

(2002) 09 DEL CK 0149
In the Delhi High Court
Case No : CWP No. 6931 of 2001

Amar Singh Bhati

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-09-2002

Acts Referred:

Border Security Force Act, 1968 — Section 13(1), 46
Constitution of India, 1950 — Article 226

Citation : (2004) 112 DLT 301 : (2005) 2 SLJ 172

Hon'ble Judges : S.B. Sinha, C.J;A.K. Sikri, J

Bench : Division Bench

Advocate : Anil Gautam, for the Appellant; K.K. Sud, ASG and Rekha Palli, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sikri, J.—The petitioner is an Ex-Assistant Commandant who was serving with Border Security Force (BSF). He had joined the BSF as a Constable in the year 1966 and, after getting few promotions during his service career, had risen to the rank of Assistant Commandant in the year 1993. Giving an example of exemplary service he claims that on 20.9.1993 while serving in Kashmir Valley he killed four militants in an encounter and in the process he himself sustained five bullet injuries and a major bomb splinter in his belly which were extracted by a major operation. During his service career, he further claims, he had earned about 20-22 cash awards, good entries by various superior officers because of his meritorious and unblemished record of his services.

2. However, according to the petitioner, he was implicated in a false case at the instance of Shri S.K. Ghosh, Junior Staff Officer (JSO) (General) and was tried by General Security Force Court (GSFC) w.e.f. 21.9.2000 to 23.10.2000 on a charge-sheet u/s 46 of the BSF Act read with Section 13(1)(e) of the Prevention of Corruption Act. The allegation against him was that he was found in possession of Rs. 24,000/- at BOP "Cede" on 21.8.1996 which allegedly was

disproportionate to the known source of income from the petitioner. He was convicted of the aforesaid charge on 23.10.2000 and was sentenced to suffer rigorous imprisonment for one year, dismissal from service and fine to the tune of Rs. 5,000/-. The petitioner discloses the circumstances which led to framing of aforesaid charge and his trial by GSFC in his petition in detail. His version is in the following terms.

3. In July 1996 the petitioner was posted in 41 Bn BSF and the company of the petitioner was stationed at BOP Shikarpur. On 29.7.96 the company of the petitioner went to Rajapur training camp for collective training. The company personnel received their pay for the month of July 96 on 2nd or 3rd August, 1996. On 7th August, 96 the commandant of the unit directed that the company of the petitioner shall proceed to BOP Gede and the move was to commence on 10.8.96. It was directed that the company personnel shall move with light bedding and shall leave their boxes, suitcases and other heavy luggage at Rajapur training camp itself and the guard of one NCO and 3 Constables. The petitioner passed such instructions to the coy personnel on 7.8.96 through the CHM (Coy Havaldar Major) and also passed instructions that since boxes and suitcases of Jawans were not being carried, if any person wanted to deposit his money with the coy Comdr (petitioner) for safe custody, he could do so. That between 8.8.96 to 10.8.96, 8 coy personnel deposited the money of their pay and allowances with the petitioner i.e.. HC Pritam Singh (PW 6) deposited Rs. 2,000/- (Rs. two thousand only), Ct. Raghubir Singh (PW 13) deposited Rs. 4,000/- (Rs. four thousand only), Naik P.N. Singh (PW7) deposited Rs. 5,000/- (Rs. five thousand only), Naik Asheshwar Ram (PW 8) deposited Rs. 2,000/- (Rs. two thousand only), Ct. BSK Nair (PW 12) deposited Rs. 4,000/- (Rs. four thousand only), Ct. Paramjit Chand (PW 14) deposited Rs. 3,800/- (Rs. three thousand eight hundred only), Ct. Anil Kumar (PW 10) deposited Rs. 1,700/- (Rs. one thousand seven hundred only) and Ct. Sushil Kumar (PW 11) deposited Rs. 1,500/- (Rs. one thousand five hundred only). Thus a total of Rs. 24,000/- (Rs. Twenty Four thousand only) was deposited by the Coy personnel with the petitioner for which the entries were made in the private fund cash book and were signed by the petitioner as well as the employees depositing the money. That on 21.8.1996 Shri S.K. Ghosh (PW 1), Junior Staff Officer (General) from the intelligence branch of Frontier Headquarter, BSF Calcutta came to BOP "Gede" and carried out the search of personal belongings of all the BOP personnel and seized the money of their pay and allowances found from their possession. After carrying out the search of all the personnel the JSO(G) and his team went to the hut of the petitioner to carry out his search. The petitioner on being asked voluntarily handed over Rs. 30,700/- (Rs. thirty thousand seven hundred only) to the JSO(G) which he possessed and told him that Rs. 24,000/- (Rs. twenty four thousand only) were of the Jawans as aforesaid and Rs. 6,700/- (Rs. six thousand Seven hundred only) were his own. The petitioner also offered to show the applications of the 8 personnel and the private fund cash book. However, the JSO(G) refused to see the same and seized the money i.e..

30,700/- (Rs. thirty thousand seven hundred only) handed over by the petitioner. That on 28.8.1996, the JSO(G) submitted his detail report to the higher Headquarter stating that during his raid at the BOP "Gede" he had seized about Rs. 1,08,000/- from BOP personnel including that of Rs. 30,700/- recovered from the petitioner. The JSO(G) alleged in his report that as per his information the amount recovered from the BOP personnel including the petitioner was received by them from the smugglers. It may however be most pertinent to mention here that there was not even a whisper in the Detail Report of JSO(G) that the petitioner had made any confession/admission before him.

4. A Record of Evidence was prepared against the petitioner without complying with the provision of BSF Rules 45 and 48. The petitioner gave his statement that out of the money handed over by him to the JSO(G) Rs. 6,700/- belonged to him whereas Rs. 24,000/- belonged to the 8 personnel who had deposited the same with him for safe custody. All the 8 personnel as mentioned aforesaid were examined at the ROE as prosecution witnesses and they deposed that they had in fact deposited their money with the petitioner between 8th August to 10th August, 96 which totalled Rs. 24,000/.

5. At this stage it would be appropriate to have a bird's eye view of the GSFC proceedings. The petitioner has annexed the entire proceedings along with his writ petition, contents thereof would reveal that 16 prosecution witnesses were examined. The proceedings started on 21.9.2000 when the order convening the Court, the charge-sheet, ROE and additional ROE were led before the Court.

6. Shri Gyaneshwar Singh was the Prosecutor and Shri O.P. Rana was the Defending Officer with Shri Jitender Marria as the defense Counsel. As per the charge-sheet u/s 46 of the BSF Act, the petitioner was charged as under:

BSF Act Section 46

"Committing a civil offence, that is to say criminal misconduct, for having been as public servant, in possession of pecuniary resources disproportionate to his known sources of income for which he cannot satisfactorily account for an offence specified in Section 13(1)(e) of the Prevention of Corruption Act, 1988, punishable u/s 13(2) of the said Act.

In that he, at BOP Gede, on 21 August, 96" was found in possession of Rs. 24,000/- (Rs. twenty four thousand only) an amount disproportionate to his known sources of income, which he could not satisfactorily account for".

7. Thereafter all the prosecution witnesses were examined and cross-examined by the defense Counsel at length on various dates and the deposition of these witnesses is annexed. After the examination of 16 prosecution witnesses the petitioner was asked as to whether he wanted to produce any witnesses in his defense to which he replied in the affirmative. He stated that he wanted to produce witness to character as well as to facts. He further stated that he wanted to give his own statement without being affirmed and he required time to

prepare his written statement and, Therefore, he would be giving his statement on the next date. His request was agreed and the Court Martial proceedings were adjourned. On the next date i.e.. 19.10.2000 the petitioner handed his written address which was read and marked as Ex. DD. Thereafter, certain questions were asked by the Court which were replied to by him. After his statement was over the petitioner stated that he neither wanted to produce any witness nor any witness to the character, The Court was adjourned to 23.10.2000 for the purpose of closing address by prosecution as well as defense. On 23.10.2000 the Prosecutor submitted a typed closing address which was read and marked as Ex. EE. Likewise defense also submitted typed closing address. This was also read and marked as Ex. FF. Thereafter, the Court was closed for consideration of finding. The proceedings then record the findings holding the petitioner guilty of the charge and these findings were announced in the open Court. It would be apposite to reproduce the proceedings of 23.10.2000 on this aspect:

"At 0830 hrs on 23rd Oct, 2000, the Court reassemble, pursuant to the adjournment, present the same members and Law Officer as on 19th Oct, 2000.

Exhibit "EE"

The Prosecutor submits a typed closing address which is received, read, marked Exhibit "EE" signed by the Law Officer and attached to the proceedings.

Exhibit "FF"

The defense Counsel submits a typed closing address which is received, read, marked Exhibit "FF" signed by the Law Officer and attached to the proceedings.

Exhibit "GG"

The Law Officer hands in a typed summing up which is received, read, marked Exhibit "GG" signed by the Presiding Officer and attached to the proceedings.

Finding

The Court Closed

The Court is closed for the consideration of the findings.

Finding

The Court find that the accused, IRLA No. 49416 Shri Amar Singh Bhati, Asstt. Comdt. of 41 BN BSF is "GUILTY" of the charge.

Announcement of Finding

The Court being re-opened, the accused is again brought before it. The finding is read in the open Court and is announced as being subject to confirmation "

8. Thereafter proceedings on conviction started. One Gursharan Singh, Head Constable was examined at this stage who produced past record of the petitioner and proved the same which was marked as Ex. HH. The petitioner declined to

cross-examine him but submitted that before his promotion to the rank of Assistant Commandant he had earned 20 good entries in service record. After becoming Assistant Commandant he had been awarded with two Commendation Cards by the IG, BSF Baramulla and IG, BSF Punjab respectively. After that the petitioner was asked as to whether he wish to address the Court in mitigation of sentence to which he replied by stating I have rendered more than 37 years of service in BSF and RAC I have not earned any bad entry during my entire service and I am due for superannuation after about 15 months. As such the Court may take a lenient view in awarding the punishment.

9. After this ritual the Court was closed for consideration of sentence and punishment subject to confirmation was passed. It may be stated that although the Court recommended for mercy under BSF Rule 103 the Director General, BSF as Confirming Officer while considering the punishment and sentence of the Court did not find any ground to grant mercy as recommended. The proceedings from the stage of pronouncing the sentence to confirmation by the Director General are recorded in the following manner:

Sentence

"The Court sentence the accused IRLA No. 49416 Asstt Comdt Shri Amar Singh Bhati of 41 BN BSF:

(i) One year rigorous imprisonment

and

(ii) To be fined Rs. 5,000/- (Rs. five thousand only)

and

(iii) To be dismissed from service

Recommendation for mercy under BSF Rule 103

The Court unanimously makes recommendation to mercy that the sentence of the accused be reduced to forfeit 3 years of service for the purpose of pension, for the following reasons:

(a) That the accused has rendered more than 37 years of service.

(b) That the accused has got unblemished service record, and

(c) That the accused is due for superannuation after about 15 months.

Announcement of sentence and recommendations to mercy.

The Court being re-opened, the accused is brought before it. The sentence and the recommendation to mercy and reasons for such recommendation are announced in the open Court.

The sentence is announced as being subject to confirmation.

Signed at Rear Hqr 41:BN BSF, Faridkot this the 23rd day of October, 2000.

Sd/- 23.10.2000 Sd/- 23.10.2000 Law Officer Presiding Officer

(S.K. Mishra) (Satwant Singh) Dy. Comdt (Law) Commandant HQ DG BSF. 200 BN BSF I withhold confirmation and transmit the proceedings to the Director General, BSF.

Place: Jalandhar Cantt.

Dated: 4.12.2000

Sd/-

(A.S. Aulakh) IPS

I.G. BSF PUNJAB

CONFIRMING OFFICER

I confirm the finding and sentence of the Court. I do not find any ground to grant mercy as recommended by the Court. I direct that the sentence of rigorous imprisonment shall be carried out by confinement of the accused in civil prison".

10. There was a purpose in stating the manner in which the aforesaid proceedings were recorded. Two aspects would clearly emerge there from which this Court wants to emphasise:

(a) The prosecution had produced 16 witnesses who were cross-examined at length. Thereafter the petitioner gave his defense statement in writing which was also taken on record. Both the parties submitted their closing addresses i.e.. the written arguments. These contained their respective versions and detailed analysis of the evidence in the manner prosecution and defense wanted the material on record to be read and the prosecution was to show that the evidence on record established the guilt. On the other hand defense tried to point out the loopholes in the prosecution story and analysing the evidence in the way he wanted to be read, he admitted to show that he was innocent. This exercise conducted elaborately. However, it is not reflected in the findings recorded by the GSFC. After the conclusion of the arguments the Court was closed for consideration of the findings and came out with one word finding i.e.. "guilty". What were the reasons to arrive at this finding are not stated. Likewise on sentence the same is the case while pronouncing the sentence. What were the reasons which prevailed in the mind of the Court in awarding the particular sentence are not discernible from record.

(b) Furthermore, even when the Court unanimously recommended mercy and was of the opinion that sentence be reduced to forfeit of three years of service for the purpose of pension and gave reasons why the mercy was required while confirming the order of confirmation of finding and sentence by the Director General he has simply stated that he did not find any ground to grant mercy, obviously he did not deal with what were the reasons given by the Court in

support of its recommendation for mercy. What prevailed in the mind of Director General, Therefore, is not placed on record.

11. To put it simply, the findings of GSFC on the guilt and the sentence pronounced by it are without any reasons. Likewise the confirmation of finding of sentence as well as the conclusion of the Director General that it was not a case of mercy is without any reasons i.e.. neither of the two authorities have given any reasons in support thereof.

12. Whether these authorities were bound to give reasons is the question, which is a very important question of law, that arises for consideration.

13. We have discussed this issue in great detail in the CWP No. 5261/2001 entitled=102 (2003) DLT 415, Nirmal Lakra v. Union of India and Ors., decided today itself. Therefore, it is not necessary to repeat here what is observed in great detail by one of us (S.B. Sinha, CJ) in that judgment, wherein it is pointed out that in a matter like this it is almost imperative for the authorities to give reasons in support of their findings. The only sheet anchor for the respondent is the Supreme Court judgment in the case of S.N. Mukherjee Vs. Union of India, . In that case the question, arose as to whether the Confirming Authority, while confirming the order of sentence of the Court-martial, is required to assign any reason. Two questions, which were framed, are:

"(i) Is there any general principle of law which requires an administrative authority to record the reasons for its decision; and

(ii) If so, (sic) the said principle apply to an order confirming the findings and sentence of a Court-Martial and post confirmation proceedings under the Act?"

S.C. Agrawal, J., speaking for the Bench, held:

"34. The decision of this Court referred to above indicate that the regard to the requirement to record reasons the approach of this Court is more in line with that of the American Courts. An important consideration which has weighed with the Court for holding that an administrative authority exercising quasi-judicial functions must record the reasons for its decision, is that such a decision is subject to the appellate jurisdiction of this Court under Article 136 of the Constitution as well as the supervisory jurisdiction of the High Courts under Article 227 of the Constitution and that the reasons, if recorded, would enable this Court or the High Courts to effectively exercise the appellate or supervisory power. But this is not the sole consideration. The other considerations which have also weighed with the Court in taking this view are that the requirement of recording reasons would, (i) guarantee consideration by the authority; (ii) introduce clarity in the decisions; and (iii) minimize chances of arbitrariness in decisions-making. In this regard a distinction has been drawn between ordinary Courts of Law and Tribunals and authorities exercising judicial functions on the ground that a Judge is trained to look at things objectively uninfluenced by considerations of policy or expediency whereas an executive officer generally

looks at things from the stand point of policy and expediency.

35. Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decisions are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decisions-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, Therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review it may, however, be added that it is not required that the reasons should be as elaborate as in the decision of the Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge."

14. Therein, the Apex Court observed that the under-lined object of the rules of natural justice is to prevent miscarriage of justice and secure fair play and action. It was held that the requirement to record reasons can be regarded as one of the principles of natural justice, which covered exercise of powers by administrative authorities. It was observed:

"39. For the reasons aforesaid, it must be concluded except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision."

15. Thus, the Apex Court, in that case was concerned with the question as to whether reasons are required to be assigned while disposing of post-confirmation petition u/s 164(4) of the Act.

16. Judicial review, it is trite, is a basic feature of the Constitution of India. All statutes must, thus, be construed in such a manner so that right of judicial review of a citizen may be effectively safeguarded.

17. In *L. Chandra Kumar Vs. Union of India and others*, , it has been held that the Parliament cannot insert a provision in the Constitution, which would take away the right of judicial review of the High Court under Article 226 of the

Constitution of India. Under the Constitution of India, thus, a right of judicial review is considered to be the basic structure of the Constitution, which, thus, can in no situation be altered or taken away.

18. Can it be permitted to be done indirectly in terms of the provisions of statute only on the ground of the unavailability of the protection in this behalf under Article 33 of the Constitution is the question.

19. Regarding Vires: Although the question of virus of Rule 99 (1) of the BSF Rules framed under the BSF was raised as being vocative of Article 14 of the Constitution of India is challenged, it is not necessary to go into that question in the present case.

20. We may point out at this stage that even as per in the case of S.N. Mukherjee (supra), the Court had ultimately gone into the exercise of going into the records to find out as to whether the charge against the charge-sheeted officer had been established. Therefore, it would be appropriate to undertake that exercise more particularly when the conclusions of the GSFC as well as the Director General do not reveal anything. However, before we embark on this inquiry, it would be relevant to point out that the petitioner had submitted post confirmation petition dated 23rd January, 2001. He had also filed a statutory petition under Rule 117 of the Border Security Force Rules. However the Central Government did not take any decision thereon with the result sentence of the petitioner started. When legal notice dated 2nd May, 2001 also did not evoke any response, the petitioner filed CWP No. 4590/ 2001 in this Court which was disposed of vide order dated 1st August, 2001 whereby the Competent Authority was directed to dispose of the petition of the petitioner u/s 117(2) of the BSF Act within two weeks. Thereafter, order dated 20th August, 2001 was passed rejecting the statutory petition/appeal of the petitioner as devoid of any merit. This of course is a reasoned order wherein the Competent Authority has stated in brief the case and also noted the factual and legal issues raised by the petitioner in this petition. After taking note of the respective cases, the operative portion of this order reads thus:

"After careful scrutiny of the proceedings of GSFC, the evidence on record can be divided in two categories; first of prosecution witness Nos. 1, 2, 3 & 4 and second of PWs 6 to 8 and 10 to 14. As per PWs 1 to 4, recovery of Rs. 30,700/- was made from the petitioner by PW 1 in presence of PWs 2, 3 & 4. The petitioner admitted to have received the amount from smugglers and stated before Shri Ghosh, AC (PW 1) who was holding the charge of JSO (G) at that time, that "YEH TO AAP KO PATA HAI, YEH PAISA SMUGGLER KA HAI... MAIN TO FAS GAYA, HAM TO MAR GAYA, HAM KO BACHAIYE.....CASE KO BOP PAR HI SETTLE KAR LO. CASE KO AAGE MAT BADHAIYE. HAMARE NAUKARI CHALA JAYEGA. HAME JAIL BHI SAKTA HAI. COMPANY OUR UNIT KA BADNAMI HOGA. JINTA PAISA RAID KE DAURAN MILA HAI, USKO AAP LE LIJIYE AUR USKE ALAVA JITNA PAISA, EK LAKH, DO LAKH AAP KO AUR AAP KI PARTY KO CHAHIYE, HAM DENE KO TAIYAR HAIN.... GHOSH SAHEB, YEH AAP KYA KAR RAHEIN HAIN.

CASE KO AAGE MAT BADHAIYE. YEH AAP SE MERA REQUEST HAI. COMPANY KA AADMI BHI AAP SE REQUEST KAR RAHA HAI. AAP CASE KO AAGE MAT BADHIYE. CASE KO YAHIN PAR RAFA DAFA KAY DEEJIYE. AAP KO KYA CHAHIYE AAP BATAIYE." PWs2, 3 & 4 have also corroborated the statement of PW1. The evidence further shows that when PW1 asked the petitioner to produce any document or register in support of the said amount, he could not do so and in turn admitted that the said amount was received from the smugglers. On the other hand, PWs 6 to 8 and 10 to 14 have stated that the said amount belonged to them and was given to the petitioner for safe custody as they had no other arrangement at the post for its safe custody. The record of the said amount was also maintained in a private cashbook signed by above PWs and the petitioner. While going through the evidence, two vital aspects have appeared which need to be considered carefully. First aspect is that PWs 1, 2, 3 & 4 have not narrated in their statements in ROE and Addl ROE about the detailed confessional statement made by the petitioner to PW 1. Thus, it is a vital improvement in their statements. The second aspect is that the amount, if deposited with the petitioner by the Coy personnel for safe custody with its proper record in a private cashbook, why it was not brought to the notice of PW 1 and why necessary documents were not shown to him. The Court, evidently did not believe the defense version and considered it to be an afterthought.

Notwithstanding some minor discrepancies/contradictions in the evidence, it is established that recovery of amount was made from the petitioner and he could not satisfactorily account for the same nor produced any document in support thereof to PW 1. The Court has full discretion to accept or reject any part of evidence. Even the most truthful witnesses have tendency to exaggerate and improve upon their statements but that may not be the sufficient ground to disbelieve or discard the statements of PWs 1, 2, 3 & 4. There is no evidence to suggest that they had any enmity or ill will against the petitioner. The circumstances under which the amount was recovered from the petitioner and his immediate reaction thereafter renders the defense version unbelievable. It appears that the cashbook and other documents were prepared subsequently to cover up the case. The petitioner has not produced any witness in his defense except submitting a hand written statement which forms part of GSFC proceedings as Exhibit "DD". In his written statement, he has denied the charge and stated that the amount recovered from him belonged to the Coy personnel which was given to him for safe custody. As per him, he had narrated this fact to Shri S.K. Ghosh, JSO(G) soon after the recovery. However, PW 1, Shri S.K. Ghosh has categorically refuted this fact.

In view of all above facts and circumstances, the General Security Force Court (GSFC) has rightly found the petitioner "Guilty" of the charge and there has been no legal or procedural flaw in the proceedings. The same have been conducted in accordance with the provisions of the BSF Act/Rules. As regard punishment, the Court has considered his past record of service before deciding the quantum of punishment. In fact, criminal misconduct, for having been, a public servant, is

considered to be a very grave offence which carries punishment up to life imprisonment. In the instant case, the petitioner has been awarded only 1 year's RT besides fine of Rs. 5,000/- and to be dismissed from service. The BSF is an "Armed Force of the Union" raised for inspiring the security of the borders of the country, to discharge this onerous responsibility, a very high standard of discipline is required among all members of the Force. The offence u/s 46 of the BSF Act, for committing a civil offence, that is to say, criminal misconduct, for having been, as 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 Section 13(1)(e) of the Prevention of Corruption Act, 1988 punishable u/s 13(2) of the said Act, is viewed with due seriousness in the BSF. If the members of the Force are allowed to indulge in such offences, the discipline, which is the backbone of this elite force, will be completely jeopardised.

In view of the above discussion and considering all aspects of the case minutely and carefully the Central Government has rejected the statutory petition/appeal of the petitioner being devoid of merit."

21. We may state at this stage that we are conscious of our limited power of judicial review of such orders. We are not sitting as Appellate Authority over the findings of the GSFC or the Central Government deciding post confirmation petition/appeal. However, as already pointed out above, even while doing this judicial review if the reasons are available in the findings recorded by the GSFC, the task of the Court is easier. The Court is required, in exercise of its power under Article 226 of the Constitution of India, to examine as to whether in the decision making process, principles of natural justice were complied with and further the order is not irrational, unreasonable or arbitrary and that it is not perverse, However, when there are no reasons in support of the finding recorded by the GSFC, it is difficult, nay, impossible, to undertake this exercise simply by looking into the order. One will have to look into the records for this purpose. It may be mentioned here that the case of the petitioner was, which was vehemently argued by learned Counsel for the petitioner, that the prosecution case was full of contradictions and in fact the material which was inadmissible in law was taken into consideration and if that material is excluded, it was a case of "no evidence". In nutshell, the argument of the learned Counsel for the petitioner was:

(a) The prosecution had led two sets of stories which exposed the falsity of the prosecution evidence.

(b) It is established judicial dicta that when prosecution pleads two sets of stories the one favored the accused should be believed.

(c) The entire case as per prosecution evidence, was based on some extra judicial confession and statement of four interesting witnesses who stated that the petitioner had made extra judicial confession. The alleged extra judicial

confession could not be relied upon and once that was taken away, it was a case of "no evidence" inasmuch as there was no other evidence to support or prove the prosecution case.

(d) The charge itself was bad in law which mentioned that the petitioner was found in possession of Rs. 24,000/- an amount disproportionate to his known sources of income which he could not satisfactorily account for. His submission was that with the service record of almost 37 years it could be said that the possession of Rs. 24,000/- treated as disproportionate to his known sources of income. It was his submission that it was for the prosecution to prove the case which it could not and burden of proof could not be on the. petitioner.

(e) The GSFC trial was vitiated by unfair partial and one-sided role played by Law Officer during the trial and the summing up of the case. He submitted that Law Officer was supposed to give impartial advice to the members of the Court on the legal issues and he could not influence the GSFC by analysing the evidence on way or the other and in fact the manner in which he projected the case clearly showed his biased approach whereby he tried to influence the GSFC. We may state that the examination of the aforesaid issues would clearly fall within the ambit and scope of judicial review and we examined the record from this angle only. Such an exercise would be permissible in view of the law laid down in the judgments of the Supreme Court in the cases of: (1) Yoginath D. Bagde Vs. State of Maharashtra and Another, Union of India Vs. K.A. Kittu And Others, ; (3) Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others, ; (4) Union of India (UOI) Vs. H.C. Goel, Bhagat Ram Vs. State of Himachal Pradesh and Others, ; and (6) Suraj Mal Vs. State (Delhi Administration),

22. Elaborating his submissions on the aforesaid issues, the learned Counsel for the petitioner submitted that the prosecution has led two sets of stories. The first set comprises of 4 witnesses of raiding party, namely, Sh. S.K. Ghosh (PW 1), Subedar B.K. Singh (PW2), HCN.K. Banerjee (PW3) and HC P.K. Chetri (PW4) and the evidence of these witnesses discloses that during the said raid Rs. 30,700/- were recovered from the petitioner and the petitioner made detailed extra judicial confessions before Sh. S.K. Ghosh in the presence of three others to the effect that the said money was received by him from the smugglers and the money was hidden in the cot. The statement of Sh. Ghosh is contained in the GSFC proceedings in which he has made material improvements, additions and alteration as against his previous statement in the Record of Evidence (ROE) which is a part of the writ petition.

23. It is also stated that Subedar B.K. Singh (PW 2), HC N.K. Banerjee (PW 3) and HC P.K. Chetri (PW 4) have made tutored statements which match line by line and even word by word with the statement of Sh. S.K. Ghosh. However, all these three witnesses have made glaring contradictions and additions as against their previous statements in Additional Record of Evidence (AROE). In his statement HC P.K. Chetri has clearly stated that the petitioner did not make any

confession before the G team, i.e., the raiding party. There is no mention of the alleged conversation between the petitioner and Sh. Ghosh in his statement in AROE. Subedar B.K. Singh has categorically stated that the petitioner did not confess to have received money from the smugglers. In answer to question No, 12 he has stated that no eye-witness other than G team was present when the petitioner handed over the money. In the statement of HC N.K. Banerjee also there is no mention of the alleged conversion between the petitioner and Shri Ghosh in AROE. In the cross-examination before GSFC no satisfactory has been given by the aforesaid three witnesses for the gross additions, alterations and contradictions in their testimonies, before GSFC as against their previous statements. Sh. S.K. Ghosh in his first statement after the incident i.e. the detail report does not make any mention about the alleged confession and instead ask for a reward. It was also submitted that the evidence of alleged extra judicial confession through such witnesses cannot be acted / relied upon as it is a weak piece of evidence and requires corroboration even if it is coming from truthful, reliable and unimpeachable witnesses and the witnesses are unreliable, untruthful and interested witnesses belonging to the raiding party who were interested in conviction of the petitioner. The raid was also conducted in violation of Section 110, CrP.C. as no independent witness was associated and the troops of the company of the petitioner were not even allowed to be present when the petitioner was searched.

24. He further submitted that out of Rs. 30,700/- handed over by the petitioner to Sh. S.K. Ghosh, Rs. 6,700/- were of the petitioner and Rs. 24,000/- were of 8 personnel of his company who had deposited the same with him for safe custody as the troops had moved to a tented location with light bedding etc. and iron kit boxes were not carried. He also offered to show the documents relating to the amount of company personnel to Shri Ghosh but he refused to see the same. He made an attempt to point out that second set of prosecution witness in fact corroborated the aforesaid defense case. In order to show this he referred to 8 prosecution witnesses, namely, HC Pritam Singh (PW 6), HC P.N. Singh (PW 7), HC Asheshor Ram (PW 8), Constable Anil Kumar (PW 10), Constable Sushil Kumar (PW 11), L/NK B.S.K. Nair (PW 12), Constable Raghubir Singh (PW 13), Constable Paramjeet Chand (PW 14). The aforesaid witnesses also submitted their applications to the petitioner for depositing their money. They were examined in ROE and AROE and from the beginning they have made consistent, reliable and unimpeachable statements. The prosecution did not pray for declaring these witnesses as hostile. Even the law officer subjected these 8 witnesses to detailed questioning. Even Constable Umesh Kumar (PW 15) the company clerk had deposed in favor of the petitioner that the personnel had deposited money with the Company Commander. HC Barun Mukharjee (PW 17) in AROE has not only stated that no confession was made by the petitioner before Sh. S.K. Ghosh but in cross-examination he has categorically stated that the petitioner told Sh. S.K. Ghosh that the amount belonged to the company personnel and he had proper documents for the same but Sh. Ghosh refused to

see the same. It is also submitted that prosecution witnesses gave statements favoring the defense version were in service of BSF and it cannot be said that they would make false statements in favor of the petitioner risking their jobs. There is no evidence in the GSFC that the petitioner has received money from the smugglers. However, only during the year 1996 prior to the raid the petitioner had received about Rs. 50,000/- as pay and allowances and Rs. 75,000/- from his GPF withdrawal totaling Rs. 1,25,000/- and how an meagre amount of Rs. 24,000/- could be said to be disproportionate.

25. On the other hand, submission of Mr. K.K. Sud, learned Additional Solicitor General appearing for the respondents was that when the money was recovered from the petitioner in a surprise search, the petitioner was duly heard by the DIG Rule 13(b) of the BSF Rules, 1969 on 30th August, 2001 where after ROE and AROE was ordered as per rules. After consideration of the entire evidence a decision was taken to hold GSFC wherein the petitioner was charged u/s 146 of the BSF Act for committing an offence u/s 113(c) of the Prevention of the Corruption Act. The petitioner was found guilty of GSFC after due consideration of the entire evidence which was led before the Court in terms of the BSF Act. It was also submitted that in terms of the BSF Act, the Law Officer had done the summing up of the case in a very fair and balanced manner and the Court has announced its findings and sentence in open Court as required under Rules 98 and 99 of the BSF Act. It was further submitted that though the findings of the Court do not contain any reason, their decision is a well considered decision and keeping in view the scheme of the BSF Act, the need to give reasons has been specifically excluded by the provisions of the Act, specifically by use of the word "mouth" in Rule 98. Reliance was placed on the judgment of the Supreme Court in the case of S.N. Mukherjee (supra). It was also submitted that the findings of the Court (where the standard of proof is different from that in a Criminal Court) are based on evidence and the misconduct of the petitioner, a public servant is a very grave offence and the petitioner deserves no sympathy. He referred to the judgment of the Supreme Court in the case of High Court of Judicature at Bombay through its High Court of Judicature at Bombay through its Registrar Vs. Udaysingh Nimbalkar and Others, , in support of his submission. The learned Additional Solicitor General also submitted that extra-judicial confession could be taken into consideration apart there from there was circumstantial evidence against the petitioner in the form of mode of recovery. This Court, his submission was, would not interfere with such proceedings as it was not the Court of Appeal.

26. The respondents could not deny the submission of the petitioner that prosecution had led two sets of stories. Whereas PW 1 to PW 4 had given one version about the money in possession of the petitioner and recovery thereof, other 8 prosecution witnesses had stated that they had deposited their money with the petitioner accounted for the entire amount of Rs. 24,000/- which was found in possession of the petitioner. These 8 prosecution witnesses, thus, have supported what the defense of the petitioner was. There is a recovery of money from the petitioner is not in dispute. Whereas the prosecution case is that this

money which was found from the petitioner he could not account for, the petitioner's defense was that it is the sepoys working under him who had kept money with him. Those who had kept the money with him confirmed this fact in their depositions. Even the applications to this effect submitted by them are proved on record. This version of the defense, corroborated by prosecutions on evidence, is not taken into consideration at all. There appears to be some merit in the contention of the petitioner to the effect that if there were two versions which could be culled out from the prosecutions' own witnesses, one which favor the accused should have been believed at least by giving him benefit of doubt. In so far as alleged extra judicial confession of the petitioner is concerned, the prosecution witnesses are themselves at variance. Mr. P.K. Chetri (PW 4) has stated in his AROE that the petitioner did not make any confession before the G team, i.e., a raiding party. Even Subedar B.K. Singh (PW 2) stated that the petitioner did not confess to have received money from the smugglers. Likewise, HC N.K. Banerjee (PW 3) in AROE made a categorical statement that no confession was made by the petitioner. Thus, these three witnesses, namely, PWs 2, 3 & 4 have at some places stated that the petitioner made confessional statements whereas at other places they have stated that he did not do so. Since the findings of the GSFC are without any reasons, it is not known as to how the GSFC viewed the same. Although a detailed pre-confirmation petition was made, even the Director General in his order while accepting the findings of the GSFC does not record any reasons. As far as order of the Central Government at the post confirmation stage is concerned, no doubt some reasons are given, the aforesaid discrepancies are brushed aside by mentioning the same to be some minor discrepancies/contradictions in the evidence. The mind of the Central Government on this aspect can be gauged from the aforesaid observations:

"Notwithstanding some minor discrepancies/contradictions in the evidence, it is established that recovery of amount was made from the petitioner and he could not satisfactorily account for the same nor produced any document in respect thereof to PW 1."

27. This observation is dearly against the record inasmuch as 8 PWs had themselves stated that they had deposited their money with the petitioner which totalled up to Rs. 24,000/-. In fact the order of the Central Government would reveal that although when noticing the contentions of the petitioner to the effect that 8 prosecution witnesses supported the version of the petitioner while giving its reasons, this aspect has not been dealt with by the Central Government. In view of serious contradictions in the statements of PW 2 to PW 4 in respect of extra judicial confession which cannot be dubbed as minor as they have changed their version at different places, the so-called extra judicial confession should not have been made the basis of proving the case against the petitioner. The order of the Central Government is solely based on the alleged extra judicial confession. Once it is held that the said confession cannot be acted upon, there is no other reason given in the order of Central Government on which the finding can be sustained.

28. It may be relevant to state at this stage that in his summing up the Law Officer has not played an impartial role which was expected of him. There are tacit hints in his address which point out that the prosecution version to the effect that the petitioner had made confessional statement should be believed. His role was confined to explaining the legal position on this aspect. However, it is clear that he exceeded his brief by analysing the evidence and giving hints to the GSFC to believe that it was a confession of the nature which could be relied upon. This would Therefore, clearly be a case proving the bias of 1 officer and such a trial has to be considered tainted and vitiated in law. Refer: (1) R.S. Bhagat Vs. Union of India, (3) Union India and Anr. v. Charanjeet Singh Gill and Ors. reported in 2000 (5) SCC 752; (4) Ranjit Thakur Vs. Union of India (UOI) and Others, ; and Sansar Chandav . Union of India, reported in 1980 (3) SC 124.

29. It may also be stated at this stage that on the recovery of money from the petitioner, charge against him is found in possession of assets disproportionate to his known sources of income. Such a charge for which particular reference is made u/s 13(1)(e) of the Prevention of the Corruption Act has to be examined keeping in view the ingredients of this provision. Refer: (1) State of Maharashtra Vs. Wasudeo Ramchandra Kaidalwar, (2) Shri Rabindra Kumar Dey Vs. State of Orissa, ; (3). M. Krishna Reddy v. Deputy Superintendent of Police, Hyderabad; reported in AIR 1993 SC 31; and (4) Major S.K. KALE Vs. State of Maharashtra, .

30. Having regard to the law on this subject as culled out in the aforesaid judgments, it could not be said that a sum of Rs. 24,000/- found from the petitioner would be an amount which could be said to be disproportionate to his known sources of income. In fact the charge itself was not framed properly.

31. The result of the aforesaid discussion would be that the GSFC proceedings and resulted punishment based thereon are clearly unsustainable. We, Therefore, have no option but to quash the same. This writ petition is accordingly allowed.

32. The petitioner shall also be entitled to cost quantified at Rs. 5,000/-.