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

Reserved on: 02.12.2024

Pronounced on: 15.01.2025

\+ W.P.(C) 13248/2022

SUMIT SANGWAN .....Petitioner

Through: Mr.Ankur Chhibber, Mr.Anshuman Mehrotra, Advs.

versus

UNION OF INDIA AND ORS .....Respondents

Through: Mr.Mukul Singh, CGSC, Ms.Ira Singh, Mr.Aryan Dhaka, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

NAVIN CHAWLA, J.

1. The present petition has been filed by the petitioner challenging the Order dated 06.02.2022 passed by the respondent no.1, whereby the petitioner has been dismissed from service with immediate effect.

2. The petitioner further prays for directions to the respondents to reinstate the petitioner back in service with effect from 06.02.2022, and grant him all service benefits from the said date, including seniority, rank, pay, arrears etc. with interest @ 18% p.a.

BRIEF FACTS

3. The petitioner joined the Border Security Force (BSF) as an Assistant Commandant (AC) (Direct Entry) on 19.11.2012, whereafter he was posted to the 145th Bn.

4. In terms of the Order dated 26.02.2016 issued by the Deputy Inspector General (DIG), a Board of Officers (BOO) was detailed to

conduct a surprise check of the entire troops deployed at the BOP Srimantapur to verify and look into the alleged smuggling activities taking place in the area.

5. In furtherance of the same, on the morning of 27.02.2016, Sh. Ganesh Kumar, who was the Presiding Officer of the BOO, along with the other team members of the search party came to the BOP Srimantapur and started the search operation. During the search, Rs.2.54 lakhs in cash was recovered from the petitioner.

6. On 29.02.2016, the respondents conducted a Staff Court of Inquiry (SCOI) to inquire into the circumstances under which troops of the 145th Bn, BOP Srimantpur, were found in possession of various amounts of cash by the BOO on 27.02.2016.

7. Pursuant thereto, the petitioner was charged with the following three charges by way of Charge Sheet dated 02.05.2017, issued by the Commandant of the 168th Bn, BSF:

FIRST CHARGE BSF ACT 1968 SECTION- 46	***COMMITTING A CIVIL OFFENCE THAT IS TO SAY CRIMINAL MISCONDUCT FOR HAVING BEEN A PUBLIC SERVANT IN POSSESSION OF PECUNIARY RESOURCES DISPROPORTIONATE TO HIS KNOWN SOURCE OF INCOME FOR WHICH HE CANNOT SATISFACTORY ACCOUNT FOR AN OFFENCE SPECIFIED IN SECTION 13(1)(e) OF PREVENTION OF CORRUPTION ACT 1988, PUNISHABLE UNDER SECTION 13(2) OF THE SAID ACT*** *in that he,* *while deployed as Coy Comdr at BOP*

	Srimantpur, 'C' Coy, 145 Bn BSF on 27 Feb 2016 was found in possession of Rupees 2,54,000/- (Rupees two lakh fifty four thousand) which is disproportionate to his known source of income for which he could not satisfactorily account for.
SECOND CHARGE BSF ACT 1968 SECTION- 46	***COMMITTING A CIVIL OFFENCE THAT IS TO SAY CRIMINAL MISCONDUCT FOR HAVING BEEN A PUBLIC SERVANT IN POSSESSION OF PECUNIARY RESOURCES DISPROPORTIONATE TO HIS KNOWN SOURCE OF INCOME FOR WHICH HE CANNOT SATISFACTORY ACCOUNT FOR AN OFFENCE SPECIFIED IN SECTION 13(1)(e) OF PREVENTION OF CORRUPTION ACT 1988, PUNISHABLE UNDER SECTION 13(2) OF THE SAID ACT*** *in that he,* *while deployed as Coy Comdr at BOP Srimantpur, 'C' Coy 145 Bn BSF and proceeded on 08 E/Leave w.e.f. 29.01.2016 to 05.02.2016 extended by 05 days E/L with 02 days OSL upto 13.02.2016 deposited an amount of Rs. 30,000/- (Rupees thirty thousand) in his own Bank account No. 017401537618 at ICICI bank Panipat, Haryana on 29.01.2016 by cash which is disproportionate to his known source of income for which he could not satisfactorily account for.*
THIRD CHARGE BSF ACT 1968 SECTION- 22(e)	***NEGLECTING TO OBEY LOCAL ORDER*** *in that he,* *while deployed at BOP Srimantapur of 145 Bn BSF, on 27/02/2016 was found in a possession of Rupees 2,54,000/- (Rupees two lakh fifty four thousand) during surprise checking by a BOO detailed by DIG, SHQ BSF Gokulnagar in contravention to the Frontier Headquarter Border Security Force, Tripura signal No. O/4553 dated 24.03.2011*

	which prescribes that no individual deployed on border is allowed to retain more than Rs. 500/- at any given time in his possession.

8. The hearing of the Charges commenced on the same day itself, wherein the petitioner pleaded 'Not Guilty' to all the three charges. The Commandant of the 168th Bn, BSF, ordered for the Record of Evidence (RoE) proceedings against the petitioner on the abovementioned three charges.

9. The respondents, in terms of the Notice/Order dated 06.07.2018, decided to try the petitioner by convening a General Security Force Court (GSFC), which was assembled at the Bn HQ of the 200th Bn, on the following charges:

FIRST CHARGE BSF ACT 1968 SECTION - 46	***COMMITTING A CIVIL OFFENCE THAT IS TO SAY CRIMINAL MISCONDUCT FOR HAVING BEEN A PUBLIC SERVANT IN POSSESSION OF PECUNIARY RESOURCES DISPROPORTIONATE TO HIS KNOWN SOURCE OF INCOME FOR WHICH HE CANNOT SATISFACTORY ACCOUNT FOR AN OFFENCE SPECIFIED IN SECTION 13(1)(e) OF PREVENTION OF CORRUPTION ACT 1988, PUNISHABLE UNDER SECTION 13(2) OF THE SAID ACT*** *in that he,* *at BOP Srimantapur, on 27/02/2016, posted as Coy Comdr, 'C' Coy, 145 Bn BSF was found in possession of Rs.2,54,000/- (Rupees two lakh fifty four thousand) during surprise checking by the Board of Officer's detailed by the DIG, SHQ, BSF Gokulnagar, which is disproportionate to his known source of income for which he could not satisfactorily account for.*

SECOND CHARGE BSF ACT 1968 SECTION - 22(e)	***NEGLECTING TO OBEY LOCAL ORDER*** *in that he,* *at BOP Srimantapur, on 27/02/2016, posted as Coy Comdr, 'C' Coy, 145 Bn BSF was found in possession of Rs.2,54,000/- (Rupees two lakh fifty four thousand), in contravention to the Frontier Headquarter, Border Security Force, Tripura signal No. O/4553 dated 24/03/2011, which prescribes that no individual deployed on border is allowed to retain more than Rs. 500/- at any given time in his possession.*

10. The GSFC, *vide* Orders dated 16.01.2019, while finding the petitioner 'Not Guilty' of the First Charge, found the petitioner 'Guilty' of the Second Charge, and sentenced the petitioner with the punishment of 'forfeiture of two years of service for the purpose of promotion' and 'severe reprimand'. Thereafter, the matter was referred to the Confirming Authority for Confirmation and Promulgation.

11. The Confirming Authority, however, *vide* Order dated 10.09.2019, observed that the findings of the GSFC on the First Charge was against the weight of the evidence on record and ordered that the GSFC will re-assemble and reconsider its findings on the First Charge.

12. The revision GSFC trial was conducted from 20.09.2019 to 23.09.2019.

13. The revision GSFC adhered to its earlier findings of 'Not Guilty' on the First Charge. It opined that the extra-judicial confession,

wherein the petitioner had allegedly confessed that the money was ill-gotten from smuggling, was not substantiated by the evidence led by the prosecution; the prosecution failed to lead any evidence that could substantiate that the petitioner was involved in any smuggling activity; and that the prosecution could not substantiate beyond reasonable doubt that the amount in question, handed over by the Petitioner to the BOO, was beyond the known source of income making it punishable under Section 13(1)(e) of the Prevention of Corruption Act, 1988. The GSFC reiterated that the amount in question was found to be the legal money of the petitioner and was not earned from smuggling activities.

14. The revision GSFC Proceedings were again forwarded to the Confirming Authority, which *vide* Order dated 01.11.2019 and Corrigendum dated 06.12.2019, once again decided not to confirm the findings of the GSFC in respect of the First Charge but confirmed the findings and sentence in respect of the Second Charge.

15. The petitioner submitted a Statutory Petition/Post-Confirmation Petition dated 27.01.2020 to the respondents.

16. The respondent no.2 at the behest of the respondent no.4, issued a Show Cause Notice dated 19.11.2020 to the petitioner, directing him to show cause as to why his services should not be terminated in terms of Section 10 of the BSF Act, 1968 read with Rule 20(4)(a) of the BSF Rules, 1969, by dismissing him from service.

17. The petitioner replied to the Show Cause Notice in February, 2021.

18. The Statutory Petition/Post-Confirmation Petition dated 27.01.2020 of the petitioner was rejected by the respondent no.1 on

14.09.2021, by stating that there was no substance in the issues raised by the petitioner in his petition and that sufficient evidence was available in the trial proceedings to substantiate the Charge levelled against the petitioner.

19. Thereafter, by the impugned Order dated 06.02.2022, relying upon the powers vested under Section 10 of the BSF Act, 1968, read with Rule 20(4)(a) of the BSF Rules, 1969, the services of the petitioner were terminated with immediate effect.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER:

20. The learned counsel for the petitioner submits that the amount of Rs.2,54,000/- recovered from the petitioner was partly borrowed by him from his family friend and partly given to him by his sister and brother-in-law for the urgent treatment and hospitalization of the petitioner's father, who was required to be shifted to a hospital in Delhi. He submits that the money was not used as the petitioner's father recovered rather quickly. Since the petitioner was in a rush to join his Unit, having overstayed his leave by two days, inadvertently, the petitioner carried the said cash amount with him to the BOP.

21. The learned counsel for the petitioner submits that during the search at BOP Srimantapur by the BOO, the petitioner had voluntarily handed over the cash amount to the search party and emphasizes that there is a difference between 'recovered' and 'handed over'.

22. The learned counsel for the petitioner submits that all the charges were duly considered by the GSFC and having failed to force

the GFSC to change its opinion as far as the First Charge was concerned, the respondents have arbitrarily invoked the power vested in them under Rule 20 of the BSF Rules to terminate the service of the petitioner.

23. He submits that for invoking the power under Rule 20 of the Rules, it is a pre-condition that the trial of the officer by a Security Force Court should be inexpedient or impracticable. In the present case, not only has a full trial taken place, but the Conforming Authority had also remanded the same to the GSFC for a revision. Only because the opinion of the GSFC on such revision was not to the liking of the Confirming Authority, the power vested in the respondents under Rule 20 of the Rules could not have been invoked as per its whims and fancies. In support of his submissions, the learned counsel places reliance on the Judgments of this Court in ***S.S. Shekhavat v. Union of India & Ors.***, 2008:DHC:2846-DB and ***Yacub Kispotta & Ors. v. Director General BSF & Ors.***, 2015 SCC OnLine Del 12437; as well as on the Judgment of the Calcutta High Court in ***Sri. Amiya Ghosh v. Union of India & Ors.***, 2016 SCC OnLine Cal 6177.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENTS:

24. On the other hand, the learned counsel for the respondents submits that the petitioner, while being deployed on an international border, was found in possession of Rs.2,54,000/- during a surprise check. Possession of money of this amount was against the Standard

Operating Procedure (SOP), which prohibited any personnel deployed on the border to be in possession of more than Rs.800/-. He submits that the plea of the petitioner that he was not aware of such an SOP is incorrect and has been rightly disbelieved by the GFSC.

25. He further submits that this Court, in the exercise of its powers under Article 226 of the Constitution of India, cannot re-appreciate the evidence. He submits that even otherwise, there is no challenge to the findings of the GSFC or to the order of the punishment based on the findings of the GSFC on the Second Charge.

26. On the impugned Order, whereby the services of the petitioner were terminated, the learned counsel for the respondents submits that as the Confirming Authority has refused to confirm the findings of the GSFC returned in the revision proceedings, further inquiry became inexpedient and impracticable. The Director General/respondent no.2, therefore, rightly issued a Show Cause Notice to the petitioner for the proposed termination of service under Rule 20 of the BSF Rules, 1969. He submits that the reply submitted by the petitioner against the same was duly considered, and it was only after having considered the entire record and the evidence led before the GSFC, that the order terminating the service of the petitioner was passed in the exercise of power under Section 10 of the BSF Act, 1968 read with Rule 20(4)(a) of the BSF Rules, 1969.

27. Placing reliance on the Judgment of the Supreme Court in ***Union of India v. Harjeet Singh Sandhu***, (2001) 5 SCC 593, and of this Court in ***S.S. Shekhavat*** (supra), he submits that in a similar situation, the Court has held that where the inquiry becomes

inexpedient due to the GSFC maintaining the same finding in revision, which is not confirmed by the Confirming Authority, recourse to the power under Rule 20 of the BSF Rules, 1969, can be validly taken.

ANALYSIS AND FINDINGS:

28. We have considered the submissions made by the learned counsels for the parties.

29. At the outset, we would note that as far as the Second Charge is concerned, the punishment to the petitioner was promulgated on 01.11.2019, and the Post-Confirmation Petition of the petitioner was rejected by the Confirming Authority *vide* Order dated 14.09.2021. However, there is no challenge to these orders in the present petition. The present petition merely challenges the Order dated 06.02.2022, whereby the petitioner has been dismissed from service in exercise of the power vested under Section 10 of the BSF Act, 1968, read with Rule 20 (4)(a) of the BSF Rules, 1969. The submissions made by the learned counsel for the petitioner in challenge to the findings on the Second Charge, therefore, need not detain this Court.

30. As far as the impugned Order dated 06.02.2022 is concerned, and as is noted hereinabove, the Competent Authority came to the conclusion that once the finding of the GSFC in the revision trial had also not been confirmed by the Confirming Authority, and there being no provision for further remand, therefore, the trial of the officer by the Security Force Court has become inexpedient and impractical. The Competent Authority, therefore, in exercise of its powers under

Section 10 of the BSF Act, read with Rule 20 (4)(a) of the BSF Rules, ordered the dismissal of the petitioner from service.

31. Section 10 of the BSF Act reads as under:

> *"10. Termination of service by Central Government.—Subject to the provisions of this Act and the rules, the Central Government may dismiss or remove from the service any person subject to this Act."*

32. Rule 20 of the BSF Rules states that when the termination of the services of an officer is proposed under Section 10 of the BSF Act on account of misconduct, the officer shall be given an opportunity to show cause, and after considering the report on the officer's misconduct, if the Central Government or the Director General, as the case may be, is satisfied that the trial of the officer by a Security Force Court is "inexpedient or impractical", but is of the opinion that further retention of the said officer in service is undesirable, it can order the termination of the officer's service, including in form of dismissal from service.

33. Rule 20 of the BSF Rules is reproduced hereinunder:

> *"20. Termination of service of officers by the Central Government on account of misconduct.- (1) When it is proposed to terminate the service of an officer under Section 10 on account of misconduct, he shall be given an opportunity to show cause in the manner specified in sub-rule (2) against such action:*
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> *Provided that this sub-rule shall not apply:-*
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> > *(a) where the service is terminated on the ground of conduct which has led to his conviction by a criminal court or a*

Security Force Court; or

(b) where the Central Government is satisfied that for reasons, to be recorded in writing, it is not expedient or reasonably practicable to give to the officer an opportunity of showing cause.

(2) When after considering the reports on an officer's misconduct, the Central Government or the Director General, as the case may be, is satisfied that the trial of the Officer by a Security Force Court is inexpedient or impracticable, but is of the opinion, that the further retention of the said officer in the service is undesirable, the Director-General shall so inform the officer together with particulars of allegation and report of investigation (including the statements of witnesses, if any, recorded and copies of documents if any, intended to be used against him) in cases where allegations have been investigated and he shall be called upon to submit, in writing, his explanation and defence:

Provided that the Director-General may with hold disclosure of such report or portion thereof if, in his opinion, its disclosure is not in the interest of the security of the State.

(3) In the event of explanation of the Officer being considered unsatisfactory by the Director-General, or when so directed by the Central Government, the case shall be submitted to the Central Government with the Officer's defence and the recommendations of the Director-General as to the termination of the Officer's service in the manner specified in sub-rule (4).

(4) When submitting a case to the Central Government under the provision of sub-rule (2) or sub-rule (3), the Director-General shall make his recommendation whether the

Officer's service should be terminated, and if so, whether the officer should be,-

(a) dismissed from the service; or
(b) removed from the service; or
(c) retired from the service; or
d) called upon to resign.

(5) The Central Government, after considering the reports and the officer's defence, if any, or the judgment of the Criminal Court, as the case may be, and the recommendation of the Director-General, may remove or dismiss the officer with or without pension, or retire or get his resignation from service, and on his refusing to do so, the officer may be compulsorily retired or removed from the service with pension or gratuity, if any, admissible to him.

34. *Pari materia* provisions are present in Section 19 of the Army Act, 1950, read with Rule 14 of the Army Rules, 1954. Interpreting the said provisions, the Supreme Court in ***Chief of Army Staff and Ors v. Major Dharam Pal Kukrety,*** (1985) 2 SCC 412 held as under:

"13. It is pertinent to note that under Section 160 the confirming authority has the power to direct a revision of the finding of a court-martial only once. There is no power in the confirming authority, if it does not agree with the finding on revision, to direct a second revision of such finding. In the absence of any such confirmation, whether of the original finding or of the finding on revision, by reason of the provisions of Section 153 the finding is not valid. Therefore, in the case of the respondent, the finding of the general court-martial on revision not having been confirmed was not valid. Could he, therefore, be tried again by another court-martial on the same charges? Under Section 121, a person subject to the Army Act, who has been acquitted or

convicted of an offence by a court-martial or by a criminal court, is not liable to be tried again for the same offence by a court-martial. It can well be argued that by reason of the provisions of Section 153 under which no finding or sentence of a general, district or summary general court-martial is valid except insofar as it is confirmed as provided by the Army Act a person cannot be said to have been acquitted or convicted by a court-martial until the finding of "guilty" or "not guilty" in his case has been confirmed by the confirming authority. There is, however, no express provision in the Army Act which empowers the holding of a fresh court-martial when the finding of a court-martial on revision is not confirmed.

14. The decisions of three High Courts may be referred to in this connection. The first decision is that of the Allahabad High Court in G.B. Singh v. Union of India [1973 Cri LJ 485 (All)] . That was a case under the Air Force Act, 1950 (Act 45 of 1950). In that case, the officer was found guilty by a general court-martial and sentenced to be dismissed from service. The finding and sentence were referred to the confirming authority. The confirming authority passed an order reserving the same for confirmation by superior authority and forwarded the proceedings to the Chief of the Air Staff. The Chief of the Air Staff passed an order not confirming the finding or sentence awarded by the court-martial. The finding and sentence which were not confirmed by the Chief of Air Staff were promulgated after the lapse of about ten months. A fresh general court-martial was convened to retry the officer. On inquiry, the officer was informed that the findings and sentence of the general court-martial had not been confirmed as it was found that the proceedings were not in order and, therefore, there was no valid order convicting or acquitting the officer. After considering the relevant provisions of the Air

Force Act and the Air Force Rules, 1969, which are in pari materia with the corresponding provisions of the Army Act and the Army Rules, a learned Single Judge of the Allahabad High Court held that the effect of non-confirmation was that though the finding and sentence passed by the court-martial existed, they could not be put into effect unless they had been confirmed under the provisions of the Air Force Act, and that in such a case Section 120 of the Air Force Act (which is in pari materia with Section 121 of the Army Act) barred a second trial by a court-martial. In Major Manohar Lal v. Union of India [(1971) 1 SLR 717 (P&H)] the petitioner was tried by a general court-martial which found him not guilty. The General Officer Commanding-in-Chief held the proceedings to be null and void on the ground that one of the members of the court-martial was of the rank of Captain and was thus lower in rank to the petitioner and no certificate had been recorded by the officer convening the court-martial as required by Rule 40(2) of the Army Rules, that an officer of the rank of the petitioner was not available and he, therefore, ordered a retrial. A learned Single Judge of the Punjab and Haryana High Court held that under the Army Act and the Army Rules, a Captain was eligible to be made a member of a general court-martial and the mere fact that the convening officer did not append the certificate that an officer of the rank of the petitioner was not available did not make the constitution of the general court-martial invalid or the finding given by it to be without jurisdiction or the proceedings of the trial before it to be null and void. He further held that as the petitioner had no say in the constitution of the general court-martial and had suffered the trial before it, the proceedings could not have been declared null and void on a highly technical ground. The learned Single Judge, therefore, came to the conclusion that the second trial of the petitioner was without jurisdiction and the sentence imposed upon

him in consequence of that trial was wholly illegal. In J.C. 13018 Subedar Surat Singh v. Chief Engineer Projects (Beacon) C/o 56 A.P.O. [AIR 1970 J&K 179 : 1970 Cri LJ 1610] a Division Bench of the Jammu and Kashmir High Court held that though every finding of a general court-martial, whether of acquittal or of guilt, cannot be regarded as valid unless it is confirmed by the competent authority, the Legislature could not have reasonably intended that an officer convening a general court-martial can go on dissolving such court-martials and reconstituting them ad infinitum until he obtained a verdict or a finding of his own liking. The Division Bench further held that such a position would not only be against public policy and the ancient maxim "nemo debet bis vexari pro una et eadem causa" (no man ought to be twice vexed for one and the same cause) but would also reduce the provisions of the Army Act to a mockery and give an appearance of mala fides. According to the Jammu and Kashmir High Court, in such a case the proper course for the confirming authority would be to refer the case to its superior authority for confirmation.

15. This being the position, what then is the course open to the Central Government or the Chief of the Army Staff when the finding of a court-martial even on revision is perverse or against the weight of evidence on record? The High Court in its judgment under appeal has also held that in such a case a fresh trial by another court-martial is not permissible. The crucial question, therefore, is whether the Central Government or the Chief of the Army Staff can have resort to Rule 14 of the Army Rules. Though it is open to the Central Government or the Chief of the Army Staff to have recourse to that rule in the first instance without directing trial by a court-martial of the concerned officer, there is no provision in the Army Act or in Rule 14 or any of the other rules of the Army Rules which prohibits the

Central Government or the Chief of the Army Staff from resorting in such a case to Rule 14. Can it, however, be said that in such a case a trial by a court-martial is inexpedient or impracticable? The Shorter Oxford English Dictionary, Third Edition, defines the word "inexpedient" as meaning "not expedient; disadvantageous in the circumstances, unadvisable, impolitic". The same dictionary defines "expedient" inter alia as meaning "advantageous; fit, proper, or suitable to the circumstances of the case". Webster's Third New International Dictionary also defines the term "expedient" inter alia as meaning "characterized by suitability, practicality, and efficiency in achieving a particular end: fit, proper, or advantageous under the circumstances".

16, In the present case, the Chief of the Army Staff had, on the one hand, the finding of a general court-martial which had not been confirmed and the Chief of the Army was of the opinion that the further retention of the respondent in the service was undesirable and, on the other hand, there were the above three High Court decisions and the point was not concluded by a definitive pronouncement of this Court. In such circumstances, to order a fresh trial by a court-martial could certainly be said to be both inexpedient and impracticable and the only expedient and practicable course, therefore, open to the Chief of the Army Staff would be to take action against the respondent under Rule 14, which he did. The action of the Army Staff in issuing the impugned notice, was, therefore, neither without jurisdiction nor unwarranted in law."

(Emphasis supplied)

35. The same question was again considered by the Supreme Court in ***Harjeet Singh Sandhu*** (supra), wherein it was held as under:

"35. As the term used in sub-rule (2) of Rule 14 is "impracticable" and not "not reasonably practicable", there is more an element of subjectivity sought to be introduced by this provision in the process of arriving at the satisfaction, obviously because the rule is dealing with the satisfaction arrived at by the Central Government or the Chief of the Army Staff, in the matter of disciplinary action on account of misconduct committed by an officer of the Army which decision would have been arrived at by taking into consideration the then prevailing fact situation warranting such decision after considering the reports on the officer's misconduct.

36. The learned Additional Solicitor-General cited a few examples wherein trial by Court Martial may be rendered "impracticable", to wit:

> *(i) a misconduct amounting to an offence having been rendered not triable by Court Martial by expiration of the period of limitation prescribed by Section 122;*
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> *(ii) a Court Martial having been dissolved after its commencement on account of the number of officers required by the Act to validly constitute a Court Martial being reduced below the minimum or any other exigency contemplated by Section 117 occurring and the Court Martial cannot be convened to commence afresh on account of bar of limitation under Section 122 having come into play;*
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> *(iii) the Central Government, the Chief of the Army Staff or any prescribed officer having annulled the proceedings of any Court Martial on the ground that they are illegal or unjust within the meaning of Section 165 of the Act and by that time the bar of limitation under Section 122 having come into play;*
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> *(iv) <u>any finding or sentence of a Court Martial requiring confirmation having</u>*

been ordered to be revised by order of the confirming authority but in spite of such revision having not been confirmed once again and a subsequent revision of finding or sentence being not contemplated by the provisions of the Act; rather a revision once only having been provided by Section 160;

(v) a person subject to the provisions of the Army Act having secured a stay order from a court of law on commencement of Court Martial and by the time the stay order is vacated by the court of law the bar of limitation provided by Section 122 coming into play.

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39. In Illustrations (iii) and (iv) also, in our opinion, the exercise of power under Section 19 read with Rule 14 cannot be excluded. The finding and sentence of the Court Martial are ineffective unless confirmed by the confirming authority. The Act does not contemplate that the finding and sentence of a Court Martial must necessarily be confirmed merely because they have been returned for the second time. Section 165 vests power in the Central Government, the Chief of the Army Staff and any prescribed officer, as the case may be, to annul the proceedings of any Court Martial if the same are found to be illegal or unjust. The delinquent officer cannot be allowed to escape the consequences of his misconduct solely because court-martial proceedings have been adjudged illegal or unjust for the second time. The power under Section 19 read with Rule 14 shall be available to be exercised in such a case though in an individual case the exercise of power may be vitiated as an abuse of power. The option to have a delinquent officer being tried by a Court Martial having been so exercised and finding as to guilt and sentence having been returned for or against the delinquent officer by the Court Martial for the second time, on just and legal trial, ordinarily

such finding and sentence should be acceptable so as to be confirmed. Power to annul the proceedings cannot be exercised repeatedly on the sole ground that the finding or the sentence does not meet the expectation of the confirming authority. Refusal to confirm is a power to be exercised, like all other powers to take administrative decision, reasonably and fairly and not by whim, caprice or obstinacy. Exercising power under Section 19 read with Rule 14 consequent upon court-martial proceedings being annulled for the second time because of having been found to be illegal or unjust, the exercise would not suffer from lack of jurisdiction though it may be vitiated on the ground of "inexpediency" within the meaning of Rule 14(2) or on the ground of abuse of power or colourable exercise of power in a given case.

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42. Exercise of power under Section 19 read with Rule 14 is open to judicial review on well-settled parameters of administrative law governing judicial review of administrative action such as when the exercise of power is shown to have been vitiated by mala fides or is found to be based wholly on extraneous and/or irrelevant grounds or is found to be a clear case of colourable exercise of/or abuse of power or what is sometimes called fraud on power i.e. where the power is exercised for achieving an oblique end. The truth or correctness or the adequacy of the material available before the authority exercising the power cannot be revalued or weighed by the court while exercising power of judicial review. Even if some of the material, on which the action is taken is found to be irrelevant, the court would still not interfere so long as there is some relevant material available on which the action can be sustained. The court would presume the validity of the exercise of power but shall not hesitate to interfere if the invalidity or unconstitutionality is clearly demonstrated. If two views are possible, the

court shall not interfere by substituting its own satisfaction or opinion for the satisfaction or opinion of the authority exercising the power."

(Emphasis supplied)

36. From the above, it is apparent that in ***Harjeet Singh Sandhu*** (supra), one of the illustrations/situations that was considered by the Supreme Court was that if any finding or sentence of a Court Martial requiring confirmation had been ordered to be revised by an order of the Confirming Authority, but despite such revision was not confirmed once again, and as a subsequent revision of the finding or sentence was not contemplated by the provisions of the Army Act, then whether recourse to Rule 14 of the Army Rules could be taken to terminate the personnel. The Supreme Court answered the same in the positive by holding that the exercise of power cannot be excluded in such a situation. It was held that such power shall be available to be exercised in such a case, though in an individual case, the exercise of such power may be vitiated as an abuse of power. The Supreme Court further held that ordinarily, the finding of the Court Martial should be acceptable so as to be confirmed and the power conferred under Section 19 of the Army Act, read with Rule 14 of the Army Rules, cannot be exercised solely on the ground that the finding or sentence awarded by the Court Martial does not meet the expectations of the Confirming Authority, however, this would not debar the exercise of power under Section 19 of the Army Act, read with Rule 14 of the Army Rules to terminate the services.

37. Following the above, this Court in ***S.S. Shekhavat*** (supra) summarised the law/principles applicable to a similar situation as is before us in the present petition, as under:

> *"18. We have already taken note of the judgments delivered in the case of Maj. Dharam Pal Kukrety and Harjeet Singh Sandhu (Supra). We can now sum up the circumstances and the manner along with the curbs which are there in taking administrative action upon the respondents, in cases where it is decided not to confirm the findings of the Court Martial even on the 2nd occasion but to take administrative action. They can be as follows:*
>
> *a) It is not mandatory for the Confirming Authority to confirm the findings of a Court Martial given on the 2nd occasion after remand of the case in exercise of the power exercised by the said authority under Section 160 of the Army Act.*
> *b) Unless the findings of the Court Martial holding an accused "guilty" or "not guilt" are confirmed, the accused can neither be treated as "guilty" nor can be treated as "not guilty" for the offences alleged against him despite his trial.*
> *c) There is no provision under the Army Act or the rules which empowers holding of a fresh Court Martial when the finding of a Court Martial is not confirmed even for the 2nd time.*
> *d) In an appropriate case, where holding of fresh court martial is impracticable or inexpedient; the Chief of Army Staff is authorized to take action against the incumbent under Section 19 of the Act r/w Rule 14 of the Army Rules which empowers the Chief of Army Staff even to terminate the service of the incumbent, of course subject to the order passed by the Central Government in this regard.*

e) However, the existence of this power may also include passing of a lesser sentence other than termination of services including award of censure in view of their policy decision (supra) in cases covered by para 5 and 6 thereof.

f) The term used in Sub-rule 2 of Rule 14 which says that a fresh Court Martial is impracticable or not reasonably practicable has an element of subjectivity in arriving at the satisfaction by the Chief of Army Staff/ GOC in C and/or the Central Government as the case may be, regarding the misconduct committed by an accused and needs to be reached after taking into consideration the then prevailing facts and other circumstances as also the reports of court martial and the misconduct of the accused.

g) As held in Sandhu's case, situation may arise where it may be impracticable or inexpedient to have a fresh Court Martial within the time prescribed under Section 122 of the Army Act, yet there may be cases where the power vested in the Army Authorities under Section 19 read with Rule 14 cannot be excluded even if the report of the GCM is not confirmed for the 2nd time.

h) Exercise of such power may be vitiated as an abuse of power in a given case. Such power cannot be exercised only because the findings or the sentence does not meet the expectations of the Confirming Authority. The power available to the Authorities under Section 19 read with Rule 14 stands vitiated if it is shown to be a colorable exercise of power or an abuse of power which at times has been described in administrative law as fraud of power, or is only an attempt to enforce will of superior authorities without justification.

i) A misconduct committed number of years ago, for which action was not taken promptly within the prescribed period of limitation may also be a factor to vitiate such proceedings. However that would all depend on the facts and circumstances of the case and

no hard and fast rules can be laid down in this behalf.

j) Exercise of such power is always subject to judicial review in accordance with the well settled principles of law governing review of Administrative action. As and when it is shown that the exercise of power is vitiated by mala fide and found to be based upon irrelevant consideration, or is found to be a clear case of externs or what is sometimes called fraud of power it may be set aside.

k) Normally the discretions so exercised must be presumed to have been rightly exercised and is not to be readily interfered with, even if two views are possible.

l) In terms of policy letter No. 32908/AG/DV-I power of awarding of censure is very much available to the Chief of Army Staff/GCC in appropriate case where it is not practicable or expedient to hold a fresh Court Martial; provided the offence alleged to have been committed are offences involving moral turpitude, fraud or dishonesty and must be tried by Court Martial or by a Civil Court.

m) Award of Censure has also been described as Custom of Service even though such award is not part of statute but the award of the same would also be guided by the Policy framed in this regard and is subject to para 5 and 6 of the same."

38. In the said case, this Court having emphasized that the exercise of power under Section 19 of the Army Act, read with Rule 14 of the Army Rules, only because the findings or the sentence does not meet the expectations of the Confirming Authority, would be an abuse of the power, in the facts of that case, found that there were sufficient reasons for the Competent Authority to have exercised its powers under Section 19 of the Army Act read with Rule 14 of the Army Rules.

39. In ***Yacub Kispotta & Ors.*** (supra), this Court was, in fact, considering a case under the BSF Act and the Rules. The Court, taking note of the principles laid down by the Supreme Court, *inter alia*, in ***Harjeet Singh Sandhu*** (supra), found that in the facts of that case, the opinion reached by the Competent Authority holding the inquiry into the allegations against the delinquent personnel was not reasonably practicable, but was flawed. The Court was of the opinion that the resort to Rule 20 had been taken since there was no incriminating material against the personnel and perhaps because of the fear that the role of more senior officials would have come under scrutiny, given the extent of unpreparedness, possibly lack of intelligence, and the shortfall in ammunitions issued to the section.

40. In ***Sri. Amiya Ghosh*** (supra), the High Court of Calcutta, again following the principles of law laid down in ***Major Dharam Pal Kukrety*** (supra) and ***Harjeet Singh Sandhu*** (supra), found that the Confirming Authority did not give reasons for disagreeing with the findings of the GSFC and even the Show Cause Notice that was issued to the petitioner therein did not intelligibly and sufficiently define the material against the petitioner therein. The Court also considered the allegations against the petitioner therein and found the order passed by the Confirming Authority to not be worthy of acceptance.

41. From the above judgments, therefore, it is apparent that where the Conforming Authority does not agree with the findings or sentence awarded by the GSFC, even on revision, it may decide not to confirm the same. In such an event, and in a given set of facts, the Competent Authority may exercise the power vested in it under Section 19 of the

Army Act read with Rule 14 of the Army Rules (herein Section 10 of the BSF Act, read with Rule 20(4)(a) of the BSF Rules) to still dismiss the Officer. In such an event, the trial of the officer by a Security Force Court would be inexpedient or impracticable. Though the exercise of this power will not be questioned on lack of jurisdiction, the same will, however, will be tested on the general principles of administrative law.

42. Applying the above principles of law to the facts of the present case, it is first to be noted that the allegation against the petitioner is that he was found in possession of Rs.2,54,000/- while being at the border outpost (BOP). It is the case of the respondents that the said money was ill-gotten by giving patronage to smuggling activities. On the other hand, it is the case of the petitioner that the petitioner had taken the said money from one of his family friends (**Sh. Madan Lal Grover-DW-2**), and his brother-in-law (**Sh. Sudhir Sandhu-DW-1)** for the treatment of his father, who was admitted in a hospital in Delhi. The petitioner further claimed that as his father recovered and the said money was not required to be used, by mistake he carried it with himself to his place of posting because he was in a hurry to rejoin as he had already exceeded his period of leave by two days.

43. The GSFC, in its findings dated 16.01.2019, dismissed the First Charge against the petitioner of being in possession of the above amount, which was disproportionate to his known source of income, by primarily finding fault in the search and seizure procedure followed by the BOO. The GSFC also found favour in the petitioner's case that the money was borrowed by him from DW-1 and DW-2.

44. The Confirming Authority, however, *vide* Order dated 10.09.2019, remitted the findings to the GSFC for a revision, observing as under:

> *"3. While in no way intending to interfere with the discretion of the Court to arrive at any Finding on the Charge preferred against the Accused, I, as Confirming Officer wish the Court to take into account the following aspects while reconsidering its earlier Finding of 'Not Guilty' on the First Charge in respect of the Accused named above:*
>
> *(a) The **First Charge** against the Accused is U/S 46 of the BSF Act, 1968 for committing a Civil Offence that is to say Criminal Misconduct for being a public servant found in possession of pecuniary resources disproportionate to his known sources of income for which he cannot satisfactorily account for an offence specified in Sec 13 (1) (e) of the Prevention of Corruption Act,1988 punishable under Section 13 (2) of the said Act, as mentioned in the Charge Sheet **(Annexure-'B-2')**.*
>
> *b) Notwithstanding the procedural irregularities indicated by the defence in conduct of search, the evidence available on record shows that the Accused was found to be in possession of Rs.2,54,000/-(Two Lac and Fifty Four Thousand only) when a Surprise Check was carried out by the Board Of Officers at BOP Srimantapur on 27.02.2016. The Accused also admitted that said amount was found in his possession when checked by BOO. It is further in evidence that the Accused during the search confessed before PO of BOO, Sh. Ganesh Kumar, 2IC (Now Comdt) (PW-15) that the said amount was received from the smugglers and he also paid Rs.1,46,000/- and Rs. 90,000/- on two occasions to Unit 2IC, Sh.Kuldeep Singh. The*

accused has not rebutted the same during cross-examination of PW-15 & PW-9. The Court has totally discarded evidence led by the Prosecution and believed the version of the Accused that he had borrowed the said amount from his family friend Sh.Madan Lal Grover (DW-2) when his father was admitted in hospital at Panipat (Haryana) and, by mistake, he brought that amount with him on expiry of leave and kept in his suitcase at BOP Srimantapur.

c) The Court further believed that when surprise check was carried out, the Accused voluntarily disclosed possession of said amount to PW-15. However, as per the statement of Sh.Vikas Singh, DC (PW-7), Sh.Narender Pal Singh, DC (PW-9) and Sh.Ganesh Kumar, Comdt (PW-15), the Accused disclosed having possession of said amount only after the search in respect of other BOP personnel had been completed and when search of his room was about to be conducted and it became inevitable to hide such facts. As such, the Court has not appropriately appreciated the evidence available on record.

d) The Court believed the version of the Accused that he had borrowed said amount from his family friend, Sh.Madan Lal Grover (DW-2) when his father was admitted in hospital at Panipat (Haryana). However, in ***Exhibit-'DD4'*** *prepared immediately after the search, it was written by the Accused himself stating that "****mere paas se 2,54,000 Rs mile****" and further in* ***Exhibit-'GG'****, prepared by the Accused on reaching Sector HQ, Gokul Nagar mentioning that "****money recovered from me is my own money which I have brought from my home****". The fact that the amount was borrowed from anyone for the treatment of his father does not find mention in both* ***Exhibit-'DD4' & Exhibit-'GG'*** *which casts doubt on the version of the defence.*

e) The Court believed the version of the Accused that the said amount was brought by him from his home and, in his unsworn statement, the accused stated that he informed PW-15 i.e. Sh.Ganesh Kumar,2IC (now Comdt) that the seized amount was borrowed one whereas neither any prosecution witness heard such statement being made by him nor he specified as to who all were present when he made such statement to PW-15. Surprisingly, the Court did not appreciate that keeping with himself such huge amount in cash till his next leave which was not certain considering the commitments of the Force and not sending said amount through Bank or depositing the same in any of his three Bank Accounts appear unconvincing being not a natural course of action expected from the Accused particularly when he was Coy Comdr of a Coy deployed in very sensitive and smuggling prone area and SOP prohibited possession of cash amount beyond certain limit. As such the Court has erred in appreciating these issues properly.

f) It further appear unconvincing that the Accused borrowed Rs.2,00,000/- in cash from DW-2 for treatment of his father when he had more than said amount available in his Bank Accounts and he had ample opportunity to withdraw the same from his Bank Account during his leave. Further, it is also unconvincing that the Accused borrowed money from DW-2 for treatment of his father on 29.01.2016, but he did not care to return said amount to DW-2, despite the fact that he had sufficient money in his Bank Account and moreover, the said amount was no longer required for treatment of his father as his condition had improved. Furthermore, as per the statement of Sh.Madan Lal Grover (DW-2), when he called the Accused on 15th march 2016 and told him that his Cheque was lying with him and that whether he should send it

back to his home to which the accused inter alia replied that he should encash the Cheque, However, this testimony of DW-2 appears an after thought to cover up the source of unaccounted amount recovered from the possession of the Accused, In normal course, if the amount is a borrowed one, it would not be kept with him by the Accused till his next leave and would be paid back at once.

g) The Court believed the version of the Accused that the amount in question was borrowed by Accused from his family friend, Sh.Madan Lal Grover (DW-2) due to critical health condition of his father on 29/01/2016 when his father was admitted in hospital at Panipat (Haryana). However, no medical document has been produced by the Accused to the effect that on 29.01.2016, the health condition of his father was so serious requiring his shifting to Delhi for treatment.

h) Further, on 29/01/2016, the Accused stated to have borrowed Rs.2 Lakhs in cash from his family friend Sh.Madan Lal Grover (DW-2) and later, on 07.02.2016, his brother-in-law Sh.Sudhir Sandhu (DW-1) also gave him Rs.55,000/- in the hospital saying that the Accused may require the said amount. Surprisingly, the Accused never informed DW-1 that he had already borrowed RS.2 lakhs from DW-2 and the condition of his father had also improved and he was not required to be shifted to Delhi as advised by the treating doctors and thus, the money was not required, but the Accused quietly accepted the money from DW-1 which shows his malafide to cover up the matter by adducing such evidence. Besides that as per the evidence of Sh.Sudhir Sandhu (DW-1), he daily visited his father-in-law in Hospital while going and coming back from his Office and he had also stayed during night in Hospital. However, it is surprising that the accused has not asked any monetary help from the DW-1, who is his close relative

instead he borrowed money from DW-2, his family friend. Further, the Accused never disclosed the facts regarding borrowing of said amount from DW-1 & DW-2 to the authorities though mandated by Conduct Rules. The Court has not considered these evidence on record appropriately

i) The Court further believed the statement of CT Sashi Kant Yadav (DW-3) who stated that when he went to the room of the Accused at the BOP for obtaining his signature on Handing/Taking Over vouchers, he saw few bundles of Currency Notes lying on his bed. Surprisingly, the Accused never examined DW-3 at any stage of Disciplinary Proceedings i.e. COI & ROE prior to his deposition before the GSFC and no satisfactory explanation for said omission has been offered by him before the Court.

j) The Court also believed the statement of SI (Now Insp) Alok Kumar (DW-4) who stated that on 13th Feb' 2016 around 1600 hrs when he met the Accused outside the office of Adjutant at Bn HQ and enquired about the health of his father, the Accused received a call on his Mobile phone and from his Tele-Conversation, DW-4 could make out that the Accused was talking with his family and appeared to be jittery. DW-4 overheard the Accused saying "mere pass yeh galti se aagaya hai jab hum aayeinge to letehuye aayeinge". Further when the Accused had hung up the call and on being asked by DW-4, he told DW-4 that "dhai lakh rupaye, cash thi, wo galti se mere sath aagaya, usike bare me pooch rahi thi". DW-4 further admitted that he had deposed above facts for the first time before the Court as he was asked by the Accused not to disclose such facts before anybody as it may be required subsequently. The explanation for not disclosing above material facts at any stage of Disciplinary Proceeding prior to Trial of the Accused by GSFC does not appear

convincing in the overall facts and circumstance of the case. The Accused was afforded full opportunity to defend him at all stages of Disc Proceedings including making a Statement, Cross Examination of witnesses and calling of witnesses in his defence if he so desired. However, he never led any such evidence to rebut the allegations of serious magnitude involving 'Moral Turpitude' raised against him. Had he done so, there was possibility of dismissal of charge after Record of Evidence (ROE) itself under Rule 51-A of SSF Rules, 1969 whereas non- utilization of such opportunity by the accused remains unexplained raising doubt in his version of incident.

*k) As per the statement of HC/Min Bibil V D (**PW-16**), the accused submitted a Bill for re-imbursement of expenses incurred in treatment of his father as per which the period of treatment was mentioned as 23.01.2016 to 10.02.2016 and the total amount claimed by the accused was Rs.2,50,350/-. Further, in his unsworn statement before the Court, the Accused admitted that his father was discharged from Hospital on 10.02.2016. Further, as per the statement of DW-1, he had not made any payment of the Hospital Bills from the date of admission till discharge and he did not know who paid the Hospital Bills before discharge of his father-in-law, As such, the Court has failed to appreciate that during the relevant time, an amount of Rs.2,50,350/- had been paid for the Medical Expenses of father of the Accused, who is dependent on the Accused obviously on his discharge from Hospital whereas the Accused has not produced any evidence to prove the source of said amount.*

l) The evidence further shows inconsistencies in defence version of story about the source of amount recovered from the possession of accused. The Court has believed

the Prosecution version that the salary of accused was his only known Source of Income. Further, evidence shows that during the relevant period, the same was being transferred to his MOD balance and he has not made any substantial withdrawals from any of his three Bank Accounts during the relevant period so as to meet the expense for treatment of his father. Further, the Accused was not having any other receipt of Movable or Immovable Property during the relevant period, as reflected in Movable/Immovable property Returns filed by him during relevant period. Further, his parents are shown to have been dependent upon him and evidence shows that he has claimed Re-imbursement of Rs.2,50,350/-(Rupees Two Lakh Fifty Thousand Three Hundred and Fifty only) stated to have been spent on the treatment of his father. However, no evidence has been led by the accused as to how the Medical Expenses on treatment of his father were met when, on the one hand, he led evidence in his defence that the amount of Rs.2,55,000/- was taken by him from DW-1 & DW-2 for treatment of his father and, on the other hand, evidence shows that he claimed Medical Re-imbursement of Rs.2,50,350/- (Rupees Two Lakh Fifty Thousand Three Hundred and Fifty only) spent on the treatment of his father. The Court has not considered the above inconsistencies in the version of the defence while deliberating on Finding on this charge.

m) That the Court has not appreciated that, Sh.Madan Lal Grover (DW-2) could not satisfactorily explain the procedure of maintaining Accounts for such transactions though the Business Firm which is a joint Firm in the name of his brothers and he incurred liability for such transactions of personal nature to other partners which has not been satisfactorily explained by him casting doubt in defence story."

45. The GSFC re-considered the matter, however, reiterated its findings of 'Not Guilty' on the First Charge. It again believed the case of the petitioner that Rs.2,00,000/- had been taken by him from Mr.Madan Lal Grover **(DW-2)**, a family friend of the petitioner, while Rs. 50,000/- had been taken by him from his brother-in-law **(DW-1)**. The GSFC further held that the petitioner had himself handed over the above amount to the BOO, and the assertion of the BOO that the same had been recovered was not believed. The GSFC, however, did not take an adverse or favourable view as to who paid the bills for the treatment of the petitioner's father.

46. The findings of the GSFC on revision were not confirmed by the Confirming Authority, by way of a cryptic order, which is reproduced hereinunder:

> *"I do not confirm the finding of the Court on the first Charge being against the weight of the evidence. However, I confirm the Finding and Sentence of the Court in respect of Second Charge against the accused."*

47. Though the above is a cryptic order, the Show Cause Notice that was issued to the petitioner asking him to show cause as to why his services be not terminated, gave detailed reasons for not confirming the findings of the GSFC, as under:

> *"5. Whereas, the DG BSF having examined the report of Confirming Authority as well as the GSFC trial proceedings, particularly the evidence adduced before the GSFC on First Charge against you, found that though there is sufficient evidence on record against you on the First Charge, but the Court found you 'Not*

Guilty' of the said Charge against the weight of the evidence on record. As per the evidence on record, on 27th Feb 2016, a Board of Officers (BOO) detailed by the DIG, SHQ BSF Gokulnagar, carried out a surprise checking of BSF personnel deployed at BOP Srimantapur. Before starting the search of all the troops of said BOP, the troops were made to Fall In and Sh.Ganesh Kumar, the then 2IC/OPS Sector BSF Gokulnagar (PW-15), the PO of BOO, asked the troops to declare if anyone had any amount in his possession, but, none of them, including you declared anything. Though, being the Coy Comdr, you ought to have come up at your own to disclose the huge amount kept by you in your possession, but you remained silent during the ongoing search of all Coy Personnel despite being asked by the members of BOO and disclosed of having in possession of money only when the BOO was about to search your belongings. Accordingly, the BOO carried out the search of your belongings and recovered a sum of Rs.2,54,000 (Two Lakh Fifty Four Thousand Rupees only) from your possession. Further, it is seen that your salary was your only known source of income during the relevant period and the Annual Returns filed by you also revealed that you were not having any other income during the relevant period from any immovable property. Further, you had three different bank accounts, that is salary PMSP account with SBI (Exhibit-Y3) and other two savings accounts with PNB (Exhibit- X3) & ICICI (Exhibit-AA2 & AA3) and the bank statements of these accounts show that you have not made any withdrawal of money from your PNB and ICICI bank accounts. Further, total withdrawal during the period from Jul' 2015 to 27th Feb' 2016 from your SBI account, comes around Rs.60,000/-(Rupees Sixty Thousand only) whereas, during the period between 12th Dec' 2015 to 27th Feb' 2016 i.e. the period when you were deployed at BOP Srimantapur, cash withdrawal of just

Rs.12,000/- (Rupees Twelve Thousand only) had been made by you from your SBI Salary Account (Exhibit-Y3). Further as per Exhibit AA2'; in your ICICI Bank Account, there is only one transaction of withdrawal made 011 26/10/2015 for an amount Rs.280/-only. Though you stated that you received agricultural Income during the relevant period, but no documentary evidence was produced by you in support of your claim. Evidence on record reveals that your parents were also dependent upon you. Having received no such amount from any of the known sources of your income, the amount of Rs.2.54 Lac recovered· from your possession was found to be disproportionate to your known sources of income. However, in order to justify the disproportionate amount recovered from your possession by BOO, you put forth your defence through your witnesses that you had borrowed Rupees Two lakhs in cash from your family friend, Sh.Madan Lal Grover (DW-2) and Rs.55,000/- (Fifty Five Thousand rupees only) from your brother-in-law, Sh.Sudhir Sandhu (DW-l) for medical treatment of your father. However, the statements of these witnesses do not inspire confidence as DW-2 stated to have made the entries of having given Rs. Two Lakh to accused in Day Book (Exhibit-RR, RR1 & RR2) and in Ledger (Exhibit-SS, SS1), which do not bear the name of the firm of DW-2 or himself and further DW-2 has business of iron merchant and the entries of lending/borrowing could not have been validly made in his business documents. Moreover, DW-2 could not produce the Audit Report or ITRs of his Firm DW-2 also intentionally concealed some documents which he had produced during his statement at the Record of Evidence (ROE). Further, the encashment of cheque of Rs. Two lakh by DW-2 on 16th March' 2016, which he stated to have taken from you in lieu of cash, appears to be an afterthought as the recovery of huge amount had by then been effected on

27th Feb' 2016 from you. It is also seen that immediately after recovery of amount from your possession, you had given it in writing (Exhibit-DD4) that, 'mere paas se 2,54,000 Rs mile' and making no mention therein that the said amount was brought by you from your home. However, later after reaching SHQ BSF Gokulnagar, you improved upon the same, stating that "the money recovered from you was your own money which you had brought from your home" (Exhibit- 'GG'), which is afterthought and moreover, even therein you made no mention of this amount being a borrowed amount from DW-l & DW-2. You also examined CT/GD Shashi Kant Yadav (DW-3) & Inspr Alok Kumar Ravikar (DW-4) to impress upon the Court that they were in knowledge of the fact that you had brought Rs. 2.50 lakh from home. DW-3 stated that he had seen the bundles of cash on your bed at BOP Srimantapur on 14/02/2016. But both these witnesses are found to be unreliable having made improvements in their statements on material facts against their statements in SCOI/ROE. DW-3 admitted that he did not disclose the above facts during investigation at your directions to conceal the same which appears to be flimsy. The statement of DW-4 is marred with number of inconsistencies as despite being aware of the impending case against you, he did not disclose the so called facts before any other staff officer of his Battalion but stated to have made a mention of sharing the above said facts only with Sh.Satyapal Singh, DC (PW-14) who has denied the same. Furthermore, the Medical Re-Imbursement Bills to the tune of Rs.2,50,350/- were claimed by you for the medical expenses incurred upon the treatment of your father Sh.Raghubir Singh from 23/01/2016 to 10/02/2016 who was dependent upon you. You projected that you borrowed Rs.2,55,000/- from DW-1 & DW-2 for the treatment of your father but you did not submit any evidence as to how the medical expenses

on the treatment of your father were incurred when you brought the amount borrowed for this purpose with you at BOP Srimantapur on arrival from Leave and no amount has been shown to have been withdrawn by you from your bank accounts. Besides this, Sh.Ganesh Kumar (PW-15) has deposed that you made extra-judicial confession before him immediately after the recovery of Rs.2,54,000/- (Rupees Two Lakh Fifty Four Thousand only) from your possession at BOP Srimantapur wherein you had voluntarily confessed your guilt before him mentioning that .the amount recovered was ill-gotten money obtained from smuggling. Further, your confession regarding the illegal source of money to PW-15 was also corroborated by Sh.Narendra Pal Singh (PW-9). PW-15 & PW-9 are neutral persons, having no previous enmity towards you and their presence at the place of incident was merely co-incidental due to their detailment in BOO by DIG, SHQ, Gokulnagar."

48. The petitioner submitted a detailed representation against the Show Cause Notice, which has been rejected by the Competent Authority, resulting in the passing of the dismissal order. The Competent Authority has disbelieved the assertion of the petitioner that the amount recovered from him had been taken by him from DW-1 and DW-2. It has observed that the petitioner had not disclosed possession of such large amount of cash with him to any Competent Authority prior to the surprise check by the BOO. In the surprise check, cash amounts were recovered not only from the petitioner but also from other personnel as well. The BOO had been ordered specifically because there was an information of the personnel at Srimantapur, giving patronage to smuggling activity by accepting

bribes. The Competent Authority also found that, though the father of the petitioner had been admitted to a hospital, and that the petitioner had made a claim for reimbursement of the amount spent on his father's treatment, however, the petitioner did not produce any evidence as to how the medical expenses on the treatment of his father were met by him. The Competent Authority also observed that the petitioner confessed to the possession of the above amount only when he found that there was no escape from the recovery of the same.

49. As is noted hereinabove, this Court, in exercise of its powers of judicial review cannot act as an Appellate Authority to the view confirmed by the Competent Authority; it is only where the exercise of power is vitiated by *mala fide*, or is found to be based upon irrelevant consideration, or is found to be a clear case of extraneous circumstances being taken into account, or is otherwise found to be arbitrary, or as colourable exercise of power, that the Court may interfere. In the present case, the petitioner has been unable to meet the said test.

50. In view of the above, we find no merit in the present petition. The same is accordingly, dismissed.

NAVIN CHAWLA, J

SHALINDER KAUR, J

JANUARY 15, 2025/Arya/sg/SJ

Click here to check corrigendum, if any