



2025:DHC:10839-DB



\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Judgment reserved on: 20.11.2025****Judgment pronounced on: 04.12.2025**+ W.P.(C) 4261/2024
SHANTANU SAHAPetitioner

Through: Mr. Arjun Panwar, Adv.

versus

UNION OF INDIA AND ORSRespondents

Through: Ms. Shubhra Parashar, CGSC
with Mr. Virender Pratap Singh Charak, Adv.**CORAM:****HON'BLE MR. JUSTICE C. HARI SHANKAR****HON'BLE MR. JUSTICE OM PRAKASH SHUKLA****JUDGMENT**

%

04.12.2025**OM PRAKASH SHUKLA, J.**

1. The present writ petition has been filed under Article 226 of the Constitution of India seeking quashing of (i) the Findings and Sentence order dated 28.03.2023 passed by the General Security Force Court¹, whereby the petitioner was sentenced to one year simple imprisonment and was dismissed from service; (ii) order dated 22.04.2023 passed by Additional Director General, Western Command, Headquarter, SPL, Director General, Border Security Force², whereby the petitioner's pre-confirmation appeal under Section 117(1) of the Border Security Force

¹ "GSFC" hereinafter

² "BSF" hereinafter



Act, 1968³ was dismissed; (iii) the Promulgation order dated 06.05.2023 whereby the petitioner was dismissed from service and was committed to civil prison for serving sentence of one year simple imprisonment; and (iv) order dated 01.01.2024 passed by Director General, BSF, whereby the petitioner's post-confirmation petition dated 21.10.2023 under section 117 (2) of the Act against sentence and findings of the GSFC was rejected.

FACTS

2. The petitioner was recruited in BSF on 03.04.1990 as Constable (General Duty) and was posted in 27th Battalion⁴, BSF, Tagore Villa, Kolkata.

3. The prosecution's story in brief is that a lady officer⁵ was posted in the same battalion i.e., 27 BN BSF, Tagore Villa, Kolkata and was deputed to perform guard duties, where the petitioner was also deputed for guard commander duties. It is the case of the prosecution that, on 21.01.2021, while Ms. X was on duty, the petitioner touched her head and back with bad intention. Thereafter, on 14.02.2021, the petitioner was accused of offering an unwarranted gift packet of "biryani" to the Ms. X, which she chose not to keep and subsequently discarded. It is also averred that, owing to the continuous problem being faced by the Ms. X while on duty, the mother of the Ms. X went to meet the Commandant of the same Battalion to complain about the situation

³ "The Act/BSF Act" hereinafter

⁴ "BN" hereinafter

⁵ "Ms. X", hereinafter



being faced by her daughter. However, it is stated that she did not receive any favourable response and was sent back.

4. Lastly, the petitioner is also reported to have spread some indecent remarks about Ms. X around April, 2021.

5. Based on the above alleged incidents, Ms. X is stated to have submitted a written complaint against the petitioner on 18.06.2021.

6. Pursuant to the complaint, the matter was detailed for investigation before Internal Complaints Committee⁶ as per section 11(1) of the Prevention of Sexual Harassment ⁷Act, read with Rule 14(2) of the CCS(CCA) Rules, 1965.

7. The ICC, relying on a phone call recording, which purportedly disclosed the incident of petitioner offering biryani to the petitioner, held that the petitioner was guilty of the allegations levelled against him, and recommended disciplinary action. Further, disciplinary action was also recommended against four witnesses for giving wrong statement.

8. However, the Deputy Inspector General, BSF returned the ICC's findings for further clarification on the following points. First, the findings did not address the reason for the six-month delay in Ms. X's complaint, despite the seriousness of the allegations. Second, the proposal for disciplinary action against certain witnesses was not

⁶ "ICC" hereinafter
⁷ "POSH" hereinafter



supported by evidence or documents on record to show that their statements were incorrect. Third being that the date, time, and duration of the alleged incident involving the petitioner were not specified in the findings.

9. In furtherance of clarification sought by the DIG as aforesaid, the ICC recorded additional findings with respect to the particulars of the incident involving the petitioner. The subsequent ICC findings recorded that, on 12.01.2021, the petitioner placed his hand on Ms. X's head and back. It was noted that Ms. X initially spoke to the petitioner's wife but the petitioner's behaviour did not change even thereafter. The Ms. X then informed the authorities and proceeded on leave. It was further recorded that on or around 16.06.2021, the petitioner allegedly insulted Ms. X again, following which she submitted her written complaint. Based on these circumstances, the committee concluded that the delay in reporting the matter could not be attributed to any fault on the part of Ms. X. The committee also relied upon a video recording presented by Ms. X which purportedly showed his misconduct. The additional finding of ICC concluded that it stood firm on its earlier recommendation for disciplinary action against the petitioner.

10. In furtherance of the ICC's recommendations, the disciplinary authority, *vide* order dated 29.01.2022, convened a Record of Evidence⁸ against the petitioner for committing an offence under Section 46 of the Act.



11. The ROE proceedings were concluded pursuant to which, *vide* order dated 27.10.2022, a GSFC was convened and a charge sheet was framed against the petitioner, wherein the following charge was levelled against the petitioner:

BSF ACT- 1968 Section- 46	<u>COMMITTING A CIVIL OFFENCE THAT IS TO SAY USING CRIMINAL FORCE TO A WOMEN INTENDING TO OUTRAGE HER MODESTY PUNISHABLE U/S 354 IPC</u> In that he, at Bn HQ Tagorevilla, Alambazar, Kolkata on 12.01.2021 during the duty, put hands on head and back of No. XXXXXXXX XXXXX of 27 Bn BSF intending to outrage her modesty.
--	--

12. The GSFC proceedings were held from 03.11.2022 to 14.11.2022. Five prosecution witnesses were examined and cross-examined and the statement of the petitioner was recorded. The GSFC concluded with the findings that charges against the petitioner were “not proved”. The GSFC recorded that, Ms. X admitted that the incident occurred at Gate No. 2 during night hours and that she was on duty from 10:00 to 13:00 hours. However, the GSFC found that the duty register records indicated that Ms. X was on duty during that period, but the petitioner was not on duty with her. On this basis, it was held that the place and timing of the alleged occurrence were contradicted by Ms. X’s own statement as well as by the prosecution’s case. It was further recorded that none of the witnesses supported the allegation, there were no eyewitnesses to the incident, and that the corroborative evidence,



including witness statements, was insufficient to establish the charges beyond reasonable doubt. Accordingly, the petitioner was held not guilty.

13. However, the confirming authority, in exercise of its power under Section 113 of the Act, directed the GSFC to convene additional proceedings so as to take additional material on the evidence.

14. The basis for directing reconsideration and recording additional evidence was that Ms. X's statement was based on her recollection, and that the records indicated she was on duty on 12.01.2021, while the accused was also performing duties as Guard Commander on 12.01.2021 and 13.01.2021. Accordingly, further evidence on this aspect was considered necessary. It was also noted that Ms. X's mother had not been examined, and her testimony was regarded as relevant to clarify whether Ms. X had approached her to complain about the petitioner. Additionally, during the ROE, PW5 testified that PW2 had asked her about the petitioner's behaviour, to which she responded that Ms. X had told her that the petitioner used to stare at her with improper intention. The confirming authority held that these factors created a reasonable doubt and therefore more evidence should be elicited from the Ms. X, PW2, and PW5.

15. In compliance with the competent authority's direction to record additional evidence, the GSFC reconvened between 20.03.2023 and 28.03.2023, during which 5 additional witnesses were examined and additional documents were adduced on record. Following this, the GSFC reversed its earlier findings and held the charges against the



petitioner to be proved. As a consequence, the petitioner was dismissed from service and was also awarded a sentence of one year simple imprisonment.

16. The additional findings of the GSFC recorded that, Ms. X was performing her duty on 12.01.2021 from 10:00 to 13:00 hours, during which the petitioner was posted as Guard Commander from 19:00 hours on 11.01.2021 to 19:00 hours on 12.01.2021. Relying on the statement of witnesses, it was further noted that Ms. X had complained about the petitioner's behaviour to the PW2. The findings also stated that Ms. X had disclosed these concerns to her mother, who attempted to meet the Commandant to report the matter but was allegedly sent back by certain BSF personnel.

17. On this basis, it was concluded that both the petitioner and Ms. X were performing duties at Gate No. 2 on 12.01.2021. The ingredients of Section 354 of the IPC, according to the GSFC, were made out and hence, the prosecution's case was established. Accordingly, the earlier finding was reversed and the petitioner was found "guilty" of the charges alleged against him.

18. Aggrieved by the findings and sentence imposed in the additional proceedings of the GSFC, the petitioner filed a pre-confirmation appeal dated 04.04.2023 under Section 117(1) of the Act before the confirming authority. The appeal came to be dismissed *vide* order dated 22.04.2023. Following the dismissal of the appeal, a promulgation order dated 06.05.2023 was issued directing the petitioner to undergo a sentence of one year simple imprisonment.



19. Aggrieved, the petitioner filed a post-confirmation appeal before the competent authority which was also dismissed, *vide* order 01.01.2024.

20. Hence, aggrieved by the aforesaid, the petitioner has filed the present writ petition.

SUBMISSIONS

21. Mr. Arjun Panwar, the learned Counsel appearing on behalf of the petitioner, submitted that the findings recorded against the petitioner are wholly unsustainable, inasmuch as the petitioner had rendered 33 years of unblemished service prior to his dismissal and the allegation in question rests solely on the belated and uncorroborated statement of Ms. X. Further, the alleged incident of 12.01.2021 was never reported contemporaneously, and Ms. X continued to perform duties for 16 days thereafter and the written complaint was submitted only after a delay of nearly five months, for which no satisfactory explanation was rendered by the prosecution.

22. It was submitted that there is no eyewitness, and except for the complainant's mother, who was examined only at the final stage, none of the prosecution witnesses corroborated Ms. X's version. In fact, several witnesses expressly did not support the prosecution case. The ICC had itself recorded that the complainant's version lacked witness support.



23. It was contended that no CCTV footage was retained or produced despite the admitted availability of cameras at the relevant gate, nor were CDRs placed on record at any stage. It was emphasized that these omissions undermine the prosecution case, especially where no primary evidence exists.

24. It was further argued that the initial GSFC proceedings had acquitted the petitioner, noting material contradictions in Ms. X's statements and inconsistencies regarding the place and timing of duty. It was contended that the prosecution later relied solely on the arms in-out register introduced in the subsequent GSFC proceedings. Though that register reflected the complainant at Gate No. 2, independent material showed the petitioner detailed for 24-hour duty at Gate No. 1, and the petitioner was supplied only a copy of this register without any supporting duty-deployment documents.

25. It was argued that Ms. X's contradictions remain unresolved, no independent witness or CCTV corroborates the allegation, the statutory limitation under Section 9 of the POSH Act was overlooked, and the essential ingredients of the offence were never proved beyond reasonable doubt. In these circumstances, it was vehemently argued, that the revision, reversal of acquittal, and subsequent conviction and sentence are perverse, unsupported by evidence, and liable to be set aside.

26. *Per contra*, Ms. Shubhra Parashar, learned SPC, submitted that the petitioner had the opportunity to call for CCTV Cameras from the authority in his defence but failed to do so.



27. It was submitted that the confirming authority, after due consideration of the evidences brought on record, remanded the case for revision to GSFC, and later found the petitioner to be guilty. On additional evidence brought before the second stage of GSFC, it was submitted that the arm in-out Register corroborated the fact that Ms. X was performing duties at Gate No. 2 on the day of the first incident, and PW5 stated in her statement that PW2 asked her on telephone about any matter between Ms. X and the petitioner, on which she replied that the complainant confirmed that the petitioner looks at her with ill intension.

28. On additional evidence being brought before the second stage of GSFC, it was submitted that the arm in-out register corroborated the fact that Ms. X was performing the duties at gate no 2 on the day of 1st incident, and PW5 corroborated the allegation levelled against petitioner.

ANALYSIS

29. We have heard the learned Counsels for both the parties, carefully considered the material placed on record before us, and gone through the relevant judicial pronouncements.

30. Before delving into the merits of the case, we deem it essential to first delineate the scope and the extent of interference of this Court in exercising its power under Article 226 of the Constitution of India over trials conducted by the GSFC as per the BSF Act and Rules.

31. Recently, this Bench speaking through one of us (**Om Prakash**



Shukla, J) had an occasion to examine the said scope and extent of the same in *Prakash Chand Sharma v. Union of India & Ors*⁹. The relevant extract for the same is produced 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



UGSFC 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”.

32. Thus, it can be concluded from the above that the scope of judicial review under Article 226 of Constitution of India is limited to the extent of examining whether the GSFC proceedings have been conducted in accordance with the requirement of law and also whether there is any violation of principles of natural justice, so as to vitiate the entire proceedings.

33. Further, the scope of judicial review in security force courts was



also discussed by a Coordinate Bench of this Court in *Deepak v. Director General of Border Security Force and Ors.*¹⁰, wherein it was recorded that a Court exercising power under Article 226 can interfere in cases where there is violation of principles of natural justice or denial of fair trial. It was further noted that the orders of disciplinary authorities must be tested on the parameters of a fair trial. The relevant extract is re-produced below:

“9. Before touching the aspect evidence led before SSFC, we need to remind ourselves that this Court cannot act as appellate court and reassess and reappraise the evidence. However, indubitably, if we come across any instance suggesting violation of principles of natural justice or gross violation of the laid down procedure or denial of fair trial, the intervention can be made exercising power under Article 226 of the Constitution of India. The aspect of fair trial enshrined under Article 21 of Constitution of India also implies adherence to relevant statutory provisions including those contained under Indian Evidence Act...”

34. Thus, we are conscious that this Court cannot re-appreciate evidence on merits and substitute its own view regarding an appropriate punishment with that of the security force court in the exercise of power under Article 226 of the Constitution of India.

35. Therefore, in light of the above mentioned background and keeping in mind the limited scope of judicial review available, this Court, in the present matter, confines itself to examine whether the decision-making process was vitiated by virtue of any procedural impropriety, or perversity. Hence, the limited issue which is engaging our consideration is as to whether the petitioner’s conviction and sentence imposed by the GSFC without examining/calling of the



primary evidence i.e., the CCTV footage, despite its availability, constitutes a violation of petitioner's right to defend himself.

36. The main pillar of the petitioner's contention in the present matter is that no primary or direct evidence was examined in any of the proceedings against him. It is his case that the Gate No.2, where the alleged incident is reported to have been occurred, was squarely covered by CCTV cameras, however, the same was never called for examination by the GSFC, which indicates improper appreciation of evidence and adversely affects the petitioner's right to a fair trial and an impartial investigation.

37. The respondents, on the other hand, have taken a plea that the petitioner was well within his rights to produce the so-called CCTV footage during the trial, but had failed to do so. During the course of arguments and through their counter affidavit, the respondents have accepted that the place of occurrence was under the CCTV coverage, and in furtherance of it, they also went onto recognize the rights of the petitioner for examination of the said footage but have shifted the onus on to the petitioner to produce the same before the GSFC for examination.

38. Therefore, in the backdrop of these rival contentions, we deem it appropriate to refer to some of the provisions of BSF Act and the Indian Evidence Act, 1872 ¹¹ (now *Bhartiya Sakshya Adhiniyam*, 2023), which shall guide us in adjudicating the present matter.



39. It is undisputed that trials before the GSFC are regulated by the provisions of the BSF Act and the Rules framed thereunder. However, Section 87 of the Act stipulates that, subject to the BSF Act and Rules, the IEA shall apply to all proceedings before a security force court, i.e., the Act would override IEA in cases of inconsistency. We shall reproduce the provision for the sake of ease of analysis:

“87. The Indian Evidence Act 1872 shall, subject to the provisions of this Act, apply to all proceedings before a Security Force Court.”

40. As far as the provisions of the Indian Evidence Act are concerned, Section 165 of IEA empowers a Judge to obtain proper proof of relevant facts and order the production of any document or thing which is deemed fit for efficient and fair adjudication.

41. Further, Section 114 of IEA empowers a Court to presume the existence of a fact that is likely to have occurred pertaining to common order of things in light of the facts of a particular case. Further, illustration “g” of the said Section stipulates that an adverse inference may be drawn in cases wherein despite the availability of evidence, it is not produced, against a person who withholds such evidence. In the case at hand, it can be gathered from the record that the prosecution, despite being in control of the primary evidence in the form of CCTV footages, chooses not to produce or examine them. The provisions of section 114 IEA is reproduced for perusal below:

“114. Court may presume existence of certain facts. — The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events,



human conduct and public and private business, in their relation to the facts of the particular case.

(g) **that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;**

(Emphasis supplied)

42. The aforesaid general provisions of evidence is also in tandem with Section 89(1) of the BSF Act, which empowers the concerned authority to call upon witnesses and direct the production of all forms of material evidence. The relevant portion of the provision is reproduced hereinbelow:

“89. (1) The convening officer, the presiding officer of a Security Force Court, the Law Officer or, as the case may be, the officer approved under section 83 or the Commandant of the accused person may, **by summons under his hand, require the attendance, at a time and place to be mentioned in the summons, of any person either to give evidence or to produce any document or other thing.**

(4) When a witness is required to produce any particular document or other thing in his possession or power, the summons shall describe it with reasonable precision.”

(emphasis supplied)

43. Further, Rule 108 of the BSF Rules, 1969, stipulates that it is the duty of the presiding officer to ensure that an accused is afforded a fair trial and that the accused does not suffer any kind of disadvantage in the process, owing to lack of knowledge or inability to cross-examine



witnesses and overall ensure that an accused enters a proper defence.

The Rule is reproduced for perusal:

“108. Responsibility of Presiding Officer- (1) The presiding officer is responsible for the trial being conducted in proper order, and in accordance with the Act, rules made there-under and in a manner befitting a court of justice.

(2) It is the duty of the presiding officer to see **that the accused has a fair trial, and that he does not suffer any disadvantage in consequence of his position as a person under trial, or of his ignorance, or of his incapacity to examine or cross-examine witnesses, or otherwise.**”

(Emphasis supplied)

44. In the same breath, Rule 59(1) of the Rules stipulates that the superior authority, on receiving an application for a convening a court, upon scrutiny, is of the considered opinion that the recorded evidence is insufficient, it may return the case for recording of further evidence.

The relevant rule is reproduced below:

“59. **Action by a Superior Authority on receiving an application for convening a court-** (1) As soon as a superior officer receives an application for convening a court, he shall scrutinise the charge and the evidence against the accused, where necessary in consultation with the Chief Law Officer or a Law Officer and he:

(i) shall direct the Commandant to dismiss the charge where the evidence against the accused is insufficient and further evidence is not likely to be available and may direct him to do so if he considers it inadvisable to proceed with the trial; or

(ii) may return the case to Commandant for being tried by a Summary Security Force Court or being dealt with summarily if he considers that the same can be adequately so tried or dealt with; or

(iii) **may return the case for recording further evidence, if he considers the evidence recorded insufficient but considers that further evidence may be available.**”

(Emphasis supplied)



45. Rules 63(1), 63(5)(b) and 64(1) of the BSF Rules also lays down the statutory rights of an accused pertaining to the production of witnesses and/or documents for his defence. Relevant extract of both the Rules are reproduced:

“63(1) An accused, who has been remanded for trial, **shall be afforded proper opportunity for preparing his defence** and shall be allowed proper communication with his defending officer or counsel and with his witnesses.

(5) when an accused is given a copy of the charge-sheet and of the record or abstract of evidence in accordance with this rule, he shall:

(a) **have the charge explained to him;** and

(b) be informed that, upon his making a written request to his Commandant not less than twenty four hours before his trial requiring the attendance at his trial of a witness (other than a witness for the prosecution) whom he desires to call in his defence (such witness to be named by him), **reasonable steps will be taken in accordance with these rules to procure the attendance of any such witness at his trial.**

64. (1) Subject to the provisions of sub-rules (2) and (3) the Commandant shall, **on a request made in this behalf by the accused, summon such witnesses as are specified by the accused.**”

46. Needless to say, that the Apex Court, in plethora of decisions, has clarified that right to a fair trial and unbiased investigation directly flows from Article 21 of the Constitution of India and that members of the Armed Forces are not excluded from the ambit of the rights guaranteed by our Constitution. The Hon’ble Supreme Court in several occasion has reiterated that even military Justice must be ‘tempered with principles of fair play’.



47. We are conscious that in appropriate cases, the statement of the complainant, if found credible and consistent, can form the sole basis of conviction. However, the Court is bound to assess whether the conclusion or finding arrived at is unreasonable, unfair or tainted by any procedural impropriety or perversity and most importantly the principles of fair play ought to be followed in all circumstances.

48. Now, advertent to the facts of the present case, upon careful consideration of the record placed before us and analysing the abovementioned provisions, we find that the alleged incident, as per Ms. X, is reported to have been occurred inside Gate No. 2 of the premises which was under CCTV coverage.

49. There appears to be no eyewitness or direct evidence to substantiate the occurrence of the alleged incident. In these supervening circumstances, the weightage of a CCTV footage gains significance as it being corresponding electronic record, becomes the best and primary evidence of the occurrence, which according to us ought to have been produced and proved in accordance with Sections 61 to 65 read with Sections 65A and 65B of the IEA.

50. As per the record placed before us, the petitioner had made two requests for obtaining and examining the CCTV footage before the GSFC. The petitioner, in his letter dated 14.07.2022, expressly requested to obtain the CCTV footage of Gate Nos. 1 and 2. Further, in his closing address before the GSFC, the petitioner has purportedly repeated his request for examination of the relevant CCTV footage. However, no reply or justification is placed as to why such footage was



not called for examination. Instead, the onus to produce and examine the CCTV footage was shifted onto the petitioner by opining that the petitioner had the opportunity to call for CCTV footage from the concerned authority in his defence but had failed to do so.

51. It goes without saying that the petitioner, being an accused who has undergone a disciplinary proceeding and thereafter was subjected to a trial, cannot be regarded as being in exclusive possession of the CCTV footage, especially considering that the alleged incident occurred in the premises of the battalion. Section 89(1) and (4) of the Act empowers the concerned authority to summon and call for records or document which are deemed relevant for proper adjudication. Rule 108 of the Rules safeguards the right of an accused and shields them from suffering any disadvantage as an undertrial. Further, Rules 63 and 64 of the BSF Rules, as discussed above, clearly stipulate the statutory rights of an accused to produce any defence witness or document and the requirement of reasonable steps to be taken by the presiding officer in light of the same. Since, the concerned authority is empowered and was required to the aforementioned extent by statute, the onus to summon and call for CCTV footage cannot be shifted to petitioner, who in his due diligence requested for the same twice. In any case it is the respondent, who are custodian of the said CCTV footages. Henceforth, we find that concerned authority ought to have undertaken steps to obtain the CCTV footage and ensure that the accused had an effective opportunity of entering his defence. However, it is apparent from the record that the respondents made no attempts to obtain the CCTV footage, which according to us, attracts inference under illustration (g) of Section 114 of the Evidence Act as discussed above. Hence, we find



that the plea taken by learned Counsel for the respondent that the onus lay on the petitioner to procure the footage to be absurd and inconsistent with Section 89(1) and Rule 108 of the BSF Act and Rules thereunder.

52. We find that once the record indicated the availability of the CCTV footage, coupled with the petitioner's repeated written requests to obtain and examine the same, the concerned authority, in light of Section 89(1) read with Rule 64, ought to have obtained or summoned the relevant CCTV footage in pursuit of justice, fairness and reasonableness. However, the GSFC went on to convict and sentence the petitioner on the basis of the statement of witnesses and the purported in-out register without considering the significance of primary evidence in the absence of no direct evidence.

53. We are also of the view that not producing material evidence, i.e., the CCTV footage in the present case, despite repeated requests adversely effects the capacity of petitioner to enter into an efficient defence. The petitioner has been serving in the Armed Forces since the past 33 years, and considering the gravity of punishment and the significance of primary ocular evidence, refusing the petitioner the right to enter a proper defence would lead to miscarriage of justice, thereby warranting the interference of this Court. We also find that the conduct of the Respondent falling foul on the touchstone of 'principles of fair play'.

54. We also advert to an alleged video recording submitted by Ms. X before the ICC. The ICC, in its additional finding, relied upon the said video recording to demonstrate the petitioner's misconduct and thus



establish the guilt of the petitioner pertaining to the allegations in the present case. However, it is pertinent to note that the aforesaid video recording relied upon by the ICC has not been made part of the proceedings before the GSFC or at any other stage. The very fact that such paramount evidence was available before the ICC, yet it was neither produced before the GSFC, gives rise to another serious procedural irregularity.

55. The Supreme Court in *B.C. Chaturvedi v. UOI & Ors*¹², categorically held that if the conclusion or finding arrived at by a competent authority is such that no reasonable person would have ever reached, the Court may interfere with such conclusion or finding. Further, the Supreme Court in *Union of India v. Sunil Kumar*¹³ also held that interference may be warranted in cases where there is *prima facie* perversity or irrationality in the procedure. Further, this Bench, also speaking through one of us (**Om Prakash Shukla, J**) in the case of *Sheelendra Kumar v. Union of India & Ors.*¹⁴, while placing reliance on *B.S. Hari v. Union of India & Ors.*¹⁵ in context of GSFC, held that the constitutional power of judicial review may be invoked where injustice is apparent on the face of the record and where the findings are vitiated by procedural unfairness.

56. Hence, following the same approach as laid down in the aforementioned decisions, we find that denial to petitioner for examining the CCTV footage or shifting the onus on the petitioner to

¹² (1995) 6 SCC 749

¹³ (2023) 3 SCC 622

¹⁴ 2025: DHC:6812-DB

¹⁵ (2023) 13 SCC 779



produce the same, despite it being available, and irrespective of petitioner's request, was a procedural irregularity and against the 'principles of fair play' and the said act constitutes a valid ground for interference by this Court. The procedural irregularity in the present case is clearly inconsistent with the BSF Act and Rules thereunder along with IEA, which undoubtedly stipulates the right of an accused right to a proper defence, fair trial, and the duty of the concerned authorities to take relevant steps in furtherance of the same.

57. We reemphasize the fact that there was no eye witness to the incident, though it is alleged to have taken place in broad day light under the public gaze.

CONCLUSION

58. Thus, in the event of serious irregularity or ignorance of statutory duties/evidence, the right of an accused to an unbiased and fair trial would be jeopardised. In matters involving allegations of a sexual nature where both accused and complainant are members of the Armed Forces, in ordinary course, it would be an imperative duty of the competent court to examine all available material, evidence, witnesses etc. with utmost diligence for adjudication. While due sensitivity to the plight of a victim of sexual harassment has to be ensured, the Court, and administrative authorities have also to be alive to the serious and irreparable ignominy that follows an unsubstantiated allegation of sexual harassment.

59. In the present case, the authority concerned failed to consider one



of the most crucial pieces of evidence, i.e., the CCTV footage of the place of the alleged incident and a purported video recording relied by additional finding of the ICC. The aforesaid omission strikes at the heart of a petitioner's opportunity to enter into effective defence and his right to fair trial and, in any case shakes the very foundational fact alleged against the petitioner. Hence, we find that the proceedings against the petitioner herein, did not afford him fair and proper opportunity to defend himself. Further, we find that the findings and sentence imposed are also tainted with serious procedural infirmities and are grossly inconsistent with Rules 59(1), 63 and 64 of the BSF Rules due to the non-examination of otherwise readily available primary evidence, i.e., the CCTV footage. Hence, the failure to produce and examine the best and primary evidence of CCTV footage, despite its availability, relevance and the petitioner's repeated requests, led to an unfair trial since the petitioner was not afforded an effective and real opportunity to defend himself.

60. Therefore, this Court, being conscious of the confines of the power of judicial review available under Article 226 of the Constitution of India, cannot restrain itself from intervening to prevent a palpable miscarriage of justice, wherein the petitioner was effectively restrained from examining the best available primary evidence and therefore deprived of an effective opportunity of defence. The same irregularity also gains significance as no other direct evidence was available to prove the occurrence of alleged incident, and no justification was tendered as to why the CCTV footage or the purported video recording was not called for examination. The respondents, despite acknowledging the right of the petitioner to call for examination the



2025:DHC:10839-DB



best available evidence and enter into proper defence, have failed to perform their statutory duty. Thus, warranting the interference of this Court.

61. In view of the aforesaid reasons, the present writ petition is allowed. Consequently, the petitioner be reinstated to the post from which he was dismissed with all the consequential benefits, however the same shall be without any back wages or benefits accrued during intervening period.

OM PRAKASH SHUKLA, J.

C. HARI SHANKAR, J.

DECEMBER 4, 2025/rjd/pa