



2025:DHC:6812-DB



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

Judgment reserved on : 01.08.2025

Judgment pronounced on: 13.08.2025

+ **W.P.(C) 10624/2020**

SHEELENDRA KUMAR

.....Petitioner

Through: Mr. Akhilesh Kumar Pandey,
Ms. Deepika Mishra, Mr. Manoj Kumar and
Mr. Abhishek Misra, Advs.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Ms. Richa Dhawan SPC along
with Mr. Anuj Chaturvedi, Adv

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT

13.08.2025

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OM PRAKASH SHUKLA, J.

1. The petitioner has filed the present petition assailing his dismissal from service and his conviction under Section 354 and Section 323 of the Indian Penal Code, 1860¹ by the General Security Force Court² constituted under the Border Security Force Act, 1967³.

2. Shorn off unnecessary details, the facts as noted from the petition would be that the petitioner was enrolled as CT. (GD) bearing

¹ "IPC", hereinafter

² "GSFC", hereinafter

³ "BSF Act", hereinafter



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No. 944554474 in the Border Security Force⁴ on 06.04.1994 as Constable and with an unblemished career in the force.

3. In the year 2010, 70 Bn BSF was deployed along the Indo-Bangladesh border under Tripura Frontier BSF, and the petitioner was among those who were deployed. On 29th November 2020, 'D' Coy 70 Bn was deployed at Border Out Post⁵ Amzadnagar near Belonia, district South Tripura. On the same day at about 5:30 hrs, CT. V Velusami and CT. Santosh Singh Jat left the aforesaid BOP for Observation Point⁶ duty, at OP No. 3 along the border. At the same time, a dog patrolling team comprising of CT. Ashwani Kumar and CT. Rajesh Singh also left the BOP for patrolling along with border, who were later joined by the petitioner.

4. As per the substratum of the matter, apparently around 7:45 am, the petitioner received information through his sources that 4-5 head of cattle would be smuggled to Bangladesh from Amzadnagar. Upon receiving the information, the petitioner told CT. V. Velusamy and CT. Santosh Kumar that he is going to check the suspected location for smuggling and would call them via wireless, if required.

5. Apparently, when the petitioner reached near the rubber plantation, he spotted one Mr. Abdul Kalam hiding in the bushes. He was there to facilitate smuggling of cattle and was speaking on his mobile phone. As soon as the said Mr. Abdul Kalam saw the petitioner, he started shouting '*BSF BSF Bhago goru bhagao*' (BSF

⁴ "BSF", hereinafter

⁵ "BOP" hereinafter

⁶ "OP" hereinafter



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BSF run shove the cow) and running towards the rubber plantation. While running, he got stuck in one of the bushes and fell down. His mobile phone also fell which was later picked up by the petitioner and was submitted to the P S Belonia. Furthermore, the petitioner spotted cattle with one Mr. Khokha Mia (father of the said Mr. Abdul Kalam) near the rubber plantation. The petitioner moved towards Mr. Khokha Mia and the cattle with an intention to catch them. After hearing the shouts of Mr. Abdul Kalam, his father Mr. Khokha Mia, his brother one Mr. Badshah Mia and some other persons including some females, who were apparently waiting behind the bushes to assist in Mr. Abdul Kalam in moving the cattle, came towards the petitioner and began assaulting him with the bamboo sticks, dah etc.

6. It is the case of the petitioner that, after he ran towards OP No. 3 he called CT. V. Velusamy and CT. Santosh Kumar Jat through wireless set for help. Both of the BSF personnels reached at the spot and saved the petitioner from the mob by shielding him. By that time, Mr. Khokla Mia along with his companion miscreants had already injured the petitioner. During the scuffle between the BSF personnels and the companion miscreants, Mr. Abdul Kalam snatched the rifle from CT Santosh Kumar Jat. During the said altercation, few persons from the mob including women tried to snatch the charged rifle from him. In this process, the trigger of the weapon was pressed and gunshot got fired and bullet accidentally hit Mr. Khokla Mia. Mr. Khokla Mia succumbed to his injuries on the same day.

7. Thereafter, the Offg. Coy Commander D Coy and Commandant 70 Bn BSF reached the spot and after verifying the said incident, took



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BSF personnels to BOP Amzadnagar. From BOP, the injured petitioner and CT. Santosh Kumar Jat were taken to Belonia hospital. On the same day Offg. Coy Commander of D Coy filed an FIR against Mr. Khokha Mia, Mr. Abdul Kalam and Mr. Badshah Mia (FIR no. 283 of 2010) in P S Belonia under Section 148, 149 & 353 of IPC against the aforesaid miscreants in PS Belonia for attacking sentry on duty and preventing them from discharging bona fide Government duties and causing grievous hurt with an attempt to kill BSF personnel.

8. On the same day, another FIR (FIR No. 282 of 2010) came to be lodged in P S Belonia by one Smt. Ambia Khatoon who was wife of Mr. Khokha Mia against the petitioner and the BSF personnels viz. CT. V. Velusami and CT. Santosh Singh Jat. According to the said FIR⁷ apparently, at around 7:30 am, one of the BSF personnels was seen dragging daughter of Mr. Khokha Mia⁸ near tower no. 3 towards jungle by holding her hand. According to the complaint, one Ms. Bina Akhtar witnessed the entire said incident and informed the matter to her brother i.e. Mr. Abdul Kalam and apparently he saved the complainant. Smt. Ambia Khatoon further alleged that BSF personnel assaulted Mr. Abdul Kalam which caused him severe injuries. According to the complainant, Mr. Khokha Mia reached the spot to save his son (Mr. Abdul Kalam) and in the meantime one of the BSF personnels came down from tower no. 3 of Amzadnagar BOP and apparently fired bullet towards Mr. Khokha Mia, thereby causing an injury on his head which resulted in his demise on the same day.

⁷ "complaint" hereinafter

⁸ "complainant" hereinafter



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9. It is pertinent to mention that, on the very next day i.e. on 30th November 2010 an Inquiry was conducted by Staff Court of Inquiry⁹ and Deputy Inspector General BSF Udaipur, Bagafa Tripura (S) directed Sh. G N Padukone, Commandant of 129 BN BSF to investigate the circumstances under which the armed altercation took place. Subsequently vide order 22nd December 2010, Sh. G N Padukone after investigating the matter, submitted the SCOI findings and the SCOI Opinion

10. Records reveal that, Belonia Police station also investigated the complaint and a chargesheet came to be filed on 18th November 2015. Thereafter vide order dated 5th May 2015 the case was transferred to Security Force Court for trial against BSF personnels viz. CT. V. Velusami, CT. Santosh Singh Jat and the petitioner under Section 80 of the BSF Act on the following charges:

“The Accused No.1, No. 970005180 CT. V. Velusami, Accused No. 2 No. 94455447 CT Sheelender Kumar and Accused No. 3, No. 0744816 CT Santosh Singh Jat, of 70 Bn BSF, attached with 168 Bn BSF, are charged with

<u>FIRST CHARGE</u> BSF ACT SEC-46	“COMMITTING A CIVIL OFFENCE THAT IS SAY MURDER PUNISHABLE U/S 302 IPC”
(against accused No.1 only)	in that he, at village Amzadnagar near OP No. 3 in the AOR of BOP Amzadnagar on 29.11.2020 at about 730 hrs hearing a shot by his service weapon i.e. INSAS Butt No. 339 Body No. 1693477 at Shri. Khokha Mia S/o Late Ajid Mia R/o Amzadnagar caused the death of Shri. Khokha Mia

⁹ “SCOI” hereinafter



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<u>SECOND CHARGE</u> BSF ACT SEC-46 (against accused No. 2 only)	COMMITTING A CIVIL OFFENCE THAT IS SAY MURDER PUNISHABLE U/S 376 IPC” in that he, at village Amzadnagar near the house of Shri. Khokha Mia on 29.11.2010 at about 0730 hrs committed rape on the daughter of Khokha Mia R/o Amzadnagar
<u>THIRD CHARGE</u> BSF ACT SEC-46 (against accused No.1, 2 & 3 only)	COMMITTING A CIVIL OFFENCE THAT IS SAY WRONGFULLY RESTRAINING A PERSON PUNISHABLE U/S 341 IPC” in that they together, at village Amzadnagar near the OP No. 3 in the AOR of BOP Amzadnagar on 29.11.2010 at about 0730 hrs, restrained Shri Khokha Mia S/o Late Ajid Mia, Shri. Badsah Mia s/o Shri Khokha Mia & Shri Abul Kalam S/o Shri. Khokha Mia all R/o Village Amzadnagar
<u>FOURTH CHARGE</u> BSF ACT SEC-46 (against accused No.1, 2 & 3 only)	COMMITTING A CIVIL OFFENCE THAT IS SAY VOLUNTARILY RESTRAINING A PERSON PUNISHABLE U/S 341 IPC” in that they together, at village Amzadnagar near the OP No. 3 in the AOR of BOP Amzadnagar on 29.11.2010 at about 0730 hrs, voluntarily Shri Khokha Mia S/o Late Ajid Mia, Shri. Badsah Mia s/o Shri Khokha Mia & Shri Abul Kalam S/o Shri. Khokha Mia all R/o Village Amzadnagar

11. In the interregnum Commandant, 168 Bn BSF Gokulnagar, Tripura convened order dated 18th November 2015 directing evidence to be recorded as per Rule 48 of BSF Rules. Subsequently, Record of Evidence¹⁰ was submitted to GSFC and proceedings against the

¹⁰ “ROE” hereinafter



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petitioner under Section 376 r/w Section 511, Section 341 and Section 323 r/w Section 34 of IPC; CT V. Veluswamy under Section 302, 341 and 323 r/w Section 34 of IPC and CT. Santosh Kumar under Section 341 and Section 323 r/w Section 34 of IPC were initiated.

12. Subsequently trial was conducted by GSFC at 200 Bn BSE Gokulnagar, Tripura on 2nd April 2019. The petitioner pleaded 'Not Guilty' and thereafter, the proceedings continued against the petitioner on a day-to-day basis between 02.04.2019 to 15.05.2019. Subsequently, on 15th May 2019, GSFC acquitted BSF personnels viz. CT. V. Veluswamy and CT. Santosh Kumar Jat of the charges including the charge of murder which was alleged to have been committed by CT. V. Veluswamy. However, GSFC convicted the petitioner under Section 354 of IPC and resultantly, dismissed the petitioner from services.

13. Subsequently, the petitioner preferred a pre-confirmation petition under Section 117 (1) of the BSF Act before HQr. Special Director General (Eastern Command) BSF at Kolkata. The pre-confirmation petition came to be dismissed by the Special Director General BSF (Confirming Authority) *vide* order 29th June 2019 and as such confirmed the dismissal of the petitioner from the service. Thereafter on 15th July 2019, the petitioner was no longer a part of 70 Bn BSF.

14. The petitioner on 7th August 2019 preferred a statutory petition before the Director General¹¹ BSF, in view of directions of GSFC, DG

¹¹ "DG" hereinafter



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vide an order dated 4th February 2020 dismissed the aforesaid statutory petition.

15. Thus, dissatisfied by the order passed by the DG, the petitioner has filed the present writ petition under Article 226 of the Constitution of India, seeking for the following relief(s):

- “a. Issue a writ in the nature of Certiorari or any other appropriate writ, quashing the impugned Order dated 04.02.2020, passed by the Director General, Border Security Force and direct the Respondents to reinstate the Petitioner in service with all consequential benefits.
- b. Pass any such other or further orders in favour of the Petitioner as this Hon'ble Court may deem fit and proper.”

16. Ms. Deepika Mishra, learned counsel appearing on behalf of the petitioner would submit that SCOI had already adjudicated the matter on merits immediately after the incident i.e. on 30th November 2010 and during the proceedings before SCOI, evidence of 23 witnesses along with 16 exhibits was recorded. Only after the examination of the evidence on record, SCOI submitted its report and categorically opined that the statements of civil witnesses are contradictory and do not corroborate with each other with regards to the presence of BSF Personnel near the house of Mr. Khokha Mia. Further, SCOI also opined that there is also no evidence on record for wrongful restraint caused to the complainant by any of the BSF personnels.

17. The learned Counsel strenuously argued that the report submitted by the SCOI was placed before the DIG, BSF and the DIG endorsed the view of SCOI. It is apposite to set out remarks of the



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DIG, BSF respectively:

“I agree with the PO that keeping in view the circumstantial evidence CT. Sheelendra Kumar did not try to commit rape of XXXX which is alleged by civilians. The intention of the civilians of this allegation is to put extreme pressure on BSF”

18. Further, the learned Counsel has referred to the various questions and answers recorded during SCOI and GSFC proceedings to argue that the complainant and her brothers i.e Mr. Abdul Kalam and Mr. Badshah Mia did not identify the petitioner in the proceedings before SCOI and ROE which happened immediately after the accident but the petitioner was suddenly identified by the aforementioned during GSFC proceedings after a gap of 9 years.

19. The learned Counsel has buttressed her submissions on the premises that, the findings recorded by GSFC are erroneous inasmuch as GSFC has misread the statement of BSF personnel CT Santosh Kumar Jat PW-3 and has concluded that the area near Amzadnagar was fully fenced. Even though, CT Santosh Kumar (PW-3) in his cross-examination clearly and unequivocally stated that the area near Amzadnagar was not completely fenced which was further confirmed by one Mr. Mukesh Kumar (PW-14) who is a Coy Clerk and was in charge of the documents on the date of the armed altercation.

20. It has been further submitted by the learned Counsel that, the GSFC erred in observing that the petitioner was not a member of special team constituted to prevent smuggling in the border area. Learned Counsel drew this Court’s attention to statement of ASI Ram Dev Singh (DW-3) and the testimony of Coy Commander Inspector



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Brahm Prakash, both of whom categorically stated that petitioner was a member of special task force who was assigned the specific task of curbing smuggling activities.

21. Further, Ms. Mishra drew this Court's attention to the statements made by CT Santosh Kumar Jat and Mukesh Kumar (PW-14) wherein it is categorically mentioned that there were injuries on the hand of the petitioner and the petitioner's uniform was torn and scratches could be seen on the body of the petitioner. Therefore, it is evident that the petitioner was involved in an altercation and sustained serious injuries as a result thereof.

22. Furthermore, it was submitted by the Counsel that it is a matter of record that the father of the complainant, Mr. Khokha Mia was accidentally shot and succumbed to his injuries on the same day and allegation of molestation of the daughter of Mr. Khokha Mia is an attempt to falsely implicate the petitioner as result of the same.

23. Per Contra, Ms. Richa Dhawan, learned SPC, submits that petition is liable to be dismissed inasmuch the same sets out no valid grounds which may warrant judicial review and the sentence awarded to the petitioner is not disproportionate to the offence committed by the petitioner and the present case is not that typical case, wherein this court should entertain any judicial review in GSFC proceedings.

24. The learned Counsel has buttressed her submissions on the premise that GSFC trial was conducted strictly in accordance with Rule 45 (1) (i) of the BSF Act and Rules, wherein witnesses were



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examined and documents have been exhibited and the GSFC has given an well-reasoned order on specific findings.

25. Learned SPC, further contends that the petitioner was awarded full opportunity of defending himself and no violation of natural justice or legal procedure has been demonstrated.

26. The counsel further contends that the GSFC has meticulously analyzed the oral and documentary evidence, and the findings arrived are detailed, well-reasoned and are based on corroborated facts and as such the impugned order does not call for any interference by this Court. Even though there was no procedural irregularity or arbitrariness and, in any case, this Court may not override or dilute a conviction rendered by a competent authority/ GSFC after full trial.

27. Ms. Dhawan has submitted that in a case of judicial review of the GSFC proceedings, the petitioner must demonstrate that the punishment imposed or the procedure adopted was so unreasonable or unjust that it shocks the judicial conscience of the Court, and that there was a violation of the principles of natural justice.

28. Having heard the learned Counsel for the parties, and taking into consideration the various documents referred by them during the course of hearing, this Court is of the view that before embarking on the path of deciding the present writ petition, the scope and extent of interference of this Court under the provisions of Article 226 of the Constitution of India in trials conducted by GSFC under BSF Act and rules ought to be examined.



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29. The GSFC proceedings are amenable to the High Court's power of superintendence and are unquestionably subject to judicial review under Article 226 of the Constitution. Interference is, however justified only where: (a) the court-martial is improperly convened or constituted; (b) mandatory statutory procedure or principles of natural justice are violated; or (c) the findings are perverse, i.e. wholly unsupported by evidence or against the weight of evidence. This doctrine has been consistently affirmed by the Supreme Court and several High Courts.

30. Recently, this Bench, while outlining the scope & extent of judicial interference in matters where the trial has been conducted by the GSFC, referred to a judgment of Coordinate Bench of this Court in the matter of *Deshraj v Director Gen. B.S.F. & Anr*¹², decided on 13th May, 2025. In that judgement, the Court, inter-alia had relied upon a decision of the Division Bench of the Gauhati High Court in *Director General, Border Security Force & Ors. v Iboton Singh (KH)*¹³ observing as follows:

“25. Before opining on the conflicting claims as raised by the parties, it is relevant to note the settled position in law that the proceedings before the SSFC are not open to be reviewed by this Court in the manner of an appellate forum. The scope of interference of this Court under Article 226 of the Constitution of India is circumscribed. We may quote the relevant extract from the **Director General, Border Security Force** (supra), which reads as under:-

12. Since the entire procedure of a trial by SFC is provided in the BSF Act and the Rules made thereunder and since the provisions contained therein require that the findings reached, and the sentence passed, against and accused by a SFC, be considered by a

¹² W.P.(C) 768/2007

¹³ 2007 SCC OnLine Gau 419



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competent authority for the purpose of confirmation thereof, such confirmation of the findings and sentence by such an authority shall be final and shall not be, ordinarily, interfered with by invoking the power of judicial review under article 226. Though it is true that notwithstanding the finality attached to the proceedings of a SFC, which stands confirmed by a competent authority, the High Court shall not, ordinarily, exercise its power of judicial review by invoking article 226, the fact remains that constitutionally, there is no limitation, on the power of the High Court, to examine, under article 226, if there has been any infraction of the provisions of the relevant enactments resulting into miscarriage of justice. Thus, for the limited purpose of determining if the proceedings of a SFC have been conducted in accordance with the requirements of the law, the High Court's power, under article 226, would always remain available. The power, under article 226, will also be available to find out if there has been violation of the principles of natural justice, while conducting the trial and whether such violation has vitiated the entire proceedings. The power of judicial review, so exercisable, does not, however, empower the High Court, if one can point out, to sit on the findings of a SFC or on the proceedings of a SFC as an appellate authority and re-appreciate the findings for the purpose of determining if the evidence were sufficient for the conclusion reached. However, when the findings reached are found to be perverse and/or contrary to, or in violation of, the provisions of the law relevant thereto and if such infraction has resulted, in the opinion of the High Court, failure of justice, it becomes the duty of the High Court to step in under article 226 and undo the wrong. If the High Court sits over the findings of a SFC as if it is sitting as an appellate authority, then, such an approach of the High Court would amount to overstepping its jurisdiction.”

31. Further, in *Syed Yakoob v. K.S. Radhakrishnan & Ors.*¹⁴, the Supreme Court has expounded the limits of the High Court's jurisdiction to issue a writ of certiorari under Article 226. The relevant paragraphs are reproduced below:

“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

¹⁴ 1963 SCC OnLine SC 24



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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 properly, 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 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 Ishaque*, *Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam* and *Kaushalya Devi v. Bachittar Singh*)

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is



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experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.”

32. Thus, this Court is clear in its mind that, while exercising its power under Article 226 of the Constitution against the proceedings or orders passed pursuant to the GSFC trials, which are conducted under the BSF Act, it must remain conscious of the self-imposed limitations on its jurisdiction. This power of judicial review enjoins upon and confines its scope to examine only the correctness of the decision making process and the fairness of the procedure adopted and not the examination of the decision *per se*. The Supreme Court in ***B.C. Chaturvedi v UOI & Ors.***¹⁵, has outlined the scope of judicial review in the following words:

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant,

¹⁵ (1995) 6 SCC 749



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the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.”

33. Notwithstanding the procedural latitude available to military courts, the provisions of the Indian Evidence Act regarding relevance, admissibility, burden, and standard of proof guide the Inquiry. Therefore, the GSFC bears the same responsibility as an ordinary criminal court to safeguard the rights of the accused and ought to be guided by the fundamental principles of criminal jurisprudence.

34. This Court, therefore, confines itself to examining whether the decision-making process is vitiated by illegality, irrationality, procedural impropriety, or perversity.

35. The foundational basis of the disciplinary action against the petitioner, in the present case, rests upon the allegation of sexual misconduct, as stated by complainant in complaint. The principal



question that arises for consideration is whether the disciplinary findings, based solely on the allegation of sexual misconduct as levelled by the complaint, are sustainable in law. While it is well settled that in appropriate cases, the statement of the complainant may, if found credible and consistent, form the sole basis for adverse action but it remains incumbent upon the Court to assess whether the conclusions drawn by the disciplinary authority are supported by cogent reasoning and as to whether the material relied upon for arriving such decision inspires confidence, and most importantly, whether the proceedings as a whole satisfy the minimum standards of procedural fairness and reasonableness.

36. At this stage, it is pertinent to state the relevant portion of statement of complainant and Mr. Badshah Mia in a comparative chart at the various level of proceedings.

SCOI	ROE	GSFC
<u>XXXX</u> Q. Do you recognize anyone of them(BSF personnel) Ans. No, I did not pay any attention.	I cannot recognise him as he was covering his face with a piece of cloth. His face was covered with a piece of cloth, so, I couldn't recognise the BSF personnel.	I hereby identify that person presently sitting in the Court as accused no.2. I kept on resisting accused no.2 and in that process, the cloth with which he has covered his face got removed and I saw his face. I saw the face of accused no.2 for the first time when he was beating my brother Abdul kalam.



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<p><u>BINA AKHTAR</u></p> <p>I heard the shout of my brother Abul Kalam and I came outside my house hearing his shot.</p> <p>I saw my brother bleeding from head and I then became unconscious. Two ladies from my house came and took me to my house and brought me back into consciousness. I then came out of the house on the main road and then heard a gun shot.</p> <p>At that time some members of the public told me that my father khokha mia was shot dead as I then went to that place where my father was lying down.</p>	<p>I heard the shout of people and came outside my house and then I heard the sound of a shot (firing of weapon) and then I went to see at the spot of incident and I found that my father was laying there on the ground with a shot on his head. My brother Abdul kalam was not present there.</p>	<p>I heard the voice of my elder brother Abdul kalam shouting loudly.</p> <p>At that time, I was inside our house. I came out and went towards rubber plantation which was behind our house. On reaching there, I saw my brother. He was having injuries on his hands and head. He was bleeding from the head. He told me that he had been hit by someone.</p> <p>Thereafter, he fell unconscious. I shouted for help. On hearing my voice, my father, Khokha Mia came out of his shop which was near our house and reached on the spot inside the rubber plantation. He asked me to go and shut his shop. I followed his direction. When I was returning to the place of incident after closing the shop, I heard a sound of gunshot being fired. I ran towards my house. In between, I was informed by the villagers that my father Khokha Mia had been shot.</p>
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<u>BADSHAH MIA</u> I was working in the fields. At that time I heard some commotion at a distance of 100 yards where my father khokha mia was also present. I saw the BSF person I ragging my father from the rubber plantation towards the road. I went up to the BSF personnel and requested them not to shoot but they did not listen to me and fired at my father on his forehead, the same bullet also hit me.	I was watching television at home and my father was at the shop near our house. Then I heard the shouting of my sister Tulu Akhtar from outside. Then my father called me and I went outside and along with my father. I can't recognise the BSF person who pulled my sister as his face was covered with a cloth.	While I was inside our house, I heard loud voices from sal plantation near our house. I went to the road near sal plantation. My father Khokha Mia was already present there. I asked him as to what has happened. My father told me that my brother Abdul kalam has been beaten. I hereby identify those two BSF personnel sitting in the Court as accused no.2 and 3.
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37. The statements recorded by the complainant, Mr. Badshah Mia and Mr. Abdul Kalam before the SCOI and before GSFC further complicate the narrative. Insofar as the contention of the learned counsel for the petitioner, regarding there being material contradictions in the witness statement is concerned, this Court finds that there is cogent evidence on record to show that there are material contradictions in the statements of the complainant, Mr. Badshah Mia and Mr. Abdul Kalam. At this stage, it is pertinent to note that the complainant, Mr. Badshah Mia and Mr. Abdul Kalam did not identify the petitioner in the proceedings before SCOI, where the evidence was being recorded immediately after the date of the said incidence, but miraculously identified the petitioner during the proceedings before



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GSFC after a gap of almost 9 years. Therefore, the statements made by complainant, Mr. Badshah Mia and Mr. Abdul Kalam lack coherence when juxtaposed with the statement made before the SCOI initially. These discrepancies are not minor inconsistencies and go to the root of the cause as they may not be attributable to lapse of memory or emotional distress since it is the matter of fact that statement before SCOI proceedings happened immediately after the incident whereas the GSFC proceedings happened 9 years after the incident. Furthermore, no plausible explanation has come from the side of complainant for not identifying the petitioner earlier when the memory is fresh but only being able to identify him 9 years after the accident. Therefore, this Court is of the view that the omission of core facts, which would reasonably be expected in a genuine narration, detracts from the reliability of the statements of the complainant, Mr. Abdul Kalam and Mr. Badshah Mia and raises serious doubt about the veracity of the complainant's version.

38. A close scrutiny of the evidence, particularly the statements of the complainant, Mr. Abdul Kalam and Mr. Badshah Mia recorded before the GSFC, discloses material omissions and contradictions that seriously undermine the complainant's case. Rather, they go to the root of the allegation and are indicative of an evolving version of events, which militates against the credibility of the witness. Therefore, this Court is of the considered opinion that the allegations, emerging from the complaint and subsequent statement, suffer from material inconsistencies and omissions, and do not inspire confidence so as to justify the adverse conclusion arrived against the petitioner.



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39. The Supreme Court in *B.S. Hari v. Union of India & Ors*¹⁶ reiterated that the High Court, while exercising jurisdiction under Article 226 of the Constitution, is empowered to examine whether the findings recorded are based on any rational evidence or whether the proceedings stand vitiated by perversity, arbitrariness, or procedural unfairness. The constitutional power of judicial review is not fettered by technicalities and may be invoked where injustice is apparent on the face of the record.

40. It is also material to note that in cross-examination of CT. Santosh Singh Jat and Mukesh Kumar, it is categorically stated that the area near Amzadnagar, where the said incidence occurred is not completely fenced. Hence, it is plausible to infer that the area near Amzadnagar is prone to cattle smuggling since the area is not completely fenced. The relevant extracts of cross examinations of Santosh Singh Jat PW-3 and Mukesh Kumar PW-14 are reproduced below:

“Mukesh Kumar PW-14

CROSS EXAMINATION BY THE DEFENDING OFFICER

Accused No. 02 was performing GD duties at BOP Amzadnagar.

It is correct to suggest that there was a special task force constituted at Coy level which used to carry out special operations to prevent cattle smuggling etc. in the Coy AOR.

Complete AQR of 'D' Coy was not fenced at the time of this incident. There were 02-03 unfenced gaps of about 400-500 yards in the Coy AOR.

Santosh Kumar Jat Kumar PW-14

The fencing work was under progress in its AOR. Also, the AOR of BOP Amzadnagar was a smuggling prone area. Khokha Mia,

¹⁶ (2023) 13 SCC 779



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resident of village Amzadnagar in the AOR of 168 BOP Amzadnagar, was a known smuggler of that area. Earlier, Khokha Mia was residing near the international boundary ahead of the proposed fencing alignment, later, he, along with his family, shifted to Indian side of the fencing while 'D' Coy was deployed at BOP Amzadnagar.”

41. Further, it has come on record that Mr. Khokha Mia and his family, including the complainant were involved in smuggling activities and his name finds mention in both police and BSF records. This lends credence to the version put forth by the defense regarding the incident of smuggling and retaliatory attack by the villagers. In contrast, the complainant’s version of events alleging outraging the modesty of the complainant in broad daylight, amidst a hostile crowd during a state of commotion where gunshots were fired, appears highly improbable and difficult to believe.

42. The Constitution Bench of the Supreme Court in *S.N. Mukherjee v. Union of India*¹⁷, has categorically held that while courts-martial are not required to record detailed reasons for their findings or sentence, their proceedings are nonetheless subject to judicial review under Article 226 and Article 32 of the Constitution. The Court observed that such review is permissible in cases where the proceedings are vitiated by legal or procedural infirmities, or where fundamental right is infringed. It was further held that although the court-martial is a specialized forum, its decisions are not beyond the pale of constitutional scrutiny, especially where there exists an error of law apparent on the face of the record, or where the finding is manifestly perverse or arbitrary. The relevant portion of the said

¹⁷ (1990) 4 SCC 594



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judgment is reproduced below:

“42. Before referring to the relevant provisions of the Act and the Rules it may be mentioned that the Constitution contains certain special provisions in regard to members of the Armed Forces. Article 33 empowers Parliament to make law determining the extent to which any of the rights conferred by Part III shall, in their application to the members of the Armed Forces be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline amongst them. By clause (2) of Article 136 the appellate jurisdiction of this Court under Article 136 of the Constitution has been excluded in relation to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces. Similarly, clause (4) of Article 227 denies to the High Courts the power of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces. This Court under Article 32 and the High Courts under Article 226 have, however, the power of judicial review in respect of proceedings of courts martial and the proceedings subsequent thereto and can grant appropriate relief if the said proceedings have resulted in denial of the fundamental rights guaranteed under Part III of the Constitution or if the said proceedings suffer from a jurisdictional error or any error of law apparent on the face of the record.”

43. Applying the said principle to the facts of the present case, this court finds that the conviction of the petitioner is founded solely on the testimony of the complainant, Mr. Abdul Kalam and Mr. Badshah Mia, which, for reasons already noted above, is riddled with inconsistencies, material contradictions, and unexplained improvements. In absence of any corroborative material or forensic evidence, the findings of guilt appear not only legally unsustainable but also perverse. Glaring irregularities between the statements recorded by the complainant, Mr. Abdul Kalam and Mr. Badshah Mia before SCOI and GSFC which go to the root of the matter, cannot be overlooked by this Court while exercising its writ jurisdiction.



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44. In the present case, the contradictions noted herein are neither incidental nor superficial, they pertain to essential aspects such as the identity of the petitioner, and the absence of any spontaneous or consistent account of events. These material inconsistencies substantially erode the credibility of the complainant's version and render the findings of guilt against the petitioner unsustainable in law.

45. Having noted the infirmity in the reasoning adopted in the GSFC proceedings, the punishment imposed cannot be held legally sustainable. Accordingly, the next question that arises for determination is the nature of relief warranted in facts and circumstances of the present case. This Court finds guidance in the judgement of the Supreme court in *Ranjit Thakur Vs Union of India*¹⁸, wherein it was held that strikingly disproportionate punishment justifies judicial interference and such punishment cannot be allowed to stand uncorrected in exercise of Judicial. In *Andhra Pradesh Industrial Infrastructure Corporation Limited v S N Raj Kumar*¹⁹, the Supreme Court held:

“20.... In the realm of Administrative Law “proportionality” is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities and reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise — the elaboration of a rule of permissible priorities [Union of India v. G. Ganayutham, (1997) 7 SCC 463: 1997 SCC (L&S) 1806]. De Smith [Judicial Review of Administrative Action (1995), para 13.085, pp. 601-605; see also, Wade: Administrative Law (2009), pp. 157-158, 306-308.] also states that “proportionality” involves “balancing test” and “necessity test”. The “balancing test” permits

¹⁸ (1987) 4 SCC 611

¹⁹ (2018) 6 SCC 410,



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scrutiny of excessive onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations.”

46. In the absence of direct and cogent evidence against the petitioner, the punishment imposed appears unduly harsh. Therefore, in the considered opinion of this Court, the impugned order dated 4th February 2020 is legally unsustainable and stands vitiated by serious infirmities. This Court notes that the Trial had been pending for the last 15 years and while under normal circumstances, remanding the matter to GSFC might have been an appropriate course of action, the prolonged delay, the petitioner’s advancing age and the findings arrived at hereinabove persuade this Court to refrain from doing so.

47. Therefore, in the exercise of extraordinary jurisdiction under Article 226 of the Constitution, this Court is compelled to intervene to prevent a palpable miscarriage of justice and as such for all the aforesaid reasons, the writ is allowed. As a sequel, the impugned order dated 4th February 2020 is hereby quashed and set aside with consequential reliefs. The petitioner shall stand exonerated of all charges and be reinstated to the post from which he was dismissed. The petitioner shall be entitled to all consequential service benefits on a notional basis from the date of dismissal till the date of reinstatement, including continuity of service for all purposes, restoration of seniority, and fixation of pay with notional increments, as if no break in service had occurred. These notional benefits shall be reckoned for the purposes of pension, gratuity, and other terminal dues, subject to any lawful adjustment or verification but shall not entail payment of back wages or arrears of salary for the intervening period.



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48. Necessary consequential orders shall be issued and the notional benefits accorded to the petitioner within a period of four weeks from the date of this judgment.

49. All pending application(s), if any, stand disposed of.

OM PRAKASH SHUKLA, J.

C. HARI SHANKAR, J.

AUGUST 13, 2025/AT