" in that he, having been granted 15 days Paternity Leave w.e.f. 06.11.2015 to 20.11.2015 failed without sufficient cause to rejoin at Bn HQ on the expiry of said leave but rejoined on 3 0.12.20 15 (FN) (total period of absence- 39 days) and awarded the punishment of '07 days pay fine', to be deducted from his salary.

iv. He was tried summarily on 19.04.2018 for committing offences under Section 40 of the BSF Act, 1968 for "Violation of good order and discipline of the Force" in that he, on 14.04.2018 at about 2020 hrs left BOP Saitanbari, 'D' Coy of 174 Bn BSF without intimation of Post Commander, which is violation of SOP & under Section 26 of the BSF Act, 1968 for "Intoxication" in that he, on 14.04.2018 at about 2020 hrs found in the state of intoxication at BOP Saitanbari, 'D' Coy of 174 Bn BSF and awarded the punishment of '14 days ngorous imprisonment (RI) in Force custody & 14 day's pay fine', to be



deducted from his salary.

v. He was tried summarily on 04.05.2019 for committing an offence under Section 19(b) of the BSF Act, 1968 for "Without sufficient cause overstaying leave granted to him" in that he, having been granted 45 days Earned Leave w.e.f 13.02.2019 to 29.03.2019 and further extended 15 days Earned Leave w.e.f 30.03.2019 to 13.04.2019(AN) but failed to rejoin duty on expiry of said leave without sufficient cause and voluntarily joined duty on 27.04.2019 (total period of absence- 14 days) and awarded the punishment of '10 days rigorous imprisonment in Force custody'.

vi. He was tried summarily on 06.12.2019 for committing an offence under Section 22(e) of the BSF Act, 1968 for "Neglect to obey any general, local and other order" in that he, on 02.12.2019 at about 1330 hrs was found in the state of intoxication at Bn HQ and awarded the punishment of ' 14 days rigorous imprisonment in Force custody and 14 day's pay fine', to be deducted from his salary.

vii. He was tried summarily on 17.01.2020 for committing an offence under Section 19(a) of the BSF Act, 1968 for "Absenting himself without leave" in that he on 23.08.2019 at about 1630 hrs, absented himself without leave from Bn HQ, Alamganj, Dhubri (Assam) and voluntarily reported at Bn HQ Maheshpur, Raiganj (WB) on 09.11.2019 (FN) {total absent without leave (AWL) period- 78 days} and awarded the punishment of '28 days rigorous imprisonment in Force custody'.

viii. He was tried summarily on 12.08.2020 for committing offences under Section 19(d) of the BSF Act, 1968 for "Without sufficient cause, failing to appear, at the time fixed at the place of appointed for exercise or duty" in that he, on 31.07.2020 at about 2400 hrs, failed to attend 2nd shift duty w.e.f. 010001 to 010600 hrs in the AOR of BOP Domutha, 'D' Coy, 174 Bn BSF & under Section 22(e) of the BSF Act, 1968 for "Neglect to obey any General, local and other order" in that he, on



01.08.2020 at about 0900 hrs was found in the state of intoxication in BOP Domutha, during surprise checking by SI Ramdayal B. Satve and awarded the punishment of '28 days rigorous imprisonment in Force custody and 14 day's pay fine', to be deducted from his salary.

ix. He was tried summarily on 03 .11.2020 for committing offences under Section 19(d) of the BSF Act, 1968 for "Without sufficient cause, failing to appear, at the time fixed at the place of appointed for exercise or duty" in that he, on 09.10.2020 at about 2330 hrs, failed to attend ACP duty w.e.f. 2400 hrs to 0600 hrs and evening OP duty w.e.f. 101200 hrs to 101800 hrs in the AOR of BOP Elendry, 'D' Coy, 174 Bn BSF & under Section 22(e) of the BSF Act, 1968 for "Neglects to obey any general, local and other order" in that he, on 10.10.2020 at about 1600 hrs, proceeded to local market without any permission of his superior officer and was found in the state of intoxication in BOP Elendry and awarded the punishment of '14 days rigorous imprisonment in Force custody and 14 days pay fine', to be deducted from his salary."

38. Mr. Verma has also submitted that, besides the aforementioned punishment, there were times when the respondents have taken a lenient view and regularised his absence period, as under:-

"i. 26 days OSL period w.e.f. 13.07.2010 to 07.08.2010 was regularized by granting 26 days Earned Leave in continuation to earlier sanctioned 15 days Earned Leave.

ii. 15 days Earned Leave w.e.f. 30.03.2015 to 13.04.2015 was extended in continuation to earlier sanctioned 45 days Earned Leave.

iii. 15 days Earned Leave w.e.f. 18.04.2013 to 02.05.2013 was extended in continuation to earlier sanction 45 days Earned Leave.

iv. 04 days OSL period w.e.f. 08.02.2015 to 11.02.2015 was regularized by granting 05 days Earned Leave in continuation to earlier sanctioned 30 days Earned Leave.



*v. 90 days AWL period w.e.f. 05.09.2016 to 03.12.2016 was regularized by granting 90 days Extra Ordinary Leave (EOL).
vi. 15 days Earned Leave w.e.f. 30.03.2019 to 13.04.2019 was extended in continuation to earlier sanctioned 45 days Earned Leave.”*

He seeks the dismissal of the petition.

ANALYSIS AND CONCLUSION

39. Having heard the learned counsel for the parties, the short issue which arises for consideration is whether the plea of guilty of the petitioner is sufficient /valid to dismiss him from service.

40. The law on this aspect has been crystallised wherein action against a personnel who alleged to have pleaded guilty is sought to be taken, then the same should be in conformity with the mandate of Rule 142(2) of the BSF Rules. If the action is not in conformity then the same is in contravention to the said rule.

41. Mr. Inayati has relied on the judgment of the Supreme Court in ***Union of India & Ors. v. Jogeshwar Swain, Civil Appeal Nos. 8629-8630/2014***, on the issue of applicability of Rule 142(2) of the BSF Rules, which is followed while conducting the SSFC proceedings; which accordingly to him has been violated. In this judgment, the Supreme court while hearing appeal against the judgment/order passed by this Court in ***W.P. (C) 17430/2006***, wherein this Court has set aside the dismissal order passed against the respondent therein directed his reinstatement. The facts of the case were the respondent was a Constable (General Duty) in the BSF. The case against him was that while he was posted as security aide to a lady doctor on



17.06.2005, at about 07:45 PM, he clicked pictures of that lady doctor while she was taking her bath. The allegations against him were that on the fateful day, the lady doctor requested him to leave her quarter as she were to take a bath, while she was bathing, she noticed through the window of her bathroom two camera flashes, suspecting foul play, she raised an alarm, on her alarm, her mother went out but could find none. Later, the matter was reported to the Chief Medical Officer (CMO), the BSF Authorities investigated the matter and put the original petitioner under open arrest.

42. Suffice to state that on the completion of record of evidence, the Commandant remanded the original petitioner to a trial by the SSFC. The SSFC held its proceedings on 23.07.2005, wherein, the original petitioner is stated to have pleaded guilty. Based on that, the SSFC dismissed the original petitioner from service.

43. The challenge to the dismissal before this Court was primarily on two grounds; a) there were procedural infirmities in conducting the proceedings and b) the evidence recorded did not inculcate him.

44. With regard to the first ground, it was pointed out that Rule 60 of BSF Rules, disqualified an officer from serving as a Court if he was the officer who convened the Court or is the Commandant of the accused. The High Court observed that SSFC was not only convened but also presided over by the Commandant of the original petitioner which vitiated the proceedings of the SSFC. The second ground was that the minutes of the proceedings recording acceptance of guilt by the original petitioner before the SSFC was not signed by the original petitioner. The issue before the Supreme Court in



the case of *Jogeshwar Swain (supra)*, which is relevant for deciding the present petition, is primarily from paragraph nos. 33 to 38, which we reproduced as under:-

“33. Rule 142 of the BSF Rules, 1969 which fall in Chapter XI of the BSF Rules, 1969 deals with the manner in which an SSFC is required to record the plea of guilty. Rule 143 provides for the procedure after the plea of guilty is recorded. The relevant portion of Rule 142 as it stood on the date of the proceeding in question is reproduced below:

“142. General plea of “Guilty” or “Not Guilty”.—

(1) The accused person’s plea of “Guilty” or “Not Guilty” or if he refuses to plead or does not plead intelligibly either one or the other), a plea of “Not Guilty” shall be recorded on each charge.

(2) If an accused person pleads “Guilty”, that plea shall be recorded as the finding of the Court; but before it is recorded, the Court shall ascertain that the accused understands the nature of the charge to which he has pleaded guilty and shall inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty, and of the difference in procedure which will be made by the plea of guilty and shall advise him to withdraw that plea if it appears from the record or abstract of evidence (if any) or otherwise that the accused ought to plead not guilty.”

34. A plain reading of sub-rule (2) of Rule 142 would indicate that on the accused pleading guilty, before a finding of “Guilty” is recorded, the SSFC is not only required to ascertain whether the accused understands the nature and meaning of the charge to



which he has pleaded guilty but it must also inform the accused of the general effect of that plea and of the difference in procedure which will be made by the plea of guilty. That apart, even if the accused pleads guilty, if it appears from the record or abstract of evidence or otherwise that the accused ought to plead not guilty, the SSFC is required to advise him to withdraw that plea.

35. 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 subrule (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.**

36. Reverting to the facts of this case, we notice from the record that the minutes of the proceedings of the SSFC dated 23.07.2005 do not indicate as to what advise was rendered to the accused with regard to the



*general effect of the plea of guilty taken by him. The minutes dated 23.07.2005 are nothing but a verbatim reproduction of the statutory rule. **There is no indication as to how the accused was explained of the broad consequences of him pleading guilty. Verbatim reproduction of the statutory rule and nothing further, in our view, is no compliance of the provisions of sub-rule (2) of Rule 142 of the BSF Rules, 1969. Therefore, we are of the view that the appellants cannot draw benefit from the minutes of the proceedings as to canvass that the plea of guilty was accepted after due compliance of the requirements of sub-rule (2) of Rule 142 of the BSF Rules, 1969.***

37. Further, the record of the proceedings of SSFC dated 23.07.2005 does not bear the signature of the accused. No doubt, the requirement of having the signature of the accused on the minutes recording plea of guilty was first introduced by insertion of the proviso to sub-rule (2) of Rule 142 with effect from 25.11.2011. But there existed no embargo in obtaining signature of the accused to lend credence to the making of the plea of guilty. Absence of signature of the accused in this case assumes importance because here the accused denies taking such a plea and looking at the available evidence, pleading guilty appears to be an unnatural conduct. At the cost of repetition, it be observed that the case against the petitioner was in respect of clicking photographs of a lady doctor while she was taking her bath. There was no eye-witness of the incident; the camera was recovered from some other person's house; PW-9, a witness to the keeping of the camera by the accused (i.e., the original petitioner), in her previous statement made no such disclosure; there was no cogent evidence with regard to ownership of that camera; and, above all, even the reel was not developed to confirm the allegations. In



these circumstances, when there was a challenge to the making of such confession before the High Court, a very heavy burden lay on the non-petitioners (appellants herein) to satisfy the conscience of the Court that the plea of guilty was recorded after due compliance of the procedure prescribed by the BSF Rules, 1969. As we have already noticed that there was no proper compliance of the procedure prescribed by sub-rule (2) of Rule 142 of the BSF Rules, 1969, absence of signature of the accused in the minutes further dents the credibility of the SSFC proceeding. The High Court was therefore justified in looking at the evidence to find out whether punishment solely on the basis of confession (i.e., plea of guilty) was justified.

38. In this context, the High Court meticulously examined the record of evidence prepared under the direction of the Commander to come to the conclusion that except for the statement of PW-9 that the camera was hidden by the original petitioner, there was no worthwhile evidence in respect of his culpability. The High Court also noticed that even PW-9 was not consistent, as during investigation PW-9 had not made any such disclosure that the original petitioner had hidden the camera in the house from where it was recovered. What is important is that the house from where the camera was recovered was not the house of the original petitioner but of another constable who had his house adjoining the quarter where the lady doctor had taken her bath. Interestingly, there was no evidence led to indicate that the said camera was of the original petitioner. In these circumstances, where was the occasion for the original petitioner to make confession of his guilt when there was hardly any evidence against him. Admittedly, none had seen him clicking photographs and the lady doctor also did not inculcate the original petitioner though she might have



suspected the original petitioner. Further, we notice that while preparing the record of evidence also, plea of guilty of the original petitioner was recorded, which the original petitioner claims to have been obtained under duress and without giving him sufficient time to reflect upon the evidence as is the mandate of the proviso to sub-rule (3) of Rule 49 of the BSF Rules, 1969. At this stage, we may remind ourselves that while preparing the record of evidence the statement of last witness was recorded on 29.06.2005 and on that day itself, without giving twenty-four hours' time for reflection, as is required by the proviso to subrule (3) of Rule 49 of the BSF Rules, 1969, alleged confessional statement of the original petitioner was recorded. In these circumstances, when the original petitioner had raised a plea before the High Court that his confession was involuntary and that in fact no confession was made by him, there was a serious burden on the non-petitioners (i.e., the appellants herein), to satisfy the conscience of the High Court that there had been due compliance of the procedure and that the confession was made voluntarily. More so, when the record of evidence contained no worthwhile evidence regarding the guilt of the original petitioner. In the aforesaid backdrop, the SSFC ought to have advised the original petitioner to withdraw the plea of guilt as per provisions of subrule (2) of Rule 142 of the BSF Rules, 1969.”

45. Before, we deal with this issue, it is necessary to reproduce the contents of proceedings wherein the petitioner has allegedly accepted the plea of ‘guilty’ to all the charges as under:-

The charge sheet is read (translated) and explained to the accused, marked-annexure-B2, signed by the Court and attached to the proceedings.

Arraignment



Question to the accused

Q.2 How say you no. 080027744 Rank constable Name Murari Kumar Singh of 174 Bn BSF, are you guilty or not guilty of the first charge which you have heard/read?

*Ans.2 Answer by the accused.
"Guilty"*

Q.3 How say you No. 080027744 Rank CT(GD) Name Murari Kumar Singh of 174 Bn BSF, are you guilty or not guilty of the second charge, which you have heard/read?

Ans.3 "Guilty"

The accused having pleaded guilty to the charges, the court explains to the accused the meaning of charges to which he has pleaded guilty and ascertains that the accused understands the nature of the charges to which he has pladed guilty. The court also informs 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 plead. The Court having satisfied itself that the accused understands the charges and the effect of his plea of guilty and satisfied form 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."

"PROCEEDINGS ON A PLEA OF GUILTY

The Record of Evidence is read (translated), explained, marked "K", signed by the Court and attached to the Proceedings.

The Accused No. 080027744 Rank, CT (GD) Name Murari Kumar Singh of 174 Bn BSF is found Guilty of



the Charges

Charge-1 :-Guilty

Charge-2 :-Guilty

Question to the accused.

Q-4. Do you wish to make any statement in reference to the charge or in mitigation of Punishment?

Ans. Yes, I wish to make a statement,

I will not commit mistake again. I have put on approximate 13 Years of Service and I have small children and wife who are all depended on me. My mother who has expired 02 years back and I have taken loan of Rs-500000/-for her treatment and still I am paying the loan amount to the bank. I may be punished less severely and I should be posted to any ANO Bn so that I can repay my loan.

Q-5. Do you wish to call any witness as to character?

Ans. No, I do not wish to call any witness.”

46. The aforesaid judgment was followed by us in the case of ***Amarjeet Singh v. Union of India & Anr., 2024:DHC:3189-DB***, whereby the following the dicta law laid down by the Supreme Court, this Court has set aside the dismissal of Amarjeet Singh by stating in paragraph no. 47 onwards as under:-

“47. Perusal of the same would reveal that the petitioner has pleaded guilty to all the charges with an intent that he may be given one more opportunity to continue in the respondents” force and it was also stated by the petitioner that if the mistake he has done be pardoned, he will not repeat it again as he has family to support being the only earning member of his family.

48. Therefore, it is clear to us, that the SSFC has not informed him about the consequences of pleading



guilty. In fact, it appears that he was under the bona fide impression that if he pleads guilty, he may be able to secure his job. If that be so, the respondents have only for the sake of formality adhered to the provision of Rule 142 (2) of the BSF Rules and as such, dismissed the petitioner from the service, simply on the basis of the so-called 'guilty plea' in respect of all the three charges. Hence, the proceedings being not in accordance with Rule 142 (2) of the BSF Rules and as well as the law laid down by the Supreme Court in Jogeshwar Swain (supra), the same is not sustainable in the eyes of law.

49. This we also say, for the reason that the DIG himself while reviewing the SSFC trial proceedings under Rules 160 and 161 of the BSF Rules, has clearly held that there is non-compliance of mandatory provisions of Rule 142 (2) of the BSF Rules in respect of charge No.1. It is not understandable to us that when the plea of guilty was with respect to all the three charges, how the findings of the SSFC in respect of the same plea of guilty against the First Charge only is not in conformity with Rule 142 (2) of the BSF Rules. It is to be stated here that if the plea of guilty in respect of the First Charge is in violation of Rule 142 (2) of the BSF Rules, the same conclusion must also hold good with regard to the Second and Third Charges.

50. Though, it can be stated that with regard to the First Charge, there was no cogent evidence to hold the petitioner guilty, but that would not meet the requirement of compliance of the procedure as stipulated for pleading guilty under Rule 142 (2) of the BSF Rules. The fact that the petitioner, despite there being no evidence, has pleaded guilty qua the First Charge, makes it clear that the petitioner has pleaded guilty with regard to the said Charge, though there was no evidence to prove his guilt only with an intent



that he may be able to secure his job. Surely, the intent being so and the respondents having not explained the consequences/ effect of pleading guilty, surely the mandate of Rule 142 (2) of the BSF Rules, has been violated. The necessary consequence is that the SSFC proceedings held against the petitioner which resulted in his dismissal only on the ground of him pleading guilty shall be unsustainable and the dismissal of the petitioner stands vitiated on this ground only.

51. Though other grounds have been urged by Mr. Inayati to challenge the dismissal of the petitioner from the service of the respondents' Force, we do not see any reason to advert to those pleas as we have set aside the impugned action of the respondents on the ground that the mandate of Rule 142 (2) of the BSF Rules has not been followed while dismissing the petitioner from the service.

52. Accordingly, the impugned dismissal order dated December 30, 2021 and the order of the respondents dated September 27, 2022 dismissing the statutory appeal are set aside. The petitioner shall be reinstated in the service of the respondents' Force with all the consequential benefits including back wages to be paid with interest @ 6% per annum.

53. The writ petition is disposed of in above terms. No costs."

47. From the reading of the judgment of the Supreme Court, it is noted that, a guilty plea needs to be recorded in a given SSFC trial proceedings, (In terms of the mandate of Rule 142(2) of the BSF Rules) in the following manner:-

(i) The SSFC is not only required to ascertain whether the accused understands the nature and meaning of the charge



to which he has pleaded guilty but it must also inform the accused of the general effect of that plea and of the difference in procedure which will be made by the plea of guilty;

(ii) Even if the accused pleads guilty, if it appears from the record or abstract of evidence or otherwise that the accused ought to plead not guilty, the SSFC is required to advise him to withdraw that plea;

(iii) Before acting on the plea of guilty, the compliance of the procedural safeguards need to be followed, inasmuch as, it needs to be ensured 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;

(iv) It is for such a reason that Rule 142 (2) 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;

(v) Since, the procedure laid down in Rule 142 (2), serves an important purpose and is for the benefit of an Accused, its strict adherence is warranted before accepting a plea of guilty.

48. Having perused the contents of the documents and as reproduced by us in the above paragraphs, wherein the guilty plea of the petitioner has been recorded, it can be seen that the following was not put forth to the petitioner



inssofar as compliance of Rule 142(2) of the BSF Rules is concerned:-

(i) The court has explained to the accused/petitioner the meaning of charges to which he has pleaded guilty and ascertained that the accused understood the nature of the charges to which he has pleaded guilty;

(ii) The court has also informed the accused/petitioner in the language he understands, the general effect of the plea and the difference in procedure which will be followed consequent to the said plea;

(iii) The Court having satisfied itself that the accused understands the charges 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.”

49. Inasmuch as, there is nothing in the proceedings to show that the SSFC had informed the accused/petitioner about the nature and meaning of the charge which he may have to face, as well as, about the broad consequences that he may have to suffer once he pleads guilty. In other words, the petitioner was not informed that, in the case of him pleading guilty, the consequence could be of his dismissal from service.

50. It is clear from perusal of paragraph 35 of the judgment of the Supreme Court in *Jogeshwar Swain (Supra)* that strict compliance of Rule 142 (2) of the BSF Rules becomes important as the same ensures that confessions do not become an easy way out for deciding cases where marshalling of evidence to prove the charge becomes difficult. In fact, the case of the petitioner and also recorded by the respondents in answer to the question no.4 is that, the petitioner had pleaded guilty to all charges with an



intent that, he may be punished less severely and be posted to any battalion, so that he can repay his loan and then education of his children.

51. Therefore, it is clear to this Court that the SSFC has not informed him about the consequences of him pleading guilty. In fact, it appears that the petitioner was under the *bona fide* impression that, if he pleads guilty, he may be able to secure his job. If that be so, the respondents have only for the sake of formality adhered to the provisions of Rule 142(2) of the BSF Rules and as such dismissed the petitioner from this service, simply on the basis of so-called guilty plea in respect of these charges. The relevant part of the dismissal order as under:-

“///ORDER///

No. 080027744 Constable Murari Kumar Singh ‘D’ Coy of this unit has been tried by Summary security force Court on 21st June’ 2021 at 1800 hrs by the under signed for committing the following offences:-

<p><u>BSF ACT-1968.</u> <u>SECTION-40</u></p>	<p><u>“AN ACT PREJUDICIAL TO GOOD ORDER AND DISCIPLINE TO THE FORCE”</u></p> <p><i>in that he,</i></p> <p><i>On 29.04.2021, at about 0450 hrs, no. 080027744 CT Murari Kumar Singh while performing the duty of Unit Mag Guard at Bn hq, 174 Bn BSF, Maheshpur (WB) and fired 01 Round of 5.56 mm INSAS without any provocation from his personal weapon Butt No. 335 Body No. 16844395.</i></p>
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<p><u>BSF ACT-1968.</u> <u>SECTION-22 (e)</u></p>	<p><u>“NEGLECTS TO OBEY ANY GENERAL, LOCAL AND OTHER ORDER”.</u></p> <p><i>in that he,</i></p> <p><i>On 29.04.2021, at about 0450 hrs, when checked by ASI/ Adjt Ashok Kumar Gularia, found him in the state of intoxication while on Unit Mag guard duty at Bn HQ. 174 Bn BSF in contravention of Battalion Oder No. Steno/ Order/ 174 Bn/ 2019/ 18159-68 dated 03.10.2019</i></p>
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2. The court has found the accused **‘Guilty’** of above charges and awarded the sentenced **“TO BE DISMISSED FROM SERVICE”**. The finding and sentence of the court was promulgated to the accused at Bn HQ. 174 Bn bsf, Maheshpur, Raiganj (WB) on 21st June’ 2021 by the undersigned.

3. *Outstanding dues & Govt. Dues if any be recovered from the dues payable to the individual. He has been struck off strength from this Battalion 21.06.2021 (AN).”*

52. Even on the statutory appeal filed by the petitioner, the Competent Authority has held the petitioner has given a statement that, he will not commit the mistake again and he may be punished less severely. The relevant paragraphs of the order dated 26.12.2021 is reproduced as under:

“6. Whereas, the aforesaid petition/appeal dated 17.08.2021 of the petitioner has been considered carefully by the competent authority i.e. Inspector General BSF, North Bengal Ftr and it has been observed that the SSFC trial of the petitioner was conducted strictly in accordance with rules and procedure as prescribed under the BSF Act & Rules, wherein the petitioner



was given sufficient opportunity to defend himself at every stage of the trial. More so, there is sufficient and cogent evidence available on record in the ROE proceedings to sustain his conviction on the aforementioned charges against him. **The grounds raised by the petitioner are also examined thoroughly and the same are found to be false and misleading. During the trial, the petitioner himself pleaded 'Guilty' to both the charges against him.** The Court complied with the provisions of BSF Rule 142(2) and thereafter, following the due procedure, the Court found the petitioner 'Guilty' of both the charges against him. **On being given an opportunity to make a statement in reference to the charges and/or mitigation of the punishment, and to call witness as to character, the petitioner did not call any witness as to character, but made short statement, wherein he has stated that he will not commit mistake again. He had put in approximate 13 years of service in BSF and he has small children and wife who all are depended on him. His mother had expired 02 years back and he had taken loan of Rupees 5 lakh for treatment and still he is paying the loan amount to the bank. He may be punished less severely and he should be posted to any ANO Bn so that he can repay his loan".** The petitioner was not tried for the same offences twice as alleged. In fact, on 17.05.2021, the petitioner was tried summarily under Section 53 of the BSF Act, 1968 for committing another offence under Section 19(b) of the BSF Act, 1968 for "Overstaying from leave without sufficient cause for 86 days" and on being found guilty of the said charge, he was awarded the punishment "to suffer 28 days RI in force custody". As far as service profile of the petitioner is concerned, as on 21.06.2021 ie. the date of his conviction by the SSFC, the petitioner was 35 years 05 months and 01 day of age and had rendered 13 years, 02 months and 20 days of service in BSF. His past service record is also not good as during his service career in BSF, he had been punished on 10 earlier occasions for committing various offences under the BSF Act, 1968, but he failed to improve himself.

7. In view of foregoing and after careful consideration of all the



facts and circumstances of the case, the Inspector General BSF, North Bengal Ftr, being the competent authority, rejected the petition/appeal dated 17.08.2021 submitted by the petitioner for reinstatement in service being devoid of merit.”

(Emphasis supplied)

53. Hence, the proceedings being not in accordance with Rule 142(2) of the BSF Rules as well as the law laid down by the Supreme Court in the case of ***Jogeshwar Swain (Supra)***, the same is not sustainable in the eyes of law. Accordingly, the impugned order of dismissal dated 21.06.2021 and the order of Statutory Appeal dated 26.12.2021 are set aside. The petitioner shall be reinstated in the service of the respondents with all consequential benefits including back wages to be paid with interest at 6% per annum.

54. The petition is disposed of with the above directions.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

MARCH 10, 2026

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