

(2023) 07 DEL CK 0006

In the Delhi High Court

Case No : Civil Writ Petition No. 1099 Of 2020, Civil Miscellaneous Application
No. 23338 Of 2022

Rajesh Kumar P V

APPELLANT

Vs

Union Of India & Anr.

RESPONDENT

Date of Decision : 04-07-2023

Acts Referred:

Constitution of India, 1950 — Article 20(2), 226
Border Security Force Rules, 1969 — Rule 11, 14A(1)(b)(ii), 45B, 51A
Border Security Force Act, 1968 — Section 35, 35(a), 40, 53, 53(2), 55, 64, 75, 117
Code Of Criminal Procedure, 1973 — Section 300

Citation : (2023) 07 DEL CK 0006

Hon'ble Judges : Suresh Kumar Kait, J; Neena Bansal Krishna, J

Bench : Division Bench

Advocate : Naushad Alam, Sandeep Pathak, Sushil Kumar Pandey, Sahaj Garg,
Kuldeep Singh

Final Decision : Disposed Of

Judgement

Neena Bansal Krishna, J

1. The petitioner has filed the present petition under Article 226 of the Constitution of India to issue Writ of Certiorari to set aside the Chargesheet dated 19.08.2017, Order of Sentence of "Severe Reprimand" dated 21.08.2017, and also issue Writ of Mandamus to direct the respondent No. 1 to notionally promote him to the Rank of AC/Elect. against the vacancy year 2016-17 or 2017-18 or 2018-19 along with all consequential benefits and seniority.

2. The facts in brief as narrated in the present petition are that the petitioner is presently working as Inspector/Junior Engineer (Electrical) with the Border Security Force (hereinafter referred to as "BSF") and is currently posted at STS-BSF, Tigri, New Delhi. While working as Junior Engineer, a Summary Trial was initiated against him by DIG, Barmar and he was served with Chargesheet dated 14.10.2016 and was charged with two charges under Border Security Force Act

1968 (hereinafter referred to as the "Act, 1968"), namely: Section 35(a) for knowingly making a false statement in a document signed by him; and Section 40 for committing an omission prejudicial to good order and discipline of the force.

3. The DIG BSF, Barmer/respondent No. 2 directed preparation of the Record of Evidence (ROE) which was completed on 10.12.2016 after which the petitioner was absolved from all the charges on 31.12.2016 by DIG BSF, Barmer on the ground that no evidence was found to substantiate the charges levelled against him. Consequently, vide Letter dated 02.01.2017 STS, BSF, New Delhi, the service record of the petitioner was returned to Departmental Promotion Committee (hereinafter referred to as "DPC") for consideration for promotion to the Rank of Assistant Commandant (Elec.) for the vacancy year 2016-2017.

4. However, after about eight months, the Inquiry was re-initiated against him for the same above-mentioned charges by the same DIG who had conducted the first Chargesheet, despite having been already exonerated, as the Charges had been found to be not substantiated by any evidence. The second Chargesheet was issued on 19.08.2017 which contained the same charges verbatim as mentioned in the first Chargesheet dated 14.10.2016. However, no ROE was prepared after issuance of second Chargesheet and the ROE prepared in the first Chargesheet was used in the second Chargesheet.

5. The petitioner, on directions filed Written Submissions in his defence dated 21.08.2017. He was held guilty of both the Charges and sentenced to "severe reprimand" on 21.08.2017, the copy of which is not available with the petitioner.

6. Thereafter, the petitioner filed a Representation dated 31.08.2017 through proper channel, which was rejected on 08.01.2018.

7. Aggrieved by the said rejection order, petitioner filed the Statutory Petition dated 24.02.2018 for setting aside the finding of the Summary Trial and the sentence of "severe reprimand" and the Rejection Order. This Statutory Petition was treated as Petition under Section 117 of the Act, 1968 vide Inter Office Note dated 26.02.2018. However, no decision was conveyed to the petition on his Statutory Petition leading to the filing of another Statutory Petition dated 28.09.2018. After 18 months, the respondent No. 1 rejected the said application/petition vide Order dated 06.11.2019. The Rejection has been challenged on the ground that the respondent No.1 has failed to appreciate and deal with the grounds taken/raised in the Statutory Petitions and the Order has been passed in an arbitrary manner without affording any opportunity to the petitioner of being heard.

8. The petitioner's grievance is that the respondent No.1 failed to appreciate that the petitioner was not involved at any stage of the work of "Renovation of EI of 06 Nos Old Barracks (03 Nos old location & 03 Nos in firing range) at 99 Bn BSF (now 63 Bn BSF), Jalipa under SHQ BSF Barmer". It was Shri R.C. Yadav, AC/AE(Elect.) and SI/JE (Elect.) Dharamveer Singh who were in direct supervision

and control of the Work, as also admitted by them. Further, the petitioner was not the competent Engineer to either physically verify the work or to prepare any document. No provision in the CPWD Manual, 2014 provides that the petitioner at any stage was obligated to check the status of Work or prepare any documents, including the bills relating to the Work. The petitioner was neither asked by Shri R.C. Yadav AC/AE (Elect.) to verify the work nor was any Movement Order ever issued for verifying the work at the site situated at the distance of about 14 kms from SHQ, BMR.

9. The petitioner had only filled the blank columns on the directions of his superior Officer-in-Charge and AE was competent to issue the completion certificate. The petitioner had no occasion to have any doubt on the status of the Works and deficiency of the electrical items as the entire documents were prepared by Shri R.C. Yadav, AC/AE(Elect.) and SI/JE (Elect.) Dharamveer Singh. Accordingly, the petitioner has submitted that no offence under Sections 35 and 40 of the Act, 1968 is made out in the facts of the case.

10. The petitioner has stated that in the year 2016, 23 JE were promoted, excluding the petitioner even though he was eligible to be promoted to AC/Elec. vide Office Order dated 29.11.2017, as his name was included in the list of personnel to be considered by DPC for promotion to the next higher rank of AC/ Electrical for the vacancy year 2018-19. He was not promoted for the reasons better known to the respondents.

11. The petitioner has asserted that Shri R.C. Yadav, AC/AE (Elect.) and Shri Dharamveer Singh, SI/JE (Elect), also faced the summary trial in connection with the same works. Seniority of Shri R.C. Yadav was downgraded by five years and Mr. Dharamveer Singh was awarded "severe reprimand". They were never absolved from the charges as the petitioner. Shri R.C. Yadav has taken the Voluntary Retirement from Service and Shri Dharamveer Singh stands promoted to the higher rank of Inspector/ Electrical on 25.04.2018 for the vacancy year 2018-19.

12. The AC/MIN, STS, BSF New Delhi issued an Inter-Office Note dated 07.09.2018 stating that petitioner having seniority No. 1 is falling within the cut off seniority and his case be forwarded to FHQ, Staff Section, New Delhi for consideration of promotion to the next higher rank of Assistant Commandant/ Electrical for the vacancy year 2019 as per combined seniority of Group B and C Personnel of BSF, Eng Set UP-2017. The petitioner has further stated that he was examined and found fit being in medical Category SHAPE- I. However, the petitioner was not promoted again for which he has again not been provided any reason.

13. The petitioner, while pointing out that the Chargesheet dated 19.08.2017 contained verbatim Charges as in Chargesheet dated 14.10.2016, asserts that despite him being absolved from all charges in the first Chargesheet on the ground that no evidence was found to substantiate the charge, the trial of the

petitioner by way of second Chargesheet held in 2017, was based on the ROE prepared in the first Chargesheet. The second Chargesheet was not supported by any new documents or evidence which could be re-appreciated by the respondent No.2 in the second trial and the manner in which the respondent has conducted the trial, is against the mandate of the BSF Act and Rules framed therein.

14. The petitioner's name was not considered for promotion to the next higher rank of AC/Elect in the year 2016 despite being eligible for promotion to AC/Elect., though 23 Junior Engineers were promoted. He was considered in the year 2017 (being at Serial No. 12 in the Seniority List) and in 2018 (being at Serial No. 1 in the Seniority List) for the promotion to the next higher rank of AC/Elect but was not promoted. In the year 2019, no DPC was called for and he is not likely to be considered by the DPC called for vide Signal dated 14.01.2020 for promotion to the post of AC/Elect. in view of the said punishment.

15. The petitioner has claimed that no person can be tried for the second time for an offence for which he has already been prosecuted and discharged earlier, and such an act is in complete violation of principle of double jeopardy guaranteed under Article 20(2) of the Constitution of India and as per Section 300 of the Code of Criminal Procedure, 1973 as well.

16. The petitioner has thus sought for quashing of the Chargesheet dated 19.08.2017 and subsequent orders therein, and a direction commanding the respondent No.1 to notionally promote the petitioner to the Rank of AC/Elect. against the vacancy year 2016-17 or 2017-18 or 2018-19 and grant and other consequential benefit(s) including seniority to the promotional post of AC/Elect. and for a direction commanding the respondent No. 1 to include the name of the petitioner to be considered by the DPC called for vide Signal dated 14.01.2020 for promotion to the post of AC/Elect.

17. The respondents in their Counter-Affidavit have explained that the petitioner was posted at Sector HQ (SHQ) BSF, Barmer, Rajasthan under Frontier HQ BSF Gujarat. Administrative Approval and Expenditure Sanction for Rs.3,34,870/- in favour of DIG BSF Barmer for renovation work i.e., Electrical Installation in 06 old Jawan Barracks of 99 Bn. BSF (later on 63 Bn. BSF at Barmer under DIG SHQ BSF Barmer and now 142 Bn. BSF), was accorded by Inspector General (Adm.), HQ DG BSF New Delhi on 15.01.2014.

18. The Tenders were invited for the said work and M/s. Nadeshwari Electrical, Barudi, Gudamalani, Barmer, Rajasthan was recommended for Award of Work as the rate quoted by the Firm was the lowest at Rs.3,68,040. However, the Tender was rejected by Shri Ram Baby Pateria, DC (Elect.), Ftr HQ BSF, Rajasthan (holding Additional Charge of Frontier Headquarter BSF, Gujarat) on the grounds that the Rates quoted by the Firm were higher than the Rates of DSR-2014 (Delhi Scheduled Rate). Thereafter, fresh Tenders were called and the work was awarded to the same Firm for Rs. 3,69,118/- which was Rs. 1078 higher than

earlier quoted rates. Thereafter, the bills were processed by the Engineering Branch of SHQ, BSF, Barmer, Rajasthan for payments to the Firm without completion of the work.

19. On receipt of report about above irregularity from Inspector (Vigilance), a Staff Court of Inquiry (hereinafter referred to as "SCOI") was ordered by Frontier Headquarter, Border Security Force, Gujarat vide Order No. 327-31 dated 19th June 2015, to investigate and collect evidence to determine shortcomings/misappropriation, if any, in the allotted work of Renovation of EI of 06 Nos. Old Barracks at Jalipa, Barmer. Accordingly, the Staff Court of Inquiry (SCOI) was conducted in said case and finalised with the remarks of Inspector General, BSF, Gujarat Frontier.

20. In accordance to the Inspector General's direction, disciplinary action against Shri R. C. Yadav, AC/AE(Elect), Insp/JE(Elect.) Rajesh Kumar P V (the petitioner herein) and SI/JE(Elect.) Shri Dharamvir Singh of SHQ BSF, Barmer was initiated for preparation of false statement and enabling processing of Bills and other irregularities. The petitioner was then heard under Rule 45 B of the BSF Rules, 1969 (hereinafter referred to as the "Rules, 1969") by the Deputy Inspector General, Sector Headquarter, BSF, Barmer on 14.10.2016 on both the Charges and was given due opportunity to cross-examine the witnesses.

21. It is only after conducting the preliminary hearing of the petitioner under BSF Rule 45B on both the charges, the Deputy Inspector General, SHQ BSF Barmer, ordered preparation of ROE against the petitioner vide Order dated 14.10.2016. Thereafter, DIG, SHQ, BSF Barmer took decision under Rule 51A, to drop the Charges against the petitioner and to issue an advice to the petitioner.

22. However, DIG, SHQ did not follow the correct procedure as envisaged in Rule 51A of Rules, 1969 because as per the Rule, the DIG should have recorded the reasons while dismissing the charges.

23. Later, the case was examined at Frontier Headquarter, Gujarat and it was found that there was sufficient evidence to proceed with the disciplinary action against the petitioner. Thus, vide their Letter No. 10/Law/Ftr-Guj/2017/435 dated 31.07.2017 Frontier Headquarter, Gujarat advised the SHQ BSF, Barmer to dispose of the case by holding a Summary Trial as per Section 55 of the Act, 1968. It is asserted that the decision of the DIG Barmer to issue advice to the petitioner was not proper as being against the weight of evidence. Moreover, the Advisory Letter was never issued to the petitioner. The petitioner was then tried summarily as per the relevant provisions on 21.08.2017 on the aforementioned two Charges and on being found guilty, and the punishment of "severe reprimand" was awarded.

24. Thereafter, the petitioner submitted his Representation dated 31.08.2017 to IG, BSF, Headquarter Gujarat Frontier against the Summary Punishment awarded to him. Although, no provision of Appeal against the summary punishment exists, in the BSF Act & Rules, his Representation was considered by IG, BSF

Gujarat Frontier in detail and rejected being devoid of merit and the Petitioner was intimated decision vide STS, BSF, New Delhi Office Note dated 08.01.2018. The application of the petitioner was examined but the same was returned to STS BSF Tigri, New Delhi with observations vide FHQ L/No. 3052 dated 15.03.2018 seeking some factual details of the case.

25. The petitioner again submitted another Petition dated 28.09.2018 and the same was received by FHQ vide STS BSF Tigri New Delhi Letter No. 15007-11 dated 12.10.2018 and the complete case file of the petitioner was received from field formation vide their Letter No. 7431-32 dated 09.08.2019 and after considering the facts in totality, his case was rejected by DG, BSF New Delhi being devoid of merit vide FHQ Order No. 12022-25 dated 06.11.2019.

26. The respondents also stated that the petitioner has himself admitted that he had filled up a few columns of First and Final bill, Measurement Books and other related documents of works, without verifying the factual position on ground, though it was his duty to ascertain the accuracy of the same. He made false documents/entries in Column Nos. 3,4 and 5 in the First and Final bill of Rs. 3,67,951/- Serial No. 4 of Work Completion Report and at Page Nos. 29 and 53 of Measurement Book without physical verification on ground of completion of work which was meant to be forwarded to Pay and Accounts Division, BSF, New Delhi for sanction of Bill, well knowing the fact that the work was incomplete and there were procedural irregularities. The petitioner also improperly omitted to do physical verification as well as deficiency of electrical items worth Rs. 76,648. Though petitioner was not given any specific duty to supervise the work in question, yet as per practice in vogue, whenever a JE/Elect. of under command Units of SHQ BSF Barmer proceeds on leave, JE/Elect. available at SHQ Barmer has to look after the duties of concerned JE/Elect. in his absence and this practice was followed in this case as well. He was duty bound to check the correctness of the documents before signing it.

27. On the basis of Staff Court of Inquiry, Disciplinary action was initiated against the petitioner and under Rule 51(A). The DIG BSF Barmer dropped all the charges against him without properly appreciating the evidence on record and "Advice" was issued. The "Advice" cannot be equated with the disciplinary action which would have made out a case of double jeopardy. Since, no disciplinary action was taken against the petitioner before his summary trial, no relief can be granted to the petitioner.

28. The other two accused persons were also tried under the BSF Act and Rules and awarded appropriate punishment as under: -

"(a) Sh. R C Yadav, AC/Elect was awarded punishment under BSF Act Sec – 40

(i) To take rank and precedence as if his appointment as AC/AE(Elect) bore the date 30.12.2016.

(ii) To be Severely Reprimanded.

(b) SI/JE(Elect) Dharamveer Singh was awarded punishment "To be Severely Reprimanded" under BSF Act Sec - 36A."

29. It is also averred that there was no irregularity in holding the Summary Trial after 8 months without ordering fresh ROE, as the ROE prepared against petitioner was still pending for finalization. It is contended that as per Section 75 of the Act, 1968 no double jeopardy against the Petitioner took place and the whole case has been misconstrued by the petitioner.

30. It is asserted that that the Court has no appellate jurisdiction to re-appreciate the evidence and the petitioner has projected incomplete statements of the Prosecution witness(es) who had deposed during the ROE and the contentions of the Petitioner should not be countenanced in view of his length of service as well as general knowledge he possesses, being the member of Force.

31. The respondents further submitted that the DPC Committee met on 03.03.17 for consideration of the cases of Inspectors/JE (Elect.) for their empanelment and eventual promotion to the rank of Assistant Commandant (Elect.) in BSF Engineering setup against the existing vacancies for the year 2016-17. The petitioner's case was placed in a separate sealed cover as Chargesheet was served upon him for committing the offences under Sections 35(a) and 40 of the BSF Act, 1968 and the pendency of ROE, as per the Department of Personnel and Training (DoP&T) O.M. dated 14.09.1992. When the Committee again met on 03.04.2018 for the transitional vacancy year of 2018, the DPC assessed the petitioner as "unfit" due to award of "severe reprimand" under Section 55 of the Act, 1968.

32. It is admitted that the petitioner having seniority No. 1 is falling within the cut off seniority and his case is required to be assessed for empanelment and eventual promotion to the rank of AC(Elect.) for the vacancy year 2019. The issues regarding seniority the Officers of this cadre have been finalized on 31.12.2019 and DPC is being detailed shortly to assess for empanelment and eventual promotion to the rank of AC(Elect.) for the vacancy year 2019. No response can be given regarding the year 2020 as the DPC for the vacancy year 2020 is still under process.

33. The respondents have thus claimed that the averments made in the present petition are without merit and the petition is liable to be dismissed.

34. The petitioner in his rejoinder has denied all the contentions of the Counter-Affidavit and submitted that he is not aware of the contents of the Letter dated 31.07.2017 issued by the FHQ, Gujarat to advise SHQ, BSF, Barmar to dispose of the case by holding Summary Trial as per Section 55 of the Act, 1968 and thus, he is unable to comment upon it. Moreover, to proceed under Section 55 of the Act, 1968 the consent of the Central Government as specified by the Director General, is required and the respondents have not filed any document to show that any such consent was ever obtained. Accordingly, no proceeding can be initiated against the petitioner under Section 55 of the Act, 1968 as he is a

"subordinate officer" and the composition of the Security Force Court which held the trial, was not in accordance with the mandate of the Chapter VI of the Act, 1968.

35. The petitioner has also stated that he had no occasion to raise any doubt on the status of the Works as the entire documents were prepared by Shri R.C Yadav, AC/AE (Elect.) and Shri Dharamveer Singh SI/JE (Elect.) and no Movement Order was ever issued for verifying the work at the site situated at a distance of 14 kms. from SHQ, Barmar. Shri Dharamveer never handed over the charges to any other Engineer and did not obtain technical clearance before proceeding on leave.

36. The petitioner drew the attention towards two Letters dated 27.12.2014 and 19.01.2015 which were sent to Shri R.C Yadav and Shri Dharamveer Singh received at SHQ, BSF Barmar on 27.01.2015 according to which he had just put the date of reference of Award relating to commencement and completion of the work.

37. Submissions heard and the Written Submissions filed by the parties have been perused.

38. Admittedly, the petitioner, who was working as Inspector/J.E. (Elect.), was chargesheeted under Section 55 of the Act, 1968 for the offences under Sections 35 and 40 of the Act, 1968 and the DIG vide his Report dated December 2016 concluded that there was no evidence against the petitioner and it was directed that the advice be issued. However, on the same charges, another Chargesheet dated 19.08.2017 was issued and the petitioner was held guilty and punished with "severe reprimand" which has resulted in denial of promotion for the year 2016-17, 2017-18 and 2018-19.

"Plea of Double Jeopardy"

39. The basic challenge is that the petitioner cannot be chargesheeted twice for the same charges. Chapter III of the Act, 1968 defines the offences for which a person employed with BSF may be punished.

40. To comprehend and appreciate the contention of the petitioner, it would be pertinent to refer to the scheme of the Act, 1968 for holding an Inquiry. Section 35 of the Act, 1968 provides for the offence of falsifying the official documents and false declarations while Section 40 of the Act, 1968 deals with violation of good order and discipline. Chapter IV of the Act, 1968 deals with punishments.

41. Chapter VI of the Act, 1968 deals with Security Force Courts. Section 64 of the Act, 1968 reads as under:

"Section 64: - Kinds of Security Force Courts-

For the purposes of this Act there shall be three kinds of Security Force Courts, that is to say,-a. General Security Force Courts;

- b. Petty Security Force Courts;
- c. Summary Security Force Courts."

42. Section 55 of the Act, 1968 provides for punishment of persons of and below the rank of subordinate officers by Deputy Inspectors-General and others. It reads as under:

"55. Punishment of persons of and below the rank of subordinate officers by Deputy Inspectors-General and others-

(1) An officer not below the rank of the Deputy Inspector-General or such other officer as is, with the consent of the Central Government, specified by the Director-General may, in the prescribed manner, proceed against a person of or below the rank of a subordinate officer who is charged with an offence under this Act and award one or more of the following punishments, that is to say -

(a) forfeiture of seniority, or in the case of any of them whose promotion depends upon the length of service forfeiture of service for the purpose of promotion for a period not exceeding twelve months, but subject to the right of the accused previous to the award to elect to be tried by a Security Force Court;

(b) Severe reprimand or reprimand;

(c) Stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

(2) In every case in which punishment has been awarded under sub-section (1), certified true copies of the proceedings shall be forwarded, in the prescribed manner, by the officer awarding the punishment to the prescribed superior authority who may, if the punishment awarded appears to him to be illegal, unjust or excessive, cancel, vary or remit the punishment and make such other direction as may be appropriate in the circumstances of the case."

43. The petitioner herein was having the designation of SI/JE (Elect.). According to Rule 14A (1) (b) (ii), he falls in the category of "subordinate officers". Rule 11 provides for appointment of subordinate officers and under-officers and it reads as under:

"11. Appointment of Subordinate officers and under-officers.- Appointments to the post of Subedar-Major or Inspector shall be made by the Inspector-General and in the case of Sub-Inspector or Assistant Sub-Inspector by the Deputy Inspector-General and under-officer by the Commandant in the following manner-

(i) by direct recruitment;

(ii) by deputation from the Army, Navy, Air Force, State Police Force, or any other Department of the Central Government or of the State Government;

(iii) by promotion as may be prescribed."

44. The DIG is thus, the Appointing Authority for the petitioner, who being an S.I. falls in the category of "subordinate officer". In the present case, inquiry was initiated against the petitioner by DIG under Section 55 of the Act, 1968 for the offences under Section 35 and Section 40 of the Act, 1968. The DIG, being the Appointing Authority of the petitioner, was also competent to conduct the Inquiry. No challenge whatsoever has been taken that the DIG was not the Competent Authority.

45. It is not in dispute that Inquiry was held under Section 55 of the Act, 1968 by DIG against the petitioner vide Chargesheet dated 14.10.2016 and two Charges were framed against him. The said two Charges were as under: -

"Section 35(a): for knowingly making a false statement on a document signed by him:

That he, at SHQ BSF Banner on 11.02.2015 being Insp./JE (Elect) of Sector Banner, made false documents/ entries in Col No. 3,4,5 in the first and final bill for Rs. 3,67,951/- Sri. No. of work completion report & at Page No. 29 & 53 of MB without physical verification on ground for the work "Renovation of EI of 06 Nos Old Barracks (03 Nos old location & 03 Nos in firing range) at 99 Bn BSF (now 63 Bn BSF), Jalipa under SHQ BSF Banner" meant to be forwarded to PAD BSF New Delhi for sanction on completion of said work well knowing the fact that, the work was incomplete & there were procedural irregularities.

Section 40 for committing an omission prejudicial to good order and discipline of the force:

In that he, at SHQ BSF Banner, on 11.02.2015 while performing the duties of Insp/JE (Elect), improperly omitted to check physical verification on ground as well as deficiency of electrical items worth RS. 76,648/- in the work "Renovation of EI of 06 Nos Old Barracks (03 Nos old location & 03 Nos in firing range) at 99 Bn BSF (now 63 Bn BSF), Jalipa under SHQ BSF Banner" with the result that false documents were prepared enabling processing of bill to PAD BSF New Delhi before completion of said work without physical verification on ground."

46. The Deputy Commandant Shri R.K Saini, 63rd Battalion. BSF was directed to prepare ROE vide Letter No. PAP/SHQ-BMR/ ROE-RK/2016/9287-93 dated 14.10.2016. Accordingly, the ROE was prepared by the Deputy Commandant, 63rd Battalion BSF and was forwarded to DIG, SHQ BSF Barmer who after considering the entire ROE, concluded that there was no evidence found to substantiate both the Charges against the petitioner. The case was accordingly disposed of with the decision to issue DIG's advice to him and same was issued. Not only this, the Final order of exoneration was made by the DIG in an Enquiry held under Section 55 of the Act, 1968 who was the Competent Authority in terms of Rule 14A (1) (b) (ii), for the petitioner, the subordinate officer.

47. The Inquiry thus, stood concluded and was also acted upon as thereafter, the disposal request was forwarded to FTR HQ Guj (Law/Vig Branch) vide Signal No.

E/7001 dated 31.12.2016 for detachment of the petitioner who had been attached with the Headquarters since August, 2016 for three months on disciplinary grounds vide FHQ BSF (Pers-Staff Sec) Order No. 8134-39 dated 10.08.2016. The Records were accordingly forwarded for the vacancy year 2016-17 along with Service Record vide Letter dated 02.01.2017 for and on behalf of the DIG. The record further shows that vide similar Letter dated 20.01.2017 conveyed the same information to STS BSF, New Delhi.

48. The respondents have claimed in their counter-affidavit that on the directions of the superior authority, the Chargesheet was again served under Section 53(2) of the BSF Act, 1968 to the petitioner on 19.08.2017. The Inspector-General apparently while considering the case of Shri R C Yadav, AC/AE(Elect.), and SI/ JE(Elect.) Shri Dharamvir Singh of SHQ BSF Barmer for whom he was the Competent Authority, felt there was enough evidence against the petitioner. However, he was neither the Competent Authority nor has the powers of suo moto review of the Order which had attained finality. The same charges, as were framed in the first Chargesheet, were re-considered. What more can be clinching factor that even the evidence which had been recorded in the first Chargesheet, was taken as the evidence in the second Chargesheet and was awarded the punishment of "severe reprimand" vide Order dated 21.08.2017. There is no mention under what provision of the Act, 1968 second Departmental Enquiry was directed to be held after the first Enquiry on the same charges stood concluded.

49. Interestingly, we find that neither Order of the superior Authority directing the dissatisfaction with the first SCOI or the grounds for directing a fresh enquiry has been placed on record. It is settled service jurisprudence that once the Departmental Enquiry has been concluded by a competent Authority, it can be varied either by way of Review or Appeal. Axiomatically, the respondents are completely silent about the procedure adopted for directing a second Departmental Enquiry when for the same charges, the petitioner having already been exonerated by the DIG, the Competent Authority. Admittedly, the respondents never challenged the findings in the First Chargesheet; this practice of condemning a person without any basis and depriving him of his legitimate claim to promotion, year after year, is highly depreciable.

50. In *Lt. Governor, Delhi and Others vs. HC Narinder Singh* (2004) 13 SCC 342, the Apex Court held that if the second proposed action is based on the same cause of action proposing to deny promotion or reversion is contemplated under the impugned Show-Cause Notice, it would amount to double jeopardy. Such an action has to be annulled.

51. In *Nand Kumar Verma vs. State of Jharkhand and Others* (2012) 3 SCC 580, the Supreme Court observed that the second Departmental Enquiry would not be out of place where a first completed enquiry is set aside by the competent forum on the technical or on the ground of procedural infirmity. It thereby implies that the second enquiry can be undertaken only after the first enquiry is set aside. We find that the procedure at its own whims and fancies has been adopted by the

respondents victimising advertently or inadvertently, the petitioner which has caused serious prejudice to him.

52. It is rightly contended by the petitioner that it is the case of Double Jeopardy. A person who has been exonerated in the first Departmental Enquiry by the DIG, the Competent Authority, cannot be tried and held guilty for the same Charges on the same evidence, in the second Departmental Enquiry held at the whims of the superior authority without there being any ground, basis or provision under the law and without setting aside the first Inquiry. The second Departmental Enquiry, therefore, is without any basis and is vitiated being contrary to the principles of service jurisprudence.

53. We therefore, find that the second Departmental Enquiry on the same charges and the same evidence, was hit by the principle of double jeopardy and the same is liable to be quashed.

"Can minor punishment of "severe reprimand" be a basis to deny promotion in perpetuity"

54. Independent of the merits, we may also consider the consequence of minor penalty of "severe reprimand" and also consider if it can be a basis for denying the promotion year after year. The issue involved in this case is whether the punishment of "severe reprimand" which is a minor punishment as per Section 53 of the Act, 1968, awarded to the petitioner can be considered for the denial of promotion by the DPC. The petitioner is claiming promotion to the rank of AC/ Elect. His case was not considered against the vacancy year of 2016-17 due to the punishment awarded. Subsequently, he has been denied the promotion against the vacancy years 2017-18 and 2018-19.

55. It is settled as per the canons of service law that an employee has a right to be considered for promotion although not a right to get promoted. Administrative devices like warning, letter of caution, reprimand etc are used by various administrative Ministries/departments for cautioning the government servants against minor lapses such as carelessness, lack of thoroughness, etc. The Allahabad High Court in the case of Dr. 10305N Lt. Col. R. Saini vs. Union of India and Others 2001 SCC Online All 632 has held that the punishment of "Reprimand" or "Severe Reprimand" does not debar an employee from being considered for promotion nor does it affect his acting or substantive promotion but is taken cognizance of as part of employee's overall record of service in assessing him for such promotion. In other words, punishment of "Reprimand" or "Severe Reprimand" by itself does not disqualify an employee for being considered for promotion and is made part of the record only. The punishment of "Severe Reprimand" awarded in remote past cannot be taken cognizance of in assessing the individual officers for promotion in isolation of the subsequent conduct.

56. Similar observations were made by the Rajasthan High court in the case of Hari Singh Mahla vs. Jaipur Vidyut Vitaran Nigam Ltd. And Ors. 2007 SCC Online

Raj 785, wherein while discussing the difference between the "censure" and "warning" the Court held that a mere warning should not be treated as a punishment and it is definitely not an adverse entry showing lack of efficiency of the employee and is to be made a part of the record.

57. The Co-ordinate Bench of this Court in the case of Sumer Singh vs. Union of India and Anr. 2012 SCC Online Del 2676 which was rendered in the context of the BSF employees, placing reliance upon the Ministry of Home Affairs OM No. 51/3/69-Ests (A) dated 27.09.1969 and D.P. & A.R. OM No. 51/5/72-Ests dated 20.05.1972 held that there may be occasions when a superior officer may find it necessary to criticize adversely the work of an officer working under him and it might call for some formal action such as communication of a written warning/displeasure/reprimand and these warnings might be considered while writing the relevant year's ACR/APAR. Henceforth, the denial of the promotion by the DPC falls foul of the settled law.

58. It was also held by the Apex court in the case of D.H.B.V.N.L Vidyut Nahar, Hisar and Ors. Vs. Yashvir Singh Gulia (2013) 11 SCC 173 that, when an imposition of a minor penalty is not a bar in granting promotion to the employee, due promotion should be granted to him in accordance with Rules and Regulations applicable.

59. We find that the punishment of "severe reprimand" cannot be a reason to deny promotion, if otherwise found suitable.

Conclusion: -

60. We, therefore, conclude that in totality of the facts and circumstances, the Chargesheet dated 19.08.2017, order of sentence of severe reprimand dated 21.08.2017, Office Notes dated 08.01.2018 and 06.11.2019 are set aside. The petitioner has been wrongly not considered by DPC for the vacancy against the year 2016-17 and subsequent years, even though he had been duly exonerated in the first Inquiry.

61. We further decide that the action of the respondents in not considering the petitioner for the vacancy year 2016-17 and subsequent years, merely on the ground of punishment of "severe reprimand" awarded in the second enquiry, as not justiciable, the second Inquiry having held to be illegal and arbitrary.

62. We hereby direct that the review DPC be commenced for the petitioner and if he is found suitable for promotion as per the findings of DPC which was kept in sealed cover, be considered within eight weeks and he be granted seniority from the year 2016-17 with all consequential benefits, if otherwise found suitable.

63. The present petition along with pending application is accordingly disposed of.