

AN INSIGHT INTO THE INTRICACIES OF BSF LAW

AN ANATOMY OF BSF LAW BY A
GD OFFICER FOR GD OFFICERS

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INDIA • SINGAPORE • MALAYSIA



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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.’**

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Dedicated to the loving memory of my 'Appachan'
Mr W. C. Mani and 'Achachan' Mr A. I. Joseph.

**‘To none shall we deny,
To none shall we delay,
To none shall we sell justice.’**

– Magna Carta

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16	K	Undertaking to dispense with witnesses	7.10.1 (x)
17	L	Application for convening Security Force Court (SFC)	7.12 (xx)
18	'M - 1'	Warrant for committing a Prisoner sentenced to Imprisonment to civil prison	8.15.1 (vi)
19	'M - 2'	Warrant for committing a prisoner sentenced to life imprisonment to civil prison	8.15.1 (vi)
20	N	Summons to witness in SFC	8.28 (i)
21	'O - 1'	General Security Force Court (GSFC) - composition & powers	8.43

SI No.	Annex No.	Topic	Chapter & Para
22	'O - 2'	Petty Security Force Court (PSFC) - Composition & Powers	8.43
23	'O - 3'	Summary Security Force Court (SSFC) - Composition & Powers	8.43
24	P	Convening order – SSFC	9.1 (viii)
25	'Q - 1'	SSFC trial proceedings	9.4 (1)
26	'Q - 2'	Record of previous convictions by summary trial and general character of the accused	9.9 (i)
27	'Q - 3'	Statement of convictions by SFCs & Criminal Courts	9.9 (i)
28	'Q - 4'	Promulgation of Finding & Sentence of SFC	8.35 (xi) 9.12 (iii)
29	R	Claiming of case from magistrate for trial by security force court	10.2 (g)
30	S	Inquest Report of unnatural death	14.2 (1)
31	T	Convening Order - Court of Inquiry	14.3 (3)
32	U	Summons to witness in CoI	14.5.2 (2)
33	V	Final order on completion of CoI	14.5.7 (2)
34	W	Court of Inquiry Proceedings	14.7 (10)
35	'X - 1'	Summons to witness in Record of Evidence (RoE)	15.3 (3)
36	'X - 2'	Proceedings of RoE	15.7 (3)
37	'X - 3'	Proceedings of Abstract of Evidence (AoE)	16.1 (12)
38	Y	Information of an incident to Police	19.2.3 (v)
39	Z	Seizure memo	19.3.1 (xx)

Preface to the Second Updated 2020 Edition

At the outset, I want to thank all my friends and well-wishers for whole-heartedly embracing my book, '**An Insight into the Intricacies of BSF Law**'. The tremendous response I received from the BSF fraternity was beyond my expectations. I received a lot of feedback from the larger BSF fraternity through email and personal interactions. Energised by this collective outpouring of thoughts, suggestions, ideas, and constructive criticism I received from my well-wishers, I took up the challenge and thoroughly revised the book.

As part of the revision, I have incorporated changes and amendments to the BSF Law and related codes over the last two years. I have updated and provided new case laws as necessary to buttress the analysis. I have also added a completely new chapter on 'Deductions from Pay and Allowances.' The revised edition also rectifies errors which had inadvertently crept into the first edition.

With immense pleasure, I offer this revised edition 2020 to my well-wishers in BSF and outside and I am sure that every user of this compendium will benefit from its meticulous thoroughness and exclusive exhaustiveness.

I am very thankful to Shri Vivek Kumar Johri IPS, DG BSF and other senior officers of this elite Force for their encouragement and support.

I am also grateful to my publisher M/s Notion Press for their cooperation and support in this effort.

February 2020
Kottayam

Babu Joseph

Preface

This book ‘**An Insight into the Intricacies of BSF Law**’ is the culmination of a bold and unique venture into the alien territory of law by a General Duty officer. I found the itinerary quite challenging. For preparing this book, I had taken help of my notes, various law-books, Law Directorate circulars/instructions etc. It took more than a decade for the book to take this shape.

While preparing this book, I have primarily kept in mind the practical problems and daily requirements of BSF officers in the field. Efforts have been put in to make the book simple and extremely useful even to persons with minimum legal knowledge. This book is an exclusive exposure and inclusive insight into the intricacies of BSF Act and Rules. This solitary effort seeking a deep insight into the complex BSF Laws is unique for following factors:

- Topic-wise consolidated presentation with notes to enable the reader to understand the law.
- Case Law has been added to help the user to have an insight into the minds of the judiciary and to sensitise him on the evolvement of a particular case law and how a particular citation can be used to one’s advantage while presenting his case before the Court.
- References to corresponding law provided in every paragraph.
- Chapters on Duties & Responsibilities of Prosecutor & Defending Officer, Indian Evidence Act, Internal Security & BSF, Law Enforcement, Human Rights & BSF, etc., available for the first time.
- Essential formats from BSF Rules and a few additional formats incorporated into the book for the convenience of users.
- Simplified language and straight-jacket presentation.
- A bird’s eye-view of ‘**BSF History**’ has been added to enlighten the users of the book about the rich and exciting role BSF has played in the larger perspective of border management, liberation of Bangladesh, 1971 Indo-Pak war and in curbing sensitive and volatile internal security problems and ever-increasing separatist tendencies.

I am immensely grateful to Shri K K Sharma IPS, Director General, Border Security Force, for his profuse remarks and prolific accolades while introducing this book. I am also deeply thankful to Shri Hari Gopal Garg, Inspector General/Chief Law Officer (Retd), Border Security Force, for his encouraging attitude and professionalism. It will not be proper for me to leave this space without thanking my staff in 191 Bn BSF for their valuable assistance in bringing out this in book form. 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 expect that this book about BSF Law will satisfy the essential legal expectations of BSF GD Officers and legal fraternity alike. Opinions, explanations, expressions, views and suggestions in the book are of the author. Inferences 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 might 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 administering justice, it will be worthwhile to remember,

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

01 June 2018

Babu Joseph

Letter from Shri K K Sharma IPS, Director General BSF



के के शर्मा, आई.पी.एस.
K K Sharma, IPS



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01st Aug 2018

I feel extremely elated to introduce this compendium on BSF Law, 'An Insight Into The Intricacies of BSF Law' by Shri Babu Joseph, Commandant BSF (Retd). This initiative by a GD Officer is highly commendable as it is the positive culmination of his rich experience and deep understanding of unit administration during his 37 years' service.

I am sure that this book of BSF Law shall definitely enable BSF officers to understand the legal aspects of a case correctly and dispose it of effectively and efficiently. He has included several topics which are of daily practice in the Force, but not generally found in law books, making it stand alone in the crowd.

Write-up 'About BSF-Myth uncovered' shall definitely provide a telescopic glimpse about the rich and heroic BSF culture to the users of this book.

I wish him all success.


(K K SHARMA)

PRAHARI - Motivation Personified



Chapter 1

BSF Act & Rules (General Appraisal)

Border Security Force, an **Armed Force of the Union of India** under Item II of List I, Schedule VII of the Constitution of India, was raised on 1 December 1965 immediately after the 1965 Indo-Pak war, to protect and defend the land borders of the country with West & East Pakistan and Burma (now Myanmar). In view of the purported duties of BSF connected with the defence of the country, Government felt the necessity of a stringent law to regulate the conduct of its members and to ensure the highest level of discipline among them. The Parliament in its wisdom and in the exercise of its powers under Article 33 of the Constitution enacted **Border Security Force Act 1968**, almost similar to Army Act. This Act was promulgated in the Gazette of India and came into effect on 1 March 1969. In exercise of the powers conferred under Sec 141 of the BSF Act 1968, the Central Government codified **BSF Rules 1969**, which came into force on June 13, 1969.

Both these enactments together with some minor enactments pertaining to recruitment, promotion, seniority, the jurisdiction between BSF & Criminal Courts, deductions from pay and allowances constitute BSF Law. Certain rules applicable to Central Civil Service (CCS) pertaining to pay, leave, medical facilities, retirement and pension are still applicable to BSF. These rules also come under the larger umbrella of BSF law.

Preamble to the Border Security Force Act 1968

‘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 (Sec 4 (1))

‘There shall be an Armed Force of the Union called the Border Security Force for ensuring the security of the borders of India.’

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)

1.1 Special Features of BSF Act and Rules

1.1.1 BSF - an Armed Force of Union of India. (BSF Act 1968 Preamble & Sec 4 (1); TADA (Prev) Rules 1986 Rule 19 (a) & 30; CAT Act 1985 Sec 2)

BSF – Central Para Military Force

In exercise of the powers conferred under Sec 43 (1) of the Arms Act 1959, BSF has been categorised as a **Central Para Military Force** vide Gazette Notification **GSR 905 (E) & 904 (E) of 11/11/2010**.

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 the defence of the country.’

(AIR 1991 SC 564 - UOI v/s Ex - Ct Amrik Singh)

1.1.2 BSF Act 1968 - A Special Law under Sec 5 CrPC

BSF was governed under CRPF (Eighth Amendment) Rules 1966 by adding a new Chapter XV - Special Provisions for Border Security Force, to CRPF Rules 1955 till the Parliament passed BSF Act 1968, as a **Special Law**, thus making the said chapter under CRPF Rules 1955 redundant.

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.’

As per Sec 5 IPC, Special Laws not affected by provisions of IPC.

Sec 5 IPC: Certain laws not to be affected by this Act. Nothing in this Act shall affect the provisions of any Act for punishing mutiny and desertion of officers, soldiers, sailors or airmen in the service of the Government of India or the provisions of any special or local law.

Case Law

- a) 'BSF Act envisages that it is an Armed Force of the Union of India for ensuring the 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 the 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 recalling; '...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 Sec 130 (*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.'

(*Apex Court amended this ruling on 10/08/1988 as far as SCM (SSFC in BSF) is concerned).

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

- 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 Court 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 members of BSF

Constitutional protection available to civilian employees in the matter of dismissal, removal, reduction in rank/post is **not available to BSF personnel** since it is not a civil service, but an Armed Force of the UoI, placed under Ministry of Home Affairs and as far as the object and tasks of BSF, 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 Forces 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 whereas 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 BSF personnel

Sec 13 (1)	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 press or publish book or letter except in connection with discharge of his duties or of purely literary, artistic or scientific nature except with prior written permission of Central Govt or Prescribed authority.
Sec 13 (2)	No person subject to this Act shall participate in or address any meeting or to 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)

- Commandant - in respect of persons under his command;
- Dy Inspector General - in respect of a Commandant;
- Inspector General - in respect of a Dy Inspector General;
- Director General - in respect of all persons' subject to the Act.

(Rule 178)

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.

(Explanation to Sec 13; Article 33 of the Constitution of India)

Article 33 of the Constitution reads

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 requirements 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 in 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 a feeling of belonging to the civilised community governed by the liberty-oriented Constitution.’ **(AIR 1982 SC 1413 - Lt Col Pritpal Singh Bedi v/s UOI)**

- e) ‘Despite the 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 Martial under the Act are not courts in the strict sense of the term as understood in relation to the 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 the 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 are governed by Civil laws also (Sec 3, 46, 47, 142)

1.1.6 Special Offences and Special provisions

Some offences that are of insignificant nature in civil service such as absenting without leave, insubordination, intoxication and **special offences** like mutiny, desertion, offences in respect of enemy, etc. **and special provisions** like 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 Security Force Courts (Sec 64)

Special courts known as Security Force Courts (SFCs) are provided for the speedy trial of offences codified in the BSF Act. Special Courts remain to a significant degree a specialised part of the overall penal mechanism by which Force discipline is maintained.

(Sec 64)

Trial by a Security Force Court (SFC) under the provisions of BSF Act shall be deemed to be a **judicial proceeding** (Sec 2 (i) CrPC 1973 within the meaning of Sec 193 & 228 of the IPC, and the **Security Force Court** shall be deemed to be a **Court** within the meaning of Sec 480 & 482 of the CrPc 1898 (Sec 345 & 346 of CrPC 1973).

(Sec 106)

Security Force Courts envisaged in Sec 64 of BSF Act are Court Martial within the ambit of Sec 475 CrPC 1973.

Definitions	Criminal Procedure Code (CrPC)
Judicial Proceedings (Sec 2 (i) CrPC)	Includes any proceeding in the course of which evidence is or may be legally taken on oath.
Court Martial (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.

The necessity of Special Courts has been recognised & accepted by the Supreme Court.

Case Law

- a) ‘The indication of the circumstances in which it would be a 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)

Note: 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)

Note: Though BSF law does not provide for appellate courts, it provides for ‘Petitions’ to Executive authority.

1.1.8 Law of Evidence applicable in trials by Security Force Courts (Special Courts) (Sec 87)

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 Rule-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 Court 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 (*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 Petitions to Executive Authority available as remedy against finding or sentence of Security Force Courts (SFCs) - No appellate jurisdiction by any court

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

- i) **Petitions against Finding and Sentence of GSFC & PSFC:** Any person subject to the Act who has been tried by PSFC or GSFC shall be allowed to put in **one petition** before confirmation to the confirming authority and **another petition** after confirmation to any officer mentioned in Sec 117. **(Rule 167 (1))**
a) **Petition before confirmation of finding and sentence:** Any person subject to this Act who considers himself aggrieved by an order passed by a PSFC or GSFC may present a petition to the officer or authority empowered to confirm any finding or sentence of such PSFC or GSFC 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 117 (1))**

- b) Petition after confirmation of finding & sentence: Any person subject to this Act who considers himself aggrieved by an order passed by PSFC or GSFC may present a petition after confirmation of such order 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 117 (2))**
- ii) **Petition in the case of SSFC:** In the case of a SSFC, he shall be allowed to put in only one petition to any of the officers mentioned in Sec 117. **(Rule 167 (2))**
- iii) Central Government, DG, or any prescribed officer may annul the proceedings of any SFC on the ground that they are illegal or unjust. **(Sec 118)**
- iv) **Period of Limitation for submitting Petitions (Rule 168):**
- 1) A petition, before confirmation, shall be submitted, within two weeks of the conclusion of 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.
- v) **Mode of Submitting Petitions (Rule 169):**
- 1) (a) A petition by a person who is still a member of the Force shall be submitted through his Commandant.
(b) A petition by a person who has ceased to be a member of the Force may be submitted to the Commandant of the unit in which the trial was held.
 - 2) An officer to whom a petition is submitted or to whom a petition is forwarded shall forward it to the next superior within a period of 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 CLO or Law Officer or to 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 an appeal by the petitioner.’

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

1.1.10 Petition to Executive Authority against termination of service under provisions in Chapter IV of the Rules

- i) Any person subject to the Act, who is aggrieved by any order of termination of his service passed under Chapter IV of the Rules may present a petition to in the case of:

Officers - to the Central Govt,
SOs including ASI - to the DG
Enrolled Persons - to the IG

Such authority may pass such orders on the petition as deemed fit.

Limitation period for filing such petition shall be three months from the date of order of termination or from the date of its receipt, whichever is later.

(Rule 28A & Proviso)

(Rule 28A inserted vide SO 436 (E) of 29/5/1990 and substituted by SO 1866 dated 27/06/2003)

- ii) **Passing of orders relating to period of 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 period of absence from duty of the person whose dismissal, removal or compulsory retirement from service was set aside. **(Rule 29)**

1.1.11 Special Courts not subject to 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 not having appellate jurisdiction/Special leave to appeal over Special Courts of Armed Forces

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 clause (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.’

(AIR1998 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 the 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 the hierarchy of Courts. The submission that full review of finding and/or sentence in confirmation proceedings under Sec 153 (*Army Act*) is provided for is a 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. The 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 the rule of law, the same cannot be denied to the protectors of this order. And it must be realised that an appeal from Ceasar to Caesar'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 of Supreme Court & High Courts

Special Court proceedings/Administrative actions by BSF authorities are subject to **judicial review** by Supreme Court and High Court under writ jurisdiction as available in Art. 32 and 226 of Constitution of India.

Article 32: 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) '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. In, *The Managing Director State Bank of Hyderabad & Anr. v. P. Kata Rao* [2008 (6) SCALE 575], this Court held:

“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)

- b) ‘Writ Court under Art 226 can interfere when inferior tribunal or authority has acted on inadmissible evidence or has drawn the wrong conclusion. However, inadequacy or insufficiency of evidence is no ground to interfere. Similarly, no interference is called for when a superior court holds a different view than the view held by the inferior tribunal.’

(WP 44/1976 (J&K (S) 1977 – Ex Ct Tirath Ram v/UOI)

- c) ‘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)

- d) ‘Writ Court cannot say whether the 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 Court of Inquiry 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)

- e) ‘High Court in writ jurisdiction cannot go into facts of the case.’

(WP 14/83 (Del) 1988 - Kala Singh v/s UOI)

- f) ‘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 the face of the record; where there has been a 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)

- g) ‘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 the sentence, particularly in military, para-military 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)**

- h) ‘In writ jurisdiction, the 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)
- i) ‘Alternative Remedy-Writ jurisdiction- breaches of natural justice & prescribed procedure - the 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)
- j) ‘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)
- k) ‘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)
- l) ‘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 the misconduct charged against him, the rule followed in criminal trials that 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)

- m) '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 the 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 a case decided by Security Force Courts

Writ Courts shall not review 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. The 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 recognised 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 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 the decision-making process and not the decision.’

(Civ. Appeal 4454/2006 (SLP 23847/2005) (SC) - 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 a 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 (CAT) Act not applicable to BSF personnel

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

1.1.16 No prior permission required for filing writ petition in High Court/Supreme Court or suit in a civil 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

Preamble of the Act	An Armed Force of the Union for ensuring the security of the borders of India and for matters connected therewith.
Sec 4 (1)	An Armed Force of the Union called the Border Security Force for ensuring the security of the borders of India.
Rule 15 (1)	<ul style="list-style-type: none"> i) Promote a sense of security among the border population ii) Prevent trans-border crimes, unauthorised entry into or exit from the territory of India. iii) Prevent smuggling and any other illegal activity.

1.3 Constitution of the Force

Preamble of the Act	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.
Sec 4 (1)	There shall be an Armed Force of the Union called the Border Security Force for ensuring the security of the borders of India.
Sec 4 (2)	Subject to provisions of BSF Act, the manner of constitution of the Force and conditions of service of its members shall be as may be prescribed.
BSF Regular (Rule 14 (1))	Officers, SOs and Enrolled persons appointed/enrolled in BSF (Regular) shall serve for the term given in enrolment form
BSF Auxiliary (Rule 14 (3))	Officers, SOs and Enrolled persons appointed/enrolled in BSF (Auxiliary) shall serve as and when called for service by the DG.
Battalion (Sec 2 (1) (b))	Means a unit of the Force constituted as a battalion by the Central Govt.
Detachment (Rule 2 (d))	Includes any part of the battalion or unit required or ordered to proceed on duty away from Headquarters.

1.4 Categories of Personnel in the Force

BSF is organised with personnel of following categories:

OFFICER (Sec 2 (1) (r); Rule 9 (Appointment of Officers) (Rule 14 A (1) (a) (Ranks)	Means a person appointed or in pay as an Officer of the Force, but does not include a Subordinate Officer or Under officer.
SUBORDINATE OFFICER (SO) (Sec 2 (1) (v) (Rule 11 (Appointment of SOs & UOs) Rule 14 A (1) (b) (Ranks)	Means a person appointed or in pay as a Subedar Major, Inspector, Sub Inspector or Assistant Sub Inspector of the Force. Note: Assistant Sub Inspector (ASI) is not included in the definition of SOs. However, in Rule 14 A (1) (b) Ranks - Subordinate Officers, rank of ASI included and rank of Subedar changed as Inspector.
UNDER OFFICER (UO) (Sec 2 (1) (x) (Rule 11 (Appointment of SOs & UOs), (Rule 12, 13, 14A (1) (c) (Ranks)	Means a Head Constable, Naik and Lance Naik of the Force. (Ranks of Naik and Lance Naik since abolished)
ENROLLED PERSONS Sec 2 (1) (k), 6, 16 Rule 12, 13 & 14A (1) (d) (Ranks)	Means an Under Officer or other persons enrolled under this Act by Enrolling officers appointed under Rule 12. Enrolled persons other than UOs include Constables and Enrolled Followers.

1.5 Ranks in BSF (Rule 14A (1); Sec 2 (1) (k), (r), (v) & (x))

In BSF, personnel are appointed/enrolled in various ranks in a pyramidal structure under the categories of Officers, Subordinate Officers, Under Officers and Enrolled Persons with Director General at the pivot. Ranks among each category are as under:

Officers	Director General (DG), Special DG (Spl DG), Additional DG, Inspector General (IG), Deputy Inspector General (DIG), Commandant, Second in Command (2IC), Deputy Commandant (DC), Assistant Commandant (AC)
Subordinate Officers (SOs)	Subedar Major (SM), Inspector, Sub Inspector (SI), Asst Sub Inspector (ASI)

(cont.)

Enrolled Persons	Under Officers (UOs)	Head Constable (HC) (Ranks of Naik and Lance Naik since abolished.)
	Other than UOs	Constable (GD), Constable (Tradesman)

Notes:

- i) Rank structure **substituted by SO No. 2628 (E) dated 25/11/2011.**
- ii) Ranks of **Naik & Lance Naik** among Under Officers abolished on adoption of Delhi Police pay scales by all Central Armed Police Forces in 5th CPC and of **Additional Deputy Inspector General** abolished on adoption of 6th CPC recommendation.
- iii) Rank of Subedar changed as Inspector and **ASI** included among **Subordinate Officers** in Rule 14A (1) (b).
- iv) **Enrolled Followers** re-christened as **Constable Followers**.
- v) Central Govt has declared post of **confirmed Deputy Superintendent of Police** equivalent to **confirmed Asst. Commandant** and **Asst. Superintendent of Police/Deputy Superintendent of Police** equivalent to **Asst. Commandant** by **SO 2843 of 06/07/1971** and **Deputy Commandant** equivalent to **Superintendent of Police** by **SO 592 dated 25/02/1997.**

Definitions	BSF Act & Rules
DG (Sec 2 (1) (i))	means the Director General of the Force appointed under Sec 5.
IG (Sec 2 (1) (n))	means an Inspector General of the Force appointed under Sec 5.
DIG (Sec 2 (1) (h))	means Dy Inspector General of the Force appointed under Sec 5.
COMMANDANT (Sec 2 (1) (f))	<p>Commandant, when used in any provision of this Act with reference to any unit of the Force means the officer whose duty it is under the Rules to discharge, with respect to that unit the functions of a Commandant in regard to matters of the description referred to in that provision.</p> <p>Note: Officer performing duties of Commandant in a unit, irrespective of his rank, is Commandant of that unit for all purposes. Officer of the rank of Commandant doing staff duties at various headquarters is not Commandant functionally.</p>

OFFICIATION (Rule 5)	<p>Exercise of power vested in the holder of an office in the Force: ‘Any power or jurisdiction given to any person holding any office in the Force to do any act or thing to, or before any person, may, for the purposes of these rules, be exercised by any other person who may, for the time being, be performing the functions of that office in accordance with the rules and practice of the Force.’</p> <p>Note: Officer officiating in a post is competent to exercise the powers and functions of that post subject to restrictions.</p>
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Case Law

‘Having regard to the provisions of the Act and the Rules, as noticed herein before, we are of the opinion that only because in a unit or Battalion a Commandant is posted, the existence of a unit would not be presumed. Once it is held that BTC, STS or Administrative Wing are wings of the BSF TCS, each wing being a component thereof, the same cannot be treated to be a separate unit for the purpose of Rule 45B of the Rules. Sec 2 (1) (f) of BSF Act defines Commandant with reference to a unit and not Commandant as holder of post.’

(AIR 2003 SC 1416 - UOI & Ors v/s BK Jha)

LOCAL RANK (Rule 14 A (3)) (Amended by SO 55 (E) dated 01/02/1999)	<p>DG, subject to confirmation from Central Govt may grant to an Officer/Subedar Major or Inspector of the Force, a rank mentioned at Sr. No.6, 7, 8 & 9 and to an officer of the Force a rank mentioned at Sr. No.2, 3, 4 & 5 in Rule 14 (A) (1) (a) as a local rank in the interest of better functioning of the Force.</p>
(Rule 14 A (4))	<p>Such officer, Subedar Major or Inspector holding local rank:</p> <ol style="list-style-type: none"> (a) shall exercise the command & be vested with the powers of an officer holding that rank; (b) shall cease to hold that rank if grant of such rank is not confirmed by the Central Govt within 21 days or when so ordered by the DG or when he ceases to hold the appointment for which the rank was granted; (c) shall not be entitled to any extra pay and allowances for holding such rank; (d) shall not be entitled to claim any seniority over other officers of the Force by virtue of having held such rank.

1.6 Members of the Force

Members of the Force (Sec 2 (1) (o))	Means an Officer, a Subordinate Officer or other Enrolled persons.
Deputationists (Proviso to Rule 1 (3))	Deputationists are also members of the Force. However, BSF Rules Chapter IV (Termination of Service) is <u>not</u> applicable to deputationists.

Case Law

- a) ‘Where a person whose services are deemed to have been constituted under Sec 142 of the BSF Act 1968 would be deemed to be a member of the Force in existence with the result that the power to terminate the services of a member of the Force is to be regulated by the Act notwithstanding the provisions contained in that behalf in CRPF Act 1949 or rules framed thereunder’.

(1979 (1) SLR 465 (Del) - Raj Singh v/s UOI)

- b) ‘The petitioner was not on deputation to BSF but was a member of the Force because of the following:
- a) He gave his consent for absorption in BSF at the time of the embodiment of PAP Battalion into BSF.
 - b) He has been drawing pay from BSF for a period over 6 months as per Sec 6 of BSF Act.
 - c) Sec 142 of BSF Act has regularised the previous appointments made prior to the passing of BSF Act.

The legislation clearly intended to legalise the constitution of the BSF, which had come into existence not under any enactment but by virtue of an executive order of the Central Govt’.

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

- c) ‘Members of Ministerial Cadre are persons’ subject to BSF Act and Rules for the purpose of discipline.’

(WP No 989/81 (J&K (J) - SI (Clk) Surendra Pal Sharma v/s UOI)

- d) ‘19. It is wide in nature. It is neither in dispute nor doubt that even a person while in custody would be subject to the Act. The custody of the appellant was an internal custody, he having been imposed with punishment. It is not a case where a prisoner is governed by a separate set of legislation. It is also not a case where a prisoner is sent to an independent authority. Even while he is in custody, he is a member of the force. He, therefore, in terms of clause (e) of Sec 22 of the Act neglected to obey any general, local or other order. Even while in custody a member of the Force serving a sentence would still be an officer of the Force.’

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

1.7 Enrollment/Appointment

Sec 6 (1)	Enrolment: Persons to be enrolled to the Force, mode & procedure for enrolment shall be such as may be prescribed by the Central Govt. Enrolment is concerned with Enrolled Persons only.
Sec 6 (2)	Status of Existing Enrolled Persons: Notwithstanding anything contained in this Act and the Rules, every person who has, for a continuous period of three months, been in receipt of pay as a person enrolled under this Act and was borne on the rolls of the Force shall be deemed to have been duly enrolled.
Sec 142 (2)	All persons who were members of the Force on the date (1 st March 1969) on which BSF Act came into force shall be deemed to have been duly appointed or enrolled under this Act.
Rule 13	Procedure of Enrolment: Enrolment of Enrolled persons shall be made as per procedure laid down in Rule 13. (Sec 6 (1), 2 (k); Rule 14A (c) & (d))
Rule 12	Enrolling Officers: Following will be Enrolling officers for enrolment of Enrolled Persons (Under Officers (Head Constables), Constable (GD & Tradesman & Followers) under Sec 6 of BSF Act; a). Commandants of all Battalions b). Any other Officer of the Force so appointed by the DG
Rule 9	Appointment of Officers: Central Govt may appoint such persons as it considers suitable as officers and their conditions of service shall be as provided in the rules made in this behalf.
Rule 11	Appointment of Subordinate Officers & Under Officers: Appointments to the post of Subedar Major & Inspector shall be made by the IG, Sub Inspector & ASI by the DIG & under Officers by the Commandant through: a). Direct recruitment. b). Deputation from Armed Forces, State Police, Central/ State Govt. c). Promotion as may be prescribed.
Rule 10	Probation: An Officer, Subordinate Officer or Under Officer on the first appointment to the Force shall be on probation for two years and Central Govt in the case of Officers & Prescribed Authority (Rule 11) in the case of SOs & UOs may, for reasons to be recorded in writing, extend period of probation not exceeding one year. (Rule 10 (1))

(cont.)

	<p>Prescribed authority under Rule 11 for Rule 10 (1): Inspector General - Subedar Major or Inspector Dy Inspector General - Sub Inspector or Asst. Sub Inspector Commandant - Under Officers. (Rule 11) Central Govt, in the case of Officers and Prescribed Authority in the case of SOs & UOs (Rule 11) empowered to terminate service of such persons without assigning any reason. (Rule 10 (2)) Provisions of Rule 10 (1) shall apply to a person on his initial promotion as an Officer (Promotion of Inspector to Asst Commandant), and a person, in the case of unsatisfactory completion of probation may be reverted to his former rank. (Rule 10 (3)) <u>Confirmation:</u> A Government servant who completes Probation may be considered for confirmation. (GoI DoPT Memo No: 18011/86-Estt (D) dated 28/03/1988.) Service shall be confirmed only once in the entire service in the entry grade after successful completion of probation period. No specific provision regarding confirmation available in BSF Act/ Rules.</p>
Rule 11A	<p><u>Commission:</u> Officers and SOs (Subedar Major, Inspector, SI & ASI) referred to in Rule 11 may be granted commission by the President & grant of commission shall be notified in the Gazette which shall be its conclusive proof. (Rule 10 & 11A substituted by SO. 2628 (E) dated 25/11/2011.)</p>

1.8 Conditions of Service

Sec 4 (2)	Constitution of the Force: Subject to the provisions of this Act, the Force shall be constituted in such manner as may be prescribed & the conditions of service of the members of the Force shall be such as may be prescribed.
Sec 7	Liability to serve: Every member of the Force shall be liable to serve in any part of India as well as outside India.
Sec 9	Tenure of service: Every person subject to BSF Act shall hold office during the pleasure of the President.
Rule 7	<p>Disqualification for appointment/enrolment: No person</p> <ol style="list-style-type: none"> Who has entered into or contracted marriage with any person having a living spouse or Who having a living spouse has entered into/contracted a marriage with any person shall be eligible for appointment to the Force. Central Govt may exempt any person from the operation of this rule as per personal law of such person or on other grounds.

Rule 8	Ineligibility of aliens: No person not being a citizen of India except with written consent of Central Govt shall be appointed or enrolled in the Force. Rule not applicable to citizens/subjects of Nepal, Sikkim or Bhutan.
Sec 3	Applicability of BSF Act & Rules: Officers, SOs, Under Officers and other persons enrolled under the Act shall be subject to the Act wherever they may be & shall remain so until retired, discharged, released, removed or dismissed from the Force in accordance with the provisions of the Act.
Sec 77	<ol style="list-style-type: none"> 1) Where an offence under this Act had been committed by any person while subject to this Act, and he has ceased to be so subject, he may be taken into and kept in Force custody and tried and punished for such offence as if he continued to be so subject. 2) No such person shall be tried for an offence, unless his trial commences within six months after he had ceased to be subject to this Act: Provided that nothing contained in Sec 77 (2) shall apply to the trial of any such person for an offence of desertion (Sec 18) or Mutiny (Sec 17) or shall affect the jurisdiction of a criminal court to try any offence triable by such court as well as by a Security Force Court.
Rule 14 (2)	BSF (Regular): Officers, Subordinate Officers & Enrolled Persons appointed to or enrolled into BSF (Regular) shall be liable for continuous service for the term mentioned in their enrolment form, letter of appointment or in the rules made in this behalf.
Rule 14 (3)	BSF (Auxiliary): Officers, Subordinate Officers and Enrolled Persons appointed to or enrolled into BSF (Auxiliary) shall serve as and when they are called out for service by the Director General with the consent of the Central Govt or for training under the order of the DG.
Rule 1 (3)	BSF Rules 1969 applicable to all persons subject to BSF Act 1968 with the exception that Chapter 1V (Termination of Service) shall <u>not</u> apply to the deputationists.
Rule 15 (5)	Lawful Command & Duty of Obedience: Any order given by a superior officer to perform any duty in connection with safeguarding security of the borders of India, administration, discipline and welfare of the Force or any such other duties called upon to perform in accordance with any law for the time being in force shall be a lawful command for the purpose of this Act.

Case Law

‘The BSF is one of the paramilitary forces of the Government of India. The conditions of service, including seniority of Members of the BSF, is to be governed by the provisions of the rules made under the BSF Act and not by the CRPF rules which govern seniority of officers in CRPF’. **(1995 (3) SCC 300 - Ravi Paul v/s UOI)**

1.9 Command and Supervision by DG

Sec 5 (1)	General superintendence, direction and control of the Force shall vest and be exercised by the Central Govt. Subject thereto & to the provisions of BSF Act and Rules, command and supervision of the Force shall vest on the DG so appointed by Central Govt.
Sec 5 (2)	In the discharge of his duties, DG shall be assisted by IsG, DIsG, Commandants & other officers appointed by Central Govt.
Sec 14 (CrPC)	Servant of Government: Any officer or servant continued, appointed or employed in India by or under the authority of Govt.

Case Law

‘Relationship of master and servant exists between personnel of BSF & Union of India. No doubt that BSF Act regulates the working of the Force and the allied matters, but merely because of that the personnel of BSF do not lose their status of being the employee of the UOI. In fact, the preamble of BSF Act itself states that BSF is a Force of the Union. Similarly, Sec 5 vests UOI with the power of control and superintendence of the Force. Thus so far as the liability of the State for the tort committed by its servant is concerned, it stands concluded by Supreme Court that if the act of the employee of the State, in discharge of his statutory functions is not referable to any delegation of sovereign powers, the State would be liable for the tortious acts committed by him in the same manner in which an ordinary master is liable for the tortious act of his servant committed during the course of his employment.’

(AIR 1981 (J&K) 60– UOI v/s Abdul Rehman)

1.9.1 Functions & Responsibilities of Spl DG, Addl DG, IG, DIG & Commandant

Sec 5 (1)	Subject to general superintendence, direction and control of the Force by Central Govt and subject to the provisions of BSF Act & Rules, command and supervision of the Force shall vest on the DG so appointed by the Central Govt.
Sec 5 (2)	In the discharge of his duties, DG shall be assisted by IsG, DIsG, Commandants & other officers appointed by the Central Govt.
Rule 15 (2)	The responsibility of command, discipline, morale and administration shall, in the case of Spl DG, Addl DG, Inspector General and Deputy Inspector General extend to Battalions, Units, Headquarters, establishments and Force personnel placed under him and of Commandant to the extent of Battalion or Unit placed under him. (Sub-Rule substituted by S.O. No. 2628 (E) dated 25/11/2011).

Rule 15 (3)	During hostilities, IG, DIG & Commandant will discharge such functions as assigned to them by their respective superiors.
Rule 15 (4)	Command, discipline, morale and administration of Battalions, Units and Establishments not placed under a particular IG or DIG shall be exercised by officers so designated by Director General from time to time.

1.9.2 Devolution of Command

Rule 16 (1)	Power of Command: An officer appointed to command shall have the power of command over all officers and men placed under his command irrespective of seniority.
Rule 16 (2) (a)	Devolution of Command: If an officer is unable to exercise command to which he has been appointed due to any reason, the command shall devolve on the Second in Command (2IC) if one has been so appointed.
Rule 16 (2) (b)	If no Second in Command has been so appointed, it shall devolve on the officer who may be appointed to officiate by the immediate superior of the officer unable to exercise command.
Rule 16 (2) (c)	If no such officer is appointed, the command shall devolve on the senior-most officer present.
Rule 16 (2) (d)	Assuming Command: Inability of an officer to exercise command and its assumption by any other officer in accordance with this sub-rule shall be immediately reported to FHQ by the officer who assumed command.
Rule 16 (3)	If persons belonging to different battalions & units are working together: <ul style="list-style-type: none"> i) In regard to the specific task on which they are engaged, the officer appointed to command or in his absence the senior most officer present shall exercise command over all such persons. ii) In all other matters the senior officer belonging to each battalion shall exercise command over persons belonging to his battalion.
Rule 2 (e)	Proper Force Authority: When used in relation to any power, duty, act or matter means such Force authority as, in pursuance of the Rules made under the Act, exercises, or performs that power or duty or is concerned with that matter.

(cont.)

Rule 5	Officiating Authority: Any power or jurisdiction given to any person holding any office in the Force to do any act or thing to, or before any person may, for the purposes of these rules, be exercised by any other person who may, for the time being, be performing the functions of that office according to the rules and practices in vogue.
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1.10 Exercise of Command & Powers

Rule 16 (1)	Power of Command: An officer appointed to command shall have the power of command over all officers and men, irrespective of seniority placed under his command.
Rule 16 (2)	Devolution of Command: <ol style="list-style-type: none"> a) Command shall devolve on the Second in Command on inability of officer appointed to command. b) If no such Second in Command has been so appointed, it shall devolve on the officer who may be appointed to officiate by the immediate superior of the officer unable to exercise command. c) If no such officer is appointed, command shall devolve on the senior-most officer present.
Rule 16 (3)	Adhoc Battalions/Units: If persons belonging to different battalions & units are working together: <ol style="list-style-type: none"> i) the officer appointed to command or in his absence, the senior most officer present shall exercise command over all such persons in regard to the specific task on which they are engaged; ii) the senior officer of each battalion shall exercise command over persons belonging to his battalion in all other matters.
Rule 16 (5)	Disciplinary Powers in Units/Battalions: Disciplinary powers over a person will be exercised by the Commandant of the Battalion/ Unit to which such person belongs or the officer on whom command has devolved under Rule 16 (2).
Proviso to Rule 16 (5)	Disciplinary Powers In Adhoc Units/Battalions: When persons belonging to different battalions or units are working together, disciplinary powers in respect of such persons may also be exercised by an officer appointed to command such persons in accordance with Rule 16 (3) (i) or in his absence by the senior- most officer present. (Proviso to Rule 16 (5) inserted by SO 2628 (E) dated 25/11/2011)

Rule 16 (6)	Disciplinary powers over persons on Duty Out of Unit: Commandant of battalion, unit, centre or establishment shall exercise disciplinary powers of Commandant over persons on detachment duty or attending a course of instruction.
Rule 16 (7)	Disciplinary Powers in HQs/Training Institutions: DG, Spl DG, Adtl DG, IG, DIG or an officer not below the rank of DIG commanding a training institution may specify one or more officers of his HQ/Training institution to exercise the disciplinary powers of Commandant over persons belonging to or on detachment duty at their HQ/Training Institution. (Insertions to Rule 16 (7) by SO. 2628(E) dated 25/11/2011 & SO 1757 (E) dated 19/04/2017)
Rule 16 (4)	When Taken Prisoner of War: When officers & other persons belonging to the Force are taken prisoner by an enemy, the existing relations of superior & subordinate and the duty of obedience shall remain unaltered, and any person guilty of indiscipline or insubordination in this behalf shall, after his release, be liable for punishment.

Explanation: In Rule 16, except in Rule 16 (2) (Devolution of command), 16 (5) & 16 (7) (Disciplinary Powers), the word ‘Officer’ shall include a Subordinate Officer and an Under Officer.

1.11 Persons Subject to BSF Act and Rules

BSF laws are applicable to all in service personnel, personnel serving sentence of imprisonment in civilian jails and sentenced to death and to a limited period in respect of personnel whose service has come to an end in one way or other.

Rule 14	BSF is organised into a) BSF (Regular) b) BSF (Auxiliary)
Sec 3	Officers, SOs, UOs & other personnel, enrolled under this Act shall remain subject to this Act until retired, discharged, released, removed or dismissed from the Force.
Rule 1 (3)	BSF Rules applicable to all persons subject to BSF Act. However, Chapter IV of BSF Rules (Termination of Service) does not apply to personnel on deputation.
Sec 6 (2)	Every person in receipt of pay for three continuous months as an Enrolled person and borne on the rolls of the Force shall be deemed to have been duly enrolled.

(cont.)

Sec 142 (1)	The Border Security Force in existence at the commencement of this Act shall be deemed to be the Force constituted under this Act.
Sec 142 (2)	Members of the Force as existing at the commencement of the Act shall be deemed to have been appointed/enrolled under BSF Act.
Sec 9	Every person subject to this Act shall hold office during the pleasure of the President.
Sec 77 (1)	Any person who ceased to be subject to BSF Act can be taken into custody and brought to trial as if subject to this Act within six months from the date of his retirement, removal, discharge, release or dismissal from service for an offence committed while subject to it.
Sec 77 (2)	No such person shall be tried for an offence unless his trial commences within six months after he had ceased to be subject to this Act, provided, nothing contained in Sec 77 (2) shall apply to the trial of any such person for an offence of desertion or for any of the offences mentioned in Sec 17 or shall affect the jurisdiction of criminal court to try any offence triable by such court or by SFC.
Sec 76	No trial for an offence of desertion, other than desertion on active duty, shall be commenced if the person in question, not being an Officer has subsequent to the commission of the offence, served continuously in an exemplary manner for not less than three years with any unit of the Force.
Sec 78 (1)	BSF Act is applicable to a person sentenced to imprisonment by an SFC though dismissed from service or otherwise ceased to be subject to this Act. Such person may be kept, removed, imprisoned and punished as if he continued to be subject to this Act.
Sec 78 (2)	BSF Act shall be applicable to a person who was subject to this Act and sentenced to death by GSFC till sentence of death is carried out.

1.12 Tenure of Service/Withdrawal from Service

Sec 9	Tenure of Service under this Act shall be during the pleasure of the President of India.
Rule 14 (2) BSF (Regular)	Officers, SOs & Enrolled Persons of BSF (Regular) shall be liable for continuous service for the term mentioned in the enrolment form, letter of appointment or rules in this regard.

Rule 14 (3) BSF (Auxiliary)	Officers, SOs and Enrolled persons of BSF (Auxiliary) shall serve as and when called out for service by the DG.
Sec 8	Withdrawal From Service by Resignation: No member of the Force is at liberty to resign his appointment during the term of his agreement or to withdraw himself from all or any of the duties of his appointment except with prior written permission of Prescribed authority.
Rule 19 (1)	Resignation of Officers: Central Govt may having regard to the special circumstances of any case, permit any officer of the Force to resign from the Force before completing the term of engagement or before the attainment of the age of retirement or before putting in such number of years of service as may be necessary under the rules to be eligible for retirement.
Rule 19 (2)	Acceptance of Resignation: Central Govt may accept the resignation under Rule 19 (1) with effect from such date as it may consider expedient.
Rule 19 (3)	Central Govt may refuse to permit an officer to resign: <ul style="list-style-type: none"> a) If an emergency has been declared in the country either due to internal disturbances or external aggression; or b) If considered it to be inexpedient so to do due to exigencies of service or in the interest of discipline of the Force; or c) If the officer has specifically undertaken to serve for a specified period and such period has not expired.
Proviso to Rule 19 (1)	Refund of Cost of Training: While granting such permission, the Central Govt may require the officer to refund actual cost of training or three months' pay whichever is higher unless he has been granted cadre clearance to accept a job in Central/State Govt or local bodies or he has completed ten years of service in the Force.
Rule 19 (4)	Resignation of SOs and Enrolled Persons: Rule 19 (1), (2) & (3) as applicable to Officers are applicable in the case of SOs & Enrolled persons and powers vested in the Central Govt in Rule 19 (1) & (2) shall be exercised by DIG in the case of a SO & by Commandant in the case of an Enrolled Person.

Note: Subordinate Officers (SOs) include Inspector whose appointing authority is IG. Though DIG is designated authority to accept the resignation of SOs under Rule 19 (4), it will not be legally tenable for an authority lower than appointing authority to exercise such power. This interpretation may be valid for Sec 11 (2) also.

This is clear in Proviso to Rule 22 (3) (Dismissal or removal of persons other than Officers on account of misconduct).

1.13 Dismissal/Removal/Termination of Service

Sec 9	Pleasure of the President: Every person subject to BSF Act shall hold office during the pleasure of the President.
Sec 10	Powers of Central Govt: Subject to BSF Act & Rules, the Central Government may dismiss or remove from service any person subject to this Act.
Sec 11 (1)	Powers of DG/IG: DG or IG may dismiss, remove from service or reduce to a lower grade or rank any person subject to the Act other than an Officer.
Sec 11 (2)	Powers of DIG/Prescribed Officer: An officer not below the rank of DIG or any Prescribed Officer may dismiss or remove from service any person subject to the Act and under his command other than an Officer or a Subordinate Officer of such rank or ranks as may be prescribed.
Rule 177	Commandant is the Prescribed Officer under Sec 11 (2).
Rule 10 (2)	Central Govt may, during the period of probation, terminate the services of an officer without assigning any reason.
Sec 48 (c)	Major Punishment in SFC: Dismissal or removal from service of persons of any Rank.
Rule 22	Dismissal or removal of persons other than officers on the ground of misconduct.
Rule 23	Dismissal/removal of any person subject to the Act by Central Govt without following the procedure laid down in the Rules.
Rule 20	Termination of service of the officer on account of misconduct by Central Govt by way of dismissal, removal, retirement or demanded resignation.
Rule 21	Termination of service of the officer on grounds other than misconduct by the Central Govt by way of demanded retirement/resignation or compulsory retirement.
Rule 23A	Termination of service of persons of any rank on conviction on a criminal charge (Civil Offence).
Rule 17	Termination of service for furnishing false or incorrect information at the time of appointment. When such action is proposed, the person concerned shall be given opportunity to show cause against proposed action. Competent Authority may grant pensionary benefits if otherwise admissible under the rules.

Rule 17A	Discharge from service for unsatisfactory progress in basic training. (Rule 17 substituted & 17A inserted by SO 2628 dated 25/11/2011).
Rule 18	Retirement of officer on ground of physical unfitness
Rule 24	Retirement of Subordinate Officers and Enrolled Persons
Rule 25	Retirement of Subordinate Officers and Enrolled Persons on the grounds of physical unfitness.
Rule 26	Retirement of Enrolled Persons on the grounds of unsuitability.
Rule 27	Retirement of Subordinate Officers on the grounds of unsuitability.
Rule 28	An officer or authority superior in command to officer or authority specified in Rules 17 to 27 can exercise such powers.
Rule 30	Effective Date of Cessation of Service: It shall be the date mentioned in the order or if no such date is mentioned, date of signing the order or date on which concerned person is relieved from duties whichever is later.
Proviso to Rule 1 (3)	Chapter IV of BSF Rules (Termination of Service - Rules 17 to 30) not applicable to personnel on deputation.

Case Law

- i) 'A member of the BSF, even if he was appointed in BSF under the CRPF Act 1949, can be removed by the Central Govt under Sec10 or by the DG or IG under Sec11 of the BSF Act 1968'. **(1979 (1) SLR 465 (Del) - Raj Singh v/s UOI)**
- ii) 'Order of the dismissal on ground of absence without leave- order passed in mere exercise of administrative powers without following either of the three alternatives specified in **Sec 19** (*Cognisance of Offence of AWL and trial by Security Force Court*), **62** (*Inquiry into Absence without leave*) and **Rules 20, 21 & 22** (*Procedure for Termination of Service on various grounds*) is ultra vires powers of authority'.
(1985 CalWN 1072 - Anil Bandhu v/s Commandant 70 BN BSF)
- iii) 'Power of prescribed authority of dismissal from service under Section 11 (2) is independent. It does not depend upon award of punishment by SFC'.
(AIR 1989 SC 1321-Gouranga Chakraborty v/s State of Tripura)

1.14 Power of Reduction of Rank or Seniority/ Deprivation of Rank

Sec 11 (1)	DG or any IG may dismiss or remove from service or reduce to a lower grade or rank or the ranks any person subject to BSF Act other than an officer, but not below the rank of appointment or enrolment.
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Sec 11 (3)	An officer not below the rank of DIG or any Prescribed Officer as mentioned in Sec 11 (2) may reduce to a lower grade or rank or the ranks any person under his command other than an Officer or Subordinate Officer. Note: Reduction to a rank lower than his initial appointment not allowed.
Sec 11 (2)	An officer not below the rank of DIG or any prescribed officer may dismiss or remove from service any person under his command other than an officer or a SO of such rank or ranks as may be prescribed. Commandant is the Prescribed Officer under Sec 11 (2). (Rule 177)
Sec 11 (4)	Exercise of any power under Section 11 shall be subject to the provisions of BSF Act & Rules.
Sec 48 (e)	Reduction to the ranks or to a lower rank or grade or place in seniority in the case of UOs as punishment in SFCs Note: In the case of Officers & SOs, there is no provision of reduction to lower rank as punishment by SFCs.
Sec 48 (f)	Forfeiture of Seniority of rank & forfeiture of all or any part of the service for the purpose of promotion;
Sec 48 (g)	Forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose;
Sec 53 (e)	Deprivation of an acting rank or reduction to a lower grade of pay as punishment in Summary Trial of Enrolled Persons.

1.15 Evidence of the Rank & Status of Officers & Subordinate Officers

BSF list or Gazette published by authority shall be evidence of the status and rank of the Officers, SOs and of any appointment held by them. **(Sec 96 (2))**

Definition	Indian Penal Code
DOCUMENT (Sec 29 IPC)	Denotes any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, intended to be used or which may be used as evidence of that matter.

Case Law

‘To say that an administrative order can never confer any right would be too wide a proposition. There are administrative orders which confer rights and impose duties. It is because an administrative order can bridge or take away rights that courts have imported the principle of natural justice of *audi alteram partem* into this area.’
(AIR 1973 SC 303 - UOI v/s KP Joseph and Ors)

1.16 Law Laid Down by Supreme Court binding on BSF

Article 141 of the Constitution of India stipulates that laws declared by Supreme Court is binding on all courts within the territory of India and hence are equally applicable to SFCs and BSF administration.

Case Law

‘Assuming that the respondents could challenge fixation of seniority of the appellant as the order which furnished foundation for the determination of seniority was passed without impleading the respondents, the scope of such petition could be limited. In service matters where validity or interpretation of rule is concerned, any order passed by the courts which achieves finality is binding on the Department. If the court is satisfied that any employee has been prejudiced or his right under Article 14 has been violated, it may interfere in his favour. But the Department is precluded from challenging the interpretation given by the court. Since the earlier order has been upheld by this Court, the order could be set aside by this Court. The Tribunal could not have passed an order which resulted in disturbing the finality about interpretation of rule especially when the SLP had been dismissed by this Court. The appeal is consequently allowed, and the order of the Tribunal is set aside. The claim petition filed by the respondents shall stand dismissed. The appellant was entitled to exemplary costs against Railways, but since no one appeared for the Railways, and the learned counsel for the appellant did not press for it, we refrain from imposing costs.’

(AIR 1996 SC 640 - Shreedharan Kallat v/s UOI &Ors)

1.17 Service Matters

Service matters in relation to a person, means all matters relating to the **conditions of his service** in connection with the affairs of any state or of any local or other authority within the territory of India or under the control of the Government of India or as the case may be, of any corporation or society owned or controlled by the Govt, as respects;

- Remuneration (including allowances), pension & other retirement benefits
- Leave of any kind
- Tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation,
- Disciplinary matters
- Any other matter whatsoever

(Sec 3 (q) CAT Act)

Case Law

- i) **Aggrieved Person:** ‘A person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived of him something or wrongfully refused him something or wrongfully affected his title to something.’ (James L. J., in Re Sidebotham (1880) 14 Ch. D 458 referred to by SC in Bar Council of Maharashtra v/s MV Dhabolker- AIR 1975 SC 2092)’

(AIR 1981 SC 116 - Thammanna v/s K Veera Reddy)

- ii) **Review of Judgments when done:** ‘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 like 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)

1.18 President’s Power of Pardon & Remission of Sentences of SFCs.

Art. 72 of the Constitution vests President of India with the power to grant pardon, reprieve, respite or remission of punishment or to suspend remit or commute the sentence of any person convicted of any offence:

- a) In all cases where punishment is awarded by Court Martial/SFC.
- b) In all cases where the punishment or sentence is for an offence against any law relating to a matter to which executive power of the Union extends.
- c) In all cases where the sentence is a sentence of death.

Note: This Constitutional power is over and above the administrative powers conferred by law on any officer of the Force under Sec 128 or the powers of higher Courts of law for grant of remedies.

1.19 Performae Appended to BSF Rules (Rule 4)

- a) Performae in the appendices to BSF Rules, with such variations as the circumstances of each case, may require, may be used for the respective purposes therein mentioned and if used shall be sufficient, but a deviation from such forms shall not, by reason only of such deviation, render invalid any charge, warrant, order, proceedings or any other documents relevant to these rules.

- b) Any omission of any such form shall not, by reason only of such omission, render any act or thing invalid.
- c) Directions in the notes & the instructions in the format shall be duly complied with to which they relate, but any omission to comply with any direction in the notes or instructions shall not, merely by reason of such omission render any act or thing invalid.

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