

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

WPA 10487 of 2021

With

CAN 1/2022

Ravi Kant

Versus

Union of India and Others

For the Petitioner : Mr. Saptangshu Basu, Ld. Sr. Adv.
Ms. Tanuka Basu, Adv.
Mr. Tanmoy Chakraborty, Adv.
Mr. Sourav Dutta, Adv.
Ms. Susmita Saha, Adv.
Mr. Akash Das, Adv.

**For the Respondents/
Union of India** : Mr. D.N. Roy, Adv.
Ms. Debapriya Gupta, Adv.
Mr. Sourav Mondal, Adv.

Heard on : 12.03.2026

Judgment on : 27.03.2026

Ajay Kumar Gupta, J.: -

1. The petitioner has filed this writ petition challenging the purported show cause notice dated 31st December, 2020 and the purported termination notice dated 26th April, 2021, issued by the respondent no. 4, the Deputy Inspector General (Confidential), BSF, on behalf of the respondent no. 2, the Director General, BSF.
2. The prayers made by the petitioner in the writ petition, *inter alia*, are as under: -

“A) Rule 26 of the Writ Rules be dispensed with;

B) A Writ of or in the nature of Mandamus be issued directing the respondent authorities as follows: -

i) to act in accordance with law;

ii) to set aside and/or quash the purported show cause notice for initiation of action under Rule 20 (4) (C) of the BSF Rules, 1969 under No. C-14011/08/2019/CC/ PERS/BSF/21469-74 dated 31st December, 2020 issued by the respondent no. 4 on behalf of the respondent no. 2;

iii) to set aside and/or quash the purported show cause notice for termination of service of the petitioner under Rule 20 (4) (C) of the BSF Rules, 1969 under F. No. C-14011/08/2019/ CC/ Pers/ BSF/ 10799-802 dated 26th April, 2021 issued by the respondent no. 4 on behalf of the respondent no. 2;

iv) to supply the petitioner the copy of the report of the petitioner's misconduct on the basis of which purported show cause notices for initiation of proceeding and termination of service were issued by the respondent no. 4 on behalf of respondent no. 2;

v) to restrain the respondents from proceeding further on the basis of purported show cause notices dated 31.12.2020 and 26.04.2021 issued by the respondent no. 4 on behalf of the respondent no. 2;

C) A Writ of or in the nature of Certiorari be issued directing the respondents particularly the respondent nos. 2, 3, 4 and 5 to transmit all papers and documents relating to this case so that on perusal of the same a conscionable justice may be administered thereon by setting aside and/or quashing purported show cause notices dated 31.12.2020 and 26.04.2021 respectively issued by the respondent no. 4 on behalf of the respondent no. 2;

D) Rule Nisi in terms of prayer (B) and (C) above;

E) An order of Injunction be passed restraining the respondents particularly the respondent nos. 2, 3 and 4 from proceeding further on the basis of the purported show cause notices dated 31.12.2020 and 26.04.2021 issued by the respondent no. 4 on behalf of the respondent no. 2 till the disposal of this application;

F) An order of Injunction be passed restraining the respondent nos. 2, 3 and 4 from terminating the service of the petitioner by invoking Rule 20 (4) (C) of the Border Security Force Rules, 1969 till the disposal of this application;

G) An order of Mandatory Injunction be passed directing the respondents particularly the respondent nos. 2, 3 and 4 to supply the documents as sought for by the petitioner vide various letters and to supply the copy of the report on petitioner's misconduct, the basis of which the purported show cause notices were issued by the respondent no. 4 on behalf of the respondent no. 2;

H) Ad-interim order in terms of prayers (E), (F) & (G) respectively;

I) Any other or further order or orders and/or direction or directions as to Your Lordships may deem fit and proper.”

FACTS OF THE CASE:

- 3.** The brief facts, leading to the filing of this writ petition, are as follows:
 - a.** On 1st December, 1988, the petitioner joined as a Sub-Inspector/Platoon Commander in Border Security Force ('BSF' in short). On 01.02.1993, the petitioner joined as Assistant Commandant. In August, 2011, the petitioner was promoted to the rank of Commandant and in September, 2011, the petitioner was posted to 38 BN BSF as Commandant deployed at Dera Baba Nanak, Punjab.
 - b.** In August of 2014, a complaint was lodged by a Subordinate female officer/respondent no. 6, against the petitioner. At the relevant time, the respondent no. 6 was posted at 80 BN, BSF Camp, Rajouri, about 320 kms away from the posting of the petitioner. On 14th August, 2014, on disciplinary grounds, the

Petitioner was posted to FTR.HQ, BSF, Jalandhar, Punjab. The Court of Inquiry was concluded against the petitioner, and suitable action as deemed appropriate was recommended against the petitioner on 10.09.2014.

- c.** In December, 2014, the petitioner was posted to SHQ, Ferozepur, Punjab. A Record of Evidence (ROE) was conducted, and the Recording Officer recommended administrative action in the nature of displeasure and warning against the petitioner. However, in August, 2015, the respondent no. 2, exercising discretionary power, directed that a General Security Force Court (GSFC) be convened to try the petitioner of the proposed three charges.
- d.** The Petitioner faced trial before a GSFC at Ferozepur, Punjab. Before, during, and after the period of trial, he was confined in a room and was not permitted to leave the BSF Campus. On 10th July, 2017, the GSFC declared the petitioner '**Not Guilty**' of all three charges.
- e.** By order dated 20th August, 2018, the Respondent no. 2, instead of confirming the findings of the GSFC, directed a revision trial for re-appreciation of evidence in respect of one charge. The petitioner faced a revision trial before the GSFC at Ferozepur, Punjab. The petitioner was again confined to one room for one month pre- and

post-revision trial, before the GSFC and was not permitted to leave the BSF Campus during that period.

- f.** On 11.09.2018, the GSFC reconfirmed its earlier finding once more declaring the petitioner **“Not Guilty”** of the said charge, after complete, careful and judicious scrutiny of the evidence on record, law and other circumstances. The petitioner reported to SHW, Ferozepur, for promulgation of sentence on 10.03.2019, which was conveyed and two charges were dropped on 11.03.2019.
- g.** In September, 2019, the petitioner was awarded a Director General’s Commendation Card.
- h.** On 8th January, 2021, the petitioner received the purported show cause notice dated 31st December, 2020, issued by the respondent no. 4 on behalf of the respondent no. 2 under Rule 20(4)(C) of the BSF Rules, 1969, read with Section 10 of the BSF Act, 1968. The petitioner sought documents to give a detailed reply to the purported show cause notice dated 31st December, 2020.
- i.** On 1st February, 2021, the petitioner submitted a partial reply to the show cause notice as the documents sought by the petitioner were not provided to him. On the same date, the petitioner filed a writ petition before the Hon’ble Delhi High Court. The Hon’ble High Court initially stayed the show cause notice, and on 3rd February,

2021, the petitioner withdrew the writ petition and, accordingly, it was dismissed as withdrawn.

- j.** Again, in April, 2021, the petitioner requested that the respondent no. 2 supply the documents for giving a detailed reply, but on 26th April 2021, the respondent no. 2 issued second show cause notice to terminate the service of the petitioner. The petitioner received the said show cause notice was received by the petitioner.
- k.** Being aggrieved by and dissatisfied with two show cause notices dated 31.12.2020 and 26.04.2021, the petitioner filed this writ petition seeking the aforesaid relief(s).

SUBMISSIONS ON BEHALF OF THE PETITIONER:

- 4.** Learned senior counsel appearing on behalf of the petitioner vehemently argued that the impugned show cause notices issued by the respondent no. 4 on behalf of the respondent no. 2 are premeditated and reflect a closed and prejudged mind of the confirming authority. It was argued that the said show cause notices were issued without application of mind and without semblance of reasoning with the sole objective of terminating the petitioner from the service, despite the GSFC having found **“Not Guilty”** on all three charges levelled against him from 20.06.2017 to 10.07.2017. The petitioner faced trial on the basis of a recommendation made by the

respondent no. 2. The GSFC concluded the trial and found “**Not Guilty**” after considering the evidence, both oral and documentary.

5. It was further submitted that the findings of the GSF were placed before the confirming authority, i.e., the respondent no. 3 herein. However, instead of confirming the same, the authority further remanded the matter back for revision only on one charge with the express direction to the GSFC to revisit its earlier finding on a particularly one charge that is preferred u/s 46 of the BSF Act, 1968 for committing a civil offence – Sexual harassment by demand or request for sexual favours punishable u/s 354A (2) IPC.
6. Pursuant to such remand, the petitioner again faced trial/re-appreciation of evidence before the Revisional Court and, ultimately, vide order dated 11.09.2018, again the Revisional Court confirmed the earlier findings of “**Not Guilty**”. However, the respondent no. 3 again did not confirm the findings of the GSFC or the Revisional Court. Rather, the petitioner’s movements outside the campus were curtailed for around two months. The petitioner was forced to be confined to a single room without any work for want of confirmation from the respondent no. 3. Ultimately, the petitioner joined on 01.05.2018 at SHQ, BSF, Kolkata, West Bengal Frontier as

Commandant (Operations), a sensitive posting at the Indo-Bangladesh Border.

7. It was further contended that, in 2019, the petitioner was awarded the Director General Commandant Roll (DGCR) in recognition of his meritorious service after acquittal. However, subsequently, the petitioner received a Show Cause Notice proposing compulsory retirement on the basis of the same allegations for which he had already been tried and exonerated.
8. Learned Senior Counsel further submitted that the impugned Show Cause Notice as well as Termination, issued by the respondent no. 4 on behalf of the respondent no. 2, are whimsical, mala fide, and issued without any valid and sufficient ground. It was argued that the mandatory conditions for the invocation of Rule 20 of the BSF Rules, 1969 were not satisfied. Therefore, the act of the respondent no. 2 was apparently illegal, assumed jurisdiction to terminate the service of the petitioner and a mala fide, arbitrary and unconstitutional exercise of power. No sufficient reason was assigned in the said show cause notices as to why such show cause notice was required to be issued when twice occasions GSGC declared '**Not Guilty**' after full trial on the basis of evidence, both oral and documentary as such, such notices are liable to be set aside and should be quashed.

9. Learned senior counsel has placed reliance on some judgments in support of his contention that if the show cause notice without assigning valid reasons or indicating the finding of the GSFC are not convincing, perverse and against the weight of the evidence should be unsustainable and should be set aside as under: -

i. Sri Amiya Ghosh Vs. The Union of India & Ors.¹;

ii. R.S. Kadian Vs. Union of India & Ors.²;

iii. No. 87250608 Head Constable, Raj Kumar & Ors. Vs. Commandant 125 Battalion Border Security Forces & Ors.³;

iv. Union of India & Ors. Vs. No. 87250608 Head Constable, Raj Kumar & Ors.⁴

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

10. Learned counsel appearing on behalf of the Respondents submitted an affidavit in opposition filed in the present writ petition by the respondents, stating a clear stand against the petitioner. It was contended that the confirming authority rightly declined to accept the findings of the GSFC, believing that retention of the petitioner in service was not desirable, in terms of Section 11 of the BSF Act, 1968, read with Rule 22 (2) of the BSF Rules, 1969. Accordingly, a

¹ (2017) 1 CAL LT 1 (HC);

² W.P.(C) 19014/2006 & CM Appl. 19244/2018;

³ W.P. 10263(W) of 2015 order dated 11.01.2017;

⁴ 2025 SCC OnLine Cal 8165.

show-cause notice dated 31.12.2020 was issued to the petitioner. It was further submitted that the Petitioner failed to submit a proper reply, necessitating issuance of a second show case notice dated 26th April, 2021, proposing termination under Rule 20(4)(C). It was argued that adequate opportunity was afforded to the petitioner and no prejudice has been caused.

- 11.** It was further submitted that although the GSFC returned findings of **“Not Guilty”** on two occasions, such findings do not attain finality unless confirmed by the competent authority. The confirming authority, upon an overall assessment of the evidence, was not satisfied with the findings, and reasons for such dissatisfaction have been duly recorded in the show cause notice. It was contended that the writ petition is premature, as the petitioner approached the Court without submitting a complete reply to the show cause notice.
- 12.** Learned counsel further submitted that the matter was earlier considered by a Co-ordinate Bench, which directed the petitioner to file a reply to the show cause notice and permitted the respondents to proceed with the enquiry. However, it was directed that the final outcome of such proceedings shall not be given effect to without leave of the Court. The respondents were also directed to file their affidavit-

in-opposition within the stipulated time. The observations of the Coordinate bench are Setout hereinbelow: -

“the matter is required to be heard after affording the respondents to disclose their stand on affidavit. At the same time, if no protection is granted to the petitioner, the proceedings before the Director General, BSF will continue and the writ petition may be rendered infructuous if at the end the petitioner is found guilty and removed from the services. The petitioner was, therefore, directed to reply to the show cause notice and the respondents shall be free to proceed with the proceedings on the basis of such notice and reply but the final result of the proceedings initiated in terms of the notice dated 31st December, 2020 shall not be published or given effect to without the leave of this Court. The petitioner is permitted to file reply to the show cause notice and also asked the respondents to file affidavit-in-opposition within four weeks from date and reply, if any, thereto be filed by two weeks thereafter.”

- 13.** It was lastly submitted that the departmental enquiry has already been concluded, and the outcome has been placed before this Court in a sealed cover. It was contended that there is no illegality or perversity in the initiation of proceedings or issuance of the show cause notices, and the writ petition is therefore liable to be dismissed.

ANALYSIS AND FINDINGS OF THIS COURT:

- 14.** This Court has heard the learned counsel for the respective parties and perused the materials placed on record. It appears that the GSFC

tried the petitioner under the BSF Act, 1968, w.e.f. 20th June, 2017 to 10th July, 2017. The GSFC conducted a full trial on the three charges levelled against the petitioner. Those charges are stated herein below:-

i. The first charge against him was preferred u/s 46 of the BSF Act, 1968, for committing a civil offence – “Sexual harassment by demand or request for sexual favours punishable u/s 354A (2) IPC.

ii. Second and third charges were preferred u/s 40 of the BSF Act for “An act prejudicial to good order and discipline of the Force”.

- 15.** The first charge asserted that during the period from 2nd to 3rd August, 2014, while commanding 38 Bn BSF at Dera Baba Nanak, Dist. Gurdaspur (Pb) caused sexual harassment to “X” (This court does not prefer to narrate the specific name of the victim since the matter is in connection with an offence relating to a woman), AC/MO, IRLA No. 11217206, of 80 Bn BSF by demanding/requesting her for sexual favours by sending sexually coloured messages through WhatsApp.
- 16.** The second charge asserted that during the period from 2nd August, 2014, to 4th August, 2014, while Commanding 38 Bn BSF at Dera

Baba Nanak Dist. Gurdaspur (PB) improperly used a SIM Card issued in the name of HC/RO Devender Singh, formerly posted in 38 Bn BSF, for indulging in objectionable and sexually coloured WhatsApp chatting with 'X', AC/MO of 80 Bn BSF.

- 17.** The third charge asserted that on 1st August, 2014, at HQ 38 BN BSF, Dera Baba Nanak, Dist. Gurdaspur (PB), being Commandant of 38 Bn BSF, improperly asked 'X', AC/MO of his unit, to insist that she indulge in a WhatsApp chat with him on the pretext of 'something urgent'.
- 18.** After culmination of the trial, the GSFC found him **'Not Guilty'** of all three charges, which should have confirmed by the confirming authority since the GSFC declared him **'Not Guilty'**.
- 19.** The confirming authority, after going through the observation made by the GSFC, found that there was sufficient evidence against the petitioner in the trial proceeding with regard to the first charge and the finding of the GSFC on the first charge was against the weight of evidence. The findings of the GSFC in the other two charges were accepted by the confirming authority.
- 20.** The Additional DG (WC), BSF, being the Confirming Authority, was unsatisfied with the weight of the evidence, remanded the matter for revision of trial by the GSFC under Rule 113 of the BSF Rules, 1969

only on the issue of aforesaid first charge. Revision Court again re-tried and reappreciated the evidence on record and finally came to a conclusion upon consideration of the evidence produced before the GSFC and declared again the petitioner as **“Not Guilty”** and confirmed the earlier findings. However, the confirming authority again not satisfied with the finding of the GSFC and observed that there was sufficient evidence in the trial proceeding with reference to the first charge against the petitioner. Therefore, he did not confirm the findings of the GSFC on first charge whereas findings of second and third charges were confirmed.

- 21.** Having examined the recognition of confirming authority as well as evidence available in the trial proceeding, the Director General, BSF is of the view that there being no provision for second revision of the finding of the GSFC under BSF Act, 1968 and the finding of the first charge having been not confirmed being against the weight of the evidence, the trial on the first charge has become inexpedient.
- 22.** It was further the view of the DG, BSF that the petitioner should not be retained in the service as it is undesirable and is of the opinion that his service should be terminated in terms of Section 10 of the BSF Act, 1968 read with Rule 20(4)(c) of the BSF Rules, 1969 by asking him to retire from service and therefore, issued show cause

notice dated 31st December, 2020 under the provision of Rule 20 of the BSF Rules asking the petitioner why he should not be terminated from service by retiring him from service.

- 23.** The petitioner has partially replied to the said notice, indicating that the show cause was not properly issued as he was acquitted by GSFC against all three charges. Subsequently, the Revision Court also confirmed the first charge, which was referred for revision by the confirming authority. He also pleaded that he had been credited with very good performance in his service career, and no materials were available against him before the GSFC to convict him of any of the charges.
- 24.** The GSFC is constituted under Section 64 of the BSF Act, 1968. It consists of not less than five officers, each of whom has held the post of Deputy Superintendent of Police for not less than three whole years and of whom not less than four are of a rank not below that of a confirmed Deputy Superintendent of police (Section 68) and has power try the case judiciously. Section 87 deals with General rule as to evidence. The Indian Evidence Act, 1872 (1 of 1872), shall, subject to the provisions of the BSF Act, apply to all proceedings before the GSFC. Apart from that the GSFC may take judicial notice of matter within the general knowledge of the members as officers of the Force

and all other general power like Summoning witnesses, Commissions for Examination of Witnesses, Examination of Witness on commission, conviction of offence not charged, presumption as to certain documents and also may inquire into, and receive, and record evidence of any previous convictions of such person, who tried before it.

- 25.** The petitioner challenged the show cause notices dated 31.12.2020 as well as 26.04.2021 issued against him proposing for termination of service by filing the present writ petition. Initially, the matter was heard by the Co-ordinate Bench and passed the following order: -

“...the matter is required to be heard after affording the respondents to disclose their stand on affidavit. At the same time, if no protection is granted to the petitioner, the proceedings before the Director General, BSF will continue and the writ petition may be rendered infructuous if at the end the petitioner is found guilty and removed from the services.

The petitioner, therefore, shall reply to the show cause and the respondents shall be free to proceed with the proceedings on the basis of such notice and reply, but the final result of the proceedings initiated in terms of the notice dated 31st December, 2020 shall not be published or given effect to without the leave of this Court.

The petitioner says that the time to file reply to the show cause notice has already expired and the petitioner may be granted an opportunity to file his reply.

The petitioner is permitted time till 16th November, 2021 for filing reply to the show cause notice dated 31st December, 2020.

Let affidavit-in-opposition be filed within a period of four weeks from date. Reply, if any, thereto be filed by two weeks thereafter.”

- 26.** In course of pendency of this writ petition, the respondents have filed an application, being CAN 1 of 2022, praying to grant leave to publish and/or to give effect to the final order of termination of service of the writ petitioner. That matter was placed before the Co-ordinate Benches, but ultimately the matter came up before this bench on 07.01.2026 due to a change in determination, and this Court heard the learned counsels for the respective parties at length for final adjudication.
- 27.** Now, the questions that emerge for consideration before this Court are as follows:
- i. Whether, after the petitioner has been declared “Not Guilty” by the GSFC and such finding has been reaffirmed upon revision, the confirming authority is empowered to issue a show cause notice proposing termination of service under Rule 20(4)(c) of the BSF Rules, 1969?

- ii. Whether the confirming authority is under a legal obligation to assign cogent and reasonable grounds for declining to confirm the GSFC's finding of "Not Guilty"?
 - iii. Whether the principles of natural justice require the authority to furnish all relevant materials to the petitioner and afford a meaningful opportunity of hearing before taking an adverse decision?
- 28.** Upon careful perusal of Section 107 of the BSF Act, it is revealed that the findings of GSFC need confirmation by the confirming authority.
- 29.** Before deciding the issue involved in the instant case, this Court would like to refer to Section 10 of the BSF Act, 1968 and Rule 20 of the BSF Rules, 1969 as under: -

Section 10 of the BSF Act, 1968:

"10. Termination of service by Central Government. - Subject to the provisions of this Act and the rules, the Central Government may dismiss or remove from the service any person subject to this Act."

Rule 20 of the BSF Rules, 1969:

"20. Termination of service of officers by the Central Government on account of misconduct. -(1) When it is proposed to terminate the service of an officer under Section 10 on account of misconduct, he shall be given an opportunity to show-cause in the manner specified in sub-rule (2) against such action:

Provided that this sub-rule shall not apply: -

(a) where the service is terminated on the ground of conduct which has led to his conviction by a criminal court or a Security Force Court; or

(b) where the Central Government is satisfied that for reasons, to be recorded in writing, it is not expedient or reasonably practicable to give to the officer an opportunity of showing cause.

(2) When after considering the reports on an Officer's misconduct, the Central Government or the Director- General, as the case may be, is satisfied that the trial of the Officer by a Security Force Court is inexpedient or impracticable, but is of the opinion, that the further retention of the said officer in the service is undesirable, the Director-General shall so inform the officer together with particulars of allegation and report of investigation (including the statements of witnesses, if any, recorded and copies of documents if any, intended to be used against him) in cases where allegations have been investigated and he shall be called upon to submit, in writing, his explanation and defence:

Provided that the Director-General may withhold disclosure of such report or portion thereof if, in his opinion, its disclosure is not in the interest of the Security of the State.

(3) In the event of the explanation of the Officer being considered unsatisfactory by the Director-General, or when so directed by the Central Government, the case shall be submitted to the recommendations of the Director-General as to the termination of the Officer's service in the manner specified in sub-rule (4).

(4) When submitting a case to Central Government under the provisions of sub-rule (2) or sub-rule (3), the Director-General

shall make his recommendation whether the Officer's service should be terminated, and if so, whether the officer should be-

- (a) dismissed from the service; or*
- (b) removed from the service; or*
- (c) retired from the service; or*
- (d) called upon to resign.*

(5) The Central Government, after considering the reports and the officer's defence, if any, or the judgment of the criminal court, as the case may be, and the recommendation of the Director-General, may remove or dismiss the officer with or without pension, or retire or get his resignation from service, and on his refusing to do so, the officer may be compulsorily retired or removed from the service with pension or gratuity, if any, admissible to him.”

- 30.** Section 108 of the BSF Act envisages the power of the ‘confirming authority’, which reads as under:

“S.108. Power to confirm finding and, sentence of General Security Force Court. – *The findings and sentences of General Security Force Courts may be confirmed by the Central Government or by any officer empowered in this behalf by warrant of the Central Government.”*

- 31.** As per Section 108, the findings of GSFC deserve confirmation. This provision is silent about the observance of principles of natural justice if the findings of the GSFC are in favour of the employee, and the confirming authority intends to disagree with it and is inclined to impose punishment.

- 32.** So, this Court is of the view that the confirming authority can issue a show cause notice under Rule 20 of the BSF Rules, subject to some reasonableness, as to why it is not satisfied with the findings of the GSFC as well as the Revisional Court.
- 33.** It is not disputed that in the present case, the case was tried by the GSFC against the petitioner on mainly three charges and found 'Not Guilty' of all three charges. Subsequently, the competent authority was not satisfied with the finding of the GSFC as regard to the First Charge and placed the petitioner before the GSFC for revision. But this time, he was also declared 'Not Guilty' of the alleged charge. However, the authority was not satisfied with the finding the GSFC and issued a show cause notice dated 31st December, 2020 under Rule 20(4)(c) of the BSF Rules, 1969, and subsequently another show cause notice was issued on 26th April, 2021 indicating therein that the grounds or reasons leading to decision for proposed administrative termination of your service have adequately been covered.
- 34.** The show cause notices dated 31st December, 2020, and 26th April, 2021, become the subject matter of challenge before this court.
- 35.** The Show cause notice dated 31st December, 2020 reads, *inter alia*, as follows:

“3. Whereas, at the Revision Trial, the Court adhered to its earlier Finding of ‘Not Guilty’ on the First Charge. However, the Confirming Authority after going through the evidence available in the Trial Proceedings, confirmed the Findings of the Court on the Second and Third Charges but did not confirm the Finding of the Court on the First Charge as the same was found to be against the weight of evidence.

4. Whereas, the Addl DG (WC), the Confirming Authority has taken up the case with HQ DG BSF for initiation of administrative action against you under Section 10 of the BSF Act, 1968 read with Rule 20(4) (c) of BSF Rules, 1969 i.e. to retire you from service.

5. Whereas, DG BSF has examined the report of Confirming Authority as well as the GSFC trial proceedings and on overall perusal of the evidence adduced before the GSFC in respect of the First Charge, DG BSF has found that the Court considered the words of the chat, "I waana have all kind of relationship with u.. are you ready?? Yeah.... emotional psychological physical etc.. now make me clear. Be frank pl" devoid of any sexual orientations, though, a plain reading of the chats clearly indicates solicitation of sexual favours. Even in the context of entire chat, it indicates that you were leading the victim towards solicitation of sexual favours. Other reasons given by the Court to acquit you interalia include initiation of the chat by PW-4, XXXX (the victim) that she did not object to your chats, that the word ‘physical’ did not have any sexual connotations and that the interpretation of the chat by the victim was an afterthought. All these reasons seem to skirt the core issue of sexual harassment by the chats by

negating the conversation which with no ambiguity or doubt that the said conversation did have sexual orientation demanding sexual favour. During cross-examination, PW-4 had stated that in the word 'physical education', 'physical' means everything about the physical activities i.e. mental, physical endurance, physical exercises, etc. The Court quoted these words to say that even PW-4 stated before the Court that word 'physical' did not have any sexual connotation which was completely absurd and misleading. The Court also doubted the authenticity of the chat between you and PW-4 on the ground that Dr. M Bhaskar (PW-3) could not open the Mobile Phone of PW-4 to show the chat to the Court, a copy of which is already attached with the Report (Exhibit -P') and that he failed to submit the certificate u/s 65B of the Indian Evidence Act, 1872 with the Report which the Court found to be legal requirement but the same was submitted afterwards. The Court also reasoned that the chat record annexed with the Report (Exhibit-'P') submitted by the Forensic Expert appeared to be photographs of the chats in the Mobile only and this Report did not mention IMEI number. However, the Court failed to appreciate the fact that Dr. M Bhaskar (PW-3), the Forensic Expert stated unambiguously before the Court that he retrieved the data of WhatsApp chat which took place between Mobile Number 75893-72373 and Mobile number 94192-95356 and got stored in the Mobile Phone (Sony Xperia) of XXXX and annexed said data details of the said WhatsApp chat with the Report (Exhibit-'P'). Since the chats were extracted from the Mobile Phone by a specialized agency, mere non mention of IMEI number, when the Mobile Phone or the Mobile Numbers were not in dispute, does not

otherwise affect the cogent evidence on record. Furthermore, at the Revision Trial, when the expert witness opened the WhatsApp chat stored in memory of said Mobile Phone, i.e. a Primary Evidence before the Court and the Court duly satisfied itself about the authenticity of the said WhatsApp chat stored in said Mobile Phone which corroborates the direct evidence of XXXX (PW-4) whereby, you had posted sexually colored messages through WhatsApp demanding/ requesting sexual favours, the Court ought to have revoked its earlier Finding on the Charge, but it adhered to its earlier Finding rejecting the evidence on record on mere technical grounds. In view of the evidence of Expert describing the manner of extraction for arriving at his opinion, negating such evidence merely on the basis of flimsical observation by Court was not appropriate. In sum and substance, the Finding of the Court on the First Charge is against the weight of evidence. The Court having considered the observations raised in Revision Order, adhered to its earlier Finding on the First Charge. The Court has, however, not given any reason for its disagreement with the issues raised in the Revision Order despite its visit to work station of PW-3 at CFSL, Chandigarh and having satisfied that there was no variation in the WhatsApp chat record annexed with the Report (Exhibit-P), as alleged in the particulars of the First Charge preferred against you, after having seen WhatsApp chat on the Mobile at the workstation of PW-3 resulting in grave miscarriage of justice(Copy of GSFC trial proceedings has already been provided to you vide letter No 03/104/2015-CLO/BSF/1739-41 dated 19th Aug' 2019).

6. *Whereas, in the light of above, DG BSF has found that the reasons given by the Court in support of its Finding on the First Charge are not in consonance with the evidence available on record of the trial proceedings & thereby it's finding on the said Charge is against the weight of evidence.*

7. *Whereas, "having gone through the Report of the Confirming Authority as well as evidence available in Trial Proceedings, Director General, BSF is of the view that there being no provision for second revision of the Finding of the Court under the BSF Act, 1968 and the Finding of the First Charge having been not confirmed being against the weight of the evidence, the trial on the first charge has become inexpedient. In view of evidence available in the Trial Proceedings with regard to the First Charge against you, Director General BSF is further of the view that your further retention in service is undesirable and is of tentative opinion that your Services should be terminated in terms of Sec 10 of the BSF Act, 1968 read with Rule 20(4)(c) of BSF Rules, 1969 by retiring you from Service."*

- 36.** Upon careful perusal of the show cause notice dated 31st December, 2020 particularly paragraphs 5, this Court does not find any specific or sufficient reasons for not confirming the findings of the GSFC and Revisional Court. The reason assigned in the said show cause notice was simply indicated the evidence adduced before the GSFC in respect of the First Charge are sufficient to hold him guilty.

37. The finding of the GSFC had been very clearly reflecting that the First

Charge could not be proved on the following grounds:

i) The alleged chats between the accused and P.W. 4 are not authentic as P.W. 3 (Addl.), Dr. M. Basker was not able to open the mobile of PW-4 to show the chat to the court;

ii) PW-3 (Addl.) failed to submit the required certificate under section 65B of Indian Evidence Act, 1872 with his report, which is a legal requirement;

iii) He has not even mentioned the IMEI Number of the Mobile under examination.

iv) The Court does not find any double meaning in the alleged chat as it is the mere interpretation of PW4. The court also not believed alleged word or chat conveyed any meaning showing that the accused was demanding or requesting sexual favour from her and ultimately declared him 'Not Guilty'.

38. This Court is conscious that the writ court is not sitting in appeal to analyse and appreciate evidence that was tendered before the GSFC.

However, in appropriate cases, a writ court has jurisdiction to interfere with the action of the authority, when it is found to be mala fide, perverse, arbitrary or unreasonable and a violation of the principle of natural justice.

39. This court gains/gets support that it is settled law that the writ court may, on the basis of admitted facts and circumstances, itself pass an order or give directions which the Government or the public authority

should have passed or given had it properly and lawfully exercised its discretion relying upon a particular paragraph no. 67 of the judgment passed in the case of ***Sri Amiya Ghose Vs. The Union of India & Ors.***⁵.

40. In the present case, while it is true that the petitioner has replied to the show-cause partly to the Director General, BSF, asking him to supply relevant documents, reserving his right to make additional submissions once the documents sought have been provided to him. He also indicated in his reply that he was given DGCR even after the alleged incident and the acquittal. He could not understand as to why the show cause notice had been issued despite a detailed judicial verdict by the Learned GSFC, which was in a much better position to separate the grain from chaff during Trial as well as Revision, as proposed by the concerned Authority of the BSF.

41. Section 106 of the BSF Act, 1968, is set out herein below:-

“106. Powers of Security Force Court in relation to proceedings under this Act.—Any trial by a Security Force Court under the provisions of this Act shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Security Force Court 26 shall be deemed to be a court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898 (5 of 1898).”

⁵ **(2017) 1 CAL LT 1 (HC).**

- 42.** The aforesaid section clearly indicates that any Trial held by a Security Force Court is deemed to be a judicial proceeding under sections 193 and 228 of the Indian Penal Code. Section 106 grants power to the Security Force Courts, that is equivalent to a court under the Code of Criminal Procedure, 1898, for handling perjury and contempt. Therefore, the final decision of the GSFC has some probative value, and the findings are deemed relevant and trustworthy enough to be admitted unless found perverse and ex facie illegal.
- 43.** It is not disputed that the Confirming Authority has confirmed the findings of the court on the second and third charges after going through the evidence available in the Trial proceedings. However, the First Charge was not confirmed, as it was found to be against the weight of evidence, although all three alleged charges levelled against the petitioner were based on a similar set of facts and more or less related to the same victim/complainant.
- 44.** The writ petitioner had written several letters dated 11th January, 2021, 13, January, 2021, 15th January, 2021, 21st January, 2021 and April, 2021 to the Director General, BSF copy to HQ SPI DG (EC), Kokata, HQ. SPL DG (WC) Chandigarh and SHQ BSF Kolkata but neither reply was given by any of the authority nor supply the

documents sought for by the petitioner is a wholly violation of principle of natural justice. The Judgment relied upon by the petitioner in the case of **Union of India and Ors. Vs. No. 87250608 Head Constable Raj Kumar and Ors.**⁶, particularly paragraph nos. 26, 27 and 28 are squarely applicable in the present facts and circumstances as under: -

“26. No doubt, Section 108 is silent about following the principles of natural justice and for putting the employee to notice in the event of disagreement by the confirming authority but this question is no more res integra. In Punjab National Bank vs. Kunj Behari Misra, (1998) 7 SCC 84 the apex court dealt with a case where the disciplinary authority disagreed with the finding of enquiring authority and acted under regulation 7(2), whether principles of natural justice are to be followed or not was the point. It was poignantly held as under:

*“19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result, thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, **it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings.** The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we*

⁶ 2025 SCC Online Cal 8165

have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

(Emphasis supplied)

27. In the case of **Punjab National Bank (Supra)** the court considered its previous judgment in **Ram Kishan vs. Union of India (1995) 6 SCC 157** wherein it was held as under:

*“10. The next question is whether the show-cause notice is valid in law. It is true, as rightly contended by the counsel for the appellant, that the show cause notice does not indicate the reasons on the basis of which the disciplinary authority proposed to disagree with the conclusions reached by the inquiry officer. The purpose of the show-cause notice, in case of disagreement with the findings of the inquiry officer, is to enable the delinquent to show that the disciplinary authority is persuaded not to disagree with the conclusions reached by the inquiry officer for the reasons given in the inquiry report or he may offer additional reasons in support of the finding by the inquiry officer. **In that situation, unless the disciplinary authority gives specific reasons in the show cause on the basis of which the findings of the inquiry officer in that behalf is based, it would be difficult for the delinquent to satisfactorily give reasons to persuade the disciplinary authority to agree with the conclusions reached by the inquiry officer. In the absence of any ground or reason in the show-cause notice it amounts to an empty formality which would cause grave prejudice to the delinquent officer and would result in injustice to him. The mere fact that in the final order some reasons have been given to disagree with the conclusions reached by the***

disciplinary authority cannot cure the defect.

(Emphasis supplied)

28. We find support in our view from the judgment of **Ram Kishan (Supra) and Punjab National Bank (Supra)** and therefore, inclined to hold that principles of natural justice must be read into Section 108 of BSF Act when confirming authority intends to hold an employee guilty by taking a different view than the view taken by GSFC.”

45. The Second notice dated 26th April, 2021, was a glaring example of perversity since it was issued without giving the opportunity of hearing to the petitioner. The contents of the notice are stipulated herein below in verbatim:

“SHOW CAUSE NOTICE FOR TERMINATION OF SERVICE UNDER RULE 20(4)(C) OF BSF RULES, 1969

Please refer to your letter No. 2018-21 dated 15.01.2021, L/No. 2203-06 dated 25.01.2021, letter dated 01.02.2021 and letter dated 06.02.2021.

2. *It is to inform that you were issued with SCN for proposed termination of service under Rule 20 (4) (c) of BSF Rules, 1969 on account of misconduct, which was found to be inexpedient for disposal by holding disciplinary proceedings against you. GSFC trial proceedings instituted against you pertaining to such misconduct concluded as “Not Confirmed” in respect of the First Charge of the said trial was relied upon in the SCN. It is to mention that Findings and Sentence of GSFC Trial are not valid unless confirmed by the Confirming*

Authority. In the SCN at para 8, a case regarding issuance of IG's displeasure has also been mentioned, which has already been issued to you on 04.11.2010. Further vide FHQ BSF (Law Branch) letter No. 3/104/2015-CLO/BSF/1739-41 dated 19.08.2019 you have been provided with the copy of GSFC Trial proceedings including the proceedings on Revision as well as the Findings of the Court instituted against you.

3. DG BSF having carefully considered the matter has taken a tentative decision for termination of your services under Rules 20(4)(c) of BSF Rules, 1969. The details behind such decision including inexpediency of further trial have been elicited in the above mentioned SCN and same may be referred. As regards the details of examination of ROE proceedings and recommendations as per your letter dated 13.01.2021, you are also informed that based on the evidence adduced against you in the RoE proceedings, GSFC trial was instituted against you. Hence, the RoE proceedings or the recommendations on the same are of no relevance to the SCN issued to you.

4. The grounds or reasons leading to decision for proposed administrative termination of your service have adequately been covered in the above said SCN itself. Further, your queries and requirements of documents raised vide your letter No. Pers/RK/GSFC/2021/2018-21 dated 15.01.2021 are clarified as above. In view of above, your request for additional documents in connection with the Show Cause Notice served upon you, is devoid of merit.

5. *In view of above, you are directed to submit your reply to the Show Cause Notice issued vide letter No. C-14011/08/2019/CC/Pers/BSF/21469-74 dated 31.12.2020 within 15 days of receipt of this letter, failing which ex-parte decision will be taken.”*

- 46.** Rule 22(2) makes it obligatory for the competent authority to inform the delinquent official of all adverse reports and call upon him to submit in writing his explanation. Sub-Rule 3, in no uncertain terms, makes it clear that after considering the defence of the employee, a decision to dismiss or remove him may be taken. The lawmakers have employed the word “may” with a view to giving discretion to the competent authority to take a decision whether or not the employee should be dismissed or removed. Importantly, such a decision needs to be taken in a judicious way by considering the explanation and defence of the employee. This legislative intent and quasi-judicial discretion given to the authority is taken away in the instant case by issuing a subsequent notice, apparently and manifestly premeditated, pre-judged, close-minded, an empty formality and eye wash. Consequently, the same is unsustainable in law and liable to be set aside.
- 47.** Ordinarily, when the show cause notices are set aside, the proper course is to remand the matter to the concerned authority to proceed

afresh by issuing a fresh notice to show cause and to take its logical conclusion in accordance with law. However, this court is of the view that such remission is neither proper nor required in the present situation, since the petitioner is going to retire from service this month, i.e., March, 2026, as disclosed by the parties at the time of argument.

- 48.** Consequently, **WPA No. 10487 of 2021** stands **allowed** without order as to costs. The show cause notices dated 31.12.2020 and 26.04.2021 are hereby set aside. Accordingly, it is directed that the petitioner shall be entitled to all consequential benefits admissible in accordance with law as expeditiously as possible, preferably within four weeks.
- 49. CAN 1 of 2022** and all connected applications, if any, are also, thus, disposed of.
- 50.** Interim order, if any, stands vacated.
- 51.** Parties shall act on the server copies of this Judgment duly downloaded from the official website of the High Court at Calcutta.

- 52.** Urgent Photostat certified copies of this Judgment, if applied for, be supplied to the parties upon compliance of all the necessary and legal formalities.

[AJAY KUMAR GUPTA, J.]

P.A.