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**(2009) 11 JH CK 0024**  
**In the Jharkhand High Court**

Ram Chandra Prasad

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

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**Date of Decision :** 12-11-2009

**Acts Referred:**

Border Security Force Act, 1968 — Section 40

**Citation :** (2009) 11 JH CK 0024

**Hon'ble Judges :** Dhirubhai Naranbhai Patel, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

D.N. Patel, J.—The present petition has been preferred by a Constable of the Border Security Force, who has been dismissed from the services vide order at Annexure-2 dated 3rd July, 2007 for misconduct of opening of border fencing Gate No. 127 to facilitate smuggling activities of six bundles of goods from Bangladesh to India. Departmental Appeal was also dismissed vide order dated 15th January, 2008 (Annexure-7 to the memo of petition). The orders at Annexure-2 as well as at Annexure-7 are under challenge in this writ petition.

2. It is mainly submitted by learned Counsel for the petitioner that both the authorities have not appreciated the evidence on record and the charges levelled against the present petitioner, have not been proved, looking to the evidence on record and, therefore, the orders passed by both the authorities below, deserve to be quashed and set aside. It is also submitted by learned Counsel for the petitioner that the quantum of punishment is grossly disproportionate to the nature of misconduct and, therefore also, both the orders passed by authorities below,; deserve to be quashed and set aside.

3. I have heard learned Counsel for the respondents, who has submitted that very serious are the charges against the present petitioner of opening the border fencing Gate No. 127 to facilitate smuggling activities from the neighbouring country to India. Several witnesses have been examined by the Department and

they are as many as eight in numbers and their evidences have been properly appreciated by the authorities below and, therefore, the petitioner has been rightly punished for dismissal, looking to the gravity of charge, proved against the petitioner. Otherwise also, there is concurrent finding of the fact by both the authorities below. There is no error in the inquiry procedure, held by the respondents under the Border Security Force Act, 1968. So far as punishment for dismissal is concerned, it is submitted by learned Counsel for the respondents that as the petitioner had opened the border fencing Gate No. 127 and that too to facilitate smuggling activities, the punishment for dismissal, awarded by the respondents, cannot be levelled as shockingly disproportionate and thus, this writ petition may not be entertained by this Court under its extraordinary jurisdiction and, therefore, the present petition deserves to be dismissed.

4. Having heard learned Counsel for both sides and looking to the facts and circumstances of the case, it appears that:

(i) The present petitioner was working as constable with the Border Security Force and the following were the articles of charges, levelled against him dated 29th June, 2007 at Annexure-1:

BSF ACT AN ACT PREJUDICIAL TO GOOD Sec 40 ORDER AND DISCIPLINE OF THE FORCE In that they together, in the area of BOP Kaiyedappa, on 24th Dec. 2006, at about 02:30 hrs., while on duty at Naka Point No. 4 improperly and without authority, opened border fencing Gate No. 127 to facilitate smuggling of Sue bundles of goods from Bangladesh to India. Place : Fatikchera (A.K. Sharma) Date : 29 June, 2007 COMMANDANT 22 BATTALION BSF

(ii) In pursuance of the aforesaid charge, the respondents have examined total eight witnesses. The inquiry was held before the Summary Security Force Court u/s 40 of the Border Security Force Act, 1968.

(iii) Looking to the depositions of witnesses, presented by the respondents, charges have been proved and order of punishment has been inflicted upon the petitioner vide order dated 3rd July, 2007 (Annexure-2 to the memo of petition) and, thereby, he was dismissed from the services w.e.f. 3rd July, 2007.

(iv) Looking to the departmental appeal order, which is at Annexure-7 dated 15th January, 2008, the said appeal has been dismissed, which was preferred by the petitioner and looking to the depositions of the witnesses, it was found that there was sufficient evidence on record to prove charge against the petitioner. Moreover, he has pleaded guilty of the charges, during the trial.

5. Thus, there is no procedural error in holding inquiry. So far as quantum of punishment is concerned, looking to the nature of charge against the present petitioner that he had opened the border fencing Gate No. 127 to facilitate smuggling of six bundles of goods from the neighbouring country to India, the punishment awarded by the respondent authorities cannot be levelled as

shockingly disproportionate. On the contrary, the punishment is in consonance with the nature of misconduct.

6. Thus, looking to the procedure of holding inquiry by the respondents, there is no error. As far as evidence is concerned, there is sufficient evidence to bring at home the charges levelled against the present petitioner and so far as quantum of punishment is concerned looking to the nature of misconduct, it cannot be said that it is shockingly disproportionate to the charges levelled against the present petitioner.

7. In view of these facts and reasons, there is no substance in this writ petition and, hence, the same is, hereby, dismissed.