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

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Judgment reserved on: 06.02.2026

Judgment delivered on: 30.04.2026

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W.P.(C) 192/2024

PRAVIN BATANIYA

.....Petitioner

versus

UNION OF INDIA & ANR.

.....Respondents

Advocates who appeared in this case

For the Petitioner : Dr. S. S. Hooda, Mr. Shaurya Banshtu, Mr. Manpreet Singh, Advs.

For the Respondents : Mr. Manish Kumar, SPC with Mr. A. K. Tiwari, Adv. for R1 and R2.

CORAM:**HON'BLE MR. JUSTICE V. KAMESWAR RAO****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****JUDGMENT****V. KAMESWAR RAO, J.**

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

“a. Issue a Writ, order or direction in the nature of Certiorari quashing and setting aside Order dated 30.11.2020 passed by Respondent No. 2 whereby the Petitioner has been dismissed from service; and

b. Issue a Writ, order or direction in the nature of Certiorari quashing and setting aside Order dated 20.09.2023 passed by Respondent No. 2 whereby the Petitioner's representation has been rejected; and

c. Issue a Writ, order or direction in the nature of



Mandamus directing the Respondents to reinstate the Petitioner in service with all consequential benefits like back pay etc.”

2. The facts as noted from the present petition are that, the petitioner was a Constable in Border Security Force (BSF) and has challenged his dismissal from service vide the impugned order dated 30.11.2020 under Section 11 of the Border Security Force Act, 1968 (the Act) read with Rule 177 of the Border Security Force Rules, 1969 (the Rules) and Rule 22(1)(b) of the Rules.

3. The petitioner while he was posted at Samba, Jammu and Kashmir in 2018, received a friend request from a girl named Krishna on his social media. As per the petition, she claimed to be a native of Chandigarh and is residing in Dubai for studies. As per the petitioner, the girl initiated the contact primarily through Facebook and messenger and solicited his pictures in uniform and enquired about his place of posting which as per the petitioner was never disclosed.

4. Dr. S. S. Hooda, learned counsel appearing for the petitioner has argued that, in September, 2018, while the petitioner was on leave, the said girl asked for the petitioner's bank account number in order to buy a gift for petitioner's son and transferred a sum of Rs.5000/- in his account. He stated that, once petitioner found out that the account of the transferor belonged to one Mr. Srinivas which is when the petitioner became suspicious of the intentions of the said girl.

5. According to him, after the battalion had moved to Meghalaya, the petitioner broke all contacts with the girl on suspicion of intel-collection



through false identity. After two or three months, he received a call from an unknown number asking him to delete all the contents/ data relating to the said girl. One year later, i.e., in 2019, the petitioner received another friend request from a different girl named “Preety Sharma” who claimed to be a resident of Shillong and showed active interest in meeting him but the petitioner ignored her and stopped receiving messages from her.

6. He stated that, in November, 2020, the respondent No.2/BSF allegedly received security inputs that the petitioner is in constant touch with Pakistani Intelligence Operatives (‘PIO’) and on 20.11.2020, the petitioner was interrogated at his place of posting by the Deputy Commandant of respondent No.2. Subsequent, Staff Court of Inquiry (SCOI) was held and the petitioner was found liable for misconduct.

7. Simultaneously, a complaint was made by respondent No.2 and an FIR was registered against the petitioner with the Meghalaya Police. The Investigating Officer in his final report before the Judicial Magistrate First Class has concluded that, on grounds of no concrete evidence, the petitioner shall be discharged. Dr. Hooda has drawn our attention to the said final report which was accepted by the Judicial Magistrate First Class, East Khasi Hills, vide order dated 26.05.2023. Consequently, after the acceptance of the final report, the petitioner submitted a representation dated 07.06.2023 seeking reinstatement in service. However the same was rejected vide order dated 20.09.2023.

8. It is the submission of Dr. Hooda that the petitioner was not provided any documents/ information in respect of the SCOI conducted against him. He also alleged that the petitioner was kept in complete dark throughout the



proceedings before SCOI and no details were shared with him.

9. According to him, the SCOI stands vitiated on this ground alone as the same was not in compliance of Rule 173(8) of the Rules, which mandate that, if a person is found blameworthy in the SCOI then such a accused/official ought to be granted an opportunity to cross-examine the witnesses and also be provided with all the material relied upon against him. He stated that these rules were not followed or applied to the petitioner. Whereas, the petitioner was only asked to narrate the facts of his case, which he did in Hindi and the same were recorded in English. After which, the petitioner was directed to sign his statement by his superior officer and he complied with the same. As per Dr. Hooda, the statement of petitioner was neither read over to him nor translated to him in Hindi nor a copy of the statement was given to him.

10. Dr. Hooda in his rejoinder submission has argued that the respondents despite claiming that the provisions under Rule 173(8) were complied, has not placed on record any documents which would show the argument of the respondents of the compliance. He has further argued that, when an opportunity said to be granted to the petitioner to cross examine the witness, a separate document needs to be typed stating that the accused has been granted such an opportunity and the answer of the accused has to be recorded and signed by him. Moreover, the statement of each witness is also supposed to be counter signed by the accused after he has been given an opportunity to cross examine them. However, in the instant case, no such document has been placed on record and hence compliance of Rule 173(8) is unsubstantiated.



11. Furthermore, he submitted that the failure to comply with the provisions of rule 173(8) is a fatal flaw in the SCOI proceedings and is in violation of principles of natural justice. Therefore, the SCOI proceedings ought to be set aside on this ground alone. He also submitted that, since the foundations of the SCOI were *non est*, the findings cannot be relied upon. He argued that the respondents have also failed to comply with Rule 176 of the Rules which entitles the petitioner to a copy of the SCOI proceedings conducted against him, however neither the same have been supplied to him nor has an order passed claiming exception to Rule 176 of the Rules has been provided to the petitioner.

12. Dr. Hooda argued that the respondents have resorted to making false submissions in as much as the petitioner has neither admitted nor confessed to sharing any secret or classified information with any person outside the force. The petitioner has only stated that, he was contacted by a lady on social media and he has only interacted with the said profile casually and shared photographs of himself in uniform and general scenery with her. He submitted that the police investigation conducted at the behest of the respondent authorities has not supported the version of the respondents, that the petitioner shared any secret or classified information. He stated that, it is a matter of common sense that general topographical images are widely available on the internet and can be accessed using free software such as Google Earth.

13. He submitted that the respondents believed (in the SCOI proceedings) that the petitioner was not aware that the person talking to him was a PIO and also nothing has been placed on record to show that the said Facebook



profile was being operated by the PIO. Consequently, the petitioner could not have been found blameworthy on merits. It appears that the apprehension of the acquittal of the petitioner from the trial prompted the respondent authorities to declare that the trial as inexpedient and resorted to terminating his services summarily.

14. Mr. Manish Kumar, learned Senior Panel Counsel for the respondents stated that this petition ought to be dismissed *in limine* as the petitioner had acted in a manner which was prejudicial to the national security and national interest. He stated that the petitioner was found blameworthy for sharing sensitive/secret information with the PIO in the SCOI. He stated that after careful examination of facts and circumstances of this case, his reinstatement in service was rejected by the Inspector General, FTR HQ, BSF, Kashmir *vide* letter no. L/No.518/Est.-1/R-Statement/2023/14640/44 dated 20.09.2023.

15. He stated that the petitioner was dismissed from service on account of misconduct under Rule 22 of the Rules, after observing the laid down procedure under the Act and Rules. The SCOI was conducted in the present case and the remarks of the DIG, SHQ Jowai reveals that the petitioner befriended a PIO on Facebook and Messenger and proceeded to pass on personal information relating to the department including photographs of the petitioner in uniform; details of deployment of the Battalion at location in Samba and the proposed move of the Battalion from Samba (Jammu and Kashmir) to Mawpat, Shillong (Meghalaya). Further, the petitioner had confessed to the fact of receiving an amount of Rs.5000/- from the PIO in his Savings Account which is also his salary account. At the time of the



SCOI, the petitioner had given his statement and was afforded an opportunity to cross examine witnesses and produce witnesses in support of his case under Rule 173(8), however the petitioner declined to do so. For these reasons, the argument of the petitioner that the SCOI was held in violation of principles of natural justice would not survive.

16. He submitted that, even if the petitioner neither revealed the real identity of the person with whom he was in contact with nor shared personal details, the same is in itself a violation of the guidelines issued by the respondent no.2 regulating the usage of social media. He stated that the information regarding the movement of the Unit and its deployment is vital secret pertaining to the national security and the petitioner was found to be blameworthy for sharing these particulars during the SCOI. Resultantly the petitioner was dismissed from the force effect from 30.11.2020 on account of misconduct. Simultaneously, SI Neeraj Choudhary being unit (SI/LO) lodged an FIR before PS Nongmynsong, Shillong against the petitioner for allegedly sharing information with the PIO in exchange of Rs. 5,000/-.

17. Mr. Kumar has relied upon the judgment of the Supreme Court in the case of *Ajit Kumar Nag v. GM, (PJ) Indian Oil corporation Ltd., (2005) 7 SCC 764*, to state that departmental proceedings as well as criminal proceedings can be conducted simultaneously. While deciding the case of the petitioner after the SCOI proceedings were complete, it was found that the trial of the petitioner was inexpedient and impracticable as it would have an impact on the interest of security of the State and such matters were not seen to be fit to be made public, including the source of information. It is for these reasons that the trial by the Security Force Court as well as issuing



show cause notice with all details adverse to the petitioner would have prejudiced the security of the state, if this information were to be made public. Accordingly, the services of the petitioner were terminated under BSF Rules 22(1)(b).

18. He stated that the decision as cited by the petitioner is not applicable in the instant case, as the decision to terminate the service of the petitioner was taken on the basis of the evidence as produced at the time of the SCOI proceedings. He has drawn our attention to Proviso (b) of Rule 22(1) of the Rules which stipulates that, where the competent authority is satisfied that it is not expedient or reasonably practicable to give the person (to be terminated from services) an opportunity to show cause, the authority must record reasons for the same in writing. In this regard, he has also relied upon the judgment of this Court in the case of *Kishore Chandra Sahoo v. Union of India and Ors., 2021 SCC OnLine Del 4868*.

19. According to him, in the present case, the allegation against the petitioner is that, he was in regular contact with the PIO and if a show cause notice is issued, the reply thereto would likely jeopardise the national security and certain vital operational and deployment details would come into focus in such an inquiry. The source and material forming an opinion for the person contacted with the PIO would also need to be disclosed which is why the decision of respondent no.3 cannot be said to be unreasonable or perverse and warrants no interference in the present case by this Court.

20. Mr. Kumar has stated that, during the course of hearing, the petitioner has given a false statement and has tried to mislead this Court, despite the fact that the impugned order dated 20.09.2023 has been passed in New Delhi



and the same is annexed as Annexure P-6, the petitioner has taken a ground that this Court does not possess territorial jurisdiction to entertain this petition. Another ground on the issue of jurisdiction is that the petitioner belongs to Madhya Pradesh and the cause of action has arisen in Uri and Shillong and not in Delhi. This ought not to be considered, as the impugned order has been issued in Delhi. He seeks dismissal of the present petition.

ANALYSIS

21. Having heard the learned counsel for the parties and perused the record, the short issue which falls for consideration is that the action of the respondents in dismissing the petitioner from service is justified. The impugned order dated 30.11.2020, passed by the respondents gave the following reasons, which we reproduce as under:

“Whereas, a SCOI was ordered by SHQ BSF Jowai, vide their O/No.43/Estt/SCOI/SHQ-Jowai/BSR/2020/7831-34 dated 27.11.2020 to investigate into the circumstances under which No.115441411 Constable (GD) Pravin Bataniya of 97 Bn BSF allegedly involved in espionage activities over social media.

2. As per findings of the Staff Court of inquiry, No.115441411 Constable (GD) Pravin Bataniya 97 Bn BSF Befriended a PIO namely Miss Krishna through Facebook and Messenger and later on passed information on Whatsapp to her No.115441411 Constable (GD) Pravin Bataniya accepted receiving money of Rs.5,000 Rupees five thousand) only from that PIO on his saving account No.20094719991 which is also his salary account. No.115441411 Constable (GD) Pravin Bataniya of 97 Bn BSF confessed having shared his photographs in uniform and place of deployment details of the Battalion at Samba location and also the move of the battalion to present location i.e. Mawpat, Shillong with PIOs.

3. No.115441411 Constable (GD) Pravin Bataniya found blameworthy for sharing secret information of vital National



Security including unit deployment and its movement to PIO. He has also received five thousand rupees from PIO. Doing so, he has violated existing guidelines/instructions regarding use of social media, issued by Bn and H/HQrs, which he was well aware of.

4. No. 115441411 Constable (GD) Pravin Bataniya has acted in a manner which was prejudicial to the National Security, National Integrity and National Interest. Therefore, the SCOI found No.115441411 Constable (GD) Pravin Bataniya blameworthy of sharing sensitive/secret information to PIOs.

5. Whereas, in view of the above and after going through the relevant records, I am convinced beyond doubt about the involvement of No.115441411 Constable (GD) Pravin Bataniya in anti-national activities and crime. I am satisfied that further retention of No.115441411 Constable (GD) Pravin Bataniya in service is undesirable due to his involvement in anti-national activities prejudicial to National security. I am also satisfied that it is not expedient to give Constable (GD) Pravin Bataniya an opportunity of show cause because show cause notice and his reply is likely to disclose many minute operational and deployment related secret information, examination/scrutiny of which by non-authorized persons will jeopardize the security of International border and for the same reason his trial by a Security Force Court is inexpedient.

6. I, therefore, in exercise of powers vested in me under Section 11(2) of BSF Act, 1968 read with Rule 177 of BSF Rules, 1969 and under the provisions of Rule 22(1)(b) of BSF Rules, 1969, dismiss No.115441411 Constable (GD) Pravin Bataniya from service w.e.f 30th November 2020 (AN). No.115441411 Constable (GD) Pravin Bataniya is struck off from the strength of 97 Bn BSF w.e.f 30th November 2020 (AN).”

22. On the issue of sharing vital information with the PIO, much reliance has been placed by Dr. Hooda on the fact that in the FIR registered against the petitioner; he was discharged as no material could be found against the petitioner to show that he had committed any serious offence/misdemeanor.



Though, the said submission looks appealing on a first blush, but on a deeper consideration it must be held that there cannot be any comparison between a criminal case and a departmental inquiry (Security Force Court in this case), as the nature of the evidence required in a criminal case is of a higher degree, as the charge/offence need to be proved beyond reasonable doubt, whereas, in the case of a departmental inquiry, the misdemeanor has to be proved on the anvil of preponderance of probability.

23. We note that an FIR was registered against the petitioner on 30.11.2020 in Meghalaya. Though, the investigation culminated in the police concluding that no concrete information and/or evidence is found against the petitioner in the USB drive / CFSL report which could be used against the petitioner but the respondents are not precluded to initiate a departmental inquiry (Security Force Court) for the misdemeanor. In other words, the department is within its right to initiate proceedings under the conduct rules on the same principles as we have delineated above.

24. Dr. Hooda has primarily relied upon the judgment of the Supreme Court in the case of *State of West Bengal State Electricity Board v. Dilip Kumar Ray (2007) 14 SCC 568*, to contend that, this is a fit case for this Court to award the damages to the petitioner, as despite there being no evidence against the petitioner, he was wrongly proceeded against in a criminal case by lodging an FIR wherein, he was discharged. He submitted that, if the charges have not been proved by the respondents, then for the respondents to even proceed with the departmental inquiry (Security Force Court) is uncalled for. This submission also seems appealing on a first blush but the plea is liable to be rejected, in view of the judgment of the Supreme



Court in the case of *Ajit Kumar Nag (supra)* on which reliance has been placed by Mr. Kumar, wherein the Supreme Court has held as under:

*“As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two proceedings criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused ‘beyond reasonable doubt’, he cannot be convicted by a court of law. **In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of ‘preponderance of probability’.** **Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside.**”*

(emphasis supplied)



25. Having noted the position of law and also, the fact that the conclusion of the SCOI proceedings is clear, that the petitioner has not denied the fact that he was in contact with a stranger on Facebook and Messenger and later passed on information considered sensitive by the respondents on Whatsapp to the stranger apart from receiving an amount of Rs.5,000/- from the said person in his savings account, the penalty of dismissal is justified and ought not to be interfered with.

26. Insofar, the plea of Dr. Hooda that the respondents could not have dispensed with the inquiry (Security Force Court) is concerned, we may state here that the law with regard to dispensing with the inquiry is settled as held by the Supreme Court in the case of *Union of India v. Tulsiram Patel, (1985) 3 SCC 398* wherein the Court in paragraph nos. 133, 138, 142 and 144, has held as under:

“133. The second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311(2). This is a constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional.

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138. Where a government servant is dismissed, removed or reduced in rank by applying clause (b) or an analogous provision of the service rules and he approaches either the High Court under Article 226 or this Court under Article 32, the court will interfere on grounds well established in law for the exercise of power of judicial review in matters where administrative discretion is exercised. It will consider whether clause (b) or an analogous provision in the service rules was properly applied or not. The finality given by clause (3) of



Article 311 to the disciplinary authority's decision that it was not reasonably practicable to hold the inquiry is not binding upon the court. The court will also examine the charge of mala fides, if any, made in the writ petition. In examining the relevancy of the reasons, the court will consider the situation which according to the disciplinary authority made it come to the conclusion that it was not reasonably practicable to hold the inquiry. If the court finds that the reasons are irrelevant, then the recording of its satisfaction by the disciplinary authority would be an abuse of power conferred upon it by clause (b) and would take the case out of the purview of that clause and the impugned order of penalty would stand invalidated. In considering the relevancy of the reasons given by the disciplinary authority the court will not, however, sit in judgment over them like a court of first appeal. In order to decide whether the reasons are germane to clause (b), the court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable way would have done. The matter will have to be judged in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of a court-room, removed in time from the situation in question. Where two views are possible, the court will decline to interfere.

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142. The question under clause (c), however, is not whether the security of the State has been affected or not, for the expression used in clause (c) is "in the interest of the security of the State". The interest of the security of the State may be affected by actual acts or even the likelihood of such acts taking place. Further, what is required under clause (c) is not the satisfaction of the President or the Governor, as the case may be, that the interest of the security of the State is or will be affected but his satisfaction that in the interest of the security of the State, it is not expedient to hold an inquiry as contemplated by Article 311(2). The satisfaction of the President or Governor must, therefore, be with respect to the expediency or in expediency of holding an inquiry in the interest of the security



of the State. The Shorter Oxford English Dictionary, 3rd Edn., defines the word “inexpedient” as meaning “not expedient; disadvantageous in the circumstances, unadvisable, impolitic”. The same dictionary defines “expedient” as meaning inter alia “advantageous; fit, proper, or suitable to the circumstances of the case”. Webster’s Third New International Dictionary also defines the term “expedient” as meaning inter alia “characterized by suitability, practicality, and efficiency in achieving a particular end: fit, proper, or advantageous under the circumstances”. It must be borne in mind that the satisfaction required by clause (c) is of the Constitutional Head of the whole country or of the State. Under Article 74(1) of the Constitution, the satisfaction of the President would be arrived at with the aid and advice of his Council of Ministers with the Prime Minister as the Head and in the case of a State by reason of the provisions of Article 163(1) by the Governor acting with the aid and advice of his Council of Ministers with the Chief Minister as the Head. Whenever, therefore, the President or the Governor in the constitutional sense is satisfied that it will not be advantageous or fit or proper or suitable or politic in the interest of the security of the State to hold an inquiry, he would be entitled to dispense with it under clause (c). The satisfaction so reached by the President or the Governor must necessarily be a subjective satisfaction. Expediency involves matters of policy. Satisfaction may be arrived at as a result of secret information received by the Government about the brewing danger to the security of the State and like matters. There may be other factors which may be required to be considered, weighed and balanced in order to reach the requisite satisfaction whether holding an inquiry would be expedient or not. If the requisite satisfaction has been reached as a result of secret information received by the Government, making known such information may very often result in disclosure of the source of such information. Once known, the particular source from which the information was received would no more be available to the Government. The reasons for the satisfaction reached by the President or Governor under clause (c) cannot, therefore, be required to be recorded in the order of dismissal, removal or reduction in rank nor can they be made public.



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144. It was further submitted that what is required by clause (c) is that the holding of the inquiry should not be expedient in the interest of the security of the State and not the actual conduct of a government servant which would be the subject-matter of the inquiry. This submission is correct so far as it goes but what it overlooks is that in an inquiry into acts affecting the interest of the security of the State, several matters not fit or proper to be made public, including the source of information involving a government servant in such acts, would be disclosed and thus in cases such as these an inquiry into acts prejudicial to the interest of the security of the State would prejudice the interest of the security of the State as much as those acts would.”

(emphasis supplied)

27. From the above, it follows that this Court cannot act as an appellate authority when the authority concerned is satisfied that the conduct of the inquiry (Security Force Court) shall be prejudicial to the security of the State. The justification given by the authority is that, if a show cause notice is to be issued to him, the reply thereto by him would likely risk the national security as certain vital information including deployment related details will come in public domain which would jeopardise the security at the international border. This according to us is a justifiable reason. Rule 22(1) of the Rules contemplates that power vests with the competent authority (with reasons to be recorded in writing) to hold it is not expedient or reasonably practicable to give the person concerned an opportunity of showing cause before dismissing or removing from service.

28. We may refer to the judgment of this Court in ***Yacub Kispotta & Ors. v. Director General BSF & Ors., 2015 SCC OnLine Del 12437***, wherein a Coordinate Bench of this Court has held that the decision, whether to hold



an inquiry in prevailing circumstances which in certain cases would not be reasonable or practical, is in the domain of the disciplinary authority, and has to be based on objective facts, the role of the Writ Courts to exercise their mandate of judicial review is confined to considering whether such reasons were germane and relevant and nothing more.

29. Moreover the Supreme Court in a recent judgment in the case of ***Bhagirath Choudhary v. Border Security Force*** in ***Civil Appeal No(s). 3877/2011***, dated 12.02.2026 has held that, in cases where national security is of a paramount concern, any misdemeanor by a security personnel, has to be viewed sternly. The relevant part of the findings of the Supreme Court read as under:

*“7. Insofar as prayer of the appellant for extending the benefit of pension in the teeth of Yasodhar Kamat’s referred to supra though at first blush looks attractive, on a deeper examination it is not. We say so, for the simple reason that in the said case, the delinquent employee was absent unauthorizedly which triggered the authorities to dismiss the appellant from service. In that factual background, this Court is of the view that punishment imposed was highly disproportionate and found the antecedent of the appellant therein was also for a similar offence, namely, unauthorized absence, whereas in the instant case, the appellant has four incidents resulting in punishment being imposed on 13.05.1980, 06.01.1989, 25.07.1994 and 29.12.1995 which has also resulted in the imprisonment of ten days for the first offence, and punishment of severe reprimand for the second and third offences, and the fourth one is the present case of permitting smuggling of cattle at the Border of the country. **When the national security is paramount, any infraction thereof that too by the officers or the concerned who would be manning the Borders cannot be viewed lightly and it is for this reason, the punishment permissible under Section 48(1)(c) of the BSF Act, 1968 has been imposed on the appellant.** However, having regard to the fact that the*



appellant has put in 36 years of service, we permit the appellant to submit a representation to the respondents for granting pension, if any, and in the event of such application being filed, the authorities would be at liberty to consider the same on its own merits and in accordance with law notwithstanding the confirmation of the order of dismissal taking into consideration that 36 years of service had been rendered by appellant and respondent would be at liberty to restrict the pension for any particular quantum or period or otherwise. However, we make it clear that this order shall not be construed as an order directing the respondent to grant pension to appellant and it would be in the complete discretion of the competent authorities.”

(Emphasis supplied)

30. Insofar as the plea of Dr. Hooda, that there is violation of Rule 173(8) of the Rules is concerned, the submission is in the context that the petitioner has not been given the right of cross-examination of the witnesses and was also not provided all the material that has been relied against him. Suffice to state the case of the respondents as noted in paragraph 15 above reveal that the petitioner was afforded the opportunity to cross-examine witnesses and produce witnesses in support of his case under Rule 173(8), however, the petitioner declined to do so. In the rejoinder to the counter-affidavit, the petitioner has stated that it is not the case of the respondents that the Director General has specifically passed an order denying a copy which is to be given to the petitioner and thereby claim exemption from the mandate of Rule 176 of the Rules. So, in that sense, the respondents were under obligation to supply the SCOI proceedings. We are afraid, Rule 173(8) and 176 of the Rules, which we reproduce as under cannot be interpreted in the manner stated by the petitioner.

“173. Procedure of Courts of Inquiry.-(1) The



proceedings of a Court of Inquiry shall not be open to the public. Only such persons may attend the proceedings as are permitted by the court to do so.

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(8) Before giving an opinion against any person subject to the Act, the court will afford that person the opportunity to know all that has been stated against him, cross-examine any witnesses who have given evidence against him, and make a statement and call witnesses in his defence.

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176. Copies of Court of Inquiry Proceedings.- A person subject to the Act against whom the Court of Inquiry has given an opinion or who is being tried by a Security Force Court on a charge relating to matter investigated by the Court of Inquiry, shall be entitled to copies of the proceedings of the Court of Inquiry unless the Director-General orders otherwise.”

31. In ***Baljinder Singh v. UOI & Ors., ILR (2006) 2 P&H 423***, the Punjab and Haryana High Court in its judgment dated 21.10.2006 has interpreted the said Rule in the following manner:-

“17. It is true that the expression “cross-examine the witnesses” is not mentioned in the above reproduced note, however, the fact that the petitioner himself has signed and acknowledged the opportunity given to him to lead defence evidence etc., thus, he could put up a note of protest against denial of opportunity coupled with the fact that the Presiding Officer has certified the compliance of 173(8) of the Rules, leaves no doubt in one's mind that the plea as if the petitioner was not afforded an opportunity to cross-examine Karnail Singh—the civilian during the course of Court of Inquiry proceedings, is merely an afterthought.

18. Another vital contention which goes to the root of the matter pertains to non-compliance of rule 176 of the rules, namely, non-supply of the copies of the proceedings of the Court of Inquiry. Whereas Learned Counsel for the petitioner



contended that respondent No. 3 was obligated in law 'to supply' copies of these proceedings, the respondents contend that the petitioner never 'demanded' the same. In my view, the expressions "shall be entitled to copies of the proceedings of the Court of Inquiry unless the Director General order otherwise" as contained in rule 176 are of significant importance. It appears that the right to seek copies of the proceedings of the Court of Inquiry has been given to a delinquent in order to ensure that he can effectively participate in the trial proceedings before the Summary Security Force Court and no prejudice is caused to him. However, the fact that the Director General, BSF is entitled to refuse the supply of copies of the Court of Inquiry proceedings, clearly indicates that there is no obligation is cast upon the authorities to supply copies of these proceedings to the delinquent and it is for him to apply and seek copies thereof. Further, prior permission of the Director General before supplying such copies is also visible, who, in turn is competent to decline such request. It is not the case of the petitioner that he had applied for the copies of the Court of Inquiry proceedings yet the same were denied to him, no advantage of rule 176 can be taken by him at this stage. 19. There is yet another aspect of the matter. As observed earlier, the object of getting copies of the Court of Inquiry proceedings is to have effective participation in the trial proceedings before the Summary Security Force Court. A perusal of the Summary Security Force Court proceedings (Annexure P-6) reveals that after recording the statement of each witness, a note has been given that "the accused is provided an opportunity to cross examine the witness but he declines to do so". This note has been duly signed and acknowledged by the petitioner. The petitioner thereafter declined "to make any statement" and also refused to "produce any witness". Before conclusion of the proceedings, he confessed his guilt of the charge, a detailed reference to which has already been made. The petitioner, thus, having refused to avail the opportunity to cross-examine the witnesses or to produce his own evidence and rather having admitted his guilt, cannot be permitted to turn around and say that he has been held guilty in derogation to the principles of natural justice and



fair play. Further, the note recorded by the Summary Court in terms of rule 142 of the rules, suggests that the petitioner did not object to the charge framed against him though such a right is conferred under rule 139. Similarly, the procedure laid down under rule 145 also appears to have been complied with.”

32. So, it is clear there is no obligation on the part of the respondents to supply the SCOI proceedings. It is important to note that the SCOI proceedings become relevant/important to be relied upon in the trial proceedings before the Summary Security Force Court. In the case in hand, the show cause notice and the Summary Security Force Court proceedings were dispensed with; so no question arises for placing reliance upon the proceedings of SCOI. In any case, it is not the case of the petitioner that he has asked for the record of the proceedings of the SCOI, which has been refused. In view of the interpretation to the Rule 176, it must be held that this plea of Dr. Hooda is unmerited and the same is rejected.

33. We hold that there were sufficient reasons for the authorities to dispense with the show cause notice and the proceedings of the Security Force Court.

34. In view of the conclusion above, we do not see any merit in the petition. The present petition being devoid of merits is dismissed. No costs.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

APRIL 30, 2026/RT