

(2018) 11 J&K CK 0089

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 475 Of 2002

S. Inderjit Singh @APPELLANT@Hash Union Of India And Others

Date of Decision : 15-11-2018

Acts Referred:

Border Security Force Act, 1968 — Section 10, 11, 11(2), 11(3), 14, 16, 17, 18, 19, 20, 21, 30, 30(a), 30(b), 30(c), 30B, 30(f), 40, 55, 55(1), 55(2), 141(1), 141(2)
Border Security Force Rules, 1969 — Rule 20, 20(2), 20(3), 45, 45(2), 51, 53, 53(1), 53(2), 53(3), 54, 55, 55(3), 56, 57, 57(2), 57(3), 93(2), 167, 169
High Court Of Jammu And Kashmir Rules, 1999 — Rule 138(3)

Citation : (2018) 11 J&K CK 0089

Hon'ble Judges : Tashi Rabstan, J; Sanjeev Kumar, J

Bench : Division Bench

Advocate : Z.A. Qureshi, Rehana, T.M. Shamsi

Final Decision : Dismissed

Judgement

1. Petitioner is aggrieved of, impugns and exhorts quashment of Sentence dated 30th July 2001 (Annexure A to writ petition) passed by respondent no.4 (General Security Force Court through its Presiding Officer) and Confirmation bearing no.3/285/2001-CLO/BSF/5338-39 dated 28th September 2001 (Annexure C to writ petition) passed by Chief Law Officer/Deputy Inspector General, Directorate of General, Border Security Force, Ministry of Home, Government of India. He beseeches a direction to respondents to take him back into service and pay him all emoluments, grant him promotion and all other service benefits as if order of sentence was never passed and confirmed.

2. According to petitioner, he had been working as ASI/CIK with respondent no.3. He had been tried by General Security Force Court (respondent no.4) and sentenced on 30th July 2001, by dismissing him from service and forfeiting all arrears of pay, allowances and other public money due to him as on 30th July 2001. Petitioner avers in writ petition on hand that he has been sentenced under Section 30-B of Border Security Force Act, 1968 and tried by respondent no.4 from 12th July 2001 to 13th July 2001. The order of sentence is said to have been carried out and implemented by an Order dated 12th October 2001

(Annexure B to writ petition) passed by DIG/PSO Ftr. Headquarter, Jammu. Sentence has been confirmed by respondent no.2. Petitioner claims that he had represented against Order of respondent no.4, by filing a petition under Rule 167 and Rule 169. However, the same had been rejected vide Order dated 28 th September 2001. On 11th May 2001, after General Security Force Court had been constituted, DIG PSO informed petitioner that competent authority had approved to try petitioner and one AC/SO. Immediately on receipt of letter, petitioner claims that he had made a representation to respondent no.3, requesting him not to hold joint trial of Mohan Lal and petitioner and sought a separate trial. His application dated 15th May 2001 had, however, been rejected vide Order dated 30th may 2001. Nonetheless, he had been asked to made a request to respondent no.4. Charge Sheet had been framed on 5th July 2001 against petitioner and aforesaid Mohan Lal, jointly. This had been followed by constitution of a General Security Force Court, which had met on 12th July 2001. Petitioner claims that he had made a request to respondent no.4, but same had been turned down and it proceeded to try petitioner. It is averred that petitioner and aforesaid Mohan Lal had to face trial jointly for dishonestly misappropriating property belonging to government, which is an offence under Section 30-B of BSF Act, 1968. Petitioner maintains that the words of the charge against him and above Mohan Lal, are that "they together at Jammu between 01.07.1997 to 31.12.1998 while being Drawing and Disbursing Officer and Cashier respectively of Ftr. HQ BSF Jammu misappropriated Rs.8,47,883/- of public fund". According to petitioner, rest of the charge sheet pertained to afore-named person, Mohan Lal, who had to face trial for two more offences covered under Section 30-F & 40. Petitioner maintains that evidence led by prosecutor had been a single set of witnesses, who tried to prove the case against petitioner and all charges against Mohan Lal, which in turn influenced respondent no.4 for passing sentence of punishment against petitioner.

3. Next submission of petitioner in writ petition on hand is that under law two persons can be tried only in those cases where they confined or had a common intention to commit that offence. In that eventuality, a joint trial is permitted under law and any evidence led to prove the charge can be read against both of the accused persons for acquitting or convicting them as the case may be. It is also highlighted that where one of the accused persons has been charged to have committed an offence with another accused person, he cannot be tried by the same charge along with second accused person, who in that charge sheet is alleged to have committed some different offences independently. Such accused persons are to be charged separately and such offences are to be tried separately. This procedure, as claimed by petitioner, has been violated with impunity by respondent no.4 and sentence, so passed by it, is non-est in eye of law. This objection, as claimed by petitioner in writ petition on hand, had been raised by him when he had been issued with a letter that he along with Mohan Lal had to be tried jointly, but respondents are said to have not accepted said objection of petitioner and asked him to raise said objection before General

Security Force Court, which he claims to have done. However, his request had been turned down and he had been illegally tried along with Mohan Lal for offences, which he has not committed. This illegality, as stated by petitioner, has made whole trial illegal and non-est in eye of law. It is contended claimed that petitioner has also been deprived to defend his case because of the fact that he had been tried jointly with above Mohan Lal, for alleged offences to have been committed by him and Mohan Lal.

4. It is also avowed in writ petition on hand that a single set of witnesses and documentary evidence had been produced by prosecutor in support of charges, depriving him to note which part of evidence had been produced in support of the charge levelled against them under Section 30-B and which set of evidence had been produced to prove independent charge levelled against Mohan Lal under Section 30 (f) and 40 of BSF Act. The act of respondents is said to have deprived petitioner to project his defence for simple reason that he had no knowledge who were witnesses, whose statements he had to rebut by producing his defence and who had been the witnesses to be ignored by him. petitioner also that respondent no.4 had also appreciated statement of all witnesses and on the basis of their statement, has sentenced petitioner irrespective of the fact that they had also no information or knowledge that which evidence, documentary or oral, had been produced by prosecutor to prove charge against petitioner and that such a sentence is illegal.

5. Subsequent assertion of petitioner in writ petition is that ingredients of offence of misappropriation have not been proved and the case is hand is a case of no evidence against petitioner, and therefore, petitioner could not have been sentenced for misappropriation of government money. Even questions petitioner had been under Rule 93 (2) did not suggest that he had been entrusted with a cash amount in any form whatsoever to the tune of Rs.8,47,883/- which he has dishonestly misappropriated and converted for his own use along with Mohan Lal. The prosecutor, according to petitioner, has to prove that cash, so mentioned in the charge, had been that of the government, secondly that this amount had been misappropriated by him or converted it to his own use along with Mohan Lal and that there had been dishonest intention on part of petitioner for committing these acts. Petitioner's subsequent submission is that questions put to him under Rule 92 (2) are formulated for his explanation so that he is in a position to explain that part of evidence only, which has come against him on the record and questionnaire is based on that portion of evidence which proves guilt of the accused person. Petitioner states that he does not want this Court to appreciate evidence, even questions, which have been put to him are read and are taken on its face value, what has been proved or come on record against him, is that he has misconducted himself. The evidence, in the opinion of petitioner, to which he had been asked to reply under Rule 93 (2) does not prove that he had been entrusted with the cash for which he had been charged in any form and secondly, that this cash amounting to Rs.8,47,883/- had been misappropriated by him and Mohan Lal, or converted the same for their own use and to what extent and

lastly, it had been with this intention that he misappropriated the property which had been of the government. Not witness, as claimed by petitioner, has come to the court and said that cash of Rs.8,47,883/- had been of government; that it had been entrusted to petitioner; that he has misappropriated the same, or converted the same for his own use and that he did it dishonestly. He also maintains that in view of explanation tendered by him to question put to him under Rule 93 (2) coupled with application made under Rule 167, punishment, so given to him, does not commensurate with alleged offence for the reason that what has been proved by respondents is that he has, at the most, committed misconduct by not updating cash book and not an offence of misappropriating the government property.

6. Counter affidavit has been filed by respondents. They insist that petitioner had been posted to Ftr HQ BSF, Jammu, from 75 Bn BSF and he joined during the month of May 1993. He had been appointed as Cashier w.e.f. 1st September 1994. Respondents aver that as per Chapter XIII, PARA 13.4 (Page- 230) of BSF Accounts Manual, following are duties of Cashier:

- a) He will be responsible for maintenance of government cash book and connected documents like UD register, advance registers.
- b) Check cash deductions list prepared by the coys and to prepare consolidated list and maintain miscellaneous deduction registers.
- c) Preparation of challans for the money credited in treasury and obtain accepted copies of challans.
- d) Deal with encashment of all bank drafts and cheques received from various formations.
- e) Ensure prompt disposal of money received through various sources including undisbursed amount from coys etc.
- f) Maintain bank draft in/out registers.
- g) Maintain service postage stamp register.
- h) Ensure paid acquittance rolls received from various formations are thoroughly scrutinised before they are put up in guard file for records.
- i) Responsible for keeping proper accounts of permanent advance and ensure its full utilisation and recoupment.
- j) Prepare disbursement sheet and advice slip to ensure prompt disbursement.
- k) Perform any other duties entrusted to him.

7. Respondents also insist that while petitioner had performed duties as Cashier during the year 1998, he had not paid due attention towards his duties as Cashier as per instructions and had played with government money at his own and he had not prepared monthly summaries in cash book from February 1998

onwards and had even stopped writing of cash book and other related documents, like incoming draft registers, UD register etcetera, from August 1998 onwards. Due to above act of petitioner, total accounts of FTR HQ BSF Jammu are claimed to have collapsed and subsequently complaints had been started receiving from various formations regarding non-payment of pay and allowance during the month of December 1998. Then the matter had been brought to the notice of the then IG BSF, Jammu, who had passed order to Shri R. S. Chawla, DIG (Retd.) that Shri Mohan Lal, SO/AC and ASI/CLK Inderjit Singh, should complete the government cash book within a month, but petitioner had not paid any heed to cash book and to sort out financial irregularities committed by him, in spite of repeated instructions given to him. It is also asserted that since irregularities had not been rectified, a board of officers had been detailed on 31st March 1999, to carry out checking of government cash-book for the period commencing from 1st January 1998 to 31st December 1998, aiming at to find out actual irregularities / embezzlement that had taken place in public fund account of FTR HQ Jammu. The board proceedings are said to have been submitted on 29th July 1999, giving various suggestions as well. One of its suggestions had been to get government account audited for the period, beginning from July 1997 to January 1999, by Internal Audit Party, Jammu, since actual loss could not be assessed by board of officers as the confirmation/A-Roll of BDs, sent to other formations/firms, had not been available to verify correctness. Subsequently, special audit of public fund accounts for period from July 1997 to December 1998 had been carried out by PAD BSF New Delhi, with effect from 4th October 1999 to 23rd October 1999, and a report had been submitted on 31st January 2000.

8. It is next insisted by respondents in their counter affidavit that SCOI had also been ordered by DG BSF, to investigate circumstances under which irregularities/ embezzlement took place in public fund accounts for the period commencing from 1st July 1997 to 31st December 1998 and to fix responsibility of officials, whose act led to irregularities in government accounts. The SCOI proceedings duly completed, in all respect, had been submitted to FHQ BSF during the month of October, 2000. As per remarks of DG BSF on the SCOI proceedings, the actual loss had to be worked out by an Audit Team of PAD, after re-auditing whole transactions for the period covered in SCOI since as per opinion of the court, disciplinary action had to be initiated, besides recovery of actual loss had to be worked out by special audit. Respondents maintain that as per final audit carried out by PAD BSF, net loss of government money has been worked out Rs.8,47,883/-and as per opinion of the court and remarks of competent authority on the SCOI, the actual loss of Rs.8,47,833/- has been worked out by special audit to be recovered. On the basis of recommendations of the court as well as remarks of IG BSF on SCOI proceedings, petitioner had been heard by his Commandant under Rule 45 of BSF Rules, 1969, along with Mohan Lal, SO/AC, on the charge as per charge sheet and ROE had been ordered. Commandant of the accused, who had ordered ROE, after going through ROE under Rule 51 of

BSF Rules, had referred the same to competent superior authority in consultation with LO GDE-I. GSFC had been convened and conducted against petitioner and Mohan Lal, with effect from 12th July 2001 to 30th July 2001 as per evidence established on the charges as per charge-sheet. The court, it is claimed, has found accused guilty of first charge and sentenced petitioner, subject to confirmation, for dismissing him from service and forfeiting all arrears of pay and allowances and other public money due to him as on 30th July 2001. The sentence of the court has been confirmed by DG, BSF, and promulgated on 12th October 2001.

9. It is also claimed by respondents that on the basis of recommendations of the court as well as remarks of DG BSF on SCOI proceedings, petitioner had been heard by his Commandant and after hearing petitioner, referred the same to competent superior authority, who in consultation with LO-I had convened a GSFC, which had been conducted against petitioner and above Mohan Lal. The court has found petitioner guilty of first charge and sentenced him. The GSFC proceedings are said to have been forwarded to Chief Law Officer for post-trial advice. In the interregnum, petitioner is stated to have submitted a representation, which had been forwarded to Chief Law Officer, New Delhi. Representation has been rejected by DG BSF as being devoid of merit.

10. Rejoinder has been filed by petitioner to rebut submissions made by respondents in their Reply. He avers that he had been holding the post of Cashier substantively. He had been asked to perform duties of Junior Accountant and for performing such duties, he had not been provided with any Helper. Petitioner claims that he had requested respondent S.O. /Accountant about difficulties, which he had been facing but his request had not been accepted. Petitioner denies to have been asked to complete backlog work within a period of one month. He states that he had been asked to complete cash book etcetera, which had been completed by him so far as it was possible for him to do so. There had been no intentional or deliberate act on his behalf to commit financial irregularities and he has no knowledge bout constitution of the Board, neither the Board had affiliated him for such summary investigation. Even the enquiry which had been conducted, had not been in accordance with rules, but at the same time they have failed to fix responsibility. According to petitioner, Rule 51 of BSF Rules has not been followed in letter and spirit, so much so that by not following the rule and the proceedings, the result thereof has prejudiced the rights of petitioner guaranteed to him. It is insisted that representation made by him could not be treated as preconfirmation statutory petition. In absence of any rule to this extent treating representation as preconfirmation statutory petition is an act which is without jurisdiction and against the act and rules attending the field.

11. I have heard learned counsel for parties and considered the matter. I have gone through the record produced by learned counsel for respondents.

12. Services of petitioner are governed by Border Security Force Act, 1968 (for short "Act of 1968") and Border Security Force Rules, 1969 (for brevity "Rules of

1969"). The Act of 1968 provides for constitution and regulation of an Armed Force of the Union for ensuring the security of the borders of India and for the matters connected therewith. Section 10 of the Act of 1968 says as to termination of service by Central Government. It provides that subject to the provisions of the Act of 1968, the Central Government may dismiss or remove from service any person subject to Act of 1968. Dismissal, removal or reduction by Director General and by any other officer is postulated under Section 11 of the Act of 1968. It envisions that Director General or any Inspector General may dismiss or remove from service or reduce to a lower grade or rank or ranks any person subject to Act of 1968 other than an officer. Subsection (2) of Section 11 says that an officer not below the rank of Deputy Inspector-General or any prescribed officer may dismiss or remove from the service any person under his command other than an officer or a subordinate officer of such rank or ranks as may be prescribed. Any such officer as is mentioned in Subsection (2) may, in terms of Subsection (3) of Section 11, reduce to a lower grade or rank or the ranks any person under his command except an officer or a subordinate officer. Chapter III of the Act of 1968 is concerned qua various Offences, committed by any person, who is subject to the Act of 1968. Section 14 relates to offences for enemy and punishable with death. It says that any person, subject to the Act of 1968, who shamefully abandons or delivers up any post, place or guard, committed to his charge or which it is his duty to defend, or intentionally uses any means to compel or induce any person subject to the Act of 1968 or to military, naval or air force law to abstain from acting against the enemy or to discourage such person from acting against the enemy, or in the presence of enemy, shamefully casts away his arms, ammunition, tools or equipment or misbehaves in such manner as to show cowardice, or treacherously holds correspondence with, or communicates intelligence to, the enemy or any person in arms against the Union, or directly or indirectly assists the enemy with money, arms, ammunition, stores or supplies or in any other manner whatsoever, or in time of active operation against the enemy, intentionally occasions a false alarm in action, camp, quarters, or spreads or causes to be spread reports calculated to create alarm or despondency, or in time of action leaves his Commandant or other superior officer or his post, guard, picket, patrol or party without being regularly relieved or without leave, or having been captured by the enemy or made a prisoner of war, voluntarily serves with or aids the enemy, or knowingly harbours or protects an enemy not being a prisoner, or being a sentry in time of active operation against the enemy or alarm, sleeps upon his post or is intoxicated, or knowingly does any act calculated to imperil the success of the Force or the military, naval or air forces of India or any forces co-operating therewith or any part of such forces, shall, on conviction by a Security Force Court, be liable to suffer death or such less punishment as is mentioned in the Act of 1968.

13. Section 16 of the Act of 1968 relates to offences punishable more severely on active duty than at other times. It stipulates that any person, subject to the

Act of 1968, who forces a safeguard, or forces or uses criminal force to a sentry, or breaks into any house or other place in search of plunder; or being a sentry sleeps upon his post, or is intoxicated, or without orders from his superior officer leaves his guard, picket, patrol or post, or intentionally or through neglect occasions a false alarm in camp or quarters, or spreads or causes to be spread reports calculated to create unnecessary alarm or despondency, or makes known the parole, watchword or countersign to any person not entitled to receive it, or knowingly gives a parole, watchword or countersign different from what he received, shall, on conviction by a Security Force Court, if he commits any such offence when on active duty, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and if he commits any such offence when not on active duty, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned. Section 17 relates to Mutiny whereas Section 18 is concerned about desertion and aiding desertion. Section 19 says about punishment to be inflicted for remaining absent without leave. Section 20 postulates vis-à-vis striking or threatening superior officers and Section 21 relates to disobedience to superior officer.

14. Offences in respect of property is envisaged in Section 30 of the Act of 1968. It enjoins that any person, subject to the Act of 1968, who commits theft of any property belonging to the Government, or to any Force mess, band or institution, or to any person subject to the Act of 1968, or dishonestly misappropriates or converts to his own use any such, property, or commits criminal breach of trust in respect of any such property, or dishonestly receives or retains any such property in respect of which any of the offences under clauses (a), (b) and (c) of Section 30 of the Act of 1968, has been committed, knowing or having reason to believe the commission of such offence or wilfully destroys or injures any property of the Government entrusted to him, or does any other thing with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person, shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is mentioned in the Act of 1968.

15. Section 40 of the Act of 1968, says and postulates that any person subject to the Act of 1968, who is guilty of any act or omission which, though not specified in the Act of 1968, is prejudicial to good order and discipline of the Force shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is mentioned in the Act of 1968. Section 55 of the Act of 1968 says that an officer not below rank of Deputy Inspector General or such officer as is, with the consent of the Central Government, specified by Director General may proceed against a person of or below the rank of a subordinate officer who is charged with an offence under the Act of 1968 and award one or more punishments, that is to say, 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; severe reprimand or reprimand; stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good. Subsection (2) of Section 55 of the Act of 1968 envisions that in every case in which punishment has been awarded under Subsection (1) of Section 55 of the Act of 1968, copies of proceedings shall be forwarded, by officer awarding punishment to superior authority, who may, if 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.

16. The Central Government, in exercise of powers conferred by Subsections (1) and (2) of Section 141 of the Border Security Force Act, 1968 (47 of 1968), made the Rules, which are being called as the Border Security Force Rules, 1969. The said Rules were published in the Gazette of India vide S.O.233 dated 9th June 1969. Rule 20 of the Rules of 1969 relates to termination of service of officers by the Central Government on account of misconduct. When it is proposed to terminate service of an officer on account of misconduct, he shall be given an opportunity to show cause in the manner specified in Sub Rule (2) of Rule 20 of the Rules of 1969, against such action. However, the said Sub-Rule shall not apply where service is terminated on ground of conduct which has led to his conviction by a Criminal Court or a Security Force Court; or where Central Government is satisfied that for reasons, to be recorded in writing, it is not expedient or reasonably practicable to give to the officer an opportunity of showing cause. When after considering reports on an officer's misconduct, Central Government or Director-General, as the case may be, is satisfied that trial of Officer by a Security Force Court is inexpedient or impracticable, but is of the opinion, that further retention of said officer in service is undesirable, Director-General shall so inform the officer and he shall be called upon to submit his explanation and defence. However, that Director-General is free to withhold disclosure of such report or portion thereof if, in his opinion, its disclosure is not in the interest of security of the State. In the event of explanation of Officer being considered unsatisfactory by Director-General, or when so directed by Central Government, the case shall be submitted to Central Government with the Officer's defence and recommendation of Director-General as to termination of Officer's. When submitting a case to Central Government under provisions of sub-rule (2) or sub-rule (3), Director-General, under sub-rule (4) shall make his recommendation whether Officer's service should be terminated, and if so, whether officer should be: (a) dismissed from the service; or (b) removed from the service; or (c) retired from the service; or (d) called upon to resign. Under sub-rule (5), Central Government, after considering reports and officer's defence, if any, or judgment of the Criminal Court, as the case may be, and recommendation of Director-General, may remove or dismiss officer with or without pension or retire or get his resignation from service, and on his refusing

to do so, the officer may be compulsorily retired or removed from the service with pension or gratuity, if any, admissible to him.

17. Chapter VII of the Rules of 1969 relates to investigation and summary disposal. Rule 45 thereof provides for hearing of the charge against an enrolled person. It says that the charge shall be heard by Commandant of the accused. The charge and statements of witnesses if recorded shall be read over to accused. If written statements of witnesses are not available, he shall hear as many witnesses as he may consider essential to enable him to determine the issue; the accused shall be given an opportunity to cross-examine the witnesses and make a statement in his defence. Sub Rule (2) of Rule 45 of the Rules of 1969, envisages that after hearing charge under sub-rule (1), the Commandant may: (i) award any of the punishments which he is empowered to award; or (ii) dismiss the charge; or (iii) remand the accused, for preparing a record of evidence or for preparation of an abstract of evidence against him; or (iv) remand him for trial by a Summary Security Force Court. However, in cases where the Commandant awards more than seven days' imprisonment or detention he shall record the substance of evidence and the defence of the accused. It is also provided that he shall dismiss the charge, if in his opinion the charge is not proved or may dismiss it if he considers that because of the previous character of the accused and the nature of the charge against him it is not advisable to proceed further with it. Chapter VIII of the Rules of 1969, relates to charges and matters antecedent of trial. Rule 53 the Rules of 1969 relates to Charge Sheet. Rule 54 of the Rules of 1969 says about charges. Rule 55 relates to joint charges. It says that any number of accused may be charged jointly and tried together for an offence averred to have been committed jointly by them and any number of accused, though not charged jointly, may also be tried together for an offence averred to have been committed by one or more of them and abetted by other or others. Sub Rule (3) of Rule 55 of the Rules of 1969 envisages that where accused are so charged under sub-rule (1) or sub-rule (2), any one or more of them may be charged with, and tried for, any other offence with which they could have been charged under sub-rule (1) of rule 53. In that view of matter petitioner's plea that he should not have been charged with Mohan Lal, is specious.

18. A charge-sheet as provided under Rule 56 the Rules of 1969, shall not be invalid merely by reason of the fact that it contains any mistake in the name or description of accused, and in construction of a charge-sheet there shall be presumed in favour of supporting it every proposition which may reasonably be presumed to be impliedly included, though not expressed therein, and the statement of the offence and the particulars of the offence shall be read and construed together. If there is any mistake in the name or description of accused or a mistake, attributable to a clerical error or omission, the same can be corrected at any time during a trial if it appears to the Court, it is so contained in Rule 57 of the Rules of 1969. Not only this, addition, alteration or omission can as well be made under Sub Rule (2) & (3) of Rule 57 of the Rules of 1969.

19. Pleadings of parties as also record produced by respondents would emphatically show that petitioner has been given opportunities as is/are required under and in terms of the Act of 1969 and the Rules of 1969. All that was required to be done by respondents, has been followed and complied with by respondents. It also comes to fore that respondents have conducted a full-fledged General Security Force Court, in which all facets of the matters qua misappropriation and involvement of individuals, either petitioner or any other person / accused, have been dealt with comprehensively and squared off.

20. It is most apposite to ingeminate here that petitioner had been enrolled as Constable in Border Security Force (BSF) on 5th June 1979. He had been promoted as Lance Naik from 10th July 1989. Further promotion of petitioner to the post of N.K. had been made on 15th January 1992. Petitioner thereafter had been selected in Ministerial Cadre and appointed as ASI/CLK on 2nd April 1993. In the month of May 1993, he had been posted to FTR HQ BSF Jammu from 75 Battalion BSF. He had been appointed as Cashier with effect from 1st September 1994. While discharging his duties as Cashier during the year 1998, some irregularities are said to have been committed by petitioner, causing collapse of accounts of FTR HQ BSF Jammu and subsequent whereof, complaints for non-payment of pay and allowance during the month of December 1998 are stated to have poured in. The matter had been brought to the notice of Inspector General, BSF, Jammu, who had directed petitioner and Shri Mohan Lal to complete government cash book within a month but petitioner had not paid any heed to cash book to sort out financial irregularities, though repeated instructions issued and consequently, a board of officers had been appointed on 31st March 1999, to carry out checking of government cash-book for the period beginning from 1st January 1998 to 31st December 1998, to find out actual irregularities/embezzlement, if any taken place in public fund account of FTR HQ Jammu. The board proceedings had been submitted on 29th July 1999, recommending to get government account audited for the period, commencing from July 1997 to January 1999, by Internal Audit Party, Jammu. As a consequence whereof, special audit of public fund accounts for period from July 1997 to December 1998 had been carried out by PAD BSF New Delhi, with effect from 4th October 1999 to 23rd October 1999, and a report had been submitted on 31st January 2000. SCOI had also been ordered by DG BSF, to investigate whys and wherefores, under which irregularities/embezzlement took place in public fund accounts for the period, from 1st July 1997 to 31st December 1998 and to fix responsibility of officials, whose act led to irregularities in government accounts. The SCOI proceedings had been submitted to FHQ BSF in the month of October, 2000. As per remarks of DG BSF on the SCOI proceedings, the actual loss had to be worked out by an Audit Team of PAD, after re-auditing whole transactions for the period covered in SCOI because as per opinion of the court, disciplinary action had to be initiated, besides recovery of actual loss had to be worked out by special audit. In terms of final audit carried out by PAD BSF, net loss of government money has been worked out Rs.8,47,883/- inasmuch as in terms of

opinion of the court and remarks of competent authority on the SCOI, the actual loss of Rs.8,47,833/- has been worked out by special audit to be recovered. Considering recommendations of the court and remarks made by IG BSF on SCOI proceedings, petitioner had been heard by his Commandant under Rule 45 of BSF Rules, 1969, along with Mohan Lal, SO/AC, on the charge as per charge sheet and ROE had been ordered. The Commandant, after going through ROE under Rule 51 of BSF Rules, had referred the same to competent superior authority in consultation with LO GDE-I. The GSFC had been conducted against petitioner and Mohan Lal, with effect from 12th July 2001 to 30th July 2001. The court found petitioner guilty of first charge and sentenced him, subject to confirmation, for dismissing him from service and forfeiting all arrears of pay and allowances and other public money due to him as on 30th July 2001. The sentence of the court has been confirmed by DG, BSF, and promulgated on 12th October 2001. Petitioner has partaken at all and every stage of the proceedings conducted by respondents as had been conditioned under BSF Act and Rules.

21. What emerges from the above is that respondents have followed and complied with all procedural requirements as prescribed and envisaged under and in terms of the BSF Act and Rules and it is only thereafter that petitioner has been awarded with impugned sentence. Having said that, writ petition lacks in merit and as a corollary, is dismissed with connected IA(s). Interim direction, if any, shall stand vacated.

22. Record be returned to learned counsel for respondents.