

(2025) 10 DEL CK 1374

In the Delhi High Court

Case No : Writ Petition (C) No. 1027 Of 2024 & Civil Miscellaneous Application
No. 4250 Of 2024

Patil Shivaji Madhukar

APPELLANT

Vs

Union Of India & Anr

RESPONDENT

Date of Decision : 30-10-2025

Acts Referred:

Constitution of India, 1950 — Article 226
Indian Penal Code, 1860 — Section 354A(i), 354C, 354D, 375, 354A(i)
Border Security Force Act, 1968 — Section 38, 40, 46, 117(1), 117(2)
Bhartiya Sakshya Adhiniyam, 2023 — Section 103
Evidence Act, 1872 — Section 106

Citation : (2025) 10 DEL CK 1374

Hon'ble Judges : C.Hari Shankar, J;Om Prakash Shukla, J

Bench : Division Bench

Advocate : Dr. Surender Singh Hooda, Aayushman Aeron, Shaurya Pratap Singh
Banshtu, Anshuman

Final Decision : Dismissed

Judgement

Om Prakash Shukla, J

1. The present writ petition filed under Article 226 of the Constitution of India has been preferred by the petitioner seeking (i) quashing of the Findings and Sentence Order dated 14.09.2022 passed by the General Security Force Court "GSFC" (ii) quashing of order dated 25.09.2023 passed by Directorate General, Border Security Force "BSF" whereby the petitioner's statutory petition against the order of dismissal came to be dismissed (iii) a direction to reinstate the petitioner in service (iv) call for the entire record of Court of Inquiry "COI", Record of Evidence "ROE", and proceedings in GSFC.

2. The brief factual matrix is that the petitioner herein was serving as a Sub-Inspector in the BSF. It is alleged that around June-July 2019, WhatsApp communication commenced between the petitioner and one Ms. X, the wife of a

fellow Constable, who resided in the same building, and their acquaintance thereafter allegedly developed beyond just friendship. It is also alleged that the petitioner, on several occasions, gifted Ms. X a mobile phone, gold locket and a dress/frock, and purportedly began to visit her at her residence in the absence of her husband. Thereafter, vide letter dated 27.08.2020, an explanation was sought for violation of professional ethics and moral conduct regarding his alleged illicit relationship with "another lady" (referring to Ms. X) from his block despite having a family of his own. It is stated that the petitioner submitted his written reply denying the allegations in toto and terming them as baseless rumours.

3. Thereafter, the husband of Ms. X who was a fellow constable submitted a written complaint to Inspector General, North Bengal Frontier, BSF alleging that the petitioner maintained an illicit relationship with his wife, visited their quarter in his absence, and attempted to and/or established physical relations. Accordingly, on 12.04.2021, COI was convened against the petitioner.

4. During the course of COI proceedings, recorded chats, screenshots of video chats and other material were recovered indicating an illicit relationship between the petitioner and Ms. X. In her statement in COI, Ms. X alleged that initially she avoided communication with the petitioner. However, she was coaxed into establishing a relationship with him and that he established physical relationship against her wish.

5. The findings of COI record that the petitioner was involved in adultery and found the allegations of illicit relationship to be proved beyond reasonable doubt. The petitioner's statement was found unreliable and inconsistent and as such strict action was recommended against him.

6. After completion of the COI proceedings, a charge sheet came to be framed against the petitioner on 08.06.2021, comprising of seven charges i.e., the first four under Section 46 of the BSF Act, 1968 "the Act" for committing civil offences under Sections 375, 354A(i), 354C and 354D Indian Penal Code "IPC", the fifth and sixth under Section 40 of the BSF Act for acts prejudicial to good order and discipline of the Force; and the seventh charge under Section 38 of the Act for making a false statement on oath before the COI.

7. ROE was ordered on the said charges under Rule 45B of the BSF Rules, 1969. It was revealed in the ROE that the petitioner had developed an improper physical relationship with Ms. X, wife of a fellow constable of the same Battalion, had given her gifts seeking sexual favours and kept objectionable photographs of her in his mobile phone. All these acts were found prejudicial to the discipline of the Force. Considering the nature of the allegations, the IG, BSF Guwahati Frontier, upon scrutiny of the evidence, decided to convene a GSFC against the Petitioner on the following three charges under Section 40 of the Act, relating to acts prejudicial to good order and discipline of the Force.

First Charge BSF Act, 1968

Section - 40

AN ACT PREJUDICIAL TQ GOOD
ORDER AND DISCIPLINE OF THE FORCE

In that he, at Bn HQ 45 Bn BSF, Raninagar, Jalpaiguri (WB) while residing in Govt Qtr No. 28 Type-II 'F' block, between March, 2019 to

22 August, 2020, improperly indulged in making physical relationship with XXXXX, XXXXXXXX, of same Battalion, residing in XXXX of same block, bringing bad name to the battalion.

Second Charge

BSF Act, 1968 Section - 40

AN ACT PREJUDICIAL TQ GOOD
ORDER AND DISCIPLINE OF THE FORCE

In that he, at Bn HQ 45 Bn BSF, Raninagar, Jalpaiguri (WB) while residing in XXXXXXXX, between March, 2019 to 22 August, 2020, made unwarranted conversation on mobile phone with XXXXXX W/o XXXX of same Battalion, residing in XXX of same block and presented gifts to her on several occasions with intent to seek sexual favours.

Third Charge BSF Act, 1968 Section - 40

AN ACT PREJUDICIAL TQ GOOD ORDER AND DISCIPLINE OF
THE FORCE

In that he, at Bn HQ 45 Bn BSF, Raninagar, Jalpaiguri (WB), between March 2019 to 22 August 2020, kept personal photographs of XXXXXX W/o XXXXXXXX same Bn in his mobile phone Redmi Note 8 Pro (IMEI No. XXXXXXXXXX) and during video calls with said XXXXXX, captured screen shots of XXXXX showing her private parts, without her knowledge and saved the same in his mobile.

The GSFC was held from 20.07.2022 to 14.09.2022 wherein the petitioner was found guilty of all three charges while finding the testimony of Ms. X and her husband (complainant) to be true. Further, the GSFC also relied upon the testimony of PW-3 who resided in the same block and had seen the petitioner talking to Ms. X and on the testimony of PW-6 (the Presiding Officer of COI), who copied the data from the petitioner's smartphone to his laptop and found objectionable photos of Ms. X. Therefore, relying on these testimonies, the petitioner was sentenced to dismissal from service. The aforementioned Order came to be confirmed by the Additional Director General (EC) on 25.10.2022.

8. Aggrieved thereby, the petitioner preferred a Statutory Petition dated 19.01.2023 to the Director General, BSF under Section 117(2) of the BSF Act, against the sentence awarded by GSFC. While the said petition was pending, the petitioner had filed W.P.(C) No. 10162/2023 before this Court, which was

disposed of vide order dated 09.08.2023 directing the Director General, BSF to decide the said petition as per law. In compliance, while deciding the application, the DG BSF rejected the statutory petition vide order dated 25.09.2023, holding that the evidence on record suggested misconduct and that such misconduct must be dealt with strictly to protect safety and securities of families living in BSF campuses.

9. Aggrieved, the petitioner filed the present writ petition before this Court.

10. Dr. Surender Singh Hooda, learned Counsel for the petitioner submitted that petitioner was initially charge-sheeted on seven charges including those under Sections 375, 354A(i), 354C, and 354D IPC read with Section 46 of the BSF Act, 1968. However, the final charge sheet placed before the GSFC contained only three charges under Section 40 of the BSF Act, 1968, pertaining to acts allegedly prejudicial to good order and discipline of the Force. It was emphasised that such modification of charges shows that the allegations of criminal force or outraging modesty were found unsustainable and hence were dropped by the authorities.

11. It was submitted that the respondents' best case, even if accepted, is that the petitioner had a consensual relationship with the said Ms. X. It was further submitted that it is an admitted position on record that Ms. X never made any complaint of any kind against the petitioner and the disciplinary authorities had themselves dropped the charges under Section 46 of the Act read with Section 375 of IPC, thereby conceding that there was no use of Criminal force, coercion, or the said act was non-consensual.

12. With regard to the second charge, it was submitted that the petitioner was alleged to have made unwarranted conversations and presented gifts to Ms. X with the intent to seek sexual favours. However, relying on the statement of the said lady, it was submitted that there is no averment whatsoever that the gifts were given in exchange for or with the intent to seek sexual favours. It was further submitted that there is nothing on record to directly connect the petitioner with the alleged photographs or the alleged misconduct.

13. It was submitted that the statement of Ms. X was made under duress as evidence suggests that her husband had physically assaulted and threatened her with dire consequences and, as such, according to learned Counsel, the statement of Ms. X is not trustworthy and reliable.

14. The learned Counsel for the petitioner also submitted that there existed serious doubts regarding the custody and integrity of the petitioner's mobile phone, as it remained in the possession of others who accessed its contents, transferred data to a laptop, and subsequently produced it as evidence.

15. Per contra, Mr. Anshuman, learned Sr.PC for the respondent, submits that statement of Ms. X was recorded thrice and was found consistent and credible. The intentions of the petitioner were highlighted through her statement.

16. It was further submitted that the claim of petitioner that the statement of

Ms. X was obtained by way of coercion is misplaced since the aspect of the alleged coercion is limited to the extent of the fellow constable/complainant asking the truth from his wife i.e., Ms. X. It was submitted that after the truth was revealed, the fellow constable made a complaint over which COI, ROE and the subsequent trial were convened where statement of Ms. X were recorded.

17. We have heard the learned Counsels for both parties and carefully perused the material on record.

18. Before delving into the merits of the case, it is important to set out the scope of interference of this Court under the Article 226 of the Constitution of India in trials conducted by the GSFC as per BSF Act. This Court through one of us (Om Prakash Shukla, J.) examined and discussed the scope and extent of this court in such matters in the case of *Prakash Chand Sharma v Union of India & Ors.* 2025:DHC:7429-DB. The relevant text for the same is reproduced below:

"25. Having heard the learned Counsel for the parties, this Court has given anxious thoughts to the entire gamut of facts and the various documents referred by them during the course of hearing. This Court is of the view that before embarking on the path of deciding the present writ petition, the scope and extent of interference of this Court under the provisions of Article 226 of the Constitution of India in trials conducted by the GSFC as per BSF Act and rules framed therein, must be understood, in order to appreciate the adversarial controversy raised in this petition between the parties concerned. Recently, this Bench had an occasion to examine the said scope & extent in the case of "*Kiran Kumar v Union of India*" (Supra) vide judgment dated 25.07.2025. This Court in the said judgment, relied on the Judgment of the Apex Court in the case of '*B.C. Chaturvedi v UOI & Ors* and an earlier judgment dated 13.07.2025 passed by a Coordinate Bench of this Court in the matter of *Deshraj v Directory Gen. BSF & Anr* which had extensively relied on a judgement passed by a Division Bench of the Gauhati High Court in *Director General, BSF & Ors. v Iboton Singh (KH)*.

26. What is discernible from these Judgments is that the scope of this Court while exercising its power of Judicial Review under Article 226 of the Constitution of India is circumscribed and limited. Further, this Court cannot be oblivious to the fact that the entire procedure of a trial by GSFC is provided in the BSF Act and the Rules made thereunder and since the provisions contained therein require that the findings reached, and the sentence passed, against an accused by a GSFC, is available for re-consideration by a competent authority for the purpose of pre-confirmation by the Director General, BSF in terms of section 117(1) of the BSF Act and Post-confirmation by the Ministry of Home Affairs under Section 117(2) of the BSF Act, 1968. Therefore, there exists various layers of adjudication and it is only after these layers of confirmation of the findings and sentence are exhausted that the findings become final. Thus, this Court finds that the scope of judicial review in these kinds of cases, becomes severely restricted and can be exercised in exceptional cases only.

27. According to this court, this restricted exercise has to be for the limited purpose of determining as to whether the proceedings of the GSFC have been conducted in accordance with the requirement of law or as to find out if there had been any violation of the principles of natural justice, while conducting the trial, so as to vitiate the proceedings. The test to be applied by this Court while examining the conduction of Trial is also limited, with a caveat that, even if the findings reached by the GSFC are found to be perverse and/or contrary to, or in violation of, the provisions of the law relevant thereto, this Court is only to interfere when the infraction has resulted, in the failure of justice. The rule being that, if the conclusion or finding be such as no reasonable person would have ever reached, this Court may interfere with the conclusion or the finding.

28. Further, this Court, while exercising its power of judicial review in GSFC orders, does not sit on the findings of a GSFC or on the proceedings of a GSFC as an appellate authority and re-appreciate the findings for the purpose of determining if the evidence were sufficient for the conclusion reached. The findings of facts arrived by the GSFC are final in nature as it being the master of the relevance, admissibility or weight of the evidence lead during the Trial. Thus, this Court, while exercising its power of judicial review is reminded of its self-imposed limitation of restrictive intrusion only when the conclusion arrived by GSFC is based on no evidence. Further, neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to these trials. So long as the findings are supported by some legal evidence, the adequacy or reliability of such evidence is not a matter which can be permitted to be canvassed before the High Court in proceeding for a writ under Article 226 of the Constitution, reliance in this regard can be placed on the judgement of State of Andhra Pradesh & Ors. v Chitra Venkata Rao of the Apex Court”.

(emphasis supplied)

19. Therefore, it is settled that the power of a Writ Court under Article 226 of the Constitution of India is limited, and it is difficult to re-appreciate evidence at this stage. Further, interference is limited to cases where there is violation of principles of natural justice or such irregularity as to term then to be a cause for failure of justice.

20. The case of the petitioner is that respondent's case relies on the statement of prosecutrix which was made under coercion and hence, is inadmissible. Therefore, in the absence of any corroborating evidence, the petitioner cannot be convicted based on such evidence. The respondents have refuted the said challenge by relying on the consistency of statements of Ms. X which were recorded three times.

21. At the outset, it can be seen from the material placed on record that plea of petitioner is overshadowed by the consistent and unwavering statement made by Ms. X during the COI proceedings, ROE and the trial before the GSFC. Moreover, this Court finds that the GSFC, while convicting the petitioner, did not solely rely

on the testimony of Ms. X. It can be seen from the record that the testimonies of PW1, 2 & 3 were also relied upon which strongly corroborate the case of prosecution. The regular communication via text messages, phone and video calls, gifts and the alleged recovery of images by PW-3 cannot be side lined. Further, from the chain of incriminating circumstances, it has been established by material evidence that these events consistently point towards the criminal act performed by the petitioner, for which he has been charged. As noted above, that this Court cannot re-appreciate evidence at this stage. It is also pertinent to note that no plea of procedural irregularity has been raised, and it is not the case of petitioner that the GSFC proceedings were not conducted in compliance with the Act and the BSF Rules. It also evident from the record that, the petitioner was afforded full opportunity of entering into a proper defence including cross-examination of witnesses.

22. The GSFC, while holding that charges against the petitioner are proved, held as follows:

"The Court does not believe inversion of the accused as he could have asked for the cost of the items from her husband but he never revealed to her husband CT Anil Kumar Pandey. Moreover, all above items were given clandestinely. The Court believes that the act of accused making calls and chats are unwarranted in nature. The Court further believes that accused had given aforesaid items to Smt Sanju Kumari just to seek sexual favours from her as there is no other reason for making such communication and giving aforesaid items to her. Hence the Court takes this issue as "Proved".

23. Pertaining to the second charge, considering the admission of the petitioner of giving gifts to Ms. X, the GSFC did not find any merit in the plea of the petitioner that that there was no averment to the effect that gifts were given to seek sexual favours. We also do not find any merits in the said defence of the petitioner.

24. Further, we note that, no reasonable justification has been given as to why gifts were given by the petitioner to Ms. X. The said act gains predominance in the background that there appears no formal, familial or professional relationship between the petitioner and Ms. X that would ordinarily justify such gestures. The act of a married individual presenting gifts to another married individual of the opposite sex (who is not their spouse), without legitimate context, may reasonably be presumed as unusual and calls for an appropriate clarification. The burden in all these kinds of situations where there are such exchange of gifts lies heavily on the person, who enters such a defence. At this juncture, it is pertinent to note that the provisions of Section 106 of the Indian Evidence Act or Section 103 of Bhartiya Sakshya Adhiniyam, 2023, offers some guidance on this aspect. However, we do not find any such defence has been cultivated or proved by the petitioner. In the peculiar facts of the present case, the GSFC found that the items were given in a "clandestine" manner and concluded that the petitioner had presented the gifts in exchange of sexual favours because had the petitioner

given the items in exchange for money, he could have disclosed it to the husband of Ms. X and got the requisite amount in return, which the petitioner did not do. There is no substantial plea relating to the challenge of any the recoveries made from the phone. We are not convinced that the finding of the GSFC merits interference.

25. Hence, in the present case, in the absence of procedural irregularity or violation of principles of natural justice or any illegality leading to failure of interest of justice, the petitioner is unable to attract this Court's limited power under Article 226 of the Constitution of India.

26. At this juncture, we also cannot restrain ourselves from commenting on the conduct of the petitioner in the present matter. In this regard, we deem it important to refer to the decision in *Charanjit Lamba v Army Southern Command* (2010) 11 SCC 314, wherein it was underscored that an officer belonging to a disciplined force bears the duty to maintain the highest standards of honesty and morality and abstain from any conduct that is inconsistent and unbecoming of the rank held by such officer.

27. It is pertinent to note that the petitioner had established an illicit relationship with the wife of his colleague by offering presents and making frequent visits, which is morally distressing and goes against the very ethos of the uniform the petitioner wears. We cannot be oblivious to the petitioner's conduct, which is not only dishonourable but also unfit for an official tasked with the onerous responsibility of protecting the country. This Court cannot turn a blind eye to such a violation of institutional and moral principles since such dishonest behaviour undermines public confidence in the integrity of the Armed Forces and is repugnant to the conscience of every citizen.

28. In view of the aforesaid, the present writ petition is dismissed.

29. The pending applications if any, are accordingly dismissed.