



\$~9

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

+ W.P.(C) 572/2016

KAILASH CHAND DIGPetitioner

Through: Mr. Himanshu Gautam and
Ms. Niharika Punn, Advs.

versus

UNION OF INDIA AND ORSRespondents

Through: Mr. Rakesh Kumar, CGSC with
Mr. Sunil, Adv. for UOI

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

07.04.2025

%

AJAY DIGPAUL, J.

1. This petition has been filed by the petitioner with the following prayers:

“In view of the facts and circumstances stated above, it is most respectfully prayed that this Hon’ble Court be pleased to:-

(i) *Issue a writ of Certiorari quashing the Proceedings, Findings and Sentence of General Security Force Court (GSFC), held between the period 12.12.2012 to 20.08.2013 and promulgated on 15.02.2014, in respect of the Petitioner;*

(ii) *Issue a writ of Certiorari quashing the Respondent’s Order dated 15.10.2014 vide which they have rejected the Petitioner’s Statutory Complaint dated 19.05.2014 against the said GSFC;*

(iii) *Issue a writ of Mandamus directing the respondents to restore all consequential benefits to the Petitioner;*

(iv) *Issue any other writ/direction that this Hon’ble Court Pass may deem fit and proper in the facts of this case.”*



2. The facts as noted from the petition are that the petitioner joined Border Security Force¹ in March, 1984 as Assistant Commandant and was thereafter promoted to the rank of Deputy Commandant in September, 1989. During his service, a complaint was filed in 2009 by the widow of petitioner's deceased younger brother, before the DG, BSF alleging therein that the petitioner married her during her visit to Terihat in September, 2000 and had forcibly cohabited with her thereafter.

3. On the basis of the said complaint, a Staff Court of Inquiry² was convened against the petitioner, between 06.10.2009 and 16.11.2009, which was followed by an Additional SCOI from May to September, 2009. Subsequently, Record of Evidence³ was recorded from April, 2012 to May, 2012, pursuant to which a Charge Sheet dated 10.09.2012 was served upon the petitioner. The petitioner was charged with:-

**“BSF ACT SECTION 46
COMMITTING A CIVIL OFFENCE THAT IS TO SAY SEXUAL
INTERCOURSE CAUSED BY A MAN DECEITFULLY
INDUCING A BELIEF OF LAWFUL MARRIAGE
PUNISHABLE U/S 493 IPC**

*in that he,
at Terihat, Jammu and Ghaziabad (UP), during the period from the
year 2000 to 2003 deceitfully caused Smt. Amresh, widow of his
younger brother Late Subhash Sharma, who was not lawfully
married to him, to believe that she was lawfully married to him,
and, in that belief, she had sexual intercourse with him and,
thereby committed an offence punishable under Sec 493 of IPC.”*

¹Hereinafter, “BSF”

²Hereinafter, “SCOI”

³Hereinafter, “ROE”



4. The ROE was followed by Convening Order dated 12.12.2012, for holding a General Security Force Court⁴ against the petitioner. The petitioner was tried on a single charge emanating from the aforementioned facts.

5. The particulars of charge averred that the petitioner at Terihat, Jammu and Ghaziabad (Uttar Pradesh), during the period of 2000 to 2003, deceitfully caused the widow of his younger brother Late Subhash Sharma, who was not lawfully married to him, to believe that she was lawfully married to him, and in that belief, she had sexual intercourse with him and thereby committed an offence punishable under section 493 of the (erstwhile) Indian Penal Code, 1860⁵.

6. On being arraigned by the GSFC, petitioner pleaded 'not guilty' to the charge. The prosecution examined 10 witnesses, the petitioner, in defence, examined 18 witnesses and made an unsworn statement.

7. After appraisal of the evidence on record, the GSFC found him 'Guilty' of this charge. Thereafter, the petitioner's previous convictions, character, rewards, etc. were recorded and he was initially sentenced:

- “(a) To take rank and precedence as of his appointment as Deputy Inspector General bore the date the first day of December, 2012;*
- (b) To forfeit nine years past service for the purpose of pension;*
- (c) To be severely reprimanded.”*

⁴Hereinafter, "GSFC"

⁵Hereinafter, "IPC"



8. The petitioner preferred a pre-confirmation petition under Rule 142 of the Border Security Force Rules, 1969⁶, dated 14.02.2013, challenging the findings of the GSFC. Thereafter, the GSFC revised its sentence in accordance with the directions of the confirming authority, and by order dated 10.02.2014, imposed the following sentence:

- “(a) take rank and precedence as if his appointment as Deputy Inspector General bore the date the first day of December, 2012;*
- (b) to forfeit two years’ past service for the purpose of increased pay;*
- (c) to forfeit nine years past service for the purpose of pension;*
- (d) to suffer fine of Rs. 2,00,000/- (Two lakhs), and;*
- (e) to be severely reprimanded.”*

9. The findings and sentence were confirmed by the ADG (Ops) HQ BSF, New Delhi on 10.02.2014.

10. Feeling aggrieved by the finding and sentence of GSFC, the petitioner submitted a Statutory Petition dated 19.05.2014 addressed to Director General⁷ BSF with the prayer to set aside the finding and sentence of GSFC.

11. The DG, on 15.10.2014, rejected the petitioner’s statutory petition being devoid of merit.

12. Dissatisfied by the order passed by the DG, the petitioner is before us under Article 226 of the Constitution of India, challenging the proceedings, findings, and sentence of GSFC held between the period 12.12.2012 to 20.08.2013 and against the order dated

⁶ Hereinafter, “BSF Rules”

⁷ Hereinafter, “DG”



15.10.2014, whereby the petitioner's statutory complaint dated 19.05.2014 against the GSFC was rejected.

13. The learned Counsel appearing on behalf of the petitioner, Mr. Himanshu Gautam contends that the complaint made by the complainant was motivated by a property dispute between them. After a gap of 1.5 years, ROE was held in 2012, followed by a charge under Section 46 BSF Act read with Section 493 IPC. The learned Counsel further contends that except the Presiding Officer, all GSFC members and the Law Officers were junior to the petitioner, violating Rule 61 and Rule 124 of BSF Rules. On this aspect, he relied upon *Union of India & Anr. v Charanjit S. Gill & Ors.*⁸, which requires a Law Officer not junior in rank to the accused unless unavailability is recorded. He raises an objection relating to jurisdiction of GSFC under Rule 72 of BSF Rules.

14. He further invalidated the charge under section 493 IPC, contending that no deceitful inducement could have occurred since the complainant knew petitioner was married with children. Thus, the essential ingredients of Section 493 IPC i.e. 'false belief in lawful marriage and cohabitation', were not fulfilled. There were contradictory evidence as the complainant herself in 30.10.2000 letter declared that she was the widow of petitioner's brother, contradicting her claim of marriage with the petitioner. He also states that there was no witness to testify the marriage ceremony as alleged between the petitioner and the complainant.



15. The learned counsel for the petitioner also contends that the GSFC relied entirely on complainant's statements, ignoring contradictions and defence evidence. Due to procedural irregularities, violation of legal norms, and lack of substantive evidence, the GSFC proceedings are vitiated and liable to be quashed.

16. *Per contra*, learned Central Government Standing Counsel, Mr. Rakesh Kumar, appearing for the respondents, submits that all statutory and procedural safeguards as envisaged under the BSF Act and Rules were scrupulously adhered to during the proceedings. The petitioner was afforded full opportunity to defend himself, and no violation of natural justice or legal procedure has been demonstrated. He further contends that the petitioner's reliance on an affidavit allegedly signed by the complainant is misplaced, as she later denied its execution, alleging coercion, and reaffirmed her allegations during cross-examination in GSFC proceedings.

17. Regarding the jurisdiction, Mr. Kumar submits that the inquiry and trial were lawfully conducted in Delhi due to the location of the complainant and nature of allegations. The ROE, and not earlier SCOI reports, formed the basis for trial. The disciplinary authority acted within its jurisdiction. As to the amendment of the charge, he argues that it was done legally under Rule 57 of BSF Rules following prosecution evidence. Objections by the defence were duly considered and rejected by the GSFC.

⁸ (2000) 5 SCC 742



18. Mr. Kumar further submits that the conviction is based on comprehensive evidence, not solely on the complainant's testimony. The petitioner had full opportunity to present his case, and no procedural irregularity or legal infirmity has been shown. Accordingly, the respondents pray that the writ petition be dismissed.

19. After hearing learned Counsel for both sides, we are of the opinion that there is no merit whatsoever in the writ petition for the following reasons:

20. The first contention regarding lack of jurisdiction or improper constitution of the GSFC deserves to be rejected at the threshold. Rule 61(2) of the BSF Rules mandates that officers trying another officer must be of rank not lower than the accused. As such, the plea regarding violation of Rule 61(2) stands belied by the record. In the present case, the petitioner, then a DIG, was tried by officers of equivalent or senior rank. No material has been placed on record to show that the members of the Court were junior to the petitioner.

21. With respect to the objection regarding the competency of the Law Officer, this Court finds no merit in the petitioner's contention. Rule 124 of the BSF Rules, 1969, while laying down the eligibility criteria for appointment of a Law Officer, does not impose an inflexible or absolute embargo against appointing an officer junior in rank to the accused. The said Rule permits such appointment where adequate justification exists, subject to the satisfaction of the competent authority. From the perusal of the original record produced before this Court, it is evident that the Convening Order dated



OFFICER UNDER INSTRUCTION

IRLA No.10592342 Shri Umed Singh Daryal, DC(Law), Ftr. HQ Meghalaya is detailed as officer under instruction.

The accused person will be warned and all witnesses duly required to attend.

The proceedings (of which only two copies are required) will be forwarded to the Additional DG(Ops)FHQ through the Chief Law Officer, Dte. General BSF, New Delhi.

-Sd-

*(M.Tripathi)
Inspector General (Prov)
HQ DG Border security Force
(Convening Officer)''*

22. In the absence of demonstrable prejudice caused to the petitioner, and no contemporaneous objection having been raised at the time the convening order was read out, this ground raised by the petitioner deserves to be rejected.

23. It is evident that the disciplinary proceedings against the petitioner were initiated upon receipt of a serious complaint from the widow of the petitioner's deceased younger brother, wherein it was alleged that the petitioner had deceitfully induced her into believing that she was lawfully married to him and had forcibly cohabited with her. The competent authority, after due application of mind and in exercise of powers under Rule 174 of the BSF Rules, 1969, directed the holding of a SCOI, which was duly followed by an Additional SCOI. Upon evaluation of the material collected during the inquiries, a prima facie case was found to exist against the petitioner, warranting the holding of a Record of Evidence (ROE). After due scrutiny of the



ROE, the competent disciplinary authority decided to convene a General Security Force Court, as permissible under the provisions of the BSF Act and Rules.

24. As regards the framing and amendment of the charge, the record demonstrates that the charge was initially framed in accordance with Rule 54 of the BSF Rules, clearly setting out the nature of the offence, the time period, place of occurrence, and the identity of the person against whom the offence was allegedly committed. The subsequent amendment to include the place “Terihat” was made during trial pursuant to the deposition of PW-1, upon an application moved by the prosecution. The GSFC, after considering the defence objections, passed a reasoned order allowing the amendment in exercise of powers under Rule 57 of the BSF Rules. This Court finds no infirmity in the said amendment, which was legally permissible and did not result in any prejudice to the petitioner.

25. The petitioner’s reliance on an affidavit allegedly executed by the complainant has also been adequately addressed in the statutory proceedings. The complainant, during cross-examination in the GSFC, specifically denied execution of any affidavit and alleged that her signatures had been obtained under threat and coercion. She reaffirmed the allegations against the petitioner during trial. Thus, no benefit can be claimed by the petitioner from such an affidavit which was neither admitted nor proved in accordance with law.

26. The jurisdictional objection raised by the petitioner with respect to territorial competency is equally meritless. The petitioner was



attached to STS BSF, New Delhi during the relevant period, and the complainant was residing in Ghaziabad. The alleged acts occurred at multiple locations including Terihat, Jammu and Ghaziabad. Given the nature of the allegations and place of occurrence as emerging from the record, it cannot be said that the GSFC lacked jurisdiction. Moreover, the entire process of hearing under Rule 45B, conduct of ROE, and initiation of GSFC was undertaken by competent authorities in accordance with the chain of command and applicable statutory provisions.

27. The record further reveals that the petitioner availed full opportunity to defend himself. He examined as many as 18 defence witnesses and was granted adjournments as sought. He was also permitted to visit Bagafa for collection of documents for his defence. No procedural unfairness or breach of natural justice has been shown.

28. The petitioner's argument that the GSFC's findings are based solely on the complainant's testimony is also factually incorrect. The GSFC considered all evidence on record, including oral testimonies and documentary material, and arrived at a reasoned finding of guilt. The conviction was not based on mere ipse dixit of the complainant but on cumulative appreciation of the evidence.

29. This Court is cognizant of the legal position expounded by the Hon'ble Supreme Court in *Hindustan Petroleum Corporation Ltd. v. Dilbahar Singh*⁹, wherein it was held that the High Court, in exercise

⁹(2014) 9 SCC 78



of writ jurisdiction, does not sit as an appellate authority to re-appreciate evidence but is confined to examining the legality, regularity and propriety of the impugned order. The present case does not disclose any such infirmity.

30. The High Court, in exercise of its writ jurisdiction, does not function as an appellate court to reappreciate evidence or substitute its own findings for those arrived at by a duly constituted Court or Tribunal, unless the decision suffers from perversity, illegality, or manifest unreasonableness. In this regard, it is useful to refer to the judgment of the Hon'ble Supreme Court in *Syed Yakoob v. K.S. Radhakrishnan & Ors Syed Yakoob*¹⁰, wherein the scope of certiorari jurisdiction was succinctly laid down as follows:

xxx

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of

¹⁰ AIR 1964 SC 477



certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmad Ishaque1 Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam and Kaushalya Devi v. Bachittar Singh.”

xxx

31. Applying the above principles, the present case does not disclose any error of jurisdiction, procedural irregularity, or breach of natural justice. The findings of the GSFC are based on comprehensive evaluation of oral and documentary evidence, and do not suffer from any illegality or perversity warranting interference by this Court under Article 226.

32. This Court cannot ignore the nature of the allegations which involve a serious breach of trust, propriety, and dignity expected from a senior officer of a disciplined force. The act of deceitfully inducing a woman, particularly the widow of one's deceased brother, into a belief of lawful marriage and cohabiting with her, if proved, is not only an offence under the Indian Penal Code but also constitutes grave moral turpitude unbecoming of a senior officer of the BSF. The act attributed



to the petitioner is highly condemnable and militates against the standards of discipline, integrity, and honour expected of the uniformed services.

33. The procedural framework under the BSF Act and Rules has been duly adhered to at every stage. The petitioner has failed to demonstrate any illegality, perversity, or procedural lapse warranting interference by this Court in exercise of writ jurisdiction. It is a settled position of law that findings of a Court Martial or its equivalents like the GSFC are not to be interfered with unless they are patently illegal or shock the conscience of the Court. No such exceptional circumstance is made out in the present case.

34. The rejection of the statutory petition by the Director General, BSF, is reasoned and based on due appreciation of record. This Court finds no infirmity in the said decision either.

35. For the reasons and observations recorded hereinabove, this Court finds no ground to interfere with the findings and sentence imposed by the GSFC. The writ petition is accordingly dismissed, with no orders as to costs.

AJAY DIGPAUL, J.

C.HARI SHANKAR, J.

APRIL 7, 2025/ar

[Click here to check corrigendum, if any](#)