



HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

WP(C) No. 579 of 2025

Sri. Som Nath,
Son of Sri Baisakhi Ram,
Resident of Rajindarpura (Bagona),
Jammu, District Jammu, Union Territory
of Jammu & Kashmir, PIN-181143.

Previously posted with Adhoc "H" Coy,
42 Battalion, Border Security Force (BSF),
Fatikcherra, West Tripura.

.....**Petitioner**

VERSUS

- 1. The Union of India,**
represented by the Secretary,
Department of Home Affairs,
having his office at North Block,
New Delhi, 110001.
- 2. The Secretary,**
Department of Home Affairs,
having his office at North Block,
New Delhi, 110001.
- 3. The Director General,**
Border Security Force,
having his office at Block No. 10,
CGO Complex, Lodhi Road, New Delhi-110003.
- 4. The Inspector General,**
Tripura Headquarters,
Border Security Force (BSF),
Salbagan, Frontier Agartala, Tripura - 799012.
- 5. The Commandant,**
42 Battalion, Border
Security Force (BSF),
having his office at Fatikcherra,
West Tripura -799045.
- 6. The Presiding Officer,**
General Security Force Court,
42 Bn, BSF, Fatikcherra, West Tripura.



7. The Reviewing Authority,
Deputy Inspector General,
BSF Sector Headquarters, Gokulnagar,
West Tripura 799008.

.....Respondents

For Appellant(s)	:Ms. Adwitiya Chakraborty, Adv. Ms. Sara Tripura, Adv.
For Respondent(s)	:Mr. Bidyut Majumder, D.S.G.I.
Date of hearing	:27.07.2026
Date of Delivery of judgment	:11.08.2026
Whether fit for reporting	: YES

HON'BLE MR. JUSTICE BISWAJIT PALIT
JUDGMENT & ORDER

This writ petition is filed by the petitioner seeking the following reliefs:-

- "i) Issue Rule, calling upon the respondents and each one of them, to show cause as to why a Writ of Certiorari and/or in the nature thereof, shall not be issued for transmitting the records, relevant to the subject matter of this writ petition, for rendering substantive and conscionable justice to the petitioner, and for quashing/setting aside the impugned Sentence by the Security Force Court dated 03.01.2024 (Annexure-3 supra);***
- ii) Issue Rule, calling upon the respondents and each one of them, to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued for mandating/directing the respondents, for quashing/setting aside the impugned Sentence by the Security Force Court dated 03.01.2024 (Annexure-3 supra), and to allow the petitioner to face a fresh trial;***
- iii) Issue Rule, calling upon the respondents and each one of them, to show cause as to why a Writ of Prohibition and/or in the nature thereof, shall not be issued for restraining/prohibiting the respondents, from acting in any manner, in furtherance of the impugned Sentence imposed by the Security Force Court dated 03.01.2024 (Annexure-3 supra);***
- iv) In the Ad-interim, and thereafter, on hearing the parties, in the Interim, an Order, in terms of relief (iii) supra;***



v) Call for the records appertaining to this petition;

vi) After hearing the parties, be pleased to make the Rule Absolute in terms of ii. above;

vii) Costs of and incidental to this proceeding;

viii) Any other Relief(s) as to this Hon'ble High Court may deem fit and proper;

AND

For this gracious act of kindness the humble petitioner above named

SHALL AS IN DUTY BOUND EVER PRAY"

2. Heard Learned Counsel Ms. Adwitiya Chakraborty, appearing on behalf of the petitioner and Learned Dy.S.G.I Mr. Bidyut Majumder, appearing on behalf of the respondents-Union of India.

3. It is the case of the petitioner that the petitioner joined as a Constable of BSF on 25.08.1989 at STC BSF Udhampur. He did his Basic Recruit Training at STC BSF Kharkan Camp (Punjab) and was further posted to 42 Bn BSF in July 1990 at Acchad, Sunderbani (J&K) and after completion of his Basic Training, he remained posted in 42 Bn BSF till February, 2011, and was further posted to STC BSF Hazaribagh as Weapon Instructor. After completion of his tenure at STC BSF Hazaribagh, he was again posted to his parent Battalion i.e. 42 Bn BSF in September, 2015 and since then, he was performing various duties assigned to him as Head Constable, thereby rendering service more than 34 years.

4. On 06.12.2023, the petitioner was officially deployed for 2nd shift OP duty (Operational Post Duty) at OP No. 1 in the AOR (Area Of Responsibility of BOP Nischintpur from 1200 hrs to 1800 hrs. He was issued one INSAS rifle (Butt No. 339/ Body No. 16537835) along with



one magazine, containing 20 rounds of live ammunition (Lot No. KF-20).

5. At about 1355 hrs, the petitioner saw 02 boys giving suspicious activities, roaming around in general area of his AOR. He thereafter called them and told them to *"MERE AREA SE CHALE JAWO"* and just after 05-10 minutes, he again saw, 02 boys coming to the fence with potla from India side and then he warned them, but they were speaking *"AASHO ASSHO"* and *"ISARA KAR RAHEE THE, BAKI AUR KITNE THE UNKE BARE ME PATA NAHI"*. Then, he stood and came out from OP shelter with his service weapon but they were still approaching towards the fence.

6. Thereafter, the petitioner ran and cocked his rifle, at that time he fired in the air while running towards them. After firing, he searched the area, but they ran away by taking over of houses. That time he realized that the complete magazine was empty and had already fired 20 rounds. Thereafter, he checked his rifle and found that his chamber & magazine had both been emptied and then he came and sat in the OP machan cum shelter.

7. After the incident, the petitioner kept on thinking about the firing incident, excessive fire done by him, and he was literally puzzled and was not in state of mind to understand everything. He kept on sitting there till Offg Coy Comdr Inspr (GD) M Surchandra Singh, SI (GD) Somra Oraon, ASI (GD) Dhanajay Tudu and CT(GD) Nazeer Ahmmad came to the petitioner and tried to contact by calling him, but



he could not hear the sound of Insp. (GD) M Surchandra Singh, SI(GD) Somra Oraon, ASI(GD) Dhanajay Tudu and CT (GD) Nazeer Ahmmad because he was sitting facing other side.

8. Thereafter, while asked put down the weapon, the petitioner handed over his weapon to CT(GD) Nazeer Ahmmad who further handed over to SI(GD) Somra Oraon. Since that time, he was senseless and in panic and could not exactly remember what was done. Thereafter, he was taken to hospital SHQ BSF Gokulnagar at around 1630 hrs (Approx) with the guard for medical examination, lateron, he was taken to Mohanpur CHC & RHTC (AGMC) and was further referred to Agartala Govt. Medical College & GBP Hospital (Tripura) after preliminary checkup where he remain admitted for 03 days and was discharged on 09.12.2023. After that a charge sheet was framed against him and in connection with the charge sheet a summer trial was carried on against the petitioner by the Summary Security Force Court at Fatikcherra.

9. It was submitted by Learned Counsel for the petitioner that, during the trial, the petitioner was not provided with an opportunity to engage any Counsel on his behalf to conduct the trial and after the conclusion of the inquiry, the Commandant of the 42 BN BSF, the Court sentenced the petitioner to be dismissed from service.

10. Thereafter, the petitioner submitted a representation to the Director General, BSF, seeking reconsideration of his case and a fresh trial. However, no response was received, nor was any opportunity of



hearing given to him. Hence, the petitioner filed the present writ petition seeking the reliefs as stated above.

11. The Union of India contested the writ petition by filing a counter affidavit, denying the assertions made by the petitioner. In the said counter affidavit, the respondents also made some averments, which are reproduced hereinbelow in Para Nos. 5 to 8 and the respondents, accordingly, prayed for dismissal of the writ petition:-

"5. That, the statements made in para 2.1 of the writ petition are not admitted as averred by petitioner. However, the answering respondents humbly submit that Regt No. 894992645 Ex-HC(GD) Som Nath (hereinafter referred as Petitioner) was enrolled in BSF on 25.08.1989 at STC BSF Udhampur. After completion of Basic Recruit Training (BRT) at STC BSF Kharkan Camp (Punjab), he joined 42 Bn BSF on 16.07.1990 on permanent posting. He remained posted in 42 Bn BSF till 06.02.2011 and was further posted to STC BSF Hazaribagh as an instructor. After completion of his tenure at STC BSF Hazaribagh, he then again had been posted to 42 Bn BSF w.e.f 21.06.2015.

With reference to the averment made by the petitioner that he rendered 34 years of distinguished & disciplined service is false, beyond truth and unfounded thus denied vehemently. It is submitted that though the petitioner served for 34 years in BSF and had earned 10 rewards during the service period, however, it is submitted that since 2019 he became habitual offender thus awarded 07 punishments on various occasions for committing various offences and misdeed which details given as under:-

- i) Tried summarily on 04.10.2019 for committing offence defined U/S 22(e) i.e. "Neglecting to obey local order" and awarded punishment "To be Reprimanded".**
- ii) Tried summarily on 22.10.2019 for committing offence defined U/S 22 (e) i.e. "Neglecting to obey local order" and awarded punishment "To be Reprimanded".**



iii) Tried summarily on 18.10.2021 for committing offence defined U/S 22(e) i.e. "Neglecting to obey local order" and awarded punishment "To be Reprimanded".

iv) Tried summarily on 18.08.2022 for committing offences defined U/S 22(e) i.e. "Neglecting to obey local order" & U/S 26 "Intoxication" and awarded punishment "To be Reprimanded".

v) Tried summarily on 31.12.2022 for committing offences defined U/S 22(e) i.e. "Neglecting to obey local order" & U/S 26 "Intoxication" i.e. "found in inebriated state" and awarded punishment "To be Reprimanded"

vi) Tried summarily on 21.11.2023 for committing offences defined U/S 21(1) i.e. "Disobeying in such a manner as to show a willful defiance of authority a lawful command given personally by his superior officer in the execution of his office" and U/S 22(e) i.e. "neglecting to obey local order" and awarded punishment "Severely Reprimanded."

vii) Tried by SSFC on 03.01.2024 for committing offences defined U/S 20 (a), 40 & 22(e) of BSF Act, 1968 and awarded punishment "To be dismissed from the service".

Therefore, needless to say that petitioner from the year 2019 served under different commanders and had constantly indulged himself in indiscipline activities at multiple occasions which substantiate that his conduct was unbecoming of a soldier and didn't reflect any improvement in his discipline/conduct despite being given ample opportunity to improve upon.

Besides above, Competent Authority taking lenient view has regularized his Overstaying from Leave granted (OSL) on 03 occasions which details are given under:-

i) 42 days OSL period regularized by granting of 42 days E/L w.e.f 25.04.1995 to 05.06.1995 vide 42 Bn BSF O/No. 1228-31 dated 27.07.1995.

ii) 26 days OSL period regularized by granting of 26 days E/L 26.12.2009 to 20.01.2010 vide 42 Bn BSF O/No. 275-77 dated 25.01.2010.



iii) 06 days OSL period regularized by granting of 06 days E/L w.e.f 17.05.2017 to 22.05.2017 vide 42 Bn BSF O/No. 10901-05 dated 03.06.2017.

Therefore, it is evident that petitioner has been afforded multiple opportunities to improve himself, but no improvement was noticed. Similarly, petitioner had been warned/ticked off for number of times for his acts of indiscipline and indifferent attitude towards discharging duties, but he didn't pay heed to the instructions and advice of seniors and has continuously breached the discipline of the Force.

6. That, the statements made in paras 2.2, 2.2.1, 2.2.2, 2.2.3, 2.2.4 & 2.2.5 of the writ petition filed by the petitioner, are denied and vehemently opposed by the answering respondents. In this regard, it is humbly submitted that on 06.12.2023, No. 894992645 Ex-HC(GD) Som Nath, "D" Coy of 42 Bn BSF was detailed to perform 2nd shift Observation Post (OP) duty at OP Point No. 01 from 1200 hrs to 1800 hrs along with No. 130828738 CT(GD) Subhasish Mondal and No. 223900129 CT(GD) Amarnath P S between BP No. 2026/4-S to 2028/MP in AOR of BOP Nischintpur Ex 42 Bn BSF. As per the record, the petitioner was issued service weapon 5.56 mm Insas Rifle Butt No. 339, Body No. 16537835 with 01 magazine & 20 rounds (LOT No. KF 20) for OP duty. The petitioner was also briefed by the supervisory staff and Offg Coy Commander to resort firing only in self/private defence, in case circumstances so demand.

During the duty, the Petitioner at about 1400 Hrs in inebriated state indiscriminately fired 20 rounds (LOT No. KF 20) from his service weapon i.e. 5.56 mm INSAS Rifle Butt No. 339, Body No. 16537835 in the air without any reason/provocation which created a panic situation among the person deployed in the area and a sense of fear in the local population living in the area.

On getting the information about indiscriminate firing by the Petitioner, No. 123503628 Inspr (GD) M Surchandra Singh, Offg Coy Comdr of Adhoc "H" Coy along with No. 860034548 SI(GD) Somra Oraon and No. 890067279 ASI(GD)/CHM Dhananjay Tudu rushed to the place of occurrence (POO) which was in the alignment of BP No. 2027/9-S. At about 1420 hrs, Offg Coy Comdr along



with two Subordinate Officers and CT(GD) Nazeer Ahmad (who after hearing sound of firing came from OP No. 02), reached approx. 50 mtrs short to Petitioner who was sitting inside the temporary OP shelter situated near IBBF Gate No. 93. After seeing Offg Coy Comdr and other 02 SO's; petitioner stood up, took the kneeling position, and aimed his service rifle towards the Offg Coy Comdr & both SOs and CT(GD) Nazeer Ahmad. Having seen his posture SI(GD) Somra Oraon politely called him twice to pacify him, but he did not respond and remained in the same posture aiming barrel towards Offg Coy Comdr & other two SOs available there.

Further, it is submitted that SI (GD) Somra Oraon again made an attempt, by calling politely, to pacify the Petitioner but, it didn't yield. After that CT(GD) Nazeer Ahmmad who had also come there from OP No. 02 requested petitioner to aim down the rifle. Subsequently, the petitioner aimed down his rifle. Thereafter, all the above personnel cautiously moved towards/nearer to the petitioner. CT(GD) Nazeer Ahmad took the weapon from petitioner and handed it over to SI(GD) Somra Oraon who further checked the chamber of the weapon and found that there was no live round inside the chamber. SI (GD) Somra Oraon also checked the magazine fitted on the INSAS Rifle which was also found empty. On asking by Offg Coy Commander, the Petitioner stated that he had fired 20 rounds in the air from his service weapon (5.56 mm INSAS Rifle butt No.339, Body No. 16537835, round Lot No. KF-20) because of anger. During the conversation, they noticed that the petitioner [Ex-HC (GD) Som Nath] was under the influence of alcohol and was not able to communicate properly. It was also noticed that at the relevant time petitioner was intoxicated and a foul smell was coming out of his mouth.

Thereafter, as per the directions of Offg. Commandant, who was present at border at that time; SI(GD) Somra Oraon along with 02 ORs as guard/escort for Ex-HC(GD) Som Nath, took the petitioner to Mohanpur CHC & RHTC (AGMC) where duty Medical Officer examined the petitioner and initially diagnosed him as a case of alcohol Intoxication as smell of alcohol was coming out from his mouth.



Attested copy of examination/diagnosis slip dated 06/12/2023 issued by Mohanpur CHC & RHTC (AGMC) is annexed herewith as Annexure - R-1.

After examination Doctor of Mohanpur CHC & RHTC (AGMC) further referred petitioner to Agartala Govt Medical College & GBP Hospital, Agartala (Tripura) with primary diagnosis as alcohol intoxication. Thereafter, the petitioner remained admitted in AGMC & GBP Hospital, Agartala for 03 days and discharged on 09.12.2023 with the final diagnosis at the time of discharge as Hypertension.

Attested copy of discharge summary issued by AGMC & GBP Hospital, Agartala is annexed herewith as Annexure-R-2.

It is further submitted that the petitioner's weapon 5.56 mm INSAS Rifle butt No.339, Body No. 16537835 was inspected & examined by the Armourer of 42 Bn BSF Armourer Workshop and found heavy gas fouling in the barrel and breach bolt front face was rusty, from which it was corroborated that the heavy firing was done from the said rifle.

Attested copy of examination report of weapon by the Armourer of 42 Bn BSF is annexed herewith as Annexure R-3.

7. That, the statements made in para 2.3 & 2.4 of the writ petition filed by the petitioner, are matter of records. However, it is submitted that since petitioner despite being a trained soldier in the most irresponsible manner without provocation/reasons fired 20 rounds indiscriminately which might have caused/resulted into any fatal injury either to BSF personnel or civilian residing in the vicinity of place of occurrence (POO). Besides above, petitioner by aiming barrel of his personal weapon INSAS Rifle Butt No. 339 towards Offg Coy Comdr has committed serious offence defined under Sec 20 (a) of BSF Act, 1968 i.e. "ASSAULTING A SUPERIOR OFFICER" Therefore, Considering gravity of offence DIG, SHQ BSF Gokulnagar vide O/No. 10837-40 dated 07/12/2023 placed petitioner under Suspension.

Attested copy of suspension O/No. 10837-40 dated 07/12/2023 issued by DIG, SHQ BSF Gokulnagar is annexed herewith as Annexure-R-4.



Thereafter, the petitioner was heard under Rule 45 of BSF Rules, 1969 by the Offg Commandant, 42 Bn BSF on 10.12.2023 on an offence report consisting three charges i.e. First charge U/s 20 (a) of BSF Act, 1968 i.e. 'Assaulting a Superior Officer', Second Charge U/s 40 of BSF Act, 1968 i.e. 'An act prejudicial to good order and discipline of the Force' & Third Charge U/s 22(e) of BSF Act, 1968 i.e. 'Neglecting to obey local orders'. During the hearing proceedings petitioner pleaded 'Guilty' against all the three charges. Thereafter, on conclusion of hearing proceedings U/R 45 of BSF It Rules, 1969; Offg Comdt, 42 Bn BSF remanded the case for preparation of Record of Evidence (ROE) proceedings as per provisions of Rule 48 of BSF Rules, 1969.

Attested copy of hearing proceedings and offence report dated 10/12/2023 are annexed herewith as Annexure-R-5.

Accordingly, 42 Bn BSF vide Order No. 21531-34 dated 10.12.2023 appointed Sh Vivek Chauhan, DC, 42 Bn BSF as Recording Officer to prepare Record of Evidence against the petitioner on three charges.

Attested copy of 42 Bn BSF O/No. 21531-34 dated 10.12.2023 is annexed herewith as Annexure-R-6.

Thereafter, RO submitted ROE proceedings duly completed in all respects vide Letter No. 21749 dated 15.12.2023. Having gone through the ROE proceedings, Commandant, 42 Bn BSF under the provision of Rule 51 (3) (iii) of BSF Rules, 1969 has decided to dispose off the case by holding a Summary Security Force Court.

Accordingly decision of the Commandant, 42 Bn BSF conveyed to the Petitioner vide L/No. 22357 dated 28.12.2023 a/w copy of ROE proceedings & charge sheet consisting three charges for preparation of his defence. Petitioner endorsed his signature on receipt of letter No. 22357 dated 28/12/2023 as a token of receipt the ROE proceedings and copy of charge sheet.

Attested copy of 42 Bn BSF L/No. 22357 dated 28.12.2023 and receipt thereof furnished by petitioner is annexed herewith as Annexure-R-7.

Further, Comdt, 42 Bn BSF vide Letter No. 22358 dated 28 Dec 2023 afforded opportunity to the



Petitioner to propose/nominate an officer/SO of his choice to act as "Friend of accused" in terms of provisions of Rule 157 of BSF Rules, 1969. It is pertinent to mention that as per provisions of Rule 157 of BSF Rules, 1969 so appointed 'Friend of Accused' shall not examine or cross examine witnesses or address the Court. Rule 122 (3) of BSF Rules, 1969 provides that the 'Friend of Accused' may advise the accused on all points and suggest the question to be put to the witnesses, but he shall not examine or cross examine the witnesses, or address the Court.

It may be seen that vide L/No. 22358 dated 28 Dec 2023 petitioner was also informed to engage a civil counsel at his own expense to defend him during the trial subject to provisions of Rule 122 & 157 of BSF Rules, 1969. Petitioner by endorsing his signature on the receipt signed on 28/12/2023 confirmed receipt of above letter bearing L/No. 22358 dated 28 Dec 2023.

Attested copy of 42 Bn BSF L/No. 22358 dated 28 Dec 2023 and its receipt furnished by petitioner is annexed herewith as Annexure-R-8.

In response Petitioner vide application dated nil requested Commandant, 42 Bn BSF to nominate suitable officer at his own to act as 'Friend of accused' during the proposed SSFC trial keeping in view future of his (Petitioner) children. Thereafter, Comdt, 42 Bn BSF appointing Sh Naveen Kumar, AC as 'Friend of accused' & two members in attendance namely Sh MT Patil, DC & Inspr (Comn) A K Chakraborty convened SSFC trial of the petitioner vide convening order No. 22490-96 dated 30.12.2023 scheduled w.e.f. 01/01/2024 at 1100 hrs.

Attested copy of application dated nil submitted by petitioner and 42 Bn BSF O/No. 22490-96 dated 30.12.2023 is annexed herewith as Annexure-R-9.

Thereafter, Summary Security Force Court (SSFC) trial of the Petitioner was held by Comdt, 42 Bn BSF w.e.f. 01.01.2024 to 03.01.2024 at Bn HQ, 42 Bn BSF, Fatikchera (Tripura) for committing following three charges:

1st Charge U/s 20(a) of BSF Act, 1968	<u>Assaulting a superior officer</u> In that he, on 06-12-2023 at 1420 hrs, while on OP duty 2nd shift at OP Point No. 1 aimed his service rifle bearing butt
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	No. 339 and body No. 16537835 towards No. 123503628 Inspr (GD) M Surchandra Singh, Offg Coy Comdr, ADHOC 'H' Coy, No. 860034548 SI Somra Oraon & No. 890067279 ASI (GD) Dhananjay Tudu.
2nd Charge U/s 40 of BSF Act, 1968	<u>An act prejudicial to good order and discipline of the force</u> In that he, on 06-12-2023 at 1420 hrs, indiscriminately fired 20 rounds from personal weapon 5.56 MM INSAS Rifle bearing butt No. 339 and body No 16537835 in air while on OP duty 2nd shift at OP Point No. 1.
3rd Charge U/s 22(e) of BSF Act, 1968	<u>Neglecting to obey local order</u> In that he, at about 1400 hrs on 06.12.2023 at BOP Nishintpur of 42 Bn BSF, found having consumed liquor in contravention of 42 Battalion order No. 1591/Steno/42Bn/SainikSammelán/2023 /1837-42 dated 19 Oct' 2023.

During SSFC trial, on being arraigned by the Court, the accused (Petitioner) pleaded 'Guilty' against all the three charges in the presence and hearing of 'Friend of Accused'. Accordingly, accused (petitioner) and 'Friend of Accused' endorsed their signature on Page -'B' of the SSFC trial proceedings. However, the Court, in the interest of justice and to afford fair opportunities, as per provision of BSF Rule 142 (1) of BSF Rules, 1969, did not accept his plea of 'Guilty' and recorded the plea of the accused as "Not Guilty" against all the three charges.

Attested copy of Page B of SSFC trial is annexed herewith as Annexure-R-10.

Thereafter, SSFC (Court) examined as many as 14 Prosecution Witnesses during the trial. The petitioner was given opportunity to cross examine each of prosecution witness.

On being given an opportunity to call any witness in his defense, petitioner declined to avail the opportunity. However, petitioner wished to make an oral statement before the court. Thereafter, accused (petitioner) made a statement at length stating therein that, "since that time he was senseless and in panic, he don't exactly remember what all has been asked to him by various visiting officers who came to meet him just after firing incident and what was it he exactly replied ".



Thereafter, the Court (SSFC) after due appraisal of evidence adduced before it, in its wisdom found the accused (petitioner) "Guilty" of all the three charges. Thereafter, the Court took into consideration the records of his previous convictions/character, as per which the accused (petitioner) was 53 years and 10 months of age and has put in 34 years and 04 months of service in BSF at the time of his trial by SSFC. The Court (SSFC) also considered his previous conduct as per which he (petitioner) has 10 rewards and 06 punishments to his credit since his enrolment in BSF. Thereafter, the Court considering gravity of the offences, sentenced him "To be dismissed from Service".

The findings & sentence of SSFC were promulgated to petitioner on 03.01.2024 by Commandant 42 Bn BSF and accordingly petitioner was struck off from strength of 42 Bn BSF vide 42 Bn BSF O/No. 154-61 dated 03.01.2024. The above said SSFC trial proceedings were countersigned by the DIG SHQ BSF, Gokulnagar on 26.01.2024.

Attested copy of oral statement deposited by accused/petitioner before SSFC trial which was reduced to writing by the Court is annexed herewith as Annexure-R-11.

Attested copy of Page- 'I' & 'J' of the SSFC trial proceedings are annexed herewith as Annexure-R-12.

Attested copy of 42 Bn BSF O/No. 154-61 dated 03.01.2024 is annexed herewith as Annexure-R-13.

Therefore, it is evident that all provisions of BSF Act & Rules were strictly complied with in the case of petitioner right from hearing proceedings conducted under Rule 45 of BSF Rules, 1969, ROE proceedings which were prepared strictly as per provisions of Rule, 48 of BSF Rules, 1969, pre-trial stage and during the SSFC trial. In fact, on arraignment petitioner had pleaded 'Guilty' against all the three charges. However, considering the interest of justice and fair opportunities to petitioner, the Court (SSFC) did not accept his plea of 'Guilty' rather recorded his plea as 'Not Guilty' against all the three charges. Petitioner miserably failed to put forth any irregularity /infirmity/prejudice took place during any stage of the



disciplinary proceedings/action taken against the petitioner.

8. That, with reference to the statements made in para 2.5 of the writ petition it is stated herein that the answering respondents have given detailed reply in para 2.3 & 2.4 of this Writ Petition. However, it may be stated herein that the Rule 122 & 157 of the BSF Rules, 1969 provides following :-

"Rule 122. Defending officer, friend of accused and counsel:

(1) At any General or Petty Security Force Court an accused person may be represented by a counsel or by any officer subject to the Act who shall be called "the defending officer" or assisted by any person whose services he may be able to procure and who shall be called "the friend of accused".

(2) The Defending Officer shall have the same rights and duties as appertain to counsel under these Rules and shall be under the like obligations.

(3) The friend of accused may advise the accuse on all points and suggest the questions to be put to the witnesses, but he shall not examine or cross-examine the witnesses, or address the Court.

Rule 157. Friend of accused.

During a trial at a Summary Security Force Court an accused may take the assistance of any person, including a legal practitioner as he may consider necessary:

Provided that such person shall not examine or cross examine witnesses or address the Court".

In view of the provisions of Rule 122 and 157 of BSF Rules, 1969, Commandant, 42 Bn BSF vide L/No. 22358 dated 28 Dec' 2023 (Annexure-R-8) afforded opportunity to the Petitioner to propose/nominate an Officer/Subordinate Officer of his choice to act as "Friend of accused" during the SSFC trial in terms of the provisions of Rule 157 of BSF Rules, 1969. It may be seen that vide Letter No. 22358 dated 28 Dec 2023, the petitioner was also informed to engage a civil counsel at his own expense to defend him during the trial subject to provisions of Rule 122 & 157 of BSF Rules, 1969. Petitioner by endorsing his signature on the receipt signed on 28/12/2023 confirmed



receipt of above letter bearing L/No. 22358 dated 28 Dec 2023."

12. At the time of hearing, Learned Counsel for the petitioner first drawn the attention of the Court to the fact that the respondent BSF authorities had framed charges against the petitioner under Section 20 and 22 of the BSF Act instead of framing the charge under Section 26 of the said Act.

13. It was further submitted that no evidence was produced before the Authority to establish that the petitioner was in drunken condition even no Medical Officer was examined to substantiate the charge. It was, therefore, contended that the inquiry proceedings conducted by the respondent authorities were not conducted in accordance with law. Accordingly, Learned Counsel urged this Court to set aside the order dated 03.01.2024 passed by the Commandant, 42 BN BSF.

14. Learned Counsel for the petitioner further submitted that the principles of natural justice had been violated during the departmental inquiry. It was contended that the department at the time of inquiry failed to provide any opportunity to the petitioner to engage any defence assistant to conduct his defence. Nor was he given an opportunity to cross examine the prosecution witnesses. In view of these procedural lapses, Learned Counsel urged before this Court for set aside the final order dated 03.01.2024 passed by the Commandant, 42 BN BSF.



15. On the other hand, Learned Counsel for the Union of India submitted that considering the materials on record, there is no scope to interfere with the findings of the Disciplinary Authority as because this High Court cannot re-appreciate the evidence on record of the departmental proceeding. It was further submitted that no procedural irregularity or illegality has been committed by the respondent authorities during the course of the inquiry. According to the respondents, the BSF authorities had rightly conducted the departmental proceedings after affording the petitioner all the enable opportunities to defend himself. It was, therefore, urged that the petitioner at the time of hearing failed to make out any case for interference by this Court, and the writ petition was liable to be dismissed.

16. In support of his contentions, Learned DSGI appearing on behalf of the respondents, placed reliance upon the judgment of the Hon'ble Supreme Court reported in **AIR 2010 SC 1551** in **Union of India & Anr. vs. Dinesh Kumar** wherein in para No.12 it was submitted as under:-

"12. On this backdrop, it is clear that the provisions for the SSFC and the appellate authority are parimateria, more particularly in case of Rule 149 and Section 117(2) of the Act, with the provisions which were considered in both the above authorities. Therefore, there cannot be any escape from the conclusion that as held by the Constitution Bench, the reasons would not be required to be given by the SSFC under Rule 149 or by the appellate authority under Section 117(2) of the Act. This position is all the more obtained in case of SSFC, particularly, as the Legislature has chosen not to amend Rule 149, though it has specifically amended Rule 99 w.e.f. 9.7.2003. It was



pointed out that in spite of this, some other view was taken by the Delhi High Court in the decision in Nirmal Lakra v. Union of India & Ors. [2003 DLT (102) 415]. However, it need not detain us, since Rule 149 did not fall for consideration in that case. Even otherwise, we would be bound by law declared by the Constitution Bench in the decision in S.N. Mukherjee v. Union of India (AIR 1990 SC 1984) (cited supra)."

17. Learned Counsel for the respondents referred another judgment of the Hon'ble Supreme Court reported in **(2015) 2 SCC 610** in **Union of India & Ors. vs. P. Gunasekaran** wherein in para No.12 it has been observed as under:-

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;**
- (b) the enquiry is held according to the procedure prescribed in that behalf;**
- (c) there is violation of the principles of natural justice in conducting the proceedings;**
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;**
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;**
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;**



(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence."

18. Reliance was further placed upon another judgment of the Hon'ble Supreme Court reported in **(1990) 4 SCC 594** in **S. N. Mukharjee vs. Union of India** wherein in para No.37, 38 & 39 the Hon'ble Apex Court observed as under:-

"37. Having considered the rationale for the requirement to record the reasons for the decision of an administrative authority exercising quasi-judicial functions we may now examine the legal basis for imposing this obligation. While considering this aspect the Donoughmore Committee observed that it may well be argued that there is a third principle of natural justice, namely, that a party is entitled to know the reason for the decision, be it judicial or quasi-judicial. The Committee expressed the opinion that "there are some cases where the refusal to give grounds for a decision may be plainly unfair; and this may be so, even when the decision is final and no further proceedings are open to the disappointed party by way of appeal or otherwise" and that "where further proceedings are open to a disappointed party, it is contrary to natural justice that the silence of the Minister or the Ministerial Tribunal should deprive them of the opportunity". (p. 80) Prof. H.W.R. Wade has also expressed the view that "natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man's sense of justice". (See Wade, Administrative Law, 6th edn. p. 548.) In Siemens Engineering Co. case' this Court has taken the same view when it observed that "the rule requiring reasons to be given in support of an order is, like the principles of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process". This decision proceeds on the basis that the two well known principles of natural justice, namely (i) that no man should be a judge in his own cause, and (ii) that no person should be judged



without a hearing, are not exhaustive and that in addition to these two principles there may be rules which seek to ensure fairness in the process of decision-making and can be regarded as part of the principles of natural justice. This view is in consonance with the law laid down by this Court in A.K. Kraipak v. Union of India wherein it has been held: (SCR pp. 468-69: SCC p. 272, para 20)

" The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely: (i) no one shall be a judge in his own cause (nemo debet esse judex propria causa), and (ii) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice."

38. *A similar trend is discernible in the decisions of English courts wherein it has been held that natural justice demands that the decision should be based on some evidence of probative value. (Sce: R. v. Deputy Industrial Injuries Commissioner ex p. Moore; Mahon v. Air New Zealand Ltd).*

39. *The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fair play in action". As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework where under jurisdiction has been conferred on the administrative authority. With regard to the exercise of*



a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect as those contained in the Administrative Procedure Act, 1946 of U.S.A. and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, there-fore, be insisted upon in such a case."

19. And finally Learned DSGI also placed reliance upon another judgment of the ***Proceedings of Inquiry In Summery Security Force Court*** wherein ***Kantilal Bhanudas Dukare vs. Officiating Commandant, 21C, 102 BN, Border Security Force, Baishnab Nagar & Ors.*** in para No.7 it has been specifically observed as under:-

"7. Having heard the learned counsel for the parties, in the context of the challenge raised in the instant Petition, we have perused the order passed by the Summary Court. The said order in our view is very cryptic inasmuch as the Summary Court after reproducing the evidence that was recorded before it has thereafter merely concluded by recording in three lines under the heading "Findings of the Court" that on the basis of the evidence before it, the petitioner is guilty of both charges." In our view, the least that is expected in such matters where the consequences are either dismissal or removal from service is that the Summary Court discusses the evidence on record on the basis of which it has reached conclusion that the charges are brought home. Merely reproducing the



evidence in the enquiry and thereafter abruptly recording the findings, in our view, is not sufficient as the same would not indicate as to what was the evidence which weighed with the Summary Court in arriving at the conclusion that the charges are held to be proved against the delinquent.”

20. Relying upon those judgments, Learned DSGI submitted that this present case is squarely covered by the principles of the aforesaid citations.

21. Heard Learned Counsel for both the sides at length and perused the writ petition, the counter affidavit filed by the respondents- Union of India, as well as the judgments relied upon by Learned DSGI during the course of hearing.

22. Admittedly, challenging the order of the Disciplinary Authority, no appeal was preferred by the petitioner. Although the petitioner has submitted that he had preferred a revision before the Director General, BSF, in this regard, save and except the copy of the petition, no other material has been placed on record. Therefore, the question that arises for consideration is whether there exists any scope for interference with the findings recorded by the Inquiry-cum-Disciplinary Authority.

23. I have also perused the judgments referred to hereinabove.

24. It appears that the scope of interference by the High Court under Article 226 of the Constitution of India is very limited. This Court cannot reappreciate the evidence recorded during the departmental inquiry or interfere with the conclusions arrived at by the Inquiry



Authority on the grounds of adequacy of evidence, reliability of evidence, correction of errors of fact, or assessment of the proportionality of punishment. In the present case, during the course of hearing, the petitioner could not make out any grounds for any interference by this High Court. Furthermore, in this case, the charges were framed against the petitioner under Sections 20 and 22 of the BSF Act by the competent BSF Authority.

25. At the time of hearing, Learned Counsel for the petitioner submitted that the provisions of Sections 20 and 22 of the BSF Act are not attracted to the facts of the present case. However, in this regard, the petitioner did not challenge anything before the BSF Court during the pendency of the proceedings nor challenged the charges to any other forum.

26. Therefore, at this stage, after conclusion of the proceedings, there is no scope to accept the contention made by the Learned Counsel for the petitioner that the provisions of Section 20 and 22 of the BSF Act are not attracted in the present matter. Furthermore, during the course of hearing, the petitioner has failed to place any material on record to substantiate the contention that the principles of natural justice was violated by the respondent authorities. Even there is no materials on record that the petitioner was not given the scope to defend himself properly before the Disciplinary cum Inquiry Authority.

27. In view of the aforesaid facts and circumstances, this Court is of the considered view that no ground has been made out for



interference with the findings recorded by the Disciplinary Authority. As such, the petitioner is not entitled to get any relief in the writ petition. Consequently, the writ petition filed by the petitioner, being devoid of merit, stands dismissed / rejected.

Pending application(s), if any, also stands disposed of accordingly.

JUDGE

