



2026:DHC:3719-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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*Judgment reserved on: 30.04.2026**Judgment pronounced on: 02.05.2026*

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W.P.(C) 11617/2023

RAJNISH KUMAR EX CONSTABLE GDPetitioner

Through: Mr. Gaurav Kumar and Mr.
Naman Sherstra, Advs.

versus

UNION OF INDIA THROUGH MINISTRY OF HOME
AFFAIRS AND ORSRespondents

Through: Ms. Ritu Reniwal, SPC.

CORAM:**HON'BLE MR. JUSTICE ANIL KSHETARPAL****HON'BLE MR. JUSTICE AMIT MAHAJAN****J U D G M E N T****AMIT MAHAJAN, J.**

1. By the present petition, the Petitioner essentially challenges the correctness of the order dated 04.08.2021 (hereafter '**impugned order**') passed by Respondent No. 5 whereby the Petitioner was found guilty of the charges under Sections 20(b), 20(c), 22(a), 40 of the BSF Act, 1968 and was sentenced to be dismissed from service.

2. Succinctly put, the relevant facts necessary for the adjudication of the present petition are as follows:

2.1. The Petitioner was working as Constable (GD) in the Border Security Force. It is alleged that on 26.07.2021, the Petitioner pointed his personal weapon towards his superior officer and used *insubordinate* language towards them. It is further alleged that the Petitioner neglected to obey the orders and acted in a manner that was



prejudicial to the discipline of the force. Based on the said allegations, the following charges were framed against the Petitioner :

<p>FIRST CHARGE BSF ACT, 1968 Sec-20(b)</p>	<p><u>USING THREATENING LANGUAGE TO HIS SUPERIOR OFFICER</u></p> <p>In that he, On 26.07.2021 at MMG Morcha of BOP Choura Forward-II, 89 Bn BSF pointed his personal weapon towards SI Tejpal Singh, HC Surender Kumar and CT Dipender Tiwari and said “GOLI MAAR DUNGA” or words to that effect.</p>
<p>SECOND CHARGE BSF ACT 1968 Sec-20(c)</p>	<p><u>USING IN-SUBORDINATE LANGUAGE TO HIS SUPERIOR</u></p> <p>In that he, On 26.07.2021 at MMG Morcha of BOP Choura Forward-II, 89 Bn BSF used insubordinate language to SI Tejpal Singh, HC Surender Kumar and CT Dipender Tiwari</p>
<p>THIRD CHARGE BSF ACT 1968 Section 22(a)</p>	<p><u>NEGLECTING TO OBEY BATTALION ORDERS</u></p> <p>In that he, At about 1533 hrs on 26.07.2021 while performing PTZ Camera duty at MMG Morcha of BOP Choura Forward-II, 89 Bn BSF, contrary to Bn order No. Estt/300/89 Bn/2020/5442-50 dated 14 May 2020 which prohibited using of mobile phone while on duty was found using mobile phone.</p>



FOURTH CHARGE BSF ACT 1968 Sec 40	<u>AN ACT PREJUDICIAL TO GOOD ORDER AND DISCIPLINE OF THE FORCE</u> In that he On 26.07.2021, while performing PTZ Camera duty at MMG Morcha of BOP Choura Forward – II, when caught red handed using mobile phone and further broke his mobile phone and thrown it away in a nearby water body in order to destroy the evidence.
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2.2. The Petitioner was tried by the Summary Security Force Court from 02.08.2021 to 04.08.2021 post which *vide* impugned order, the Petitioner was found guilty of the said charges and was sentenced to be dismissed from service.

2.3. Thereafter, the Petitioner preferred a Statutory Petition against the impugned order which also came to be dismissed on 26.10.2022. Aggrieved by the same, the Petitioner has filed the present petition.

3. The learned counsel for the Petitioner submitted that the impugned order is liable to be set aside inasmuch as the same is violative of the principles of natural justice. He submitted that the Petitioner was never provided with any opportunity to defend the charges levied against him. He submitted that the Petitioner was never summoned or afforded opportunity to lead evidence or cross examine the witnesses. He submitted that the off-record trial proceedings initiated against the Petitioner without giving him any opportunity to appear and defend the charges levied against him vitiates the entire



trial. He consequently prays that the impugned order be set aside.

4. *Per contra*, the learned SPC submitted that the contention of the Petitioner is contrary to the record. She submitted in the order dated 26.10.2022 whereby the Statutory Petition against the impugned order was disposed of, it was specifically noted that the Petitioner did not examine any witness in his defense, however, he had given a written statement before the Court. She further submitted that the order dated 26.10.2022 also records that the Petitioner had carried out cross examination of almost all the prosecution witnesses. She consequently submitted that the present petition is without any merit and is liable to be dismissed.

5. This Court has taken note of the rival submissions made by the parties and has perused the record. The original record pertaining to the SSFC Trial Proceeding of the Petitioner has also been handed over.

6. The principal argument pressed by the Petitioner is that the trial proceedings stood vitiated since the Petitioner was not afforded any opportunity to lead evidence or cross examine the witnesses. It has been urged that since the Petitioner was not given an opportunity to defend himself on the charges levied against him, the impugned order is liable to be set aside.

7. Taking note of the limited grievance of the Petitioner, this Court turns its gaze towards the original record pertaining to the SSFC Trial Proceeding of the Petitioner. Upon a perusal of the same, it transpires that the Petitioner was brought before the Court in the proceedings



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conducted before the SSFC between 02.08.2021 – 04.08.2021. The original record materializes that the Petitioner was arraigned upon each charge mentioned in the chargesheet to which the Petitioner pleaded ‘*not guilty.*’ Evidently, the prosecution examined 6 witnesses being – SI Tejpal Singh, Bhupinder Vikas (Deputy Commandant), Ct Pramod Kumar, HC Surender Kumar, Ct Dipendra Tiwari, Inspector Shesh Pal in relation to the allegations levelled against the Petitioner. From the original record, it transpires that the Petitioner was duly afforded an opportunity to cross examine the witnesses, and he also did cross examine the above stated prosecution witnesses post which the Prosecution evidence was closed. The original record further notes that the Petitioner was asked if he wanted to call any defence witness to which the Petitioner answered in negative and stated that he wanted some time for giving a written statement which was granted to him. It is thus apparent that contrary to the stance taken by the Petitioner, the Petitioner participated in the proceedings before the SSFC and was also duly afforded an opportunity to defend himself and present his case.

8. Furthermore, the order dated 26.10.2022 whereby the Statutory Petition preferred by the Petitioner against the impugned order was dismissed also notes that sufficient material existed to show that the Petitioner was guilty of the charges. It was noted that the Petitioner cross examined the prosecution witnesses, however, nothing came on record to conclude that the Petitioner had falsely been implicated in the present case. It was noted that the Petitioner could not lead any evidence/questions to contradict the answer of the witnesses.



9. On such a conspectus of facts, and upon a consideration of the material on record as well as the original record, it is apparent that the Petitioner was afforded an opportunity to defend himself on the charges levied against him during the trial proceedings and was also duly given an opportunity to cross examine the witnesses. The original record makes it clear that the Petitioner participated in the proceedings before the SSFC. The limited argument thus taken by the Petitioner that the trial proceedings stood vitiated since the Petitioner was not afforded an opportunity to defend himself and the impugned order is consequently liable to be set aside on that ground alone, is without any merit.

10. Even otherwise, insofar as the allegations are concerned, it is settled law that while exercising jurisdiction under Article 226 of the Constitution of India, this Court does not sit in appeal over the orders passed by the concerned authorities. The scope of judicial review is limited to examining the decision-making process and not the correctness of the decision on merits. The High Court, while exercising writ jurisdiction, cannot delve into the exercise of reappreciating the evidence and substituting the factual findings recorded by the concerned authorities (Ref. *Syed Yakoob v K.S. Radhakrishnan* : 1963 SCC OnLine SC 24).

11. In the present case as well, the impugned order is helmed on cogent factual findings and the same has also been upheld by the Appellate Authority while dismissing the Statutory Petition preferred by the Petitioner. In view of the aforesaid, this Court does not find any ground to warrant exercise of writ jurisdiction.



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12. The present petition is accordingly dismissed.

AMIT MAHAJAN, J.

ANIL KSHETARPAL, J.

MAY 02, 2026

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