
(2014) 05 DEL CK 0061
In the Delhi High Court
Case No : W.P. (C) 6856/2000

Dinesh Kumar

APPELLANT

Vs

UOI and Another

RESPONDENT

Date of Decision : 15-05-2014

Acts Referred:

Border Security Force Act, 1968 — Section 57, 57, 58, 59, 60
Constitution of India, 1950 — Article 226

Citation : (2014) 05 DEL CK 0061

Hon'ble Judges : Pradeep Nandrajog, J; Jayant Nath, J

Bench : Division Bench

Advocate : N.L. Bareja and Mr. S.R. Sharma, Advocate for the Appellant; Richa Kapoor and Ms. Saahila Lamba, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The petitioner was enrolled as a Constable in BSF in the year 1987.

2. It is the claim of the respondents/department that the petitioner had committed series of misconducts between the period from December 06, 1999 to May 10, 2000, the details of which are as under:-

3. In essence, the case of the department against the petitioner was that the petitioner remained absent from duty without leave for a period of 99 days from December 06, 1999 to March 13, 2000; on May 03, 2000 in a state of intoxication the petitioner used criminal force against HC Bhanwar Lal and HC Hawa Singh and as a result whereof he was placed under closed arrest; while under close arrest the petitioner refused to eat food on several occasions despite orders passed by his superior officers to said effect thereby creating nuisance and publicly refusing to accept the orders passed by the superior officers.

4. On three occasions, the Commandant heard the petitioner under Rule 45 of the BSF Rules, 1969 in respect of misconducts mentioned above. The details of

the hearing of the charge(s) are tabulated as under:-

5. Before proceeding further, we note that after conducting the first hearing of the charge against the petitioner on May 05, 2000 the Commandant had passed an order directing that the petitioner be placed under close arrest, which order reads as under:-

No. 87006956 Const. Dinesh Kumar-"F" Coy of this unit had used criminal force to No. 86132975 HC Bhanwar Lal-"HQ" Coy and No. 75001282 HC Hawa Singh-"SP" Coy on 03.05.2000 at 2055 hrs.

2. Earlier he used criminal force to NO. 71165018 HC Attar Singh for which disciplinary action is pending.

3. Above Const is a person of violent disposition and deliberately undermines discipline by using criminal force to under officer and other ranks.

4. In the interest of discipline and justice No. 87006956 Const Dinesh Kumar is placed under close arrest w.e.f. 05.05.2000 at 1430 hrs.

(Emphasis Supplied)

6. It would be apparent that what happened on May 09, 2000 when the petitioner repeatedly refused to eat dinner and the next day i.e. May 10, 2000 refused to eat breakfast is the result of anger vented by the petitioner who was aggrieved by the fact that he was kept in closed arrest.

7. At the first Record of Evidence conducted on May 11, 2000 in respect of allegations of overstaying of leave by the petitioner, the prosecution examined two witnesses viz. ASI/Clerk Mohindra Singh PW-1 and Prem Chander PW-2 who stated facts regarding absence from duty of the petitioner for the period from December 06, 1999 to March 13, 2000. The aforesaid witnesses were not cross-examined by the petitioner. It needs to be noted that the petitioner did not make any statement before the Recording Officer in spite of opportunity given to bring forth his defence.

8. At the second Record of Evidence conducted on May 12, 2000 in respect of allegations of the petitioner having assaulted HC Bhanwar Lal and Hawa Singh, the prosecution examined seven witnesses viz. HC Bhanwar Lal PW-1, HC Hawa Singh PW-2, Const. Jetha Ram PW-3, Dr. S.K. Acharya PW-4, HC Bajrang Singh PW-5, Lance Naik Ajit Singh PW-6 and Const. Prem Chander PW-7.

9. HC Bhanwar Lal PW-1, stated that on May 03, 2000 rum was to be distributed freely to the BSF personnel. After distributing pegs of rum to the personnel by 08.30 P.M. he came to his room on the first floor of Jawans Barrack to eat his dinner. Whereas he was having his dinner on his cot HC Hawa Singh was having dinner on the adjacent cot. After sometime Ct. Rajinder Singh came there and asked HC Hawa Singh to give a bottle of rum for the petitioner whereupon HC Hawa Singh told Ct. Rajinder Singh to ask the bottle from him i.e. HC Bhanwar Lal. Thereafter Ct. Rajinder Singh asked bottle of rum from him whereupon he

told him that he can collect the peg of rum from him after sometime as he is having his dinner. After sometime the petitioner accompanied by Const. Rajinder came there and said that they should be immediately given bottle of rum as they are having a party. He told the petitioner to sit down on the cot and wait for him to finish his dinner. The petitioner did not agree to his request and took his Tiffin box from him. He again requested the petitioner to sit down and let him have his dinner and not to quarrel with him. Immediately thereafter the petitioner caught his collar with one hand and hit him on the left side of his cheek. When he got up from the cot to save himself the petitioner hit him with his leg. He was saved from the petitioner by HC Hawa Singh and Ct. Jetha Ram. Thereafter he went to the SO's mess and reported the matter to Sub Nathu Singh and ASI/RO Sarabjit Singh. Pertinently, the petitioner did not cross-examine said witness.

10. HC Hawa Singh PW-2, stated that on May 03, 2000 at about 08.50 P.M. he, HC Bhanwar Lal and Ct. Jetha Ram were eating dinner on their respective cots in a room on the first floor of Jawans Barrack. At that time the petitioner came to meet HC Bhanwar Lal. The petitioner asked for liquor from HC Bhanwar Lal to which he i.e. HC Bhanwar Lal replied that he will give liquor to him after finishing his dinner. The petitioner again asked for liquor from HC Bhanwar Lal. Thereafter the petitioner picked up Tiffin box of HC Bhanwar Lal and kept it on the wall of barrack. Thereafter the petitioner caught hold of hand of HC Bhanwar Lal; HC Bhanwar Lal got his hand released from the petitioner and both of them started talking. Whereas HC Bhanwar Lal was admonishing the petitioner about his conduct of keeping his Tiffin box on the wall the petitioner was asking for liquor. After sometime the petitioner hit HC Bhanwar Lal with his hand and both the petitioner and HC Bhanwar Lal fell on the ground. He told both petitioner and HC Bhanwar Lal to stop quarreling and stay away from each other. Thereafter he asked the petitioner as to why he was behaving in such an unruly manner upon which the petitioner slapped him. He reported the aforesaid incident of petitioner slapping him to Sub Nathu Singh.

11. Ct. Jetha Ram PW-3, stated that on May 03, 2000 at about 09.00 P.M. Ct. Rajinder Singh came to a room on the first floor of Jawans Barrack to meet HC Bhanwar Lal. Ct. Rajinder Singh told HC Bhanwar Lal that the petitioner has asked for a bottle of rum as a party is going on. HC Bhanwar Lal who was eating dinner at that time replied that he has already deposited the keys of store and that he would give liquor after finishing his dinner. Ct. Rajinder Singh left from there without taking liquor. Thereafter the petitioner came there and asked for liquor from HC Bhanwar Lal. HC Bhanwar Lal gave the same reply to the petitioner as given by him to Ct. Rajinder Singh. The petitioner insisted HC Bhanwar Lal to immediately give him liquor. The petitioner lifted Tiffin box of HC Bhanwar Lal and kept the same on the partition wall of the barrack. Thereafter HC Bhanwar Lal got up from his cot at which time the petitioner caught hold of shoulder flap of HC Bhanwar Lal and both petitioner and HC Bhanwar Lal got embroiled with each other. He intervened and separated petitioner and HC Bhanwar Lal from each other. Thereafter both the petitioner and HC Bhanwar Lal

went downstairs towards ground floor.

12. Dr. S.K. Acharya PW-4, stated that on May 04, 2000 he had examined HC Bhanwar Lal in the MI room. On examination, he found an abrasion inside the mouth of HC Bhanwar Lal. On May 03, 2000 HC Bhanwar Lal had taken medicine from the nursing assistant for pain in his mouth and jaw and bleeding from his mouth.

13. HC Bajrang Singh PW-5, stated that on May 03, 2000 at about 08.45 P.M. he was having his dinner in his room on the first floor of Jawans Barrack when HC Bhanwar Lal came to him and told him that the petitioner had abused and beaten him and informed him that he is going to Sub Nathu Singh to report about the said incident. He put on his uniform and came down to ground floor when he heard the petitioner abusing. When he asked the petitioner the reason for his abusing he i.e. petitioner ran towards him with a stick. Lance Naik Ajit Singh stopped the petitioner.

14. Lance Naik Ajit Singh PW-6, stated that on May 03, 2000 at about 08.00 P.M.-08.15 P.M. he saw the petitioner and HC Bajrang Singh talking loudly to each other in the lobby of ground floor of Jawans Barrack. He told the petitioner to go away from there whereupon the petitioner went from there.

15. Ct. Prem Chander PW-7, stated that on May 03, 2000 he neither witnessed any incident involving the petitioner nor had any discussion/talk with the petitioner. However, Sub Nathu Singh made him write a GD report regarding the incident of petitioner having assaulted HC Bhanwar Lal and HC Hawa Singh and misbehaved with HC Bajrang Singh.

16. The petitioner made a statement before the Recording Officer wherein he stated that on May 03, 2000 at about 08.05 P.M. he went to HC Bhanwar Lal to take his authorized peg of liquor. HC Bhanwar Lal and Ct. Jetha Ram were sitting on the cot of HC Bhanwar Lal and HC Hawa Singh was sitting on an adjacent cot. A Tiffin box and a bottle of rum were kept between aforesaid three persons and all three of them were having glasses in their hands and drinking liquor. When he asked HC Bhanwar Lal to give him his peg of liquor he i.e. HC Bhanwar Lal replied that time for issue of peg of liquor is over and that he would not give the same to him. He twice requested HC Bhanwar Lal to issue him a peg of liquor but HC Bhanwar Lal misbehaved with him. Thereafter HC Bhanwar Lal got up carrying liquor bottle with him and kept the same in almirah. At that time he again requested HC Bhanwar Lal to issue him a peg of liquor whereupon HC Bhanwar Lal started pushing him and told him to get out. When he objected to HC Bhanwar Lal pushing him HC Hawa Singh and Ct. Jetha Singh got up and also started pushing/beating him. The aforesaid three persons i.e. HC Bhanwar Lal, HC Hawa Singh and Ct. Jetha Singh assaulted him. After sometime he heard the voice of HC Hawa Singh to the effect that they should leave him. While leaving him HC Bhanwar Lal snatched his gold chain from his neck and removed a sum of Rs. 500/- from the pocket of his t-shirt and took the same with him.

Thereafter he went to his room in the ground floor. After 4-5 minutes he saw BHM Bajrang Singh in the lobby of ground floor of Jawans Barrack upon which he went to him and narrated the aforesaid incident to him. Then Lance Naik Ajit Singh came there and told him to leave from there whereupon he went to his room. While he was having his dinner Sub Nathu Singh came there and caught hold of his right hand and directed him to immediately come out of barrack. He replied that he would come after finishing his dinner. By the time he finished his dinner Adjutant of Battalion had arrived there. He narrated the entire incident to Adjutant and requested him to get HC Hawa Singh, HC Bhanwar Lal and Ct. Jetha Ram medically examined as they were intoxicated. On May 04, 2000 he lodged a complaint with Police Station Shanti Bazar, Tripura regarding the aforesaid incident.

17. At the Abstract of Evidence conducted on May 12, 2000 in respect of allegations of petitioner refusing to eat food, the prosecution examined eight witnesses viz. HC Mala Ram PW-1, HC Kulbushan Sharma PW-2, SI Mohinder Singh PW-3, HC Manual Haque PW-4, HC Hoshiar Singh PW-5, ASI R.P. Mishra PW-6, Assistant Commandant S.S. Malik PW-7 and Deputy Commandant T.T. Pharka PW-8. The statements of the aforesaid witnesses were to the effect that the petitioner had refused to eat food on various occasions on 9th and 10th May, 2000. (We need not note the statements given by the aforesaid witnesses in detail for the petitioner had admitted having refused to eat food on 9th and 10th May, 2000.)

18. After preparation of Record/Abstract of Evidence, the Commandant ordered that a Summary Security Force Court be convened to try the petitioner. On May 17, 2000 a charge sheet was issued to the petitioner enumerating aforesaid 18 incidents of misconduct committed by him as detailed by us in para 2 above, which actually translate to three incidents: (i) Petitioner overstaying leave by 99 days, (ii) Petitioner assaulting HC Bhanwar Lal and HC Hawa Singh on May 03, 2000, and (iii) Petitioner refusing to take dinner on May 09, 2000 and breakfast the next day morning in spite of being directed to do so by his superior officers.

19. At the trial, the prosecution examined the afore-noted seventeen witnesses who were examined at Record/Abstract of Evidence and the said witnesses deposed in harmony with the statements given by them at the Record/Abstract of Evidence. Additionally, witnesses; HC Bhanwar Lal, HC Hawa Singh, Ct. Jetha Ram and HC Bajrang Singh deposed that the petitioner was drunk and speaking incoherently and his voice was unsteady at the time when he had assaulted HC Bhanwar Lal and HC Hawa Singh.

20. In addition to the witnesses examined at the Record/Abstract of Evidence, the prosecution examined two more witnesses viz. Ct. Rajender Singh and HC Suresh. Ct. Rajender Singh deposed that on May 03, 2000 at about 08.15 P.M. the petitioner gave him Rs. 100/- and directed him to bring a bottle of rum from HC Hawa Singh. He went to HC Hawa Singh who refused to give the bottle of rum to him on the pretext that he had already handed over the charge to HC

Bhanwar Lal. He had not made any request to HC Bhanwar Lal and returned Rs. 100/- to the petitioner. Thereafter he went to his bed. After sometime he heard some voices coming from first floor of the Jawans Barrack whereupon he went there and saw that the petitioner and HC Bhanwar Lal were fighting with each other. Ct. Jetha Ram separated both of them.

21. HC Suresh deposed the facts relating to refusal of the petitioner to eat dinner on 9th May, 2000.

22. The petitioner did not make any statement in his defence.

23. Vide order dated May 23, 2000 the SSFC held the petitioner guilty of all 18 charges framed against him and awarded the sentence of rigorous imprisonment for 11 months and 12 days in civil prison and dismissal from service to the petitioner. In determining the quantum of sentence awarded to the petitioner, the SSFC took into consideration the past punishments awarded to the petitioner in his service career spanning 13 years, the details whereof are as under:-

24. Taking cognizance of the statutory petition filed by the petitioner vide order dated December 02, 2000 the DG BSF set aside petitioner's conviction for the charge of unauthorized absence for 99 days and as a result remitted the unexpired portion of the sentence imposed upon the petitioner. Maintaining the conviction for the other two offences the dismissal was upheld.

25. Aggrieved by the aforesaid, the petitioner has filed the above captioned petition under Article 226 of Constitution of India.

26. In support of the present petition, learned counsel appearing for the petitioner advanced following six submissions:-

A The proceedings of Summary Security Force Court were vitiated by bias for the reason the Presiding Officer of the Court i.e. the Commandant had formed an opinion regarding the guilt of the petitioner before the commencement of the trial. To demonstrate that the Commandant had formed an opinion regarding the guilt of the petitioner before the commencement of trial the counsel highlighted that on May 05, 2002 while ordering that the petitioner be placed under close arrest the Commandant opined that "Const. Dinesh Kumar ... had used criminal force to HC Bhanwar Lal and HC Hawa Singh....Above Const is a person of violent disposition and deliberately undermines discipline by using criminal force to under Officer and other ranks". Counsel argued that the test of real likelihood of bias is whether a reasonable person, in possession of relevant information, would have thought that the bias was likely. It is settled law that a judgment which is the result of bias or want of impartiality is a nullity and the trial "coram non judice". Thus tested, the conclusion becomes inescapable in the instant case that, having regard to the fact that the Commandant was likely to decide the matter only in a particular way i.e. petitioner was guilty of the charges framed against him, the presiding over of the Summary Security Force Court by the Commandant rendered the proceedings of the Court coram non judice.

B The petitioner was seriously prejudiced in defending himself before the Summary Security Force Court. Counsel highlighted that on May 17, 2000 at about 06.25 P.M. the department served two letters upon the petitioner. The first letter informed the petitioner that the trial of the petitioner shall commence at 09.00 A.M. on May 19, 2000. The second letter informed the petitioner that he i.e. petitioner should elect an officer to act his "friend" at the trial; petitioner is at liberty to engage a civil lawyer for representing him at the trial and written reply of petitioner in said regard should reach the department by 09.00 P.M. on May 17, 2000. Counsel highlighted that the petitioner was required to submit his reply regarding election/engagement of officer/civil lawyer within two hours thirty five minutes. On the same day i.e. May 17, 2000 the department appointed Sh. Atul Yadav, Assistant Commandant as the "friend of petitioner". Counsel argued that it was near impossible for the petitioner who was placed under close arrest to have elected an officer to act as his friend and/or engage a civil lawyer at such short notice. It was argued that the aforesaid hurriedness on the part of the respondents has caused serious prejudice to the petitioner at the trial inasmuch as petitioner could not elect/engage an officer/civil lawyer to defend him at the trial.

C Rule 38 of the BSF Rules, 1969 prescribes that an accused person shall be placed under arrest on the commencement of his trial unless otherwise directed by the Convening Officer. In the instant case, the petitioner was placed under close arrest before the commencement of his trial by the SSFC, which is a violation of Rule 38 of the BSF Rules for Rule 38 envisages arrest of an accused person only on the commencement of trial.

D There has been multiplication of charges in the instant case inasmuch as 14 fourteen charges have been framed against the petitioner for refusing to have food on 9th and 10th May, 2000. Counsel argued that the multiplication of the charges has vitiated the trial of the petitioner.

E The finding of guilt of petitioner returned by the Summary Security Force Court with respect to charge of having assaulted HC Bhanwar Lal and HC Hawa Singh framed against the petitioner is based on "no evidence" for the witnesses examined by the prosecution to establish said charge have contradicted each other in material particulars. Counsel further argued that the prosecution miserably failed to establish charge of intoxication leveled against the petitioner in the absence of conduct of blood or urine tests of the petitioner to establish that the petitioner was drunk at the relevant time.

F The penalty of dismissal from service awarded to the petitioner is grossly disproportionate the misconduct(s) alleged to have been committed by the petitioner. The acts of the petitioner of causing simple injury to HC Bhanwar Lal and slapping HC Hawa Singh and refusal to eat food when he was placed under close arrest does not warrant award of penalty of dismissal from service to the petitioner. In said regards, the counsel placed reliance upon the decisions of the Supreme Court reported as State of M.P. and Others Vs. Hazarilal, and Ranjit

Thakur Vs. Union of India (UOI) and Others, .

27. Rule 43 of the BSF Rules, 1969 prescribes that where it is alleged that a person subject to the Act (other than an officer or subordinate officer) has committed an offence punishable under BSF Act an offence report shall be prepared reducing the allegation in writing. Rule 45 prescribes that the charge contained in the offence report shall be heard by the Commandant of the accused, after hearing the charge may:-(i) award any of the punishments to the accused which he is empowered to award; or (ii) dismiss the charge; or (iii) remand the accused for preparation of Record of Abstract of Evidence against him; or (iv) remand accused for trial by a Summary Security Force Court. Rule 51 requires the officer detailed to prepare Record/Abstract of Evidence to forward the same to the Commandant. The Commandant, may after going through Record/Abstract of Evidence:-(i) dismiss the charge; (ii) rehear the charge and award one of the summary punishments; or (iii) try the accused by a Summary Security Force Court where he is empowered to do so; or (iv) apply to a competent officer or authority to convene a Court for the trial of the accused. Section 57 of the BSF Act empowers the Commandant to order arrest of his subordinate who has been charged with the commission of an offence.

28. As evident from the afore-noted provisions, the BSF Rules empowers the Commandant of an accused person to take decisions in many matters antecedent to the trial of such accused including his arrest. Rule 70 prescribes that the Summary Security Force Court may be held by the Commandant of any unit of the Force and he alone shall constitute the Court. When the BSF Rules itself envisages taking of decisions by the Commandant of an accused person in various matters antecedent to the trial of such accused including his arrest the proceedings of Summary Security Force Court which is presided over by the Commandant cannot be held to be vitiated on the ground that the Commandant had taken decisions in various matters antecedent to the trial of an accused person including his arrest. Thus, the contention predicated on the plea of bias is rejected.

29. Section 63 of the BSF Act provides twenty four hours to an accused person for preparing his defence after a decision has been taken to try him by the Summary Security Force Court. To put it differently, Section 63 empowers the department to convene a Summary Security Force Court for trial of an accused person twenty hours after a decision has been taken to conduct his trial and a charge sheet is served. It means that an accused would have to within a few hours of receiving the charge sheet inform whom would he like to be defended at the trial. We cannot overlook the fact that in Central Para Military Forces as also the Armed Forces summary trials are permissible to be conducted and the apparent reason is to maintain discipline. If a wrong doer is punished immediately it sends a message to the others not to indulge in wrong. Do we not read newspaper articles and opinions on the adverse impact by delayed convictions for the reason the incident for which a person is convicted fades from

the public memory and a conviction does not serve as a deterrent to others. Thus, merely because the authorities hurried up the procedural matters concerning petitioner's right to nominate a friend of the accused, we find no wrong done.

30. Furthermore, on perusing the records of the Summary Security Force Court we find that Atul Yadav, Assistant Commandant who acted as friend of petitioner at the trial was chosen by the petitioner himself. The records further show that the petitioner chose not to engage a civil lawyer at the trial. Such being the position, we find no merit in the submission that the petitioner was prejudiced at the trial on account of appointment of Atul Yadav as friend of the petitioner.

31. The third submission advanced by the petitioner is based upon an incomplete reading of the BSF Act, 1968 and the Rules framed thereunder in the year 1969.

32. Chapter V of BSF Act (Sections 57 to 63) deals with arrest of an accused person before trial. Section 57 of BSF Act empowers the superior officer of a person who has been charged with commission of an offence to place him under arrest. Chapter V of BSF Rules (Rules 31 to 40) makes provisions of arrest of the accused persons. Rule 38 of the BSF Rules relates to the arrest of an accused person on commencement of his trial. In view of provisions of Section 57 of BSF Act, the Commandant of petitioner was empowered to order that the petitioner be placed under closed arrest before the commencement of his trial.

33. With respect to fourth submission, it is no doubt true that there has been multiplicity of charges in the instant case. However, the same would not vitiate the conviction and penalty awarded to the petitioner inasmuch as no prejudice whatsoever has been caused to the petitioner due to the multiplicity of charges. As noted above the charges relating to what happened on the night of May 09, 2000 and the morning of May 10, 2000 are a series of the same extended act of expressing displeasure by not eating dinner as well as breakfast, but would also be at the same time an act of defiance to lower the authority of the superior officers in the eyes of other jawans.

34. By no stretch of imagination, the finding of guilt of petitioner returned by the Summary Security Force Court can be said to be based on "no evidence". Except for contending that the witnesses examined by the prosecution to establish charge of assault leveled against the petitioner have contradicted themselves in material particulars not even a single contradiction in the testimonies of said witnesses has been pointed to us by the counsel for the petitioner. On the contrary, having gone through the testimonies of the witnesses examined by the prosecution to establish charges of assault and intoxication viz. HC Bhanwar Lal, HC Hawa Singh and Const. Jetha Ram, we find that the said witnesses have corroborated each other in material particulars. The testimonies of witnesses; HC Bhanwar Lal, HC Hawa Singh and Const. Jetha Ram, gist whereof have been noted in foregoing paras, clearly establish that the petitioner had assaulted HC Bhanwar Lal and HC Hawa Singh on May 03, 2000 and that petitioner was in a

state of intoxication at that time.

35. On the subject of the penalty being disproportionate the law is that award of penalty lies within the discretion of departmental authorities and unless it is so shockingly disproportionate that the conscience of the court would revolt, courts cannot and should not interfere with the penalties.

36. The question is: whether the penalty of dismissal from service is shockingly disproportionate?

37. The purpose of a penalty is two-fold. To punish the wrong doer for the misdemeanor. To set an example to others to be careful. A soft penalty may encourage others to indulge in the same wrong. Too harsh a penalty may breed unrest. Thus, while awarding discretion to award penalty one has to be careful.

38. The evidence on record and attendant facts and circumstances of the case brings out the belligerent nature of the petitioner. The petitioner used to turn aggressive and hostile if he does not have his way.

39. The petitioner demanded liquor from HC Bhanwar Lal when he was dinner. HC Bhanwar Lal asked the petitioner to wait till he finished his dinner. Instead of waiting for HC Bhanwar Lal to finish his dinner the petitioner turned aggressive and hit HC Bhanwar Lal. Thereafter petitioner slapped HC Hawa Singh for he sided with HC Bhanwar Lal and admonished him i.e. petitioner for having lost his cool. On account of aforesaid misconduct(s) committed by him, the petitioner was ordered to be placed under close arrest. Instead of being remorseful the petitioner threw tantrums and refused to eat food on several occasions while in custody.

40. Much reliance was placed by the counsel for petitioner on the decision of Supreme Court in Ranjit Kumar's case (supra) to contend that the rejection of food by a force personnel is not a serious misconduct. We have closely read the decision of the Supreme Court in Ranjit Kumar's case (supra). The aforesaid decision would not come to the rescue of the petitioner for the reason the question whether the disregard of an order to eat food by a force personnel amounts to disobedience of a lawful command or not was left open by the Supreme Court in said case. In fact, it was observed by the Supreme Court that "Every aspect of life of soldier is regulated by discipline. Rejection of food might, under circumstances, amount to an indirect expression of remonstrance and resentment against the higher authority. To say that, mere refusal to eat food is an innocent, neutral act might be an over-simplification of the matter. Mere inaction need not necessarily always be neutral. Serious acts of calumny could be done in silence. A disregard of a direction to accept food might assume the complexion of disrespect to, and even defiance of authority."

41. BSF is a para-military force. Its members carry arms. There is no place for belligerence in a disciplined force like Border Security Force. Noting incidents of gross discipline are on the rise in the armed forces, we do not find penalty

imposed upon the petitioner being disproportionately shocking.

42. In view of above discussion, we do not find merit in the present petition. The same is accordingly dismissed.