

# **SSB LAW**

## **AN ANALYTICAL TREATISE**

**BABU JOSEPH**



INDIA • SINGAPORE • MALAYSIA



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**Dedicated to the loving memory of my  
'Appachan' Mr. W. C. Mani, 'Achachan' Mr. A. I. Joseph and  
my younger brother Mr. Joseph K.**

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**‘When God closes all doors, He opens a window.  
Often we spend so much energy banging on closed  
doors that we forget to feel and enjoy the breeze  
coming through the open window.’**

**'To none shall we deny,  
To none shall we delay,  
To none shall we sell justice.'**

**Magna Carta**

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“Laws control the lesser man. Right conduct controls the greater one”.

**Mark Twain**

# PREFACE

When I was introducing my book 'An Insight into the Intricacies of BSF Law' to an erstwhile colleague, he suggested me to make an attempt regarding the law concerning Sashastra Seema Bal. I took up the challenge and threw myself wholeheartedly into this venture. I found the itinerary quite challenging. For preparing this book, I had taken help of various law-books and sought support from the law officers of Sashastra Seema Bal. It took almost one year for the book to take this shape.

While preparing this book, I have primarily kept in mind the practical and daily requirements of SSB officers in the field. Efforts have been put in to make the book simple and extremely user-friendly even to persons with minimum legal knowledge. This book is an exclusive exposure and inclusive insight into the intricacies of SSB Act and Rules and is unique for the following factors:

- Simplified language and straight-jacket presentation.
- Topic-wise consolidated presentation. Notes have been provided wherever required to enable the reader to understand the law.
- References to corresponding law provided in every paragraph.
- Chapters on Duties & Responsibilities of Prosecutor and Defending Officer, Indian Evidence Act, Internal Security & SSB, Law Enforcement, Human Rights & SSB, FIR & Seizure Memo etc.
- Sufficient Case Laws added to have an insight into the minds of the judiciary.
- Essential formats from SSB Rules have been incorporated in the book.

A bird's eye-view of '**SSB History**' has been added to enlighten the users of the book about the rich and exciting role heroes of SSB are performing in the larger perspective of border management along Indo-Nepal and Indo-Bhutan borders and a few photographs added for posterity and visual pleasure.

No amount of thanks by words would compensate the wholehearted support and encouragement in this venture by my beloved wife Sally and children Ashish and Asha. I cannot leave this page without remembering my late grandfather Mr. W C Mani, who sowed the seeds of writing in my psyche, my late father Mr. A I Joseph for his parental guidance and my late younger brother who was a genius in every sense.

I expect that this book about SSB Law will satisfy the essential legal expectations of SSB General Duty Officers and legal fraternity alike. Opinions, explanations, expressions, views and suggestions in the book are of the author. Inference may be drawn in conjunction with the relevant law. Although extreme care has been taken to avoid errors while quoting references and Case Law, few errors may have

crept in. I will be grateful to the users of this book for their valuable opinion, constructive criticism and suggestions for further improvement.

While dealing with offences under SSB Law, it will be worthwhile to remember the dictum:

**'Justice hurried means justice buried and should not be at the cost of the delinquent who is an illiterate man.'**

Kottayam, KERALA.  
February 2021

(BABU JOSEPH)

# INDIA'S BORDER ON THE NORTH & NORTH EAST







# SSB – HISTORY IN BRIEF

**‘History is simply a piece of paper covered with print;  
The main thing is still to make history, not to write it.’**

**Otto von Bismarck-Schoenhausen**

## **Prologue**

They stand vigil day and night guarding approximately 2450 kilometres of India’s geographical land limits in the north from intruders, terrorists and spies, ensuring security and preserving territorial sanctity of the Motherland, instilling confidence among millions of border population during the periods of peace and ‘no war-no peace’. From the background history of an intelligence-gathering and motivational organisation ‘**Special Service Bureau**’ (SSB), this Force was transformed into a ‘Border Guarding Force’ under the constitutional umbrella of ‘Armed Force of the Union’ with its name changed to ‘**Sashastra Seema Bal**’ (SSB) w.e.f.15 December 2003. With the passage of time and change in situations and circumstances, its charter of duties has been extended beyond what was once formally defined and is far more complex and daunting today both in times of peace and war. Whatever and wherever the challenges, this brave Force of more than one lakh men stand firm facing every eventuality with undeterred determination and indomitable courage. Even today, not many understand the role and responsibility of this elite Force or realise the extent of their behind the scene contribution and sacrifice in protecting the remotest and intractable land boundaries of the country where no man or beast can survive without boundless courage and firm determination and where blazing blizzards and sandstorms form part of the daily weather report, from the evil designs of our unfriendly neighbours and in keeping the integrity and unity of the Nation in the hinterland from internal security challenges from anti-national and divisive elements from within and outside. With inbuilt resourcefulness and unflinching determination, SSB has learnt to survive and surmount the harshness of the snow, sand, marsh and jungle. For it is here where they have to live for all the times to come as the ‘**eyes and ears of the Nation.**’

## **The Beginning**

**Special Service Bureau** - now **Sashastra Seema Bal** was originally conceived in November 1962 in the wake of Indo-Chinese conflict in 1962 with the understanding that the borders of the country could not be protected with the force of rifles alone and required the backing and resolute will of a committed border population to ensure its security for which it needed an in-depth understanding and familiarity of the terrain as well as understanding the culture and ethos of the border population resulting in the creation of a unique, unconventional yet specialized organization,

which would function in the far-flung, vulnerable, strategic, climatically and topographically difficult border areas and motivate the border population across several states towards the cause of protecting our national sovereignty and collecting valuable intelligence as the end-result. This unique Force 'Special Service Bureau' conceived in November 1962 was eventually delivered in March 1963 with Shri B N Mullik IP as founder Director. SSB initially started functioning in North Assam, North Bengal, hill districts of Uttar Pradesh (now Uttarakhand), Himachal Pradesh, part of Punjab and Ladakh area of J&K. Later, the jurisdiction of SSB was extended to Manipur, Tripura and Jammu (1965), Meghalaya (1975), Sikkim (1976), Rajasthan (1985), South Bengal, Nagaland and Mizoram (1989). covering 15 states and a population of more than 5.73 crores living in about 80,000 villages and about 9917 Kms of India's international borders. Since 1963, SSB inculcated a sense of national belonging in the border population, security and vigilance through Village Level Training Programmes and refresher courses in civil defence, use of small arms and self-defence to enable villagers to defend their villages and to participate in 'stay behind role' if the situation so warranted. Trained volunteers became the eyes and ears of SSB on the border and could be drawn on whenever required. SSB pioneered on empowerment and emancipation of women as early as 1966 and deployed women on border guarding duties as early as June 2008. SSB took part in Indo-Pak War 1965, Bangladesh Operations 1971 and Kargil Operations 1999. Through multifarious action-fronts, this Force endeared itself as people's Force by focusing on the organisational objective while remaining self-contented and on a low profile, which in the sanctimonious words of the founder Director of SSB, Shri B N Mullik IP, that is, 'Your work is your reward.'



**Smt. Indira Gandhi, Prime Minister, interacting with members of SSB**

### **Transformation of ‘Special Service Bureau’ to ‘Sashastra Seema Bal’**

After the Kargil Operations 1999, report of K. Subramanayam Committee was considered by a Group of Ministers for the relocation of all Central Para-military Forces to achieve optimum operational efficiency by assigning one border for each Force. Special Security Bureau (now **Sashastra Seema Bal**) was assigned “Stay Behind Role” before it came under the administrative control of MHA on 15<sup>th</sup> January 2001 when, Special Service Bureau (SSB) was declared a Border Guarding Force under the Ministry of Home Affairs and on 19<sup>th</sup> June 2001, given mandate to guard the Indo-Nepal Border (1751 Kms) and as the Lead Intelligence Agency for that area. This Force was rechristened “**Sashastra Seema Bal**” (SSB) on 15<sup>th</sup> December 2003. On 12<sup>th</sup> March 2004, it was assigned to guard Indo-Bhutan border and as the Lead Intelligence Agency for that border also. On 27<sup>th</sup> March 2004, this infant Force celebrated its greatest moment of pride when it was awarded the President’s Colour. SSB is now spread across the States of Uttarakhand, UP, Bihar, West Bengal, Sikkim, Assam and Arunachal Pradesh protecting international borders with Nepal and Bhutan.

Parliament passed the SSB Act 2007 (53 of 2007) and it came into force on **20<sup>th</sup> December 2007** and subsequently SSB Rules 2009 on **31<sup>st</sup> July 2009**.

### **Role of SSB in Peace and War**

An Armed Force of the Union of India to:

- i) Safeguard the security of assigned borders of India and promote a sense of security among the people living in border areas;
- ii) Prevent trans-border crimes, smuggling and any other illegal activities;
- iii) Prevent unauthorized entry into or exit from the territory of India.
- iv) Carry out civic action programme in the area of responsibility.
- v) Perform any other duty assigned by the Central Government.

### **Performance of Duties during Peace/No Peace-No War situation**

With an enduring tradition and distinct and varied individual culture behind him, every member of SSB understands that India and its mainland are only as safe as the borderlands are secure. Today, as never before, the integrity of the country is being threatened on several fronts. The borders with Nepal and Bhutan spread along with the States of Uttarakhand, UP, Bihar, West Bengal, Sikkim, Assam and Arunachal Pradesh are secured in the hands of SSB and this elite Force is also repeatedly utilised to quell the troubled hinterland. SSB’s day and night presence reassure the civilians and the local authorities of their security and safety. The Force has intensified its activities, augmented its units, fortified vulnerable border segments and improved round-the-clock vigilance all along the varied, difficult and inhospitable borders with the help of modern technological devices. SSB functions by establishing Out Posts at administratively, tactically and functionally appropriate places along the fringes of land border.

### **Performance of Duties during War**

In times of war, SSB's intimate knowledge of the border, its problems and people becomes an invaluable asset and provides a blueprint of information for the Army. As an extension to the Army's main line of defence, SSB functions under the operational control of Army and is entrusted with diverse duties ranging from special tasks, protection of vital installations to guarding prisoners and maintaining law and order in captured territory.

### **Training in SSB**

From the beginning, SSB pursued a motto of self-reliance in training its cadres resulting in intensive training of every recruit/trainee before he is absorbed into the Force. By 1990, SSB had seven Major Training Centres and seven Women's Advanced Training Schools. Training was imparted to the population in the border areas of HP, Punjab, part of J&K, UP, North Assam, North Bengal and South Bengal and NEFA region. SSB's highly reputed training institutions, SSB Frontier Academy, Group Leaders Training School and High Altitude Training Centre at Gwaldam (Uttarakhand), Administrative Officers Training Centre at Mahabaleshwar and two Advanced Training Schools at Sarahan (HP) and Haflong (Assam) located in serene and sprawling campuses are best-suited for outdoor exercises and manoeuvres and are fully self-sufficient with state of the art training facilities, hostels and hospitals. In these institutions, officers and men are trained to be rough and tough, resilient and resourceful.

### **SSB and Border Population**

India has no regular/contiguous natural features/barriers demarcating its borders with any of the bordering countries, be it Pakistan, China, Nepal, Bhutan, Myanmar or Bangladesh. The boundary line passes through fields, villages, creeks, ravines, desert, mountains and rivers creating peculiar problems to the border guarding forces. Many of the border areas being remote and intractable, there is little and sometimes no contact with the hinterland and in some places SSB is the only link with the Government. Initially, the border-folk stayed aloof, suspicious of the SSB who, they felt had suddenly intruded into their insulated and private world. It was no easy task for SSB to alleviate their fears and gain their trust and support. From the very beginning, SSB concentrated its energies and efforts to extend a hand of friendship and to integrate their work and lives within the norms and customs of the border inhabitants. Understanding the border population and communicating with them at their level with sincerity, honesty and impartiality at all times and under any circumstance is a lesson every SSB 'Snow Heroes' has to learn. Endeavour has always been to build an efficient force with a humane face -an ability to deal with human lives and treat men, women and children of all areas and their customs with compassion, empathy, respect and dignity. During natural disasters, SSB rushes to their help carrying food, clothing, medical supplies and

other relief materials bringing succour to the affected population. Time and again, the Force has saved lives and property, helped evacuate thousands of stranded people, provided food, clothes, temporary shelter and all other possible assistance to the suffering population.

It is a matter of great pride for the Force that **SSB ‘Snow Heroes’** has always won the hearts and accolades of the border-folk with their exemplary behaviour and conduct. Now, every borderman is an integral part of the village he defends and protects, sharing their sorrows and joys, trials, tribulations and celebrations as one of them and to whom they turn for help of every kind at any time. With time and experience, every individual in SSB has come a long way in understanding the needs and problems of the villagers. Today, these simple people acknowledge the Force not merely as the guardians of the border, but consider them the guardians of their life and as one among them. Border villages have been adopted by SSB units for special assistance where the scope is unlimited to improve their living conditions and to enhance the quality of their lives by simple and diverse humanitarian acts, repairing roads and school buildings, organising school classes and job oriented training for the village unemployed, providing medical aid, extending a caring hand during natural calamities etc. Other tasks vary from providing raw material for rural handicrafts to providing drinking water through water tankers. This genuine concern for the welfare of the border communities has yielded rich dividends for SSB. The complete co-operation of the village is responsible, in no small measure, for SSB’s success in the effective policing of the borders, stemming infiltration, controlling smuggling and other trans-border crimes. Village Resistance Groups/Village Voluntary Groups, organized and trained by SSB carry out watch and ward duties in villages and promptly report about suspicious movements to the Out Posts. In the final analysis, the favourable attitude of the border-folk towards the Force is the cornerstone of its success.

### **Expansion of SSB**

Special Service Bureau was initially deployed in the States where India shared land-borders with Pakistan, China and Myanmar. Now, with its role changed as a ‘Border Guarding Force’, Sashastra Seema Bal, is deployed along the international borders of Nepal and Bhutan. Against the scheme of recruiting locals for the tasks allotted to the earlier incarnation Special Service Bureau, its present incarnation Sashastra Seema Bal has acquired a pan India conglomeration.

## Our Chiefs

Name	From	To
Shri B N Mullik IP	15-03-63	07-12-63
Shri D S Sharma IPS	17-12-63	12-10-64
Shri B N Mullik IP	13-10-64	06-05-66
Shri P N Kaul IAS	24-10-68	20-04-72
Shri P S Raturi IPS	28-06-72	11-07-77
Shri T M Subramaniam IPS	21-11-77	31-03-79
Shri S S Bajwa IPS	01-04-79	03-02-82
Shri Onkar Singh IPS	09-02-82	31-08-82
Shri S D Pandey IPS	01-09-82	23-08-85
Shri H B Johri IPS	24-08-85	23-10-85
Shri S D Pandey IPS	24-10-85	31-10-85
Shri H B Johri IPS	01-11-85	31-07-90
Shri N Natarajan IPS	24-10-90	31-10-91
Shri G D Khemani IPS	01-11-91	31-08-93
Shri B B Nandy IPS	01-09-93	01-11-93
Shri Rajinder Mohan IPS	02-11-93	30-09-96
Shri Robinder Ohri RAS	13-11-96	31-10-97
Shri N S Sandhu IPS	01-11-97	25-10-99
Shri R P Kureel IPS	29-10-99	14-01-01
Shri NS Sandhu IPS	31-01-01	31-08-01
Shri V K Malik IPS	01-09-01	31-03-03
Shri B I Vohra IPS	02-06-03	21-09-03
Shri Divakar Prasad IPS	22-09-03	31-07-04
Shri Himanshu Kumar IPS	01-08-04	31-10-05
Shri Vijay Shanker IPS	01-11-05	12-12-05
Shri J K Sinha IPS	15-12-05	07-02-06
Shri Tilak Kak IPS	08-02-06	30-09-07
Shri Gopal Sharma IPS	01-10-07	30-11-08
Shri MV Krishna Rao IPS	04-12-08	31-10-10
Shri Y S Dadwal IPS	10-11-10	31-10-11
Shri Pranay Sahay IPS	01-11-11	10-12-12
Shri Arun Chaudhary IPS	11-12-12	30-04-14
Shri BD Sharma IPS	14-08-14	31-01-16
Smt. Archana Ramachandran IPS	03-12-16	30-09-17
Shri Rajni Kant Mishra IPS	01-10-17	30-09-18
Shri S S Deswal IPS	01-10-18	11-01-19
Shri Kumar Rajesh Chandra IPS	11-01-19	

## Rededication

In March 2020, SSB completed 57 years of service to the Nation. During this period of more than five decades, the Force has evolved a proud and rich tradition of competence, valour and camaraderie. The very name of 'SSB' instils a sense of security in the minds of our countrymen who live along different areas of India's land borders and among general public whenever and wherever it is deployed

for internal security duties. This confidence is the outcome of the untiring toil and constant vigil the brave borderman have put in by working round the clock tirelessly and without any respite in the border and other challenging situations. Each battalion and unit of the SSB is a miniature India in which men from all parts of the country work together in pursuit of the common objective of safeguarding and securing the assigned land borders of the Nation. The Seema Prahari, who are deployed over 2450 KMs. of the Indo-Nepal and Indo-Bhutan borders have continued to brave all odds and performed duties in fast-changing and hostile environments despite severe strain.

During the last 57 years, SSB has emerged as a well-knit and versatile Force. Besides guarding the borders in the inaccessible and snowy terrain of the Himalayas, the Force has been deployed in various parts of the country in the highly sensitive and difficult task of maintaining internal security and law and order, election duties and relief operations during natural calamities bringing succour to the hapless and helpless civilians and the Force has acquitted every task not only with vigour, valour, efficiency, élan, drive and dedication but also with compassion and consideration for the common man.

The SSB will remain in the service of the Nation in all situations, day-in and day-out securing the international borders, checking any misadventure by forces of the not-so-friendly northern neighbour, checking the cross-border movement of terrorists and criminals and maintaining the nation's unity and integrity while deployed on Internal Security duties. During war or no-war no-peace situation, SSB, as the first line of defence will remain adequately prepared to bear the first brunt of the attack and to ensure that no enemy crosses the borderline unchecked and unchallenged. Responsibility of policing highly volatile borderline for more than five decades has helped SSB to garner an unfathomable reservoir of unique skill and unmatched experience. Recognized as one of the finest border guarding forces of the day, it has redefined its scope of duties and can tackle the most critical issues of national concern with firmness and ingenuity.

\* \* \*

**“We make a living by what we get, we make a life by what we give.”**

**Winston Churchill**





# 1§ SSB ACT AND RULES

## GENERAL APPRAISAL

**Sashastra Seema Bal**, an **Armed Force of the Union of India** under Item II of List I, Schedule VII of the Constitution of India and reincarnated form of Special Service Bureau was born on 15 December 2003 as a border guarding force. Special Service Bureau (SSB) conceived in November 1962 was raised on 15 March 1963 immediately after the 1965 Indo-Pak war as an intelligence-gathering and motivational Force to be located on the borders with China, West Pakistan and Burma now Myanmar. It was rechristened as Sashastra Seema Bal (SSB) in 2003. Given the purported duties of SSB to be connected with the defence of the country, Government of India felt the necessity of a stringent law to regulate the conduct of its members and to ensure the highest level of discipline among them and the Parliament in its wisdom and exercise of powers under Article 33 of the Constitution enacted Sashastra Seema Bal Act 2007 and was promulgated in the Gazette of India and came into effect on 20 Dec 2007. In exercise of the powers conferred under Sec 155 of the SSB Act 2007, the Central Government codified SSB Rules 2009, which came into force on 31 July 2009. Both these enactments constitute SSB Law. Certain rules applicable to the Central Civil Service (CCS) about pay, leave, medical facilities, retirement and pension are still applicable to all CAPFs. These rules also come under the larger umbrella of SSB law.

### **Case Law:**

‘The Parliament, in its wisdom in exercise of its powers under Article 33 has enacted the law (*Army Act*) and the officers are to be guided by factors like exigencies of service, maintenance of discipline in the Army, speedier trial, the nature of the offence and the person against whom the offence is committed.’  
(AIR 1991 SC 1617 -Major GS Sondhi v/s UOI)

### **Preamble to the Sashastra Seema Bal Act 2007**

‘An Act to provide for the constitution and regulation of an Armed Force of the Union for ensuring the security of the borders of India and for matters connected therewith.’

### **Constitution of the Force**

‘There shall be an Armed Force of the Union called the Sashastra Seema Bal for ensuring the security of the borders of India and performing such other duties as may be entrusted to it by the Central Government.’ (Sec 4 (1))

Subject to the provisions of this Act the Force shall be constituted in such manner as may be prescribed and the conditions of service of the members of the Force shall be such as may be prescribed. (Sec 4 (2))

## 1.1 Special features of SSB Act and Rules

### 1.1.1 SSB – An Armed Force of Union of India. (Preamble & Sec 4 (1))

#### Case Law:

‘The BSF is an Armed Force of Union of India constituted under Item 2 of List I of Schedule VII of the Constitution of India and is primarily connected with defence of the country.’ (AIR 1991 SC 564–UOI v/s Ex - Ct Amrik Singh)

Similar situation remains with SSB.

#### SSB - Central Para Military Force

In exercise of the powers conferred by Sec 19 (1), Sec 22 (2) & Sec 23 of the Arms Act 1959, SSB has been declared as a **Central Para Military Force** vide **GSR 905 (E) & 904 (E) of 11/11/2010**.

### 1.1.2 SSB Act 2007 – A Special Law under Sec 5 CrPC

SSB Act is a Special law. As per Sec 5 CrPC, Special Law will override the general law.

**Sec 5 CrPC:** ‘Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed by any other law for the time being in force.’

#### Case Law:

- a) ‘BSF Act envisages that it is an Armed Force of the Union of India for ensuring security of borders of India and matters connected therewith. BSF Act is a Special law. It is applicable in the State of J&K.’  
(WP 44/76 J&K (S) 1977 - Ex Ct Tirath Ram v/s UOI)
- b) ‘BSF Act is a special law. As per Sec 5 CrPC, special law overrides general law. The said Section does not prohibit applicability of Cr PC 1973 when special law does not contain such provision like Sec 428 CrPC.’  
(CriLJ 1985 (563) (Cal)- Anand Singh Bisht v/s UOI)
- c) ‘The Indian Army Act constitutes a special law in force conferring a special jurisdiction on the Court Martial prescribing a special procedure for the trial of the offences under the Act. The Act & Rules constitute a self-contained Code specifying offences and the procedure for detention, custody and trial of the offenders by the Court Martial. The procedural safeguards contemplated in the Act must be considered in the context of and corresponding to the plenitude of the Summary jurisdiction of the Court Martial and the severity of the consequences that visit the person subject to that jurisdiction. The procedural safeguards should be commensurate with the sweep of the powers. The wider the power, the greater the need for the restraint in its exercise and correspondingly, more liberal the construction of the procedural safeguards envisaged by the statute. The oft-quoted words of Frankfurter, J. in *Vitarelli v. Seaton*, 359 US 535 are again worth re-calling; ‘...If dismissal from employment is based on a defined procedure, even though generous

beyond the requirements that bind such agency, that procedure must be scrupulously observed. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so, he that takes the procedural sword shall perish with that sword.' 'The history of liberty' said the same learned Judge 'has largely been the history of observance of procedural safeguards.' (318 US 332). Non-compliance with the mandate of Sec130 (*Opportunity to challenge constitution of Court*) is an infirmity which goes to the root of jurisdiction and without more vitiates the proceedings\*. Prithpal Singh Bedi v/s UOI (AIR 1982 SC 1413) relied on.'

(AIR 1987 SC 2386 – Ranjit Thakur v/s UOI)

(\*Apex Court amended this ruling on 10-8-88 as far as SCM in Army is concerned. Same is applicable to Summary Force Court (SFC) in SSB.)

- d) 'The relevant Chapters of the Army Act, the Navy Act and the Air Force Act embody a completely self-contained comprehensive code specifying the various offences under those Acts and prescribing the procedure for detention and custody of offenders, investigation and trial of the offenders by Court Martial, the punishments to be awarded for the various offences, confirmation & revision of sentences imposed by Court Martial, the execution of such sentences and the grant of pardons, remissions and suspensions in respect of such sentences. These enactments, therefore, constitute a special law in force conferring special jurisdiction and powers on Courts Martial & prescribing a special form of procedure for the trial of the offences under those Acts. The effect of Sec 5 of CrPC is to render the provisions of the Code inapplicable in respect of all matters covered by such special law.

(AIR 1987 SC 1646 - Ajmer Singh v/s UOI)

### **1.1.3 Protection under Art 311 of the Constitution not available to SSB members**

Constitutional protection available to civilian employees in the matter of dismissal, removal, reduction in rank/post is not available to SSB personnel as it is not a civil service, but an Armed Force of the Union of India, placed under Ministry of Home Affairs and is connected with the defence of the country.

#### **Article. 311 Constitution of India:**

'Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.-

- 1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.
- 2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply:

- a. Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge or
  - b. Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or
  - c. Where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry
- 3) If in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

#### **Case Law:**

- a) 'The BSF is a part of the Armed Force of the UOI; therefore its members were not civil servants and cannot invoke Art 311 of the Constitution of India.'

**(CW 3 SLR 686 (P&H) 1981 - SI Bhagat Ram v/s UOI)**

- b) 'Art 311 of the Constitution does not apply to the members of the BSF as the BSF is an Armed Force of the Union and not a civil service. Provisions of Art 311 of the Constitution are applicable to members of civil services. Sec 4 of BSF Act expressly states, "There shall be an Armed Force of the Union." BSF is considered to be an Armed Force of the Union and not a civil service. Art 311 has, therefore, no application.'

**(CW 642/74 (P&H) 1976 - Waryam Singh v/s UOI)**

- c) 'Art 311 of the Constitution is not applicable to the members of the BSF like Army personnel who are subject to Army Act 1950. BSF Rule 27 is not, therefore, can be said to be *ultra vires* to Art 311 of the Constitution.'

**(CW 3792/72 (P&H) 1990 - SI Sansar Chand Sharma v/s UOI)**

- d) 'Art 311 of the Constitution is not applicable to members of the BSF as the same is applicable to civil service. Art 311 envisages a reasonable opportunity of being heard where-as under BSF Rule 27 opportunity of show cause has been prescribed.'

**(WP 4260/76 (P&H) 1981- SI Gurdip Singh v/s UOI)**

- e) 'To insist that the confirming authority should give a hearing to the petitioner before it confirmed the sentence passed by the Court Martial is a contention which cannot be accepted. To accept this contention would mean that all the procedure laid down by the CrPC should be adopted in respect of the Court Martial, a contention which cannot be accepted in the face of the very clear indications in the Constitution that provisions which are applicable to all the civil cases are not applicable to cases of Armed Force personnel. It is not a requirement of the principle of natural justice.'

**(AIR 1973 SC 258- Harish Uppal v/s UOI)**

- f) 'The fact of holding an inquiry is not always conclusive. What is decisive is whether the order is really by way of punishment. If the facts and circumstances of the case indicate that the substance of the order is that the termination is by way of punishment, then a probationer is entitled to the protection of Art 311. The substance of the order and not the form would be decisive. The order of termination of the services of the appellant was clearly by way of punishment in the facts and circumstances of the case. The High Court denied him protection under Art 311. The order of termination was illegal and liable to be set aside. After all, between unsuitability and misconduct thin partitions do their bounds divide.'

(AIR 1974 SC 2192 - *Shamsher Singh v/s State of Punjab*)

#### 1.1.4 Restrictions on constitutional rights applicable to SSB personnel

<b>Sec 13 (1)</b>	No person subject to this Act shall, without the previous sanction in writing of the Central Government or of the prescribed authority to be a member of or associated with trade/labour unions or political organisations, society, institution or association not recognised as part of the Force or is not of purely social, recreational or religious nature or to communicate with the press or publish book or letter except in connection with the discharge of his duties or of purely literary, artistic or scientific nature except with prior written permission of Central Govt or Prescribed Authority.
<b>Sec 13 (2)</b>	No person subject to this Act shall participate in or address any meeting or take part in any demonstration organised for political or other purposes as may be prescribed.

Rights so abrogated or restricted under **Sec 13 (1)** can be restored to a limited extent with the written permission of Central Govt or Prescribed Authority.

#### PRESCRIBED AUTHORITY under **Sec 13 (1)**

Central Govt - In respect of Officers

Director General - In respect of all persons subject to the Act except Officers  
(**Rule 180**)

<b>Prescribed (Sec 2 (1) (t))</b>	Means prescribed by rules made under this Act;
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**Explanation:** If any question arises as to whether any society, institution, association or organisation is of a purely social, recreational or religious nature under **Sec 13 (1) (b)**, the decision of the Central Government thereon shall be final.

#### Article 33 of the Constitution:

Parliament may by law determine to what extent any of the rights conferred by this part shall, in their application to the members of the Armed Forces or the Forces charged with the maintenance of public order, be restricted or abrogated so as to ensure the proper discharge of their duties and maintenance of discipline among them'

**Case Law:**

- a) 'Fundamental rights guaranteed to a citizen under Art.21 of the Constitution of India is not *ipso facto* available to members of BSF.'
- (WP No 417/1978 J&K (J) - Arun Kumar v/s UOI)**
- b) 'Any provision in the Army Act does not become void because it affects fundamental rights under Part III of the Constitution of India. Art 33 of the Constitution has made requisite modification to affect the respective fundamental rights. Sec 125 does not infringe Art 14 of the Constitution.'
- (AIR 1965 SC 247- Ram Sarup v/s UOI & Anr)**
- c) 'A plain reading thus would reveal that the extent of restrictions necessary to be imposed on any of the fundamental rights in their application to the Armed Forces and the Forces charged with the maintenance of public order for the purpose of ensuring proper discharge of their duties and maintenance of discipline among them would necessarily depend upon the prevailing situation at a given point of time and it would be inadvisable to encase it in a rigid statutory formula. The Constitution makers were obviously anxious that no more restrictions should be placed than are absolutely necessary for ensuring proper discharge of duties and the maintenance of discipline amongst the Armed Force Personnel and therefore Art 33 empowered the Parliament to restrict or abridge within permissible extent, the rights conferred under Part III of the Constitution in so far as the Armed Force personnel are concerned. In this context, reference may be made to the decision of the Supreme Court in R Viswan & Ors v/s UOI (AIR 1983 SC 658) as also a judgment of the Calcutta HC in the case of Lt. Col. Amal Sankar Bhaduri v/s. UOI& Ors. (1987 CLT 1) of which one of us (*U.C. Banerjee, J*) was a party.'
- (2003 SCC (Cri) 1069 - UOI v/s L/Dfr Balam Singh)**
- d) 'Art 33 of the Constitution which confers power on Parliament to determine to what extent any of the rights conferred by Part II shall in their application to the members of Armed Forces be restricted or abrogated does not obligate that Parliament must specifically adumbrate each fundamental right and specify in the law the degree of restriction or total abrogation of each right. That would be reading into Art. 33, a requirement which it does not enjoin. The power to legislate in respect of any item must be referable to any entry in the relevant legislative list. The law has to be enacted by Parliament subject to the requirement of Part III read with Art. 33 which itself forms part of Part III. Therefore if any provision of the Army Act is in conflict with fundamental rights, it shall have to be read subject to Art. 33 as being enacted with a view to either restricting or abrogating the fundamental rights to the extent of inconsistency or repugnancy between Part III and the Army Act. Ram Sarup v. UOI & Anr [1964] 5 SCR 931: referred to. It is one of the cardinal features of our Constitution that a person, by enlisting or entering Armed Forces does not cease to be a citizen so as to wholly deprive him of his rights under the Constitution. More so when this Court held in Sunil Batra v. Delhi Administration (1979) 1SCR 392 at p.495: (AIR 1978 SC 1675 at p. 1727) that even prisoners deprived of personal liberty are not wholly denuded of their fundamental rights. In the larger interest of national security and

military discipline, Parliament in its wisdom may restrict or abridge such rights in their application to the Armed Forces but this process should not be carried so far as to create a class of citizen not entitled to the benefits of liberal spirit of the Constitution. Persons subject to Army Act are citizens of this ancient land having feeling of belonging to the civilized community governed by the liberty-oriented Constitution.’ **(AIR 1982 SC 1413 - Lt Col Prithipal Singh Bedi v/s UOI)**

- e) ‘Despite lapse of about two decades neither the Parliament nor the Central Govt appears to have realised their constitutional obligations, as were expected by this Court, except amending Rule 62 providing that after recording the finding in each charge the Court shall give brief reasons in support thereof. The Judge-Advocate has been obliged to record or caused to be recorded brief reasons in the proceedings. Even today the law relating to Armed Forces remains static which requires to be changed keeping in view the observations made by this Court in Prithi Pal Singh Bedi’s case, the constitutional mandate and the changes effected by other democratic countries. The time has come to allay the apprehension of all concerned that the system of trial by Court Martial was not the arch-type of summary and arbitrary proceedings. In the absence of effective steps taken by the Parliament and the Central Govt, it is the constitutional obligation of the courts in the country to protect and safeguard the Constitutional rights of all citizens including the persons enrolled in the Armed Forces to the extent permissible under law by not forgetting the paramount need of maintaining the discipline in the Armed Forces of the country. The Court Martials under the Act are not courts in the strict sense of the term as understood in relation to implementation of the civil laws. The proceedings before Court Martial are more administrative in nature and of the executive type. Such courts under the Act, deal with two types of offences, namely, (1) such acts and omissions which are peculiar to the Armed Forces regarding which no punishment is provided under the ordinary law of the land and (2) a class of offences punishable under the Indian Penal Code or any other legislation passed by the Parliament.’

**(SLP (C) 7347/1999 (SC 2000) - UOI v/s Charanjit Singh Gill)**

- f) ‘The functions and duties of GREF are integrally connected with the operational plans and requirements of the Armed Forces. There can be no doubt that without the efficient and disciplined operational role of GREF, the military operations in border areas during peace as also in times of war will be seriously hampered and a highly disciplined and efficient GREF is absolutely essential for supporting the operational plans and meeting the operational requirements of the Armed Forces. The members of the GREF answer the description of “members of the Armed Forces” within the meaning of Art. 33 and consequently the application of Sec. 21 of the Army Act to the members of GREF is protected by that Article and the fundamental rights of the members of GREF must be held to be validly restricted by Sec. 21 read with Rules 19 to 21 of Army Rules. The petitioners were therefore liable to be charged under Sec. 63 of the Army Act for the alleged violations of Rules 19 to 21 and their convictions and subsequent dismissals must be held to be valid. Section 21 of the Army Act empowers the Central



Government to make rules restricting “to such extent and in such manner as may be necessary” three categories of rights of any person subject to the Army Act. These rights are part of the fundamental rights under cls. (a), (b) and (c) of Art. 19 (1) and under the constitutional scheme, they cannot be restricted by executive action unsupported by law. But Sec 21 is saved by Art. 33 which carves out an exception in so far as the applicability of fundamental rights to members of the Armed Forces and the Forces charged with the maintenance of public order is concerned. On a plain grammatical construction of its language, Art. 33 does not require that Parliament itself must by law restrict or abrogate any of the fundamental rights in order to attract the applicability of that Article. What it says is only this and no more, namely that Parliament may by law determine the permissible extent to which any of the fundamental rights may be restricted or abrogated in their application to the members of the Armed Forces and the Forces charged with the maintenance of public order. Parliament itself can by enacting a law restrict or abrogate any of the fundamental rights in their application to the members of these forces as in fact it has done by enacting the Army Act. But having regard to the varying requirement of army discipline and the need for flexibility in this sensitive area it would be inexpedient to insist that Parliament itself should determine what particular restrictions should be imposed and on which fundamental rights in the interest of proper discharge of duties by the members of these Forces and maintenance of discipline among them. The extent of such restrictions would necessarily depend upon the prevailing situation at a given point of time and it would be inadvisable to encase it in a rigid statutory formula. The Constitution makers were obviously anxious that no more restrictions should be placed on the fundamental rights of the members of these Forces than are absolutely necessary for ensuring proper discharge of their duties and the maintenance of discipline among them. They, therefore, decided to introduce a certain amount of flexibility in the imposition of such restrictions and by Art. 33, empowered Parliament to determine the permissible extent to which any of the fundamental rights in their application to the members of these Forces may be restricted or abrogated so that, within such permissible extent determined by Parliament, any appropriate authority authorised by Parliament may restrict or abrogate any such fundamental right. Parliament was therefore within its powers under Art 33 to enact S.21. The extent to which restrictions may be imposed on the fundamental rights under cls. (a), (b) & (c) of Art. 19 (1) is clearly indicated in cls. (a), (b) & (c) of S. 21 and the Central Govt is authorised to impose restrictions on these fundamental rights only to the extent of the rights set out in cls. (a), (b) & (c) of S. 21 and no more. The guidelines for determining as to which restrictions should be considered necessary by the Central Govt within the permissible extent determined by Parliament is provided in Art. 33 itself, namely, that the restrictions should be such as are necessary for ensuring the proper discharge of their duties by the members of the Armed Forces and the maintenance of discipline among them. The Central Govt has to keep this guideline before it in exercising the power



of imposing restrictions under Sec. 21. Once the Central Govt has imposed restrictions in exercise of this power, the Court will not ordinarily interfere with the decision of the Central Govt that such restrictions are necessary because that is a matter left by Parliament exclusively to the Central Govt which is best in a position to know what the situation demands. Sec 21 must, in the circumstances, be held to be constitutionally valid as being within the power conferred under Art. 33. *Ram Swarup v UOI* [1964] 5 SCR 931, referred to. In any event, the provisions of the Army Act & Army Rules as applied to the members of GREF are protected by Art 33 against invalidation on the ground of violation of Art 14.’ (AIR 1983 SC 658- R Viswan & Ors v/s UOI)

### 1.1.5 Members of the Force not absolved of their obligations under the civil law

Being Indian citizens, members of the Force are governed by civil laws also. (Sec 49, 50)

### 1.1.6 Special offences and special provisions

Some offences that are of insignificant nature in civil services such as absent without leave, insubordination, intoxication and special offences like mutiny, desertion, offences in respect of enemy etc. and special provisions such as Special Courts, Summary Trial of offenders provided in the Act for maintenance of discipline and speedy dispensation of justice.

### 1.1.7 Special Courts known as Force Courts

Special Courts known as **Force Courts** (FCs) are provided for speedy trial of offences codified in the SSB Act. Special Courts remain to a significant degree a specialised part of the overall penal mechanism by which Force discipline is maintained. (Sec 76)

**Trial by a Force Court** under the provisions of SSB Act shall be deemed to be a **judicial proceeding** (Sec 2 (i) CrPC 1973) within the meaning of **Sec 193 & 228** of IPC and the **Force Court** shall be deemed to be a **Court** within the meaning of **Sec 345 and 346** of CrPC 1973. (Sec 118)

**Force Courts** in Sec 76 of SSB Act are **Court Martial** within the ambit of **Sec 475 CrPC 1973**.

Definitions:	Criminal Procedure Code (CrPC)
<b>Judicial Proceedings</b> (Sec 2 (i) CrPC)	Includes any proceeding in the course of which evidence is or may be legally taken on oath.
<b>Court Martial</b> (Sec 475 Cr PC)	Includes any tribunal with the powers similar to those of a Court Martial and constituted under the relevant law applicable to the concerned Armed Force of the Union.

Necessity of Special Courts has been recognised & accepted by the Hon’ble Supreme Court.

**Case Law:**

- a) 'The indication of the circumstances in which it would be better exercise of discretion to have a trial by Court Martial is an index as to what considerations should guide the decision of the officer concerned about the trial being by a Court Martial or by an ordinary court. Such considerations can be based on maintenance of discipline in the Army, the persons against whom the offences are committed and the nature of the offence.'

(AIR 1965 SC 247 - Ram Sarup v/s UOI)

**Hon'ble Supreme Court has adversely commented about the absence of appeal court with power for judicial review of cases decided by Special Courts.**

- b) 'A hierarchy of Courts with appellate powers each having its own power of judicial review has of course been found to be counter-productive but the converse is equally distressing in that there is not even a single judicial review. With the expanding horizons of fair play in action even in administrative decision, the universal declaration of human rights and retributive justice being relegated to the uncivilized days, a time has come when a step is required to be taken for at least one review and it must truly be by a body composed of non-military personnel or civil personnel.'

(AIR 1982 SC 1413-Lt Col Pritpal Singh Bedi v/s UOI)

Though SSB law does not provide for appellate courts, it provides for 'Petitions' to executive authority. **Refer Para 1.1.9**

### **1.1.8 Law of Evidence applicable in trials by Special Courts (Sec 99; IEA Sec 1 (Extent)**

**Evidence Act** is applicable and **Criminal Procedure Code (CrPC)** is not applicable in trials by Special Courts.

**Case Law:**

- a) 'The Court Martial discharge judicial functions and to a great extent, is a court where provisions of Evidence Act are applicable. A Court Martial has also the same responsibility as any court to protect the rights of the accused charged before it and to follow the procedural safeguards. Proceedings of a Court Martial are not to be compared with proceedings in a Criminal Court under the Code of Criminal Procedure where adjournments have become a matter of routine though that is also against the provisions of law'

(AIR 1998 SC 577- UOI v/s Major A Hussain)

- b) 'A perusal of the above-mentioned provisions (*Army Act Sec 128 to 158 - Procedure of Court Martial; Sec 153 to 165 - Confirmation and revision of sentence; Army Rules 22, 23, 25, 28, 33, 37, 40, 41, 64 to 68, 70, 71, 95 to 97, 134 to 143 & 177 to 183 - Court of Inquiry*) goes to show that they deal with the offences against military law which are triable by tribunals called Court Martial. But the trial before them is in the nature of regular trial before a criminal court in as much as Courts Martial are bound to follow the provisions

of the general law of evidence contained in the Evidence Act, subject to certain modifications. However, the provisions of CrPC as such are not applicable.’

(AIR 1991 SC 1617- Major GS Sondhi v/s UOI)

- c) ‘The effect of Sec 5 of CrPC is to render the provisions of the Code inapplicable in respect of all matters covered by such Special law. In as much as Sec 176 of the Act (*Army Act*) specifically deals with the topic of the date of commencement of the sentence of imprisonment, there is absolutely no scope for revoking Sec 428 of the CrPC in respect of prisoners convicted by Courts Martial under the Act.’

(AIR 1987 SC 1646 - Ajmer Singh v/s UOI)

### 1.1.9 Remedy against finding or sentence of Force Courts

There is no appellate court in SSB and no appellate jurisdiction by civil courts. Remedy against the finding, order or sentence of Force Court (FC) is provided by way of petitions to Executive authorities.

- 1) **Petitions in the case of Petty Force Court (PFC) and General Force Court (GFC):** A person subject to the Act who has been tried by a PFC or GFC shall be allowed to put in one petition before confirmation, to the confirming authority and another petition after confirmation to any officer or authority mentioned in Sec 131. **(Rule 169 (1))**
  - a) **Petition Before Confirmation of finding & sentence:** Any person subject to this Act who considers himself aggrieved by any order passed by any PFC or GFC may present a petition to the officer or authority empowered to confirm any finding or sentence of such FC and the confirming authority may take such steps as considered necessary to satisfy itself as to the correctness, legality or propriety of the order passed or as to the regularity of any proceeding to which the order relates. **(Sec 131 (1))**
  - b) **Petition after Confirmation of finding & sentence:** Any person subject to this Act who considers himself aggrieved by an order passed by any PFC or GFC may present a petition to the Central Govt, DG or any Prescribed Officer superior in command to the one who confirmed such finding or sentence and such authority may pass such order thereon as he thinks fit. **(Sec 131 (2))**
- 2) **Petition in the case of Summary Force Court (SFC):** In the case of an SFC he shall be allowed to put in only one petition to any of the officers mentioned in **Sec 131**. **(Rule 169 (2))**
- 3) **Annulment of Proceedings:** Central Government, DG, or any Prescribed Officer may annul the proceedings of any FC on the ground that they are illegal or unjust. **(Sec 132: Rule 185)**
- 4) **Period of Limitation (Rule 170):**
  - 1) A petition, before confirmation, shall be submitted, within two weeks of the conclusion of the trial.
  - 2) A petition after confirmation shall be submitted within three months of the date on which the sentence was promulgated:  
Provided that the time taken by such person to obtain a copy of the proceedings shall be excluded in computing period of three months.

**5) Mode of Submitting Petitions (Rule 171):**

- 1) (a) A petition by a person who is still a member of the Force shall be submitted through his Commanding Officer.
- (b) A petition by a person who has ceased to be a member of the Force may be submitted to the Commanding Officer of the unit in which the trial was held.
- 2) An officer to whom a petition is submitted or to whom a petition has been forwarded shall forward it to the next superior within one week: Provided that an officer may not forward a petition if he is competent to give the redress asked for and decide to do so.
- 3) An officer receiving a petition shall send it to the Judge Attorney General or the officer approved by him for advice.

**Case Law:**

'Admittedly, there is an alternative and effective remedy available to the petitioner by way of filing of an appeal before the competent authority which the petitioner has not availed and filed the present Writ Petition straightway. In my considered opinion, there are certain disputed facts, which cannot be decided in this Writ Petition. Therefore, the petitioner is directed to approach the appellate authority and file an appeal as per law. However, the appeal filed by the petitioner shall be entertained by the authorities without raising any objection as to the question of limitation and consider it and pass appropriate orders as per law within a period of three months from the date of filing of appeal by the petitioner.'

(WP 3221/2001(AP) 2004 - T Ramachandra Rao v/s 191 BN BSF)

**1.1.10 Appeal to the Executive Authority against termination of service (Rule 29)**

- 1) Any person subject to the Act other than an officer who is aggrieved by any order of termination of his service passed under Chapter IV of the Rules may present an appeal within ninety days from the date of order of termination to any of the authority, higher than the one who passed the termination order. Such Authority may pass orders on the petition as deemed fit.

**Petition to be submitted in the case of:**

Officers	To the Central Govt
SOs & Enrolled Persons	To any authority higher than the one who passed the termination order

(Rule 29 (1) & (2))

- 2) **Passing of orders relating to absence from duty:** When an order of termination of service by way of dismissal, removal or compulsory retirement is set aside by appellate authority, such officer or authority shall pass such orders as necessary in respect of the period of absence from duty of the person whose dismissal, removal or compulsory retirement from service was set aside.

(Rule 29 (3))

### 1.1.11 Special Courts not subject to the superintendence of the High Court

**Article 227 (4) Constitution of India:** ‘Nothing in this Article shall be deemed to confer on a High Court, powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.’

#### Case Law:

‘Though Court Martial proceedings are subject to judicial review by the High Court under Art 226 of the Constitution, the Court Martial is not subject to the superintendence of the High Court under Art 227 of the Constitution. If a Court Martial has been properly convened and there is no challenge to its composition and the proceedings are in accordance with the procedure prescribed, the High Court or for that matter any court must stay its hands.’

(AIR 1998 SC 577- UOI v/s Major A Hussain)

### 1.1.12 High Court/Supreme Court has no appellate jurisdiction/Special leave on Special Courts

**Article 136 Constitution of India: Special leave to appeal in the Supreme Court**

- 1) ‘Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.
- 2) Nothing in cl. (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.’

#### Case Law:

- a) ‘Provisions of Sec 117(2) of the Act provide a specific remedy to the person convicted. The High Court has no jurisdiction to entertain an appeal against the order of conviction passed by the SFC and confirmed by competent authority,’ (1979 CalWN 458 (DB) - Raje Singh Negi v/s UOI)
- b) ‘The Division Bench said that the learned single Judge minutely examined the record of the Court Martial proceedings and after that came to the conclusion that the respondent was denied reasonable opportunity to defend himself. We think this was a fundamental mistake committed by the High Court. It was not necessary for the High Court to minutely examine the record of the General Court Martial as if it was sitting in appeal. We find that on merit, the High Court has not said that there was no case against the respondent to hold him guilty of the offence charged. Though Court Martial proceedings are subject to judicial review by the High Court under Art. 226 of the Constitution, the Court Martial is not subject to the superintendence of the High Court under Art. 227 of the Constitution. If a Court Martial has been properly convened and there is no challenge to its composition and the proceedings are in accordance with

the procedure prescribed, the High Court or for that matter any court must stay its hands.’ (AIR 1998 SC 577 - UOI v/s Major A Hussain)

c) ‘This is a well-settled law that High Court in writ jurisdiction does not sit as a Court of appeal on the findings arrived by GSFC.’

(WP 232/77 J&K (J) 1978 -Ct Bishan Singh v/s UOI)

d) ‘Absence of even one appeal with power to review evidence, legal formulation, conclusion and adequacy or otherwise of punishment is a glaring lacuna in a country where a counterpart civilian convict can prefer appeal after appeal to hierarchy of Courts. Submission that full review of finding and/or sentence in confirmation proceedings under Sec 153 (*Army Act*) is provided for is poor solace. A hierarchy of Courts with appellate powers each having its own power of judicial review has of course been found to be counter-productive but the converse is equally distressing in that there is not even a single judicial review. With the expanding horizons of fair play in action even in administrative decision, the universal declaration of human rights and retributive justice being relegated to the uncivilised days, a time has come when a step is required to be taken for at least one review and it must truly be by a body composed of non-military personnel or civil personnel. Army is always on alert for repelling external aggression and suppressing internal disorder so that the peace-loving citizens enjoy a social order based on rule of law, the same cannot be denied to the protectors of this order. And it must be realized that an appeal from Ceaser to Ceaser’s wife- confirmation proceedings under Sec 153 has been condemned as injudicious and merely a lip-sympathy to form.’ (AIR 1982 SC 1413-Lt Col Pritipal Singh Bedi v/s UOI)

### 1.1.13 Writ jurisdiction by Supreme Court & High Courts

Special Court proceedings/Administrative actions of SSB authorities are subject to judicial review by Supreme Court and High Court under writ jurisdiction.

#### Article 32 Constitution of India: Right to Constitutional Remedies by Supreme Court

Remedies for enforcement of rights conferred by this part:

- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
- (2) The Supreme Court shall have the power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.’

#### Article 226: Power of High Courts to issue writs

- (1) ‘Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the

nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

- (2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.’

### Case Law:

- a) 11. In the case of 2008 (10) SCALE 227, the Supreme Court held as follows: ‘The jurisdiction of the Supreme Court under **Article 32** and of the High Court under **Article 226** of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the Writ Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.’
12. In the facts of the present case, the petitioner who had tendered his resignation so as to take care of his family and personal needs, in fact took admission in a PG Diploma course at Vydehi Institute of Medical Sciences, Bangalore on 31<sup>st</sup> May, 2009 and the said course was for a period of three years. The petitioner was employed as an Assistant Commandant which was a group ‘A’ post and his resignation was, in fact, a ploy to clandestinely undergo the said PG Diploma course and he had suppressed this fact from the respondents and has not bothered to disclose the same even in the present petition. It is unfortunate that the process of this Court is being used with malafides and dishonesty to achieve a purely selfish gain by the petitioner. The Courts are to be vigilant against all efforts to overshadow the ethos of justice and fair play. The jurisdiction of this Court, being extraordinary, is normally exercised keeping in view the principles of equity. To promote honesty and fair play is one of the ends of equity. This Court is not only a Court of law but also a Court of Equity. Therefore, looking into the act of the petitioner, we are of the view that the present petition is a gross abuse of the process of law and the same deserves to be dismissed, with costs of Rs. 10,000/-, which shall be deposited in the Delhi High Court Staff Welfare Fund within four weeks of this order.  
(WP (C) 4751/2014 (HC of Delhi - 01/12/2014) – **Sujjan Singh V. UOI and DG SSB**)
- b) ‘20. However, it is well known that except the cases where the punishment is shockingly disproportionate, the Superior Courts would not ordinarily interfere with the quantum of punishment.



21. In, *The Managing Director State Bank of Hyderabad & Anr. v. P. Kata Rao* [2008 (6) SCALE 575], this Court held:

“18. There cannot be any doubt whatsoever that the jurisdiction of superior courts in interfering with a finding of fact arrived at by the Enquiry Officer is limited. The High Court, it is trite, would also ordinarily not interfere with the quantum of punishment...”

**(Cri. Appeal No. 2061/2008 (Arising out of SLP (Cri) No. 5439/2006) (SC) - Ex Ct Ramvir Singh v/s UOI & Ors)**

- c) ‘Writ Court under Art 226 can interfere when inferior tribunal or authority has acted on in-admissible evidence or has drawn wrong conclusion. However, inadequacy or insufficiency of evidence is no ground to interfere. Similarly, no interference is called for when superior court holds different view than the view held by inferior tribunal.’  
**(WP 44/1976 (J&K (S) 1977 – Ex Ct Tirath Ram v/UOI)**
- d) ‘High Court in writ jurisdiction cannot reappraise the evidence of SFC. Even if the SFC erroneously appreciated the evidence, the writ Court cannot interfere with the decision of said Court. However, if the decision of SFC is based on no evidence, the High Court in its writ jurisdiction would readily interfere.’  
**(WP 864/1981 (J&K (J) 1985 - Ajay Kumar v/s UOI)**
- e) ‘Writ Court cannot say whether trial court has correctly appreciated evidence as per law. The High Court in its writ jurisdiction cannot be converted into Court of fact. High Court in writ jurisdiction cannot adjudicate as to why other personnel who were blamed by CoI along with petitioner have not been proceeded with or tried. If BSF Rule 45 was complied with, the Commandant could have dismissed the charge. Violation of procedural law such as Rules 45, 46 and 48 shall render GSFC as nullity and *non-est*.’  
**(WP 148/1981J&K(S) 1986 - SI Shri Ram v/s UOI)**
- f) ‘High Court in writ jurisdiction cannot go into facts of the case.’  
**(WP 14/83 (Del) 1988 - Kala Singh v/s UOI)**
- g) ‘High Court can interfere with the findings and sentence of Court Martial under Art. 226 on following grounds:  
Where the Court Martial has acted without or in excess of its jurisdiction or failed to exercise it;  
Where the order of Court Martial is erroneous on face of the record; where there has been violation of principles of natural justice.  
The High Court cannot interfere with the findings of fact even if erroneous.’  
**(1987 CriLJ (SC) 504 - Guru Villa Vama Rao v/s UOI)**
- h) ‘As seen above, the Division Bench notes that the charges against the Respondent are proved and that the charges are of serious nature. Once the Court came to the conclusion that the charges were proved and that the charges were of serious nature, it was not the function of the Court to interfere with the quantum of punishment. The Division Bench was wrong in holding that factors viz.
- a) the person is coming from which place,
  - b) his family background and
  - c) his service record etc. were to be kept in mind.



In our view, the Division Bench was also wrong in holding that if a poor person pleads guilty to the misconduct, then extreme penalty of dismissal is uncalled for. In our view, a Court must not lightly interfere with sentences passed after a properly conducted enquiry where the guilt is proved. Reduction of sentence, particularly in military, paramilitary or police services can have a demoralising effect and would be a retrograde step so far as discipline of these services is concerned. In this case, the charges being of a serious nature the penalty was commensurate with the charges. Further, the Division Bench has itself noted that this was the third time the Respondent was punished.'

(AIR 2002 SC 2102 - UOI v/s Narain Singh)

- i) 'In writ jurisdiction, court can examine as to whether the authorities have complied with the requirements of law and regulations.'

(1984 (3) SLR 644 (J&K) - Harbans Singh v/s UOI)

- j) 'Alternative remedy-Writ jurisdiction- breaches of natural justice & prescribed procedure - Alternative remedy is not an absolute bar to the exercise of writ jurisdiction -Writ maintainable.'

(1989 (3) SLR 405 (All) - Uma Shankar Pathak v/s UOI)

- k) 'The Court Martial, therefore cannot be faulted on the ground of non-compliance with the principles of natural justice. We are not sitting in appeal over the finding of the GCM. Therefore, we have refrained from examining the merits of the case.' (AIR 1997 SC 2085 - Maj Gen Inderjit Kumar v/s UOI)

- l) 'High Court cannot probe into mental process of General Security Force Court and reappraise evidence.'

(1997 (1) Recent Crl. Review 217 (Del) - Sukhwant Singh AC v/s UOI)

- m) 'The scope of Art. 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of A.P. v. S. Sree Rama Rao (1963) 3 SCR 25). First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry, the High Court in a petition under Art. 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry, invalid. The High Court is not a court of appeal under Art. 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against

the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judge of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Art. 226. The jurisdiction to issue a writ of certiorari under Art. 226 is a supervisory jurisdiction. The Court exercises it not as an Appellate Court. The findings of fact reached by an inferior Court or Tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of facts however grave it may appear to be. In regard to a finding of fact recorded by a Tribunal, a writ can be issued if it is shown that in recording the said finding, Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. See *Syed Yakoob v. KS Radhakrishnan & Ors* [1969] 3 SCR 548.

(AIR 1975 SC 2151- *State of AP v/s Chitra Venkata Rao*)

- n) 'Once an Army person is found to be guilty of the charges made against him, it is not for the court to interfere with the sentence awarded by the Court Martial. The awarding of sentence is within the powers of the Court Martial. These are not matters in which the court should interfere. While exercising powers under Art 226 or 227 and/or under Art 32, the Court cannot interfere with the punishment merely because it considers the punishment to be disproportionate. It is only in extreme cases, which on their face show perversity or irrationality that there can be judicial review. Merely on compassionate grounds a court should not interfere.' (AIR 2001 SC 3053 - *UOI v/s RK Sharma*)

### 1.1.14 No judicial review of merits of the case decided by SFCs

Writ Courts shall not review the merits of the case except on the grounds of illegality, procedural irregularity & irrationality.

Judicial review is not an appeal from a decision, but a review of the manner in which the decision is arrived at.

**Case Law:**

- a) 'Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court.'  
(AIR 1996 SC 484 - BC Chaturvedi v/s UOI)
- b) 'Judicial review generally speaking is not directed against a decision, but is directed against the 'decision-making process'. The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review. All powers have legal limits.'  
(AIR 1987 SC 2386 - Ranjit Thakur v/s UOI)
- c) 'Lord Greene said in 1948 in the famous *Wednesbury* case (1948 (1) KB 223) that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. He said that interference was not permissible unless one or the other of the following conditions was satisfied, namely the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered; or the decision was one which no reasonable person could have taken. These principles were consistently followed in the UK and in India to judge the validity of administrative action. It is equally well known that in 1983, Lord Diplock in *Council for Civil Services Union v. Minister of Civil Service* [(1983) 1 AC 768] (called the *CCSU* case) summarized the principles of judicial review of administrative action as based upon one or other of the following viz: illegality, procedural irregularity and irrationality. He, however, opined that "proportionality" was a "future possibility". In B.C. Chaturvedi's case (1995 (6) SCC 749) it was observed: "A review of the above legal position would establish that the disciplinary authority, and on appeal, the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment

with cogent reasons in support thereof.” The common thread running through in all these decisions is that the Court should not interfere with the administrator’s decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in the *Wednesbury’s* case (supra) the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.’

(CA 4454/2006 (SLP 23847/2005) - UOI v/s Dwaraka Prasad)

- d) ‘A review is not a routine procedure. An earlier order cannot be reviewed unless the Court is satisfied that material error manifest on the face of the order undermines its soundness or results in miscarriage of justice. A review of a judgment is a serious step and resort to it is proper only where a glaring omission or patent mistake or grave error has crept in earlier by judicial fallibility. In the instant case, the relief of review is not justified. *Chandra Kanta v. Sheikh Habib* [1975] 3 SCR 933 at 933-34, followed.’ (AIR 1980 SC 2041 - Col Avtar Singh Shekhon v/s UOI)

**1.1.15 Central Administrative Tribunal Act not applicable to SSB personnel**

SSB is an Armed Force of the Union and not a civil service. Hence CAT is not applicable to SSB personnel. (Sec 2 CAT Act 1985)

**1.1.16 Prior permission NOT required for filing a writ in High Court/ Supreme Court**

“Ordinary people look up to judges in a way in which they no longer look up to legislators, ministers or civil servants. Judges, particularly of the higher court, are by and large believed to be learned, high-minded, independent, dutiful and upright, qualities that one no longer associates with either ministers or their secretaries.”

Andre Betteille (Sociologist)

**1.2 Tasks of the Force**

<b>Preamble of the Act</b>	An Armed Force of the Union for ensuring security of the borders of India &for matters connected therewith.
<b>Sec 4 (1)</b>	An Armed Force of the Union called the Sashastra Seema Bal for ensuring the security of the borders of India.
<b>Rule 9 (1)</b>	For the purpose of Sec 4 (1), the Force shall in area of its responsibility; <ul style="list-style-type: none"> <li>i) safeguard the security of assigned borders of India and promote a sense of security among the people living in the border area;</li> <li>ii) prevent trans-border crimes, smuggling and any other illegal activity.</li> <li>iii) prevent unauthorised entry into or exit from the territory of India;</li> <li>iv) to carry out civic action programme in the area of responsibility;</li> <li>v) to perform any other duty assigned by the Central Government.</li> </ul>

### 1.3 Constitution of the Force

<b>Preamble of the Act</b>	An Act to provide for the constitution and regulation of an Armed Force of the Union for ensuring the security of the borders of India and for matters connected therewith.
<b>Sec 4 (1)</b>	There shall be an Armed Force of the Union called the Sashastra Seema Bal for ensuring the security of the borders of India.
<b>Sec 4 (2)</b>	Subject to provisions of SSB Act, manner of constitution of the Force and conditions of service of its members shall be as may be prescribed.
<b>SSB Regular (Rule 7)</b>	SSB shall consist of SSB (Regular) and Officers, SOs & Enrolled Persons appointed/enrolled in SSB (Regular) shall serve continuously for the term given in enrolment form, letter of appointment or rules in this regard.
<b>Battalion (Sec 2 (1) (b))</b>	Means a unit of the Force constituted as a battalion by the Central Govt.
<b>Unit (Sec 2 (1) (y))</b>	Includes i) any body of officers and other members of the Force for which a separate authorised establishment exists; ii) any separate body of persons subject to this Act employed on any service and not attached to a unit as aforesaid; iii) any other separate body of persons composed wholly or partly of persons subject to this Act and specified as a unit by the Central Government.
<b>Detachment (Rule 2 (f))</b>	Includes any part of the battalion or unit of the Force required or ordered to proceed on duty away from Headquarter.

### 1.4 Categories of personnel in the Force

SSB is organised with personnel of the following categories:

<b>OFFICER (Sec 2 (1) (s))</b> <b>Appointment of Officers (Rule 13 &amp; 15)</b> <b>Ranks (Rule 8 (1) (a))</b>	Means a person appointed or in pay as an officer of the Force, but does not include a Subordinate Officer or Under Officer.
<b>SUBORDINATE OFFICERS (Sec 2 (1) (v))</b> <b>Appointment of SOs (Rule 14 &amp; 15)</b> <b>Ranks (Rule 8 (1) (b))</b>	Means a person appointed or in pay as a Subedar Major, Inspector, Sub Inspector and Assistant Sub Inspector of the Force.
<b>UNDER OFFICER (Sec 2 (1) (x))</b> <b>Appointment of UOs (Rule 14, 15 &amp; 16)</b> <b>Ranks (Rule 8 (1) (c))</b>	Means a Head Constable of the Force. (Ranks of Naik & Lance Naik since abolished)
<b>ENROLLED PERSONS (Sec 2 (1) (j))</b> <b>Appointment of Enrolled Persons (Sec 6; Rule 14, 15 &amp; 16)</b> <b>Ranks (Rule 8 (1) (d))</b>	Means persons enrolled under this Act as an Under Officer or other persons by Enrolling officers appointed under Rule 14. Includes Constables and Enrolled Followers.