



2025:DHC:2213-DB



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

*Reserved on : 28 March 2025
Pronounced on : 02 April 2025*

+ W.P.(C) 2410/2022, CM APPL. 6921/2022

DEEPAK KUMAR SINGHPetitioner
Through: Dr. S.S. Hooda and Mr.
Divyanshu Shekhar, Advs.

versus

UNION OF INDIA & ORS.Respondents
Through: Mr. Manish Mohan, CGSC
with Ms. Aishani Mohan and Mr. Varenyum
Singh, Advs. for UOI

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

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JUDGMENT
02.04.2025

C. HARI SHANKAR, J.

1. The petitioner, who is posted as Second-In-Command in the Border Security Force¹, is facing an inquiry, following a charge-sheet issued to the petitioner on 1 April 2020, by the Commandant, 123rd Bn. BSF, to whom the case had been referred by the Director General², BSF on 19 December 2018.

¹"BSF" hereinafter

²"DG" hereinafter



2. By this writ petition, the petitioner essentially seeks quashing of the communication dated 19 December 2018 from the DG to the Commandant, BSF and order dated 21 September 2021, whereby the Commandant has conveyed the decision of the Additional Director General³, BSF to order Record of Evidence⁴, so that evidence could be gathered in respect of the charge against the petitioner.
3. Clearly, therefore, what the petitioner seeks is interdiction by this Court, with the inquiry proceedings, at an interlocutory stage.
4. Pleadings have been completed and written submissions have also been filed by both sides.
5. We have heard Dr. Surender Singh Hooda, learned Counsel for the petitioner and Mr. Manish Mohan, learned CGSC for the respondents at length.
6. The case that Dr. Hooda sets up, in favour of the petitioner, is as follows.
7. The petitioner, who had been promoted to the rank of Second-In-Command, BSF, on 21 October 2016, was sent to the Sashastra Seema Bal⁵ on deputation on 1 May 2015. In the SSB, he was posted in the 41st Bn from 22 May 2015 to 1 May 2017. On 1 May 2017, he was posted from the 41st Bn to the 63rd Bn, located at Barasat,

³“Add. DG” hereinafter

⁴“ROE” hereinafter

⁵“SSB” hereinafter



Kolkata, of which he was given independent charge. The 63rd Bn was admittedly a reserve battalion, which had no operational jurisdiction.

8. Despite the fact that, as in-charge of the 63rd Bn, the petitioner had no operational jurisdiction, he was given verbal instructions of the Inspector General⁶, FTR, HQ, SSB, Siliguri, to carry out search and seizure operations on various occasions. Acting in accordance with the said verbal instructions, the petitioner, in coordination with other local agencies, such as the Police, the CID Police Kolkata, the Income Tax department, the Narcotic Control Bureau, Customs, and the Forest Authorities, carried out as many as 10 operations, in which various contraband items such as drugs and even smuggled animals were seized. Dr. Hooda has drawn our attention to various commendations and encomiums awarded to the petitioner for the work undertaken by him. There can be no gainsaying the fact that these letters of commendation do indicate appreciation of the work done by the petitioner, and, in fact, taken at face value, encourage him to continue such activities.

9. One such operation, launched by the petitioner purportedly on the verbal instructions of the IG, involved seizure of old demonetized currency from a location at the Diamond Harbour police station. When the petitioner and his associate reached the spot on 22 February 2018, disguised as decoy customers, they were attacked by armed miscreants and had to retaliate. In the altercation that followed, one Altaf Jamadar, a notorious criminal, was killed. A huge quantity of

⁶“IG, SSB” hereinafter



old and demonetized currency was, however, recovered from the premises. Cross FIRs were lodged, by the petitioner and against him. In FIR 69/2018, lodged by a local resident against the petitioner, he was arrested on the same day i.e. 22 February 2018 and was remanded to judicial custody on 23 February 2018. He remained in judicial custody for 58 days and was released on bail on 21 April 2018. In the process, the petitioner was also placed under suspension from 22 February 2018 to 21 August 2018.

10. On 23 February 2018, the IG, FTQ, HQ, SSB, Siliguri, on whose verbal directions the petitioner had been acting all along, ordered constitution of a Staff Court of Inquiry⁷, to investigate into the aforesaid incident. The SCOI submitted its report on 30 March 2018. The report read thus:

“OPINION OF THE COURT:

The Court is of the opinion that Sh. D. K. Singh, who on 22/02/2018, had gone to Sharisa Market area under Police Station Diamond Harbour, to conduct Decoy method of operation in order to seize and apprehend demonetized old Indian currency notes, amounting to Rupees nine crores had no written approval, knowledge and consent of I.G. FTR SLG.

Sh. D.K Singh, Second-In-Command had informed Police Diamond Harbour, giving them sufficient time on 22/02/2018. However, while he was approaching towards the target area, he along with HC/GD Amitava Pramanik, before the arrival of police were kidnapped, finally culminating in act of firing in the air without aiming at anyone by Sh. D. K. Singh, Second-In-Command to save HC/GD Amitava Pramanik which led to criminals to flee the scene.

After having been arrested by the police Diamond Harbour on 22/02/2019 under section 302 (IPC) and Arms Act 25/27, Sh.

⁷“SCOI” hereinafter



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D.K Singh on 23/02/2018, escaped from police custody through the help of SSB personnel has no justification and his contention in telling police that he was not escaping but going to SSB camp to get documents, despite of vehement opposition from Sh. Gautam Mitra, Officer-In-Charge of P.S. Diamond Harbour is also meaningless and irrelevant.

The SSB personnel who helped in such escape of Sh. D.K Singh from Police Custody also have no moral explanation nor justification for such actions, though they had pleaded that they had just carried instructions as issued by their Officiating Commandant.

Sd/-
30/03”

11. On 11 July 2018, the IG SSB convened an Additional COI in terms of Rule 175(11)⁸ of the Sashastra Seema Bal Rules 2009⁹, to investigate and collect further evidence. The Addl. COI submitted its report in July 2018. The Addl. COI found that the petitioner, as officiating commandant of the 63rd Bn had acknowledged having conducted several operations beyond his operational jurisdiction, but claimed to have done so in terms of verbal directions issued by IG, SSB. As a reserve battalion, the 63 Bn had no Area of Responsibility¹⁰ to conduct such operations. Besides, Sharisa Market under PS Diamond Harbour, where the alleged incident had taken place, was beyond the operational jurisdiction of the 63 Bn. That said, it was also a fact that the petitioner had received several commendations, appreciations and even cash awards for the said operations, which may have emboldened him to continue to do so. The Addl. COI also found

⁸ (11) The Court may be re-assembled as often as the officer who assembled the court may direct, for the purpose of examining additional witnesses, or further examining any witness or recording further information and in such a case the Court may record fresh opinion if considered necessary after complying with the provisions of clause (b) of sub rule (8).

⁹ “the SSB Rules” hereinafter

¹⁰ “AOR” hereinafter



that the operation had been conducted only on verbal consent from the IG, SSB.

12. Having so noted, however, the report of the Addl. COI does not arrive at any conclusive finding but merely adverts to the evidence which was recorded before it.

13. Apparently, thereafter, the IG SSB entered his remarks with respect to the opinion and recommendations of the COI on 12 August 2018. Having referred to the evidence recorded before the COI and the Addl. COI in detail, the IG, SSB, in para 24 of his remarks, recommended thus:

“24. I further recommend the following: -

(i) Disciplinary action be taken against Shri D K Singh, Second-in-Command, under the provisions of Rules & Regulations applicable to him, for violating the instructions/ directions/ SOP issued by higher authorities/ FHQ SSB and Frontier HQrs SSB Siliguri while planning and conducting the operation on 22.02.2018 out of the AOR in the area of Sharisa Market at Diamond Harbour (West Bengal).

(ii) A case may be taken up with the Ministry of Home Affairs, Govt. of India for revocation of suspension in respect of Shri D K Singh, Second-in-Command and further, he may be repatriated to BSF, his parent Department.

(iii) The entire case in respect of Shri D K Singh, Second-in-Command may be sent/ forwarded to the BSF for taking decision at their end in respect of the criminal cases, as mentioned above, registered against him at PS Diamond Harbour (West Bengal), and for taking disciplinary action against him under the provisions of BSF Act & Rules for the omissions & commissions on his part as mentioned at sub-para (i) above.”



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14. On 30 August 2018, the petitioner was repatriated to the BSF.
15. On 19 December 2018, the DIG (Confid), on behalf of the DG, BSF, addressed the following communication to the IG, BSF:

“CONFIDENTIAL

No. C-14011/09/2018/Confid-Disc-I/BSF/29806-08

Government of India,
Ministry of Home Affairs
Directorate General, Border Security Force,
(Confid/Vig Directorate: Confidential Section)

Block No.10, 5th Floor,
CGO Complex, Lodhi Road,
New Delhi, 110 003
Dated, the 19 Dec 2018

The Inspector General
Border Security Force
Ftr HQ BSF,
Meghalaya.

INITIATION OF ACTION AGAINST SHRI DEEPAK KUMAR SINGH, SECOND IN- COMMAND (REPATRIATION FROM DEPUTATION FROM SSB) POSTED TO 123 BN BSF

With reference to subject referred above, I have been directed to inform that Shri Deepak Kumar Singh, 2IC while on deputation with SSB, was involved in a scuffle on 22/02/2018 with anti social elements in the general area under Police Station Diamond Harbour, Kolkata (WB). In the scuffle, a person named Altaf Jamadar S/o Khalik Jamadar R/O Vill- Boillagacchi, PS Raidighi, Sundarban (WB) was killed. After the incident, PS Diamond Harbour had registered case No 69 dated 22.02.2018 u/s 302 IPC and 25/27 Arms Act against the officer and other SSB personnel. On the basis of the FIR, Diamond Harbour Police arrested the officer on 22.02.2018. The officer was placed under deemed suspension w.e.f. 22.02.2018 i.e. from the date of his detention in police custody vide SSB order dated 16.03.2018 under Rule 41(2)(i) of SSB Rules 2009. The deemed suspension period was further extended for another 90 days w.e.f. 22/05/2018 to 20.08.2018 by SSB. The officer was released on bail from the



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Police Custody by ACIM Court Diamond Harbour vide order dated 24.04.2018. The officer was repatriated from deputation and relieved by SSB on 30.08.2018. On return from deputation, the officer was posted to 123 Bn BSF vide Pers Dte, FHQ Sig No R-3227 dated 01/10/2018.

2. In the case under reference, Ftr HQ, SSB, Siliguri ordered an inquiry in the incident. The Court of Inquiry/Addl COI was completed under SSB Act & Rule and the officer had been found blameworthy in the COI. The Officer while being inducted in SSB had opted to be governed by the provisions of BSF Act & Rules. Therefore, the case has been forwarded to BSF by HQ SSB, New Delhi for initiation of disciplinary action against the officer.

3. The aforesaid case has been examined in detail at this HQ in consultation with Law Branch, FHQ. It has been found that since, the COI/Addl CsOI ordered by IG, SSB, Siliguri Frontier being a fact finding body under the SSB Act & Rules, investigated into commission & omission on the part of the officer and other SSB personnel, therefore, it may not operate as a bar in initiating action against the officer on the basis of the COI /Addl COI by the BSF authorities. However, while, considering to claim the criminal case against the said officer from criminal court it may be borne in the mind that the officer has committed the alleged offence along with one HC(GD) of SSB whose identity is known but he cannot be dealt with under the BSF Act & Rules. Thus, it would not be advisable to claim the case from criminal court. However, these aspects may be considered by concerned competent authority while taking a decision to claim the case from criminal court.

4. In view of above, since, the officer has now been posted to 123 Bn BSF under Ftr HQ Meghalaya, the COI/Addl. COI conducted by the SSB in the incident are sent herewith for initiation of action as deemed fit by the competent authority against Shri Deepak Kumar Singh, 2IC IRLA No 19772288 of 123 Bn BSF as per BSF Act & Rules.

Encl: 03 Files.

COI proceedings Page-01 to 352 (along with appendixes).
Addl. COI Proceedings Page -01 to 31 (along with appendixes).
Addl. COI Proceedings Page -01 to 58 (along with appendixes).

Sd/-19/12/2018
(Piyush Mordia), IPS
DIG(Confd)

Dec '2018

Copy to :-



1. HQ SDG, BSF (EC) :- For info please.
2. 123 Bn BSF :- For info please.”

16. The DG, BSF referred the case for disposal to the Commandant, 123rd Bn. BSF, who heard the petitioner at length under Rule 45B¹¹ of the BSF Rules 1969.

17. During the course of the aforesaid inquiry, the Commandant, on 1 April 2020, issued the following charge-sheet to the petitioner under Rule 53¹² of the BSF Rules:

¹¹ 45-B. Hearing of charge against an officer and a subordinate officer. –

(1)(a) The charge against an officer or a subordinate officer shall be heard by his Commandant:
Provided that charge against a commandant, a Deputy Inspector-General or an Inspector-General may be heard either by an officer commanding a Unit or Headquarters to which the accused may be posted or attached or by his Deputy Inspector-General, or his Inspector-General, as the case may be, the Director-General.

(b) The Charge-sheet and statements of witnesses, if recorded and relevant documents, if any, shall be read over to the accused:

Provided that where written statements of witnesses are not available, or where the officer hearing the charge considers it necessary, he shall hear as many witnesses as he may consider essential to enable him to know about the case.

(c) Wherever witnesses are called by the officer hearing the charge, the accused shall be given an opportunity to cross-examine them.

(d) Thereafter, the accused shall be given an opportunity to make a statement in his defence.

(2) After hearing the charge under sub-rule (1), the officer who heard the charge may:—

(i) dismiss the charge; or

Provided that he shall dismiss the charge if in his opinion the charge is not proved or may dismiss it if he considers that because of the previous character of the accused and the nature of the charge against him, it is not advisable to proceed further with it, and where a charge against an officer is dismissed on any such ground, he shall record reasons for dismissing the same:

Provided further that where a case in respect of an officer has been referred to for initiation of disciplinary action by a

(ii) remand the accused, for preparation of a record of evidence or preparation of abstract of evidence against the accused: superior authority, the officer hearing the charge shall not dismiss the same without reference to such authority:

Provided also that in case of all offences punishable with death, a record of evidence shall be prepared:

Provided also that in case of offence under Sections 14, 15, 17, 18 and offence of ‘murder’ punishable under Section 46 of the Act, if the accused has absconded or deserted, the Commandant shall hear the charge in his absence and remand the case for preparation of record of evidence.

¹² 53. Charge-sheet. –

(1) A Charge-sheet shall contain the whole of the issue or issues to be tried at one time and may contain more than one charge, if the charges are founded on the same facts or form part of a series of offences of same or similar character:

Provided that a charge under Section 18, Section 19, Section 29 and Section 32 may be included in any Charge-sheet, notwithstanding that other charges in that Charge-sheet are not founded on the same facts or do not form part of a series of offences of the same or similar character.

(2) Every Charge-sheet shall in its layout follow the appropriate specimen set out in



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“APPENDIX-VI
[See rule 53(2)]

CHARGE SHEET

The accused Shri Deepak Kumar Singh, Second-In-Command, (IRLA No. 19772288), 123 Bn BSF is charged with:

BSF ACT SEC-40 AN ACT PREJUDICIAL TO GOOD ORDER AND DISCIPLINE OF THE FORCE

In that he,

on 22.02.2018 when commanding the 63rd Battalion SSB located at Barasat, Kolkata (WB) while on deputation to SSB violated the instructions/directions/SOP issued by HQ DG SSB and Frontier HQrs SSB Siliguri (WB) while planning and conducting the operation out the AOR in the area of Sharisa Market at Diamond Harbour (West Bengal).

Place: Mawpat, Shillong (Meghalaya)
Dated, the 01 April 2020

Sd/- 01/4/20
(Rajashekar K N)
Commandant
123 Bn BSF”

18. On 3 April 2020, the Commandant returned the following findings:

“(i) Sh. Deepak Kumar Singh, 2IC/Officiating Comdt 63 Bn SSB conducted several Ops beyond jurisdiction with the help of sister agencies during his entire tenure of deputation in SSB.

(ii) All the Ops conducted beyond jurisdiction of SSB were conducted on verbal consent of competent authority since no written permission was ever provided by SSB despite repeated request by officer which is evident from the documents produced by officer in his defence.



(iii) No instance of issuance of warning, advise, explanation as well as other disciplinary measures from higher HQrs seen whenever operations have been a success and it had emboldened Sh. Deepak Kumar Singh, 2IC to conduct operations.

(iv) For these Ops conducted beyond jurisdiction, many appreciations, commendations, cash reward, DG commendation roll and Discs were awarded to Sh. Deepak Kumar Singh, 2IC from frontier headquarters, Force headquarters and from other sister agencies which confirms that there was no issue of jurisdiction and senior officers of SSB were well in knowledge and there was consent of higher headquarters behind conducting Ops.

(v) Reply given by SPIO/CPIO of SOG Police Kolkata, Police commissionerate Siliguri, Forest department Gangtok, Income tax department Kolkata, NCB (KZU) under RTI Act 2005 confirms that joint Operations were conducted frequently by 63 Bn SSB under command of Sh. Deepak Kumar Singh, 2IC and supervisory officers never objected and it shows their consent and permission.

(vi) Operational SOP is more of a guideline and not sacrosanct when it is matter of national interest and which was also accepted by SSB senior officers which is evident from awards, Commendation card issued by DG SSB and IG Ftr HQ SSB Siliguri who was himself competent authority in all the Operation as well as administrative matters.

(vii) Voice call recording (In between Sh. S Bandopadhyay, IG Ftr HQ SSB Siliguri and Sh. D K Singh) produced by officer in his defence is evident enough to prove that Operations were being conducted on the verbal permission / consent and direction being given by IG Ftr HQ SSB Siliguri is evident enough to understand that direction of competent authority was clear to not disclose to any other one.

(viii) No reply has been received whenever question was asked about permission and procedure regarding conducting Operations by Sh. Deepak Kumar Singh, 2IC from 41/63 Bn SSB and SSB higher headquarters. This fact gives the impression that there was no difference between procedure and mode of permission on previous several occasions when Operations were successful and 22nd Feb, 2018 when charge was framed against officer for violating SOP and conducting Ops without planning beyond jurisdiction.

(ix) Movement order of 30th Jan 2018 cross examination statement of SH Sripati Pandey, DC/Adjt of the 63 BN SSB during



additional COI, proves that Sh. Deepak Kumar Singh, 2IC was being directed by IG Ftr HQ SSB Siliguri to conduct Ops on his verbal direction and there was no difference between Ops conducted on 22 Feb 2018 and conducted before previous several occasions.

(x) CDR report of dated 08 Feb 2018, Facebook photo uploaded by FTR HQ SSB, Siliguri on social media, Sitrep originated by 63 Bn SSB on 9th Feb 2018, Reply of NCB (KZU) under RTI Act 2005, appreciation certificate issued by NCB for conducting Ops on 8th Feb 2018 are the circumstantial evidences which corroborates with call detail report of 22nd Feb 2018 and gives impression that permission was asked by Sh. Deepak Kumar Singh from IG Ftr HQ SSB Siliguri and accorded by competent authority before conducting Operation and it was a routine matter.

(xi) Since on 16 Feb 2018 joint Ops was already planned and joint efforts were made to seize old demonetized currency and could not be successful. On 22nd Feb, 2018 information that provided to Police was further extension with more details about 16 Feb information. Voice call recording in between Sh. Deepak Kumar Singh, 2IC and Sh. Gautam Mitra, OIC Diamond Harbour police station in the presence of SI Chandan Mishra of 16 Feb 2018 gives clear impression that police had given their consent for joint operation. Requisition letter was received by police and given acknowledgement on 16 Feb and 22 Feb 2018. Hence, there does not seem any lapse on the part of planning and preparation of previous success of 91 operations also gives clear impression that officer is competent enough to plan and execute operations successfully.

(xii) Nature of charge against officer is operational in nature and not related to moral aptitude/corruption.

(xiii) As per previous record of the officer, he has been awarded with 05 DG Commendation roll and 07 IG commendation certificate, during his 22 years of service and these awards are for operational achievements/ duty only.

(xiv) Out of last 10 years APAR, 7 times APARs are outstanding and 03 times Very Good.

(xv) The officer in his written statement has further pointed out that no proceedings/suit should be initiated against him as per BSF Sec 140(1) as had performed his duty under instructions from higher office.”



On the basis of the above findings, the Commandant concluded that the petitioner was not guilty of the charge against him and, therefore, dismissed the charge.

19. Inasmuch as the reference to the Commandant had been made by the DG, the Commandant was required, under the second proviso to Rule 45B(2)(i)¹³ of the BSF Rules, to refer the case to the DG and could not dismiss the case without such reference.

20. Accordingly, the on 3 April 2020 itself, the Commandant wrote to the DG, seeking his view in the matter, as he intended to dismiss the charge against the petitioner.

21. Under letter dated 23 December 2020, the Commandant forwarded the proceedings of the COI and the additional COI as well as his opinion in the matter to the DG.

22. The reference was forwarded through the IG, as a proper channel. The IG, while forwarding the reference to the DG, also entered remarks in February 2021, endorsing the opinion of the Commandant.

¹³ (2) After hearing the charge under sub-rule (1), the officer who heard the charge may:—

(i) dismiss the charge; or

Provided that he shall dismiss the charge if in his opinion the charge is not proved or may dismiss it if he considers that because of the previous character of the accused and the nature of the charge against him, it is not advisable to proceed further with it, and where a charge against an officer is dismissed on any such ground, he shall record reasons for dismissing the same:

Provided further that where a case in respect of an officer has been referred to for initiation of disciplinary action by a superior authority, the officer hearing the charge shall not dismiss the same without reference to such authority:



23. Following this, the impugned communication dated 21 September 2021 came to be issued by the Commandant (Rectt/GR) on behalf of the ADG, BSF to the IG, HQ, BSF, returning the documents with an advice to the Commandant to proceed further and order ROE to gather proper evidence, so that the case could be brought to its logical conclusion. The communication opines that the case could not be dismissed solely on the basis of the statement of the petitioner.

24. It is in these circumstances that the petitioner has approached this Court, essentially seeking quashing of order dated 19 December 2018 whereby the DG, BSF directed initiation of action against the petitioner and the communication dated 21 September 2021, conveying the opinion of the ADG that an ROE was required to be conducted.

Rival Submissions

25. After hearing Dr. Hooda for some time, we were of the tentative opinion that the writ petition was premature, as proceeding was still at the stage of an ROE, and no prejudice was caused to the petitioner. We, therefore, queried of Dr. Hooda as to whether he was insisting on pressing the writ petition or desired to withdraw the petition with a liberty to re-approach the Court at the appropriate stage.

26. Dr. Hooda submits that the court may proceed to decide the petition on merits.



27. Dr. Hooda first referred us to the order dated 8 February 2022, whereby notice was issued in the present petition by this Court. It is not necessary for us to reproduce the said order, as it merely records the facts, which we have already recorded hereinabove, and the sole contention, advanced by Dr. Hooda before this Court on that occasion, that the ADG, Eastern Command, was not competent to issue the communication dated 21 September 2021, as the competent authority in that regard, under Rule 45B was the DG, BSF. This Court, therefore, issued notice in the petition and stayed the operation of the communication dated 21 September 2021 *supra*.

28. Apart from the above contention, Dr. Hooda further submits that, even on merits, the proceedings against the petitioner were completely unjustified. He has drawn our attention to the findings dated 16 July 2018 of the Addl. COI, the findings of the Commandant in his note-sheet order dated 3 April 2020 and the comments of the IG while forwarding the file to the DG, entered in February 2021¹⁴.

29. Dr. Hooda submits that all authorities had recognized the fact that the petitioner had acted only as per the instructions of the IG, SSB, which the petitioner was bound to follow in view of Section 23(1)¹⁵ of the Sashastra Seema Bal Act 2007¹⁶.

¹⁴ The note-sheet does not contain any date.

¹⁵ 23. **Disobedience to superior officer.** –

(1) Any person subject to this Act who disobeys in such manner as to show a wilful defiance of authority any lawful command given personally by his superior officer in the execution of his office whether the same is given orally, or in writing or by signal or otherwise, shall, on conviction by a Force Court, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

¹⁶ “the SSB Act” hereinafter



30. Dr. Hooda has passionately submitted that if, for obeying the order of a superior, a member of the Armed Forces is to be subjected to disciplinary and punitive action, it would be a gross travesty of justice and would have a severely demoralizing effect.

31. While candidly acknowledging the fact that, as the In-charge of the 63rd Bn., which was a reserved Bn., the petitioner did not have the jurisdiction to undertake the operations which he had undertaken purportedly at the behest of the IG, SSB. Dr. Hooda submits that it was only because of these operations that large scale smuggling and drug peddling had been brought to light.

32. It was for this reason, he submits, that the petitioner was commended by several superior authorities and even awarded a cash award by the Narcotics Control Bureau and the Commissioner of Customs. Once, taking into account this fact, the Addl. SCOI, the Commandant and the IG had all entered remarks favourably to the petitioner, he submits that, subjecting the petitioner to an ROE was completely unjustified.

33. Dr. Hooda also seeks to submit that the proceedings were vitiated *ab initio*, as the charge-sheet dated 1 April 2020 was itself issued pursuant to the recommendation, by the IG, SSB, to the Commandant, BSF, to initiate disciplinary proceedings against the petitioner. He submits that, being the authority who had directed the petitioner to carry out the operations, the legitimacy of which were now being sought to be questioned, the IG, SSB effectively acted as a



judge in his own cause when he forwarded the file to the BSF with a recommendation to institute disciplinary proceedings. For this proposition, Dr. Hooda places reliance on the judgment of the Supreme Court in *A.K. Kraipak v UOI*¹⁷.

34. In any event, submits Dr. Hooda, the DG, to whom the file had been marked by the Commandant under Rule 45 of the BSF Rules, was not the petitioner's disciplinary authority. The petitioner's disciplinary authority was the Commandant, and it was the Commandant who had full authority to decide whether to punish the petitioner or exonerate him. The Commandant had already taken a decision to exonerate the petitioner and had only marked the file to the DG because of the mandate of the second proviso to Rule 45B of the BSF Rules. The DG could not, thereby, assume appellate jurisdiction over the decision of the Commandant and direct the holding of ROE. To a query from the Court as to the role of DG in such a situation, Dr. Hooda's answer is that the DG was only required to see whether there were any inherent errors in the decision of the Commandant.

35. Dr. Hooda also submits that there has been a violation of the principles of natural justice in this case as, before taking the decision communicated by the communication dated 21 September 2021, the petitioner was not heard.

36. For all these reasons, Dr. Hooda submits that the prayers in the writ petition deserve to be granted.

¹⁷ (1969) 2 SCC 262



37. Mr. Mohan, learned CGSC appearing for the respondent, has taken us through the written submissions filed by the respondent and has reiterated their contents.

38. Mr. Mohan's submission is that, once the fact that, in carrying out the operation which forms subject matter of the charge-sheet issued to the petitioner, the petitioner had acted in excess of jurisdiction vested in him, was conceded, there could be no question of grant of any relief to the petitioner. He submits that the petitioner was not as innocent as he sought to make himself out to be and that, in fact, in the skirmish which resulted as a consequence of his ill-advised vigilantism, one person also lost his life. The petitioner, he submits, is also facing criminal proceedings in that regard.

39. In such circumstances, Mr. Mohan submits that the petitioner cannot be said to have made out any case for any interlocutory interdiction with the ROE or its progress and resolution.

Analysis

40. Having heard Dr. Hooda and Mr. Mohan and examined the rival submissions, we find ourselves entirely unconvinced with Dr. Hooda's submission that this Court should interdict the holding of the ROE.

41. We are in agreement with Mr. Mohan that, once the petitioner has conceded that the operations conducted by him, including the



operation undertaken on 22 February 2018, were beyond the scope of his duties and outside his jurisdiction as the in-charge of a reserve Battalion, there can be no question of the Court interdicting the enquiry. The submission of Dr. Hooda that, if the petitioner were to be subjected to an ROE in such circumstances, it would be demoralizing, has obviously to be rejected. No official can claim any right to act outside the boundaries of his jurisdiction; least of all a member of a disciplined force such as the petitioner. In fact, Section 112 of the SSB Act, cited by Dr. Hooda himself, fortifies this position, as it enjoins on every officer of the SSB to obey *lawful* commands of his superior. A command to act beyond one's jurisdiction cannot, *prima facie*, be regarded as lawful, of which Section 112 would obligate compliance. The mere heaping of encomiums and plaudits on such a vigilante officer may not be excuse enough to condone his acting in excess of jurisdiction.

42. We may also note that *there is not a single written communication* from the IG SSB to the petitioner, requiring him to carry out operations outside his jurisdiction. The mere fact that the Additional SCOI, the Commandant and the IG BSF may have accepted this submission of the petitioner cannot advance his case. Ultimately, the disciplinary authority of the petitioner is the Commandant, and the views of the Additional SCOI or the IG BSF may, at the very highest, carry some persuasive value, which may have to be taken into account before deciding on the final order to be passed consequent to the ROE. The acceptance of the petitioner's contention, by the Addl SCOI, the Commandant and the IG, cannot be



regarded as determinative of its acceptability as an excuse for the petitioner having acted in excess of jurisdiction, or even its truth. If, therefore, the ADG deemed it appropriate to direct holding of an ROE, the decision cannot be said to be unjustified on merits.

43. Prayer (a) in the writ petition, for quashing the remarks entered by the IG SSB on the COI on 12 August 2018 was not seriously canvassed by Dr. Hooda during arguments and is, even otherwise, devoid of substance, for the simple reason that, after the COI, the Addl SCOI was convened, on the findings of which Dr. Hooda himself relies.

44. During arguments, Dr. Hooda took strong exception to the Noting dated 19 December 2018 of the IG SSB to the BSF, recommending institution of disciplinary action against the petitioner.

45. Prayer (b) in the writ petition seeks quashing of communication dated 19 December 2018 whereunder the DIG (Confid), BSF has conveyed, to the IG, the direction to initiate action, as deemed fit, against the petitioner, under the BSF Act and the BSF Rules, apropos the incident which took place at Sarisha Market on 22 February 2018. We fail to understand how such a prayer can be made at all. The communication dated 19 December 2018 is an internal letter from one officer of the BSF to another, which does not prejudice the petitioner in any manner. Interestingly, there is no prayer to quash the charge-sheet dated 1 April 2020 issued by the Commandant, BSF; though,



even had there been, no case for granting the prayer would be made out.

46. Prayer (c) in the writ petition seeks quashing of the communication dated 21 September 2021 whereby the decision of the ADG to initiate ROE has been conveyed. Again, this communication merely directs holding of a ROE. No final view regarding the culpability, or otherwise, of the petitioner, is expressed. The second proviso to Rule 45B(2) of the BSF Rules indisputably requires the Commandant to refer the matter to the higher authority at whose instance he enquired into the matter. This itself indicates that the Commandant may be the authority who passes the final order of punishment, or exoneration, but that he cannot dismiss the charge before referring the matter to the authority at whose instance he enquired into the charge.

47. Unfortunately, the BSF Rules are silent on the course of action which the higher officer could pursue once the case is referred to him by the Commandant under the second proviso to Rule 45B(2). Indeed, Dr. Hooda, too, did not seek to contend that the higher officer could not direct an ROE on the case being referred to him by the Commandant under the second proviso to Rule 45B(2). His contention, in that regard, is two fold; firstly, that, in the facts of the present case, and especially in view of the concurrent findings of the Addl SCOI, the Commandant and the IG, ROE *ought not* to have been directed, and, secondly, that the ADG could not have, in any case, so directed, as the case had been referred to the Commandant by the DG,



not the ADG, and the Commandant, too, had, therefore, forwarded the papers, on 4 February 2021, to the DG (EC), and not to the ADG.

48. On the first submission, we, for the reasons already elucidated earlier, are unable to agree with Dr. Hooda. Once the file had been forwarded by the Commandant to the higher officer under the second proviso to Rule 45B(2), there is no embargo, in the statute or elsewhere, on the higher officer, if he is convinced that further evidence is required to be garnered in the matter, directing an ROE. Dr. Hooda, too, is unable to refer us to any proscription in that regard. On whether the facts of the case warranted such a direction, we are not inclined to sit in appeal over the discretion of the higher officer. We are exercising certiorari jurisdiction, which is concerned more with the manner in which power is exercised by the authority, rather than the subjective merits of the authority's decision. The peripheries of certiorari jurisdiction are well delineated in the following classic passages from *Syed Yakoob v K.S. Radhakrishnan*¹⁸:

“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 in properly, as for instance, it decides a question without giving an opportunity to 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

¹⁸ AIR 1964 SC 477



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 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.

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; 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 mis-interpretation 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 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 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 misconducted or contravened.”

It is also well settled that certiorari jurisdiction, though classically exercised in respect of judicial or quasi-judicial exercise of power by the authority whose decision is under scrutiny, is equally applicable to executive action which affects the civil rights of the citizen. In exercising such jurisdiction, however, the High Court does not sit as a court of appeal. Much less can the High Court interfere with a decision which is jurisdictionally unexceptionable, merely because it feels such a decision *ought not* to have been taken in the facts of the case.

49. The second exception that Dr. Hooda has taken to the impugned communication dated 21 September 2021 is to the ADG (EC) having taking a decision to direct an ROE following the file having been sent to the DG by the Commandant under the second proviso to Rule 45B(2). His submission is that it was the DG who had to take the decision, and not the ADG (EC), as the DG had referred the case of the petitioner to the Commandant for disciplinary action.

50. The contention was, at first instance, facially acceptable, but, on a more incisive reading of the statute, and the counter-affidavit filed by the respondents, does not sustain. One may refer, in this context,



to the following averments, contained in the parawise reply, in the counter-affidavit, to paras 5(b) and (c) of the writ petition:

“... It is submitted that the mandate of above provisions is very clear. It obligates to refer case to “such superior authority” who referred the case i.e. DG BSF in present case, only in cases where the authority hearing the accused decides to dismiss the charge. The reference was to be submitted to HQ DG BS, through channel of command and the authorities in the said channel of command were required to examine the case/reference and on finding the reference in order, give their recommendation. The reference was accordingly examined at HQ SDG (EC) and it was found that the Comdt of the Petitioner has proposed to dismiss the charge on the basis of insufficient evidence and therefore, it was directed to collect evidence and take further necessary action accordingly. It is further submitted that the said provisions under Rule 45B of BSF Rules are not applicable in case where further disciplinary action is warranted by the competent authority. Therefore, the decision of ADG (EC) directing the concerned Frontier HQ to initiate ROE was completely within the ambit of the provisions of BSF Act & Rules. It is worth to mention here that ROE officer only records the evidence so as to the Competent Authority may arrive at a just and proper decision whether to proceed further or dismiss the charge. Further, it is submitted that as per Rule 51-A of BSF Rules, the Comdt. can dismiss the charge and he needs not to refer the matter to superior authority for getting the charge dismissed. No prejudice, therefore, have been caused to the Petitioner on this count.”

The impugned communication dated 21 September 2021 does not suffer from any inherent defect of jurisdiction. It merely communicates the view of the ADG (EC) that the resolution of the case against the petitioner, one way or the other, required recording of evidence, for which an ROE was ordered. No final opinion, regarding the guilt or innocence of the petitioner, apropos the charge against him, is expressed.

51. As was required by the second proviso to Rule 45B (2) of the BSF Rules, the Commandant forwarded the file to the DG (EC), BSF,



before finally dismissing the charge against the petitioner. It is not as though the ADG (EC) has taken any final view in the matter. The respondents have, in their counter-affidavit, clearly stated that the final view regarding the decision of the Commandant to dismiss the charge against the petitioner, would be taken by the DG. The process is still at an intermediate stage. Nothing prevents the DG from calling for further evidence before arriving at his decision.

52. The respondents have relied on Section 5(2)¹⁹ of the BSF Act, and rightly. Under Section 5(2), the DG is assisted by various officers, one of whom would unquestionably be the ADG. In examining the file as put up to him by the Commandant, therefore, if the ADG, in assisting the DG, examines whether the matter would require greater examination or more evidence, in the absence of any proscription in that regard, the ADG cannot be said to have acted in excess of jurisdiction. It is not as if the entire file has been closed without the DG examining the matter. At this stage, only an ROE has been ordered. We are unable, therefore, to agree with Dr. Hooda that the impugned communication dated 21 September 2021 suffers from any such error of jurisdiction as would justify interference in certiorari.

53. It is settled, through several judicial authorities, that Courts should ordinarily not stay inquiry proceedings, unless they suffer from some inherent default of jurisdiction.

¹⁹ (2) The Director-General shall, in the discharge of his duties under this Act, be assisted by such number of Inspectors-General, Deputy Inspectors-General, Commandants and other officers as may be prescribed by the Central Government.



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54. The decision to direct an ROE has not resulted in any prejudice to the petitioner. Dr. Hooda submits that, because of the pendency of the proceedings, the petitioner is not getting his due promotion, or rewards from the Customs authorities. These are but inexorable sequiturs to the pendency of the proceedings. If anything, the petitioner has himself to blame for having approached this Court at an interlocutory stage, instead of allowing the ROE to proceed. For all one knows, the petitioner might have been exonerated by now.

55. That said, we are not expressing any final opinion in the matter one way or the other. The guilt, or innocence, of the petitioner, would have to be examined, and a decision taken thereon by the respondents in accordance with law.

56. No case is, therefore, made out, to grant the reliefs sought by the petitioner.

57. The writ petition is, therefore, dismissed, with no orders as to costs.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

APRIL 2, 2025

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Click here to check corrigendum, if any