



2025:DHC:1440-DB



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

Reserved on: 18.12.2024
Pronounced on: 05.03.2025

+ W.P.(C) 10858/2009

PREMA RAM EX BSF CONSTABLEPetitioner

Through: Mr. Ankur Chhibber, Adv.

versus

UNION OF INDIA & ORS.Respondents

Through: Mr. Mukul Singh, CGSC with
Ms. Ira Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J.

1. The present petition has been filed by the petitioner under Article 226 of the Constitution of India, assailing the Order dated 30.09.2008 passed by the Commandant of the 105th Battalion (Bn.), Border Security Force (BSF) *vide* which the petitioner was dismissed from Service. He has also assailed the Order dated 22.04.2009 passed by the Director General (DG), BSF, rejecting his Statutory Petition under Section 117(2) of the BSF Act, 1968 (in short, 'the BSF Act').

2. The brief facts leading to the filing of the present petition are that the petitioner joined the BSF as a Constable (General Duty) on 22.10.1990, and upon successful completion of his basic training, he



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reported to the 105th Bn., BSF, on 03.11.1991. Initially, the petitioner was posted in 'B' Company, 105th Bn.,BSF and in June,2008, the said Company was deployed at BSF post Asharidah in the State of West Bengal.

3. On 25.06.2008, the Coy Commander of 'G' Coy detailed the petitioner to purchase coal and fresh vegetables from the Bhagwangola Market for the Border Out Post (BOP), Other Ranks' Mess, Kanapara. It is the claim of the respondents that the petitioner left the BOP Kanapara along with Constable Mir Rahim at around 0815 hrs., and while they were on their way, the petitioner parted ways with the Constable Mir Rahim and proceeded alone, thereby violating the administrative instructions dated 10.05.2007, which required the movement of the Unit personnel in pairs, especially outside the BOP.

4. During the course of the said day, the petitioner was apprehended by the Deputy Commandant (DC)(G)/VIG team of the Sector Headquarter Berhampore, which consisted of Sub-Inspector (SI)(G) Abhay Kumar, Inspector/VigN.B.Bhatt and Sh.Antaryami Kumar DC(G), in a General Store named Tara Store. He was found to be in possession of Rs. 27,550/- in cash and a pay-in-slip bearing the name of Sada Sukh as a payee in SBI Account bearing No. 3003264422, which belongs to Om Prakash Ola. The petitioner was, thereafter, produced before the Deputy Inspector General (DIG), Berhampore, where the petitioner allegedly confessed that he had received the said amount from the Cattle Smugglers as a gratification



in exchange for providing a safe passage for smuggling of the Cattle to Bangladesh, and that other constables from 'G' Coy were also involved in this act. The DC (G)/VIG team then handed over the petitioner, along with recovered amount and pay-in-slip, to the Commandant 105th Bn., BSF.

5. The hearing of Charge commenced on 26.06.2008 wherein, the petitioner was heard by the Officiating Commandant under Rule 45 of the BSF Rules, and Masood Mohd, DC as well as HC SK Bhandari were examined. During this hearing, the petitioner pleaded guilty to the Charges leveled against him. Subsequent thereto, on 28.06.2008, the Officiating Commandant of 105th Bn., issued a Charge-Sheet to the petitioner for having committed offences under Section 40 and 46 of the BSF Act, 1968. The Charge-Sheet listed four Charges, which are reproduced as under:-

**“FIRST
CHARGE
BSF ACT-1958
SECTION-46**

**COMMUTING A CIVIL OFFENCE
THAT IS TO SAY BEING A PUBLIC
SERVANT ACCEPTING
GRATIFICATION OTHER THAN
LEGAL, REMUNERATION FOR
FOREBEARING TO DO AN
OFFICIAL ACT, PUNISHABLE
UNDER SECTION 07 PREVENTION
OF CORRUPTION ACT.**

In that he,

*At Jiyaganj (WB) on 25.06.08 at about
1240 hrs was in possession of Rs.27,550/-
which he accepted as gratification, other
than legal remuneration as a motive for
forebearing to do an official act, allowing
a safe passage (Line) for 10 to 15 days for
the purpose of smuggling of cattle @
Rs.5000/- per pair.*



**SECOND
CHARGE
BSF ACT-1968
SECTION-40**

**AN OMISSION PREJUDICIAL TO
GOOD ORDER AND DISCIPLINE OF
THE FORCE**

*In that he,
at Jiyaganj at 1210 hrs on 25.5.08 was
found in possession of rs.27,550/- which
he could not satisfactory account for and
the same is against the unit
SOP/Instruction.*

**THIRD
CHARGE
BSF ACT-1968
SECTION-40**

**AN OMISSION PREJUDICIAL TO
GOOD ORDER AND DISCIPLINE OF
THE FORCE**

*In that he,
at Jiyaganj at 1210 hrs. on 25.6.08 had
gone alone to purchase coal & fresh
vegetable of BOP hunger against the
instruction that men must move in buddy
pair.*

**FOURTH
CHARGE
BSF ACT-1968
SECTION-40**

**AN OMISSION PREJUDICIAL TO
GOOD ORDER AND DISCIPLINE OF
THE FORCE**

*In that he,
at Jiyaganj at 1210 hrs on 25.6.08, was
found in possession of mobile phone
(Modle Nokia-3110) against the
instructions of 105 BN BSF).”*

6. Incidental to this, in order to record the evidence, *vide* the Order dated 28.06.2008, DC A.K. Hotkar was detailed by the Officiating Commandant to prepare the Record of Evidence (ROE). The preparation of the ROE against the petitioner commenced on 01.07.2008 and the same concluded on 04.07.2008.

7. Thereafter, the DIG, BSF, Berhampore, perused the ROE



proceedings and directed that the fourth Charge framed under Section 40 of the BSF Act be dropped. Charge 1 was amended and was merged with Charge 2 to form a new charge under Section 46 of the BSF Act. Following the said changes, with amended Charges, a fresh Charge-Sheet was issued on 24.09.2008. The amended charges have been reproduced as under:-

“FIRST CHARGE – BSF ACT – 1968 SECTION 46 COMMITTING A CIVIL OFFENCE THAT IS TO SAY CRIMINAL MISCONDUCT FOR HAVING BEEN AS PUBLIC SERVANT IN POSSESSION OF PECUNIARY RESOURCES DISPROPORTIONATE TO HIS KNOWN SOURCE OF INCOME FOR WHICH HE CANNOT SATISFACTORILY ACCOUNT FOR AN OFFENCE SPECIFIED IN SECTION 13 (1) (e) OF THE PREVENTION OF CORRUPTION ACT, 1988 PUNISHABLE UNDER SECTION 13 (2) OF THE SAID ACT

In that he,

at Jiyaganj, Distt- Murshidabad, West Bengal on 25/06/08 at about 1210 hrs was found in possession of Rs. 27,550/- (Rupees twenty seven thousand five hundred fifty) only which he accepted from smugglers by allowing a safe passage (line) for smuggling of cattle heads from India to Bangladesh in AOR @ Rs. 5,000/- per pair. The said amount is disproportionate to his known source of income, which he could not satisfactorily account for.

SECOND CHARGE – BSF ACT – 1968 SECTION- AN OMISSION PREJUDICIAL TO GOOD ORDER AND DISCIPLINE OF THE FORCE

In that he,

At Jiyaganj at 1210 hrs on 25/06/08 had



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gone alone to purchase coal & fresh vegetable for BOP Ors' Mess against the SOP/Instructions issued to Coys vide this officer order No. Ops/105 Bn/SOP/2007/4960-5009 dated 10/05/07 that men must move in buddy pair."

8. On 27.09.2008, the petitioner was directed to nominate his defence witness by 28.09.2008, as the trial by Summary Security Force Court (SSFC) was scheduled to commence from 29.09.2008. The petitioner gave the name of SI Vijaya Yada as his defence witness.

9. In response to a separate correspondence dated 27.09.2008 calling upon the petitioner to appoint a Friend of the Accused, the Petitioner requested for appointment of Deputy Commandant R.K. Yadav as a Friend of the Accused.

10. The petitioner was, thereafter, tried by the SSFC on 29.09.2008 and 30.09.2008, in which the SSFC recorded that the petitioner has pleaded "Guilty" to the Charges. After recording the statement of the petitioner and his witness, SI Vijay Bahadur Singh, as to the character of the petitioner, the SSFC awarded to the petitioner a punishment of 'Dismissal from Service', *vide* the Order dated 30.09.2008, which was counter-signed by the DIG on 14.11.2008.

11. The petitioner, being aggrieved by the said action, filed a Statutory Petition under Section 117(2) of the BSF Act, on 23.01.2009, before the DG, BSF challenging the dismissal Order. The said petition was dismissed *vide* the Order dated 22.04.2009.



12. Dissatisfied with the dismissal of the Statutory Petition, the petitioner has approached this Court challenging the dismissal Order as well as the Order dated 22.04.2009 of the DG, BSF.

SUBMISSIONS OF THE PETITIONER

13. Mr. Ankur Chhibber, the learned counsel for the petitioner submitted that there was a jurisdictional error in the Trial as the DIG, being a witness due to the purported confession of the petitioner when he was produced before him, was disqualified from directing the Trial by the SSFC, and his subsequently approving the findings and punishment was also improper. He contended that according to Rule 46 of the BSF Rules, 1969 (in short, 'the BSF Rules'), the petitioner should have been attached to another Unit under a different DIG for a fair Trial. As a result, the proceedings were vitiated.

14. He further submitted that no pre-trial hearing under Rule 45 of the BSF Rules was provided on the amended Charges in the Charge-Sheet. Furthermore, the Detailed Report, as mentioned in proceedings, was not supplied to petitioner. Consequently, the subsequent proceedings under Rule 48 of the BSF Rules are also untenable in law.

15. The learned counsel contended that no *prima facie* case was established under Rule 51 of the BSF Rules warranting a trial by the SSFC, since no evidence was presented to demonstrate that the recovered money was disproportionate to the petitioner's source of income, and the respondents have failed to show any administrative instructions requiring troops to move in pairs.

16. He contended that the "Plea of Guilty" was not properly



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recorded, as the petitioner did not plead “Guilty”; in fact, he pleaded “Not Guilty”. This, he submitted, is evident from the fact that the petitioner sought to have SI Vijay Yadav examined as a defence witness and had submitted an application in this record. Additionally, the petitioner did not sign the “Plea of Guilty”. Therefore, the SSFC should have followed the procedure for a plea of “Not Guilty” under Rule 145 of the BSF Rules, instead of proceeding under Rule 142 of the BSF Rules alleging the petitioner to have pleaded “Guilty”. He submitted that the petition’s signature should have been obtained on the alleged “Plea of Guilty”. In support of his contentions, he relied on the following Judgments-

- *Union of India and Ors. vs. Jogeshwar Swain*, (2023) 9 SCC 720;
- *Jai Pal vs. UOI and Ors.*, 2024 SCC OnLine Del 5625;
- *Ex-HC D.K. Dwivedi vs. Union of India and Ors.*, 2024 SCC OnLineDel 5982;
- *Devender Kumar vs. Union of India and Ors.*, 2012 SCC OnLineDel 2807;
- *Ex. Head Constable Rajinder Singh vs. Union of India and Ors.*, 2012 SCC OnLineDel 2574; and
- *Mahender Singh (Ex. Const) vs. Union of India and Ors.*, 2008 (104) DRJ 749(DB).

17. In addition to the aforementioned Judgments, he placed reliance on the decision of *Ram Paul vs. Union of India and Anr.*, 2005 (83) DRJ 718 (DB), and submitted that due to lack of evidence, there was



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no basis for conviction of the petitioner.

18. To complete the submissions, he urged that the DG, BSF rejected the Statutory Petition of the petitioner in a mechanical manner and without noticing the illegalities or defects in the said proceedings.

19. He, therefore, prayed that the writ petition be allowed and respondents be directed to reinstate the petitioner with all consequential benefits.

SUBMISSION OF THE RESPONDENTS

20. On the other hand, Mr. Mukul Singh, the learned Central Government Standing Counsel for the respondents, while supporting the Impugned Orders, submitted that the DIG was neither a witness nor an interested party in the instant case. The petitioner was produced before him as he was the Area Commander of Sector Berhampore. Thus, there was no jurisdictional error in holding the trial against the petitioner.

21. He submitted that the petitioner was caught red-handed with Rs. 27,550/- cash by the raiding party, coupled with his confession, which was voluntary, which established the *prima facie* case against the petitioner, and the Charges were framed only after preparing a detailed ROE.

22. He submitted that the procedure as required by the BSF Act and the BSF Rules was duly followed. The petitioner was given an opportunity to be heard by the Commandant on the Offence Report and further, the petitioner had sufficient opportunities to cross-



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examine the witnesses. He was also given an opportunity to make a defence statement however, he chose not to. This, he submitted, indicates that the proceedings were conducted fairly.

23. Furthermore, he contended that following the amendment of the Charges, a revised Charge-Sheet was issued, wherein, the main content of the Charges and the Charge-Sheet remained unchanged.

24. Additionally, he contended that the petitioner was provided with the copies of all necessary documents, such as the ROE proceedings and the Charge-Sheet, well before the commencement of the SSFC trial, in accordance with the provisions of the BSF Act and the BSF Rules.

25. The learned counsel contended that the petitioner pleaded “Guilty” and as a result, the procedure under Rule 142 of the BSF Rules was adopted, rather than Rule 145. Moreover, there was no requirement under the BSF Act and the BSF Rules for an accused person to sign the SSFC proceedings after pleading “Guilty” or “Not Guilty”, and therefore, his signature on his “Plea of Guilty” was not obtained.

26. The learned counsel, referring to paragraph 19 of the “*STD Operating Procedure 105 Bn. BSF regarding Financial/General Matters at BN HQ/BOPS*”, submitted that the same required the troops to move in pairs outside the BOP, thus, the petitioner’s plea, that there were no administrative requirements in this regard, is baseless.

27. To conclude, he submitted that the DG, BSF rejected the



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petitioner's Statutory Petition under Section 117(2) of the BSF Act as being devoid of any merit, after giving the same a thoughtful consideration and after carefully reviewing the entire submissions made by him. In support of his contentions, he placed reliance on *Som Dutt vs. Union of India*, 2012 SCC OnLine Del 2575.

ANALYSIS AND FINDINGS

28. We have heard the learned counsels for the parties and perused the record as well as the original record of the SSFC proceedings produced before us by the respondents.

29. Before delving into the merits of the submissions of the parties, it is important to note that while exercising powers under Article 226 of the Constitution of India, the Court should generally refrain from re-appreciating the evidence presented in the departmental proceedings. The role of the Court is not that of an Appellate Authority, tasked with re-examining or re-assessing the evidence to draw its own conclusions. However, the Court may intervene in the findings of departmental proceedings if it is evident that no reasonable person could have arrived at such conclusion, or if the proceedings are found to be inconsistent with the established rules or principles of natural justice.

30. A Co-ordinate Bench of this Court in *Som Dutt* (supra), while considering the issue of proceedings and dismissal by the SSFC, examined the question regarding jurisdiction of this Court under Article 226 of the Constitution of India in such a service matter, and held as under:-



“19. This cannot be disputed that this Court will not take over the functions of the Summary Security Force Court. The writ petition is not an appeal against the findings of SSFC nor is this court exercising or assuming the role of the Appellate Authority. It cannot interfere with the findings of the fact arrived at by the SSFC except in the case of malafides or perversity i.e where there is no evidence to support a finding or where the finding is such that no one acting reasonably or with objectivity could have arrived at or where a reasonable opportunity has not been given to the accused to defend himself or it is a case where there has been non application of mind on the part of the SSFC or if the charges are vague or if the punishment imposed is shocking to the conscience of the Court. Reliance in respect of jurisdiction of the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India has been placed on State of U.P v. Raj Kishore Yadav, (2006) 5 SCC 673; V. Ramana v. A.P. SRTC, (2005) 7 SCC 338; R.S. Saini v. State of Punjab, JT 1999 (6) SC 507; Kuldeep Singh v. The Commissioner of Police, JT 1998 (8) SC 603; B.C. Chaturvedi v. Union of India, AIR 1996 SC 484; Transport Commissioner, Madras-5 v. A. Radha Krishna Moorthy, (1995) 1 SCC 332; Government of Tamil Nadu v. A. Rajapandia, AIR 1995 SC 561; Union of India v. Upendra Singh, (1994) 3 SCC 357 and State of Orissa v. Murlidhar Jena, AIR 1963 sc 404.”

31. Having noted the jurisdiction of this Court under Article 226 of the Constitution of India, we may now deal with the main grievance of the petitioner that he did not plead “Guilty” before the SSFC, therefore, the “Plea of Guilty” does not bear his signatures. *Per contra*, the learned counsel for the respondents contended that from a perusal of the record, it is clear that the petitioner had pleaded “Guilty”, and as at the relevant time, there was no requirement under the BSF Act and the BSF Rules that the “Plea of Guilty” has to be



signed by the accused, thus, such signatures were not appended.

32. In this regard, it would be apposite to note the Rule 142(2) of the BSF Rules, as it stood before 25.11.2011, as it dealt with the manner in which the SSFC is required to record the “Plea of Guilty”.

The same reads as under:

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

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

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

33. A bare perusal of Sub-rule (2) of Rule 142 would indicate that it lays down an elaborate procedure for recording of the “Plea of Guilty” or “Not Guilty”. The provision mandates that the SSFC, before it records its findings of “Plea of Guilty”, must ascertain whether the accused understands the nature and meaning of the Charges to which he pleads “Guilty”, and that, he must be informed of the general effect of that “Plea of Guilty” and the difference in procedure that will follow. Further, if it is apparent from the record or the abstract of evidence, that the accused ought to have pleaded “Not Guilty”, then



the SSFC is required to advise the accused to withdraw that plea and proceed to record a plea of “Not Guilty” instead.

34. At the time when the SSFC proceedings in the present case were conducted, that is, on 29.09.2008, the Proviso to the Rule 142(2) of the BSF Rules, which required the SSFC to obtain signatures of the accused and the friend of accused, was not in force. This Proviso was added with effect from 25.11.2011.

35. The learned counsel for the petitioner, while placing reliance on the Judgments of **Jogeshwar Swain** (supra), **Jai Pal** (supra), **Ex-HC D K Dwivedi** (supra), **Devender Kumar**(supra), **Ex. Head Constable Rajinder Singh** (supra) and **Mahender Singh (Ex. Const)** (supra), however,vehemently submitted that even though the Proviso to Rule 142(2) of BSF Rules did not exist at the time when the SSFC was held, the Commandant should have obtained the signatures of the petitioner on the alleged “Plea of Guilty” to authenticate that the petitioner had acknowledged the said “Plea of Guilty”.

36. In this context, let us examine the Judgments referred to on behalf of the petitioner. The Supreme Court examined the subject of the absence of the signatures of the accused on the “Plea of Guilty” when the Proviso to Section 142(2) of the BSF Rules did not exist, in its decision of **Jogeshwar Swain** (supra), the relevant extracts thereof are reproduced as under:

“42. Before acting on the plea of guilty, compliance of the procedural safeguards laid down in sub-rule (2) of Rule 142 is important as it serves a dual purpose. First, it ensures that before pleading guilty the accused is aware of not only the



nature and meaning of the charge which he has to face but also the broad consequences that he may have to suffer once he pleads guilty. This not only obviates the possibility of an uninformed confession but also such confessions that are made under a false hope that one could escape punishment by pleading guilty. The other purpose which it seeks to serve is that it ensures that confessions do not become an easy way out for deciding cases where marshalling of evidence to prove the charge becomes difficult. It is for this reason that sub-rule (2) of Rule 142 requires an SSFC to advise the accused to withdraw the plea of guilty if it appears from the examination of the record or abstract of evidence that the accused ought to plead not guilty. Since, the procedure laid in sub-rule (2) of Rule 142 serves an important purpose and is for the benefit of an accused, in our view, its strict adherence is warranted before accepting a plea of guilty.

*43. Reverting to the facts of this case, we notice from the record that the minutes of the proceedings of the SSFC dated 23-7-2005 do not indicate as to what advice was rendered to the accused with regard to the general effect of the plea of guilty taken by him. The minutes dated 23-7-2005 are nothing but a verbatim reproduction of the statutory rule. **There is no indication as to how the accused was explained of the broad consequences of him pleading guilty. Verbatim reproduction of the statutory rule and nothing further, in our view, is no compliance of the provisions of sub-rule (2) of Rule 142 of the BSF Rules, 1969.** Therefore, we are of the view that the appellants cannot draw benefit from the minutes of the proceedings as to canvass that the plea of guilty was accepted after due compliance of the requirements of sub-rule (2) of Rule 142 of the BSF Rules, 1969.*

*44. Further, the record of the proceedings of SSFC dated 23.07.2005 does not bear the signature of the accused. **No doubt, the requirement of having the signature of the accused on the minutes***



recording plea of guilty was first introduced by insertion of the proviso to sub-rule (2) of Rule 142 with effect from 25.11.2011. But there existed no embargo in obtaining signature of the accused to lend credence to the making of the plea of guilty. Absence of signature of the accused in this case assumes importance because here the accused denies taking such a plea and looking at the available evidence, pleading guilty appears to be an unnatural conduct. At the cost of repetition, it be observed that the case against the petitioner was in respect of clicking photographs of a lady doctor while she was taking her bath. There was no eye-witness of the incident; the camera was recovered from some other person's house; PW-9, a witness to the keeping of the camera by the accused (i.e., the original petitioner), in her previous statement made no such disclosure; there was no cogent evidence with regard to ownership of that camera; and, above all, even the reel was not developed to confirm the allegations. In these circumstances, when there was a challenge to the making of such confession before the High Court, **a very heavy burden lay on the non-petitioners (appellants herein) to satisfy the conscience of the Court that the plea of guilty was recorded after due compliance of the procedure prescribed by the BSF Rules, 1969.** As we have already noticed that there was no proper compliance of the procedure prescribed by sub-rule (2) of Rule 142 of the BSF Rules, 1969, absence of signature of the accused in the minutes further dents the credibility of the SSFC proceeding. **The High Court was therefore justified in looking at the evidence to find out whether punishment solely on the basis of confession (i.e., plea of guilty) was justified.**”
(emphasis supplied)

37. From a reading of the aforementioned decision, it is clear that even though there was no requirement of such a “Plea of Guilty” to be signed by an accused before the insertion of the Proviso to Sub-Rule



(2) of Rule 142, the absence of the signature of the accused remains significant. The absence of the accused's signature on the "Plea of Guilty" calls into question whether the procedural safeguards were effectively followed in the Trial.

38. Further, this Court in its decision in *Jai Pal* (supra), while dealing with a similar issue, has held as under:

"29. Furthermore and most importantly, the proceedings only bear the signatures of the Commandant and none else. The 'plea of guilty' does not bear the signatures either of the petitioner or his friend appointed by the respondents meaning thereby that the plea taken by the petitioner has not been acknowledged by him.

30. No doubt, the Commandant has observed underneath the 'plea of guilty' that he has followed the procedure under Section 142(2), however, a verbatim reiteration of statutory rules made by the Commandant without any indication of the manner as to how the petitioner was explained about the consequences of pleading guilty, cannot be said to be in due compliance of Sub-Rule 2 of Rule 142 of BSF Rules.

31. In our view, merely saying or noting in the proceedings that Rule 142 has been followed is not sufficient. The statutory rule requires that the Court has to essentially explain to the accused the nature of the Charge and to warn him of the consequences and effect of plea of guilt. The accused himself must be made aware that a different procedure will be followed if he pleads guilty and about the punishments laid under the Act that could be awarded to him. It is only upon his understanding of the content of the Charge and the effect of recording of plea of guilty and also being aware of a different procedure that shall consequently follow upon recording of such plea, it can be inferred that the petitioner voluntarily pleads guilty to the Charges and thereafter such a plea should be recorded."

(emphasis supplied)



39. Similarly in *Ex-HC D K Dwivedi* (supra), *Devender Kumar*(supra), *Ex. Head Constable Rajinder Singh* (supra) and *Mahender Singh (Ex. Const)* (supra), this Court has consistently held that strict compliance of Rule 142(2) of the BSF Rules is essential, and when non-compliance thereof is apparent, the trial is held to be vitiated.

40. In the present case, as would be manifest from the record, the “Plea of Guilty” has not been signed by the petitioner or his Next Friend; the same bears only the signature of the Commandant, who has noted on the proceeding sheet as under:

“The accused having pleaded guilty to both the charges, the court read and explained to the accused the meaning of both the charges to which he has pleaded guilty and ascertains that the accused understands the nature of the charges to which he has pleaded guilty. The court also informs the accused the general effect of that plea and the difference in procedure which will be followed consequent to the said plea. The court satisfies itself that the accused understands the charges and the effect of that plea and the difference in procedure which will be followed consequent to the said plea. The Court satisfies itself that the accused understands the charges and effect to his plea of guilty to the charges and the effect of his plea of guilty to the charges particularly the difference in procedure. The provisions of Rule 142(2) are complied with.”

41. From the above noting, it is evident that the SSFC has merely recorded in the proceedings that Rule 142(2) of the BSF Act has been complied with, which is a verbatim reiteration of the statutory rule without any indication as to how the petitioner was explained about



the consequences of pleading 'Guilty' and the difference in procedure that would follow as a result of such plea. Thus, this will not suffice the requirement of the said Rule, given the serious consequences that would follow after such a plea. At this stage, it is pertinent to mention that the implication of pleading "Not Guilty" in the SSFC trial would have resulted in adoption of the procedure prescribed under Rule 145 of the BSF Rules and resultantly, the petitioner herein would have had the opportunity of having another round of recording of the prosecution's evidence

42. Further, upon reviewing the original record of SSFC proceedings, it is clear that the petitioner had nominated SI Vijay Yadav as a defence witness before the SSFC. It is surprising that the petitioner, who initially nominated a defence witness, would proceed to plead 'Guilty' on the day of the trial, despite knowing and understanding the procedural differences that would follow as a consequence of him pleading "Guilty".

43. Even the deposition of character witness as well as the statement of the petitioner in mitigation of punishment do not bear their signatures and on the other hand, it is recorded that they have stated that they do not want their statements to be read over to them and believe that it has been taken down correctly. This casts a serious doubt on the authenticity of the entire SSFC proceedings. We may quote from the SSFC proceedings the statement of the character witness and the statement of the petitioner in mitigation of punishment, which is as under:



“CHARACTER WITNESS::SI Vijay Bahadur Singh

xxxx

The witness does not want the statement to be read over to him and believes that it has been taken down correctly.

The provision of BSF Rule 89 and 90 have been complied with.”

xxx

“The accused does not want the statement to be read over to him and believes that It has been taken down correctly.

The provisions of BSF Rule 89 & 90 have been complied with.”

44. From what has been noted hereinabove, it is clear that the proceedings of the SSFC, held on 29.09.2008 and 30.09.2008, transgressed the procedural safeguards as laid down in Rule 142 of the BSF Rules. The fact that the petitioner had nominated a defence witness, coupled with the fact that the proceedings recording the "Plea of Guilty" bear only the signature of the Commandant and none else, and that it contains a verbatim reiteration of the statutory rule as opposed to a detailed explanation about the consequences of pleading 'Guilty', casts serious aspersions on the "Plea of Guilty" recorded by the SSFC on whether the petitioner was fully conscious of the ramifications of such plea, especially when he has specifically challenged having made such a plea before the SSFC. The petitioner's expidious opposition to his 'Dismissal from Service', in the form of a Statutory Petition followed by the present petition against the Impugned Order thereof, further adds to the belief of this Court that the SSFC proceedings wrongly recorded petitioner's plea of 'Guilty'



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and denied him a fair chance of defending himself. Considering the punishment of 'Dismissal from the Service' awarded to the petitioner, the prescribed rules were required to be strictly followed.

45. We, accordingly, allow the writ petition and set aside the SSFC proceedings and the sentence imposed on the petitioner. Consequently, we direct that the petitioner be reinstated in service with effect from, the date of his 'Dismissal from Service', that is, 30.09.2008, with all consequential benefits. However, given the fact that the petitioner had been in service for almost 17 years and nothing adverse regarding his past service has been brought on record, and the fact that the he has been out of service for almost 17 years, and it has not been shown to us that the petitioner was not gainfully employed or worked for gain during the intervening period, we direct that the petitioner be paid 50% of the back wages as arrears from the date of the petitioner's dismissal until today. The consequential orders in terms of this Judgement will be passed by the respondents within a period of 8 weeks.

46. The present petition is, accordingly, disposed of in above-said terms. The parties shall bear their own costs.

47. The original records of the inquiry proceedings are directed to be returned to the respondent/department by the Court Master.

SHALINDER KAUR, J.

NAVIN CHAWLA, J.

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