IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

Reserved on: **24.09.2026**
Pronounced on: **22.10.2026**
Uploaded on: **23.10.2026**
Whether the operative part or full judgment pronounced: **Full.**

LPA No.107/2022

1. Unon of India through Ministry of Home Affairs, New Delhi.
2. Inspector General Border Security Force.
3. Director General Border Security Force, BSF HQ, New Delhi.
4. General Security Force Court at Panthachowk, Srinagar, through its Presiding Officer.
5. Law Officer, General Security Force Court at Panthachowk, Srinagar.
6. Rupesh Kumar, 21C 129 Bn BSF.
7. Munish Gupta 21C, Officiating Commandant ARTY 1055 BSF (ARTY). …**Appellants**.

Through: Mr. Hakim Aman Ali, Dy.AG.

Vs.

1. Rovinder Singh S/o Shri Chatar Singh R/o Village Dildar, Post Tangdhar, P/S Tangdhar District Kupwara, Constable Sweeper No.041520020. ….**Respondent**

2. SHO Police Station Bandipora.
3. Mohammad Iqbal Sub Inspector J&K Police, Police Station Bandipora PID No.116208/EX-SI. **…Proforma Resondents**

Through: Mr. Mushtaq Ahmad Dar, Advocate.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE M. A. CHOWDHARY, JUDGE

JUDGMENT

Dr. Pushpendra Singh Bhati, CJ

01. This Letters Patent Appeal challenges the judgment and order dated 28.04.2022 passed by the learned Single Judge in *WP(C) No. 255/2020* titled *Rovinder Singh v. Union of India and others*. By virtue of the impugned judgment, while allowing the writ petition, the learned Single Judge struck

down Rule 129 of the Border Security Force Rules, 1969 as *ultra vires* Part III of the Constitution, particularly Article 21 of the Constitution and quashed the proceedings concluded by the General Security Force Court (GSFC) from the stage of leading defence evidence. The Writ Court further directed that the GSFC shall take up the matter from the stage of conclusion of the prosecution evidence and the petitioner, respondent no.1, shall be provided certified copies of the proceedings as also the copies of the statements of prosecution witnesses recorded during trial against or in favour of the petitioner before asking the petitioner to enter his defence and conclude the proceedings with reasonable dispatch, as per the provisions of the Act and the Rules framed thereunder.

02. Before adverting to the rival contentions of the parties, it would be apt to give a brief factual background of the case.

The respondent was a member of the Border Security Force and while being posted with the Force, on 27.11.2017, an incident occurred in the BSF campus at Bandipora, in which Head Constable Chander Bhan was shot dead. Accordingly, FIR No. 163/2017 came to be registered under Section 302 RPC. The police investigated the matter and presented the charge-sheet before the Chief Judicial Magistrate, Bandpora, who in turn committed it to the Court of Sessions. Since the respondent was a member of the Border Security Force, the competent authority exercised the statutory option for trial before a **General Security Force Court (GSFC)** and the criminal case was accordingly transferred for trial under the BSF Act.

The Record of Evidence was prepared and the competent authority-Inspector General, Kashmir Frontier, BSF, directed that the matter to be placed before the GSFC. The respondent was tried for commission of offences punishable under Section 302 RPC read with Section 46 of the BSF Act, as also on the charge arising from leaving his picket without orders from his superior officers.

The trial before the GSFC commenced on 13.11.2019 and was concluded on 07.03.2020. The Court found the respondent guilty and awarded imprisonment for life and dismissal from service. Since the finding and sentence of the GSFC required confirmation under Section 107 of the BSF Act, the proceedings remained subject to the statutory confirmation process.

The statutory scheme thus deliberately distinguishes between the conclusion of the trial by the Security Force Court and the stage at which the finding and sentence acquire validity upon confirmation. The BSF Act itself provides that no finding or sentence of a General Security Force Court shall be valid except insofar as it is confirmed in accordance with the Act.

During the trial, the respondent/petitioner sought certified copy of the challan along with allied documents as also the certified copies of the statements of prosecution witnesses recorded during the trial. The request was opposed on the basis of Rule 129. It was, however, not the case that the respondent was excluded from the proceedings or deprived of the opportunity to inspect the record in terms of Rule 120 of the Rules and, accordingly, the request so made was declined.

4. The respondent/petitioner feeling aggrieved approached the Writ Court challenging *inter alia* the constitutional validity of Rule 129 by contending that denial of certified copies before confirmation deprived him of an effective opportunity to prepare and conduct his defence and thereby infringed the guarantee of fair trial under Article 21.

5. Accepting the challenge of the respondent/ petitioner, the learned Writ Court allowed the writ petition primarily for the reason that although Rule 120 confers upon an accused the right to inspect the proceedings, inspection could not be equated with furnishing certified copies of the proceedings and statements of witnesses. The learned Single Judge further held that postponement of the supply of copies until confirmation of the finding and sentence prejudiced the accused in preparing his defence and therefore offended Article 21 and that Article 33 could not save Rule 129 because, no sufficient nexus had been demonstrated between the restriction imposed by Rule 129 and the maintenance of discipline or proper discharge of duties of the Border Security Force.

6. The aforesaid conclusions arrived at by the learned Writ Court have been put to challenge by the appellants through the medium of appeal at hand.

7. Learned counsel for the appellants submits that the learned Single Judge while dealing with the matter has fallen in error in treating the right to obtain copies of the proceedings as an absolute and indispensable component of the constitutional guarantee of fair trial. The first submission is that the

GSFC is a statutory Security Force Court constituted under a special parliamentary enactment, namely, the Border Security Force Act, 1968. Section 64 creates three kinds of Security Force Courts, including the General Security Force Court; Section 68 prescribes its composition; Section 72 confers upon its jurisdiction to try persons subject to the Act; Section 87 deals specifically with the applicability of the law of evidence; and Sections 107 and 108 prescribe the confirmation mechanism. The entire procedure is thus governed by a self-contained statutory scheme designed for a disciplined armed force.

8. It is submitted that the learned Single Judge gave insufficient effect to the words used in Section 87, namely that the Indian Evidence Act applies to proceedings before a Security Force Court "subject to the provisions of this Act." Consequently, where the BSF Act or the Rules validly framed thereunder make a special provision concerning access to proceedings, that special provision must prevail over the general provisions of the Evidence Act. It is contended that Rule 120 expressly provides an accused with the right to inspect the proceedings at all reasonable times before the Court is closed to consider the finding. The statutory scheme therefore does not shut the accused out from the evidence against him. He is entitled to inspect the proceedings and, through his defending officer, counsel or other permissible representative, prepare his defence. The distinction between inspection and obtaining a physical or certified copy cannot, by itself, be elevated into a constitutional requirement that copies must necessarily be supplied during the trial. Further, the learned counsel for the appellants submits that Rule 129 does not abolish the accused's right to access the proceedings. It regulates the time and manner in which a copy of the proceedings may be demanded. The Rule provides that every person tried by a Security Force Court shall be entitled to obtain a copy after confirmation of the finding and sentence, when confirmation is required, and before the proceedings are destroyed. The Rule is therefore a procedural provision forming part of a larger statutory scheme which includes inspection during trial and access to the proceedings after confirmation.

9. Learned counsel for the appellants to support his arguments placed reliance on *Union of India v. Ex. Flt. Lt. G.S. Bajwa, (2003) 9 SCC 630*, where the Supreme Court considered a substantially analogous military procedural

scheme and examined the provisions under which copies of court-martial proceedings were made available after confirmation while the accused was permitted to inspect the proceedings during the trial. The Supreme Court held that the right of inspection at reasonable times was sufficient to meet the requirements of natural justice and that the accused was not entitled to insist upon day-to-day copies of the proceedings. Reliance is also placed upon the judgments rendered in *Ex. Major General M.S. Jaswal v. Union of India & Ors., W.P.(C) No. 1864/2025 & 1865/2025, decided on 06.12.2025* and *Mushtaq Ahmad Malik v. Union of India & Ors., W.P.(C) No. 1945/2024, decided on 14.05.2026*.

10. It is contended that the principle laid down in *G.S. Bajwa* (supra) is directly relevant. The question is not whether possession of a copy might be more convenient to an accused, but whether the Constitution mandates physical copies of the proceedings at every stage of a special military trial. According to the appellants, the answer must be in the negative when the statutory scheme expressly provides an effective right of inspection.

11. Learned counsel further contends that the learned Single Judge erred in treating Article 21 as requiring the same procedural regime for an ordinary criminal court and a Security Force Court. Article 33 specifically recognises the special constitutional position of members of the Armed Forces charged with maintenance of public order. Parliament is empowered to determine by law the extent to which fundamental rights may be restricted or abrogated in their application to such forces so as to ensure proper discharge of duties and maintenance of discipline. The BSF Act is a parliamentary enactment expressly made for the constitution and regulation of an armed force of the Union for ensuring the security of the borders of India. The special rules framed thereunder, therefore, cannot be tested as though they were ordinary subordinate procedural rules divorced from the statutory purpose of the parent enactment.

12. It is further submitted that the learned Single Judge failed to appreciate the significance of the confirmation mechanism. A General Security Force Court's finding and sentence do not become valid merely upon pronouncement by the Court. Section 107 expressly makes confirmation a condition of validity. Rule 129 correspondingly postpones the right to obtain copies until

confirmation. The restriction is thus integrated with the statutory process of review, confirmation and revision and cannot be characterised as an arbitrary denial of access. It is submitted that Rule 130 itself demonstrates that the rule-making scheme has been carefully calibrated to address security considerations. It deals with circumstances where supply of copies may prejudice State security or friendly relations with foreign States and provides a controlled mechanism for inspection even in such circumstances.

13. Lastly, the learned counsel for the appellants submits that Rule 129 is neither manifestly arbitrary nor disproportionate. It is a special procedural rule applicable to a special class of proceedings and must be read with Rules 119, 120, 121, 122 and 130 and the relevant provisions of the BSF Act as an integrated scheme.

14. **Per contra**, learned counsel for the respondent supports the judgment of the learned Single Judge by contending that the respondent was facing a criminal charge carrying punishment of imprisonment for life and dismissal from service and that the proceedings before the GSFC, though conducted under a special statute, nevertheless attracted the constitutional guarantee of a fair trial under Article 21. It is contended that the statements of prosecution witnesses are essential material for preparing cross-examination and defence and merely allowing inspection, it is argued, is not equivalent to providing copies, particularly where the defence is required to compare the testimony of different witnesses, identify contradictions and prepare an effective defence. To substantiate his argument, learned counsel for the respondent placed reliance on the judgment of the Supreme Court reported in ***Nahar Singh Yadav v. Union of India : AIR 2011 SC 1549*** as also the judgment in ***Mohd. Hussain v. State (Govt. of NCT of Delhi):(2012) 2 SCC 584***, to emphasise that the requirement of a fair and just trial is fundamental to Article 21.

15. It is further contended that Article 33 does not confer an unrestricted power to abrogate fundamental rights. It is submitted that any restriction must bear a rational and demonstrable nexus with the constitutional purpose of ensuring proper discharge of duties and maintenance of discipline and in this regard reliance is placed on judgment of the Supreme Court in ***Secretary, Ministry of Defence v. Babita Puniya, (2020) 7 SCC 469***.

16. It is submitted that the appellants have not established how allowing the respondent to obtain copies of statements already recorded would adversely affect discipline, operational preparedness or security. It is, therefore, urged that Rule 129 cannot be saved merely by invoking the special status of the BSF.

17. Learned counsel for the respondent contends that Rule 130 itself shows that the rule-making authority knew how to deal with genuinely sensitive material. Therefore, according to the respondent, a blanket prohibition on supplying copies until confirmation is excessive. Lastly, the counsel contends that the proceedings conducted before the General Security Force Court were rendered defective because the defence was deprived of copies of prosecution evidence and seeks that the trial be commenced afresh from the stage of framing of charges rather than merely from the stage of leading defence evidence.

18. Upon consideration of the rival submissions and the material placed before the Court, the following issues arise for determination:

i. **Whether Section 87 of the Border Security Force Act, read with the scheme of the Act and Rules, permits Rule 129 to regulate and postpone the supply of copies of Security Force Court proceedings until confirmation of the finding and sentence?**

ii. **Whether Rule 129 of the Border Security Force Rules, 1969 is ultra vires Part III of the Constitution?**

iii. **Whether denial of certified copies during the pendency of trial, when the accused is afforded inspection of the proceedings under Rule 120, amounts to violation of the fundamental right to a fair trial?**

iv. **What relief, if any, is the respondent entitled to?**

19. The first issue which requires consideration by this Court reads as under:

(i) Whether Section 87 of the Border Security Force Act, read with the scheme of the Act and Rules, permits Rule 129 to regulate and postpone the supply of copies of Security Force Court proceedings until confirmation of the finding and sentence?

20. Section 87 of the BSF Act being of central importance, reads as under:

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

21. The words ***"subject to the provisions of this Act"*** cannot be treated as surplusage and it provides that the Evidence Act applies to proceedings before a Security Force Court but does so within the framework established by the BSF Act. The learned Single Judge correctly noticed that, ordinarily, Sections 74 and 76 of the Evidence Act would have relevance to public documents and certified copies. However, the conclusion that Rule 129 must consequently yield to Section 76 does not follow once Section 87 is read as a whole with the special provisions of the BSF Act. The principle *generalia specialibus non derogant* has application here. The BSF Act is a special parliamentary enactment regulating the constitution, discipline, offences, trial, evidence, confirmation and execution of sentences concerning members of the Force. Section 87 of the Act, itself incorporates the general law of evidence only subject to that special enactment. Further, the Rule 129 of the Act neither destroys the evidentiary value of the proceedings nor does it declare that the accused has no right to know or inspect the evidence. Instead, it regulates the time at which the person tried becomes entitled to obtain a copy of the proceedings. Rule 120 separately grants the accused a right of inspection at all reasonable times before the Court is closed to consider the finding. Rule 121 provides for review of the proceedings; Rule 128 provides for their preservation; Rule 129 deals with copies; and Rule 130 creates a further security exception.

22. Viewed together, the above provisions reveal a carefully structured statutory scheme. The right of inspection operates during the trial. The proceedings are reviewed and transmitted through the statutory mechanism and the finding and the sentence are thereafter subject to confirmation. Following confirmation, the person tried becomes entitled to obtain a copy under Rule 129. There is consequently no absolute denial of access. What the Rule postpones is the right to obtain copies.

23. The Supreme Court in ***Union of India v. Ex. Flt. Lt. G.S. Bajwa, (2003) 9 SCC 630***, while considering a substantially similar military procedural scheme, examined a rule which permitted inspection of proceedings during trial but provided for copies after confirmation. The

Supreme Court held that the right of inspection at reasonable times enabled the accused to go through the proceedings and prepare his defence and that the non-supply of day-to-day copies did not, by itself, violate natural justice. It is relavant to quote the relevant paras of this judgment:

> ***37.*** *The next grievance of the respondent which found favour with the High Court is that he was not supplied copies of the proceedings everyday, though he had repeatedly asked for the same. The appellant pointed out that neither under the Air Force Act, 1950 nor the Air Force Rules, 1969 is there any provision for supply of copies of the evidence and the proceedings everyday. But there is a provision which permits the charged officer to inspect the record of proceedings. Therefore, the request for supply of copies everyday was not tenable. The High Court held that merely because there are no provisions in the Act and the Rules to supply copies, the court cannot deny the copies of evidence and the record of proceedings to the accused and such denial amounts to denial of reasonable opportunity to defend himself, as it was in violation of the principles of natural justice.*
>
> ***38.*** *Rule 125 of the Air Force Rules, 1969 provides as follows:*
>
> > *"125. Right of person tried to copies of proceedings. — Every person tried by a Court Martial shall be entitled on demand, at any time after the confirmation of the finding and sentence and before the proceedings are destroyed, to obtain free of cost from the officer or person having the custody of the proceedings, a copy thereof, including the proceedings upon revision, if any."*
>
> ***39.*** *Rule 100 is as follows:*
>
> > *"100. Custody and inspection of proceedings. —The proceedings shall be deemed to be in the custody of the Judge Advocate (if any), or, if there is none, of the presiding officer, but may, with proper precaution for their safety, be inspected by the members of the court, the prosecutor and accused, respectively, at all reasonable times before the court is closed, to consider the finding."*
>
> ***40.*** *It will thus be seen that there is a specific provision in the Rules which provides for copies of the proceedings to the person tried by the Court Martial free of cost at any time after the confirmation of the finding and sentence and before the proceedings are destroyed. Clearly, therefore, the respondent was not entitled to a copy of the proceedings day to day as claimed by him. However, Rule 100 in terms provides that the proceedings may be inspected by the accused at all reasonable times before the court is closed to consider the finding. Nothing, therefore, prevented the respondent from inspecting the proceedings and preparing his defence. Rule 100 itself incorporates the principle of*

natural justice by giving to the respondent an opportunity to go through the proceedings and for this purpose to inspect the same at all reasonable times. This meets the requirement of the principles of natural justice and the respondent cannot complain on the ground that he was not given a copy of the proceedings day to day. The High Court was, therefore, clearly wrong in coming to the conclusion that the principles of natural justice were violated by non-supply of copies of proceedings day to day."

The principle laid down by the Hon'ble Supreme Court squarely answers the central proposition advanced by the respondent.

24. The constitutional question cannot be framed as whether copies are more convenient or even more desirable for the defence. The question is whether the Constitution requires the legislature or rule-making authority to provide physical copies of the proceedings during the trial notwithstanding a statutory scheme that provides meaningful inspection. We find no such absolute constitutional requirement. Accordingly, we hold that Section 87 of the Act, read with the special statutory scheme of the BSF Act and the Rules, is sufficient to sustain the operation of Rule 129. The postponement of copies until confirmation does not amount to overriding the Evidence Act in a manner prohibited by law; rather, it constitutes a special procedural rule operating within the qualification expressly incorporated by Section 87.

(ii) Whether Rule 129 of the Border Security Force Rules, 1969 is ultra vires Part III of the Constitution?

25. The learned Single Judge proceeded on the premise that Rule 129 takes away a fundamental right guaranteed by Article 21 and therefore must be justified under Article 33**.** There can be no quarrel with the broad proposition that Article 21 applies to proceedings before a Security Force Court. A member of the BSF does not cease to be a constitutional person merely because he is subject to a special disciplinary and penal jurisdiction. But the further conclusion that Rule 129 necessarily violates Article 21 does not follow. Article 21 guarantees life and personal liberty except according to procedure established by law. Following ***Maneka Gandhi v. Union of India : AIR 1978 SC 597***, the procedure affecting life and liberty must satisfy constitutional standards of fairness, reasonableness and non-arbitrariness. That

proposition is unexceptionable. The question here, however, is whether the procedure established by the BSF Act and Rules, taken as a whole, is unfair. It is relevant to quote the Article 33 of the Constitution which is reproduced below:

> ***33. Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc.*** *Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,-(a)the members of the Armed Forces; or(b)the members of the Forces charged with the maintenance of public order; or(c)persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or(d)persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c), be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them."*

In ***Union of India v. G.S. Bajwa (Ex. Flt. Lt.), (2003) 9 SCC 630*** the Hon'ble Supreme Court at paragraph 19 has held that:

> ***19.*** *It is indeed surprising that while considering the submissions urged on behalf of the respondent alleging the breach of his fundamental right under Article 21 of the Constitution of India, the High Court neither noticed the provisions of Article 33 of the Constitution of India nor does it appear to have been brought to its notice. Article 33 of the Constitution of India expressly empowers Parliament to determine by law the extent to which any of the rights conferred by Part III of the Constitution, in their application, inter alia, to the members of the armed forces, shall be restricted or abrogated to ensure the proper discharge of their duties and the maintenance of discipline among them. Parliament can, therefore, in exercise of powers conferred by Article 33 of the Constitution of India restrict or abrogate the fundamental rights guaranteed under Part III of the Constitution in their application to the members of the armed forces. It, therefore, follows that if any provision of the Act or the Rules restricts or abrogates any right guaranteed under Part III of the Constitution of India, it cannot be challenged on the ground that it is violative of the fundamental rights as guaranteed under Part III. It is no doubt true that the restriction or abrogation is dependent on parliamentary legislation and only a law passed by virtue of Article 33 can override Articles 21 and 22 of the Constitution of India. The law on the subject is fairly well settled and we may only refer to some of the authorities on the subject. In Ram Sarup v. Union of India [AIR 1965 SC 247 : (1965) 1 Cri LJ 236] a*

Constitution Bench of this Court upholding the submission urged by the learned Attorney-General observed: (AIR p. 251, para 16)

> *"The learned Attorney-General has urged that the entire Act has been enacted by Parliament and if any of the provisions of the Act is not consistent with the provisions of any of the articles in Part III of the Constitution, it must be taken that to the extent of the inconsistency Parliament had modified the fundamental rights under those articles in their application to the person subject to that Act. Any such provision in the Act is as much law as the entire Act. We agree that each and every provision of the Act is a law made by Parliament and that if any such provision tends to affect the fundamental right under Part III of the Constitution, that provision does not, on that account, become void, as it must be taken that Parliament has thereby, in the exercise of its power under Article 33 of the Constitution, made the requisite modification to affect the respective fundamental right. We are however of opinion that the provisions of Section 125 of the Act are not discriminatory and do not infringe the provisions of Article 14 of the Constitution. It is not disputed that the persons to whom the provisions of Section 125 apply do form a distinct class. They apply to all those persons who are subject to the Act and such persons are specified in Section 2 of the Act."*

26. To ensure compliance with the principles of natural justice, the Border Security Force Act, 1968, (hereinafter referred to as 'BSF Act' for brevity) provides efficacious remedies enabling the person to prepare a proper defence through inspection of documents, whereby he is in a position to challenge the sentence by way of a **dual-tiered statutory mechanism**, ensuring that the military trial framework satisfies the constitutional guarantees of fairness under Article 21. In this context, it is imperative to reproduce Section 117 of the BSF Act hereinbelow:

> *"117. (1) Any person subject to this Act who considers himself aggrieved by any order passed by any Security Force Court may present a petition to the officer or authority empowered to confirm any finding or sentence of such Security Force Court, and the confirming authority may take such steps as may be 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. Remedy against order, finding or sentence of Security Force Court. 54 BSF ACT*

> *(2) Any person subject to this Act who considers himself aggrieved by a finding or sentence of any Security Force Court which has been confirmed, may present a petition to the Central Government, the Director-General, or any prescribed officer superior in command to the one who confirmed such finding or sentence, and the Central Government, the Director-General, or the prescribed officer, as the case may be, may pass such order thereon as it or he thinks fit."*

27. From the plain reading of Section 117, it is evident that before the trial's verdict is finalized, the aggrieved person can file a pre-confirmation petition directly to the officer or authority empowered to confirm the court's finding or sentence. Upon receiving this petition, the confirming authority is authorized to take any necessary steps to satisfy itself regarding the correctness, legality, and propriety of the order, as well as the overall regularity of the trial proceedings.

28. If the sentence is subsequently confirmed, the aggrieved person is not left without recourse, as Section 117(2) provides a distinct second remedy in the form of a post-confirmation petition. This subsequent petition can be elevated to higher executive echelons, specifically the Central Government, the Director-General, or a prescribed officer superior in command to the original confirming authority, granting them broad discretion to pass any order they deem fit.

29. To further safeguard against miscarriages of justice, Section 118 vests these superior authorities with the explicit power to completely annul the proceedings of any Security Force Court on the ground of being illegal or unjust. This comprehensive scheme of successive reviews, evaluating substantive legality, procedural regularity, and fundamental justice at multiple command levels, ensures that the deprivation of a force member's liberty is never arbitrary. By embedding strict checks against illegality and providing ample opportunities to correct errors, the statutory procedure established by law remains inherently fair, just, and reasonable, firmly aligning with the protective due process mandate enshrined in Article 21 of the Constitution.

30. It is pertinent to mention that the harmonious reading of the statutory framework reveals that the phrase *"after the confirmation"* found in Rule 129 of the BSF Rules does not, in any manner, debar an aggrieved person from preparing his defence or mounting a legal challenge against an adverse finding

or sentence. While Rule 129 entitles a person to obtain a copy of the proceedings on demand *"at any time after the confirmation of the finding and sentence"*, this temporal condition is merely procedural and does not extinguish the fundamental right to contest the conviction. Even after a sentence is definitively pronounced, the person retains a continuous right to prepare a substantive legal defense, a principle that is forcefully protected by the subsequent provisions of Rule 130.

31. Rule 130 of the Rules, ensures that if the aggrieved intends to submit a petition under the Act or institute an action in a court of law challenging the finding or sentence, the Government is legally obligated to permit the person or their legal advisor to inspect the proceedings. The core intent of the provision is undeniably clear, i.e., it guarantees that an accused, regardless of being sentenced, is guaranteed access to inspect the vital documents and trial records necessary to formulate a comprehensive defence and challenge their punishment in a court of law.

32. The procedure, therefore, cannot be characterised as one which leaves the accused without any meaningful access to the material against him. The decision in ***Nahar Singh Yadav*** : ***AIR 2011 SC 1549*** emphasises the importance of sufficient time and facilities for the defence. It does not, however, lay down an inflexible constitutional rule that every accused in every specialised statutory jurisdiction must be supplied a physical copy of every proceeding before the conclusion of the trial.

33. Similarly, the principle of fair trial cannot be reduced to a particular mode of documentary access divorced from the statutory scheme. Therefore, we come to the conclusion that Rule 129 of BSF Rules is not *ultra vires* to the constitution as discussed above.

Article 33 and the Special Constitutional Status of the BSF

34. The significance of Article 33 assumes importance at this stage as it empowers the Parliament to determine by law the extent to which the rights conferred by Part III may be restricted or abrogated in their application to members of the Armed Forces and forces charged with maintenance of public order, so as to ensure proper discharge of their duties and maintenance of discipline among them. The BSF is an armed force of the Union of India

constituted under Item 2 of List I of Schedule 7 of the Constitution of India and is primarily connected with the defence of the country. The preamble states that the Act is 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. Section 4 provides for constitution of an Armed Force of the Union called the Border Security Force for ensuring the security of the borders of India and subject to the provisions of the Act, the Force shall be constituted in such manner as may be prescribed and the conditions of service of the members of the Force shall be such as may be prescribed. Chapter III deals with offences and Chapter IV with punishments that can be awarded by the Security Force Court. Chapter VI deals with the constitution of the Security Force Courts and their powers to try the offences punishable under the Act. Chapter VII contains the procedure; the witnesses can be summoned and examined. Section 87 lays down that the Evidence Act, shall, subject to the provisions of the Act, apply to all proceedings before the Security Force Courts. For the purpose of this appeal, it may not be necessary to go into the details of this procedure.

35. Article 33 selects only a few services for special treatment such as, military and para-military forces, police forces and analogous forces. Article 33 does not exclude any other category of civil servants from the purview of fundamental rights by reason of being Government Servants. In the case of ***Kameshwar Prasad Versus State of Bihar1960 SCC OnLine SC 30: 1962 Supp (3) SCR 369: (1966) 13 FLR 194: AIR 1962 SC 1166: (1962) 1 LLJ 294;*** the apex court at paragraph 12 has said that:

> *"12. In our opinion, this argument even if otherwise possible, has to be repelled in view of the terms of Article 33. That article selects two of the Services under the State members of the armed forces and forces charged with the maintenance of public order and saves the rules prescribing the conditions of service in regard to them — from invalidity on the ground of violation of any of the fundamental rights guaranteed by Part III and also defines the purpose for which such abrogation or restriction might take place, this being limited to ensure the proper discharge of duties and the maintenance of discipline among them. The Article having thus selected the Services members of which might be deprived of the benefit of the fundamental rights guaranteed to other persons and citizens and also having prescribed the limits within which such restrictions or abrogation might take place, we consider that other classes of servants of Government in common with other persons*

and other citizens of the country cannot be excluded from the protection of the rights guaranteed by Part III by reason merely of their being government servants and the nature and incidents of the duties which they have to discharge in that capacity might necessarily involve restrictions of certain freedoms as we have pointed out in relation to Article 19(1)(e) and (g).”

36. Hon’ble the Supreme Court in ***Ous KutilingalAchudan Nair v. Union of India, (1976) 2 SCC 780*** has held that**:**

“8. *The main contention of Mr K.R. Nambiyar, appearing for the appellants is that the members of the unions represented by the appellants, though attached to the defence establishments, are “civilians”, designated as “non-combatants unenrolled”. They include cooks, chowkidars, laskars, barbers, carpenters, mechanics, bootmakers, tailors, etc. They are governed by the Civil Service Regulations for purposes of discipline, leave, pay, etc. and are also eligible to serve upto the age of 60 years unlike that of the members of the armed forces. In view of these admitted facts, proceeds the argument, these categories of civilian employees, attached to the defence establishments, could not be validly called “members of the armed forces” covered by Article 33 of the Constitution. The points sought to be made out are, that the members of the appellants' unions are not subject to the Army Act as they do not fall under any of the categories enumerated in sub-clauses (a) to (i) of Section 2(1) of the Army Act, 1950, and that the impugned notifications are ultra vires the Army Act and are struck by Articles 19(1)(c) and 33 of the Constitution.*

9. *For reasons that follow, the contentions must be repelled.*

10. *Article 33 of the Constitution provides an exception to the preceding articles in Part III including Article 19(1)(c). By Article 33, Parliament is empowered to enact law determining to what extent any of the rights conferred by Part III shall, in their application, to the members of the armed forces or forces charged with the maintenance of public order, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.*

11. *In enacting the Army Act, 1950, insofar as it restricts or abrogates any of the fundamental rights of the members of the armed forces, Parliament derives its competence from Article 33 of the Constitution. Section 2(1) of the Act enumerates the persons who are subject to the operation of this Act. According to sub-clause (i) of this section, persons governed by the Act, include “persons not otherwise subject to military law who, on active service, in camp, on the march or at any frontier post specified by the Central Government by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of the regular army.”*

12. *The members of the unions represented by the appellants obviously fall within this category. It is their duty to follow or*

> *accompany the armed personnel on active service or in camp or on the march. Although they are non-combatants and are in some matters governed by the Civil Service Regulations, yet they are integral to the armed forces. They answer the description of the "members of the armed forces" within the contemplation of Article 33. Consequently, by virtue of Section 21 of the Army Act, the Central Government was competent by notification to make rules restricting or curtailing their fundamental rights under Article 19(1)(c)."*

37. The expression "member of armed forces" used in (a) covers such civilian employees of the armed forces as barbers, carpenters, mechanics, etc. Although these persons are non-combatants, nevertheless, they are integral to the armed forces and, therefore, their fundamental rights can also be curtailed under Article 33

38. Hon'ble the Supreme Court in ***Secretary, Ministry of Defence v. Babita Puniya, (2020) 7 SCC 469***, has explained the constitutional architecture of Article 33. The power is not unlimited in the abstract; the restriction must be by law and must have a connection with the constitutionally recognised purposes of proper discharge of duties and maintenance of discipline. The learned Single Judge relied upon this principle to conclude that Rule 129 was not sufficiently connected with discipline. With respect, this approach proceeds on an unduly narrow understanding of the statutory purpose. The question is not whether the individual procedural restriction considered in isolation constitutes a disciplinary measure in the conventional sense. The relevant question is whether the procedural scheme created by Parliament for adjudication of offences within a disciplined armed force is reasonably connected with the proper functioning of that force and its disciplinary system.

39. The BSF Act is an enactment for the constitution and regulation of an armed force of the Union for securing the security of the borders of India. The statutory scheme creates special courts, special rules of procedure, special modes of confirmation, review and revision, and special rules concerning custody and disclosure of proceedings. The BSF Act itself expressly recognises discipline as a central statutory consideration; indeed, Section 71 permits dissolution of a Security Force Court where exigencies of service or

necessities of discipline render continuation of the proceedings impossible or inexpedient.

40. It cannot therefore be said that Rule 129 exists in a legal vacuum.The postponement of copies until confirmation is embedded in the statutory process governing Security Force Court proceedings. It preserves the integrity of the proceedings during the period in which findings and sentence remain subject to review and confirmation and forms part of a specialised system of military justice.The rule is not a blanket prohibition upon inspection. It does not prevent the accused from participating in the proceedings. It does not prevent him from cross-examining witnesses. It does not prevent him from presenting a defence. It does not permanently deny access to the proceedings. It merely regulates the stage at which copies become obtainable.

41. Another important aspect overlooked in the impugned judgment is that Rule 129 cannot be examined in isolation. Rule 119 requires the transactions of the Security Force Court to be recorded and provides safeguards regarding the recording of evidence. Rule 120 provides inspection. Rule 121 provides review of General and Petty Security Force Court proceedings. Rule 122 recognises the right to a defending officer, counsel or friend of the accused. Rule 128 provides for preservation of proceedings. Rule 129 deals with copies. Rule 130 provides an additional mechanism for withholding copies where State security or friendly relations may be affected, while still permitting inspection in specified circumstances. The legislative and rule-making policy is therefore evident: the accused is given meaningful participation and access to the proceedings while the integrity, confidentiality and security of the proceedings are protected until the stage of confirmation.

42. Such a scheme cannot be described as manifestly arbitrary. The doctrine of manifest arbitrariness, relied upon by the respondent, cannot be applied merely because the legislature or rule-making authority selected one procedural stage rather than another for furnishing copies. The classification between the stage before confirmation and the stage after confirmation has a rational basis in the statutory structure, because Section 107 itself makes confirmation a condition of validity of the finding and sentence. The respondent has also suggested that persons tried before ordinary criminal courts are treated differently because an accused before such courts may

obtain copies of the proceedings.The submission cannot be accepted. The classification is founded upon an intelligible differentia: persons tried under the BSF Act before Security Force Courts constitute a distinct class governed by a special statutory regime. The differentia bears a rational relation to the object sought to be achieved, namely the regulation of trial and confirmation proceedings within a disciplined armed force. The Constitution itself recognises the special position of such forces through Article 33.Therefore, the mere fact that an accused before an ordinary criminal court may enjoy a different procedural mechanism does not render the special BSF procedure discriminatory.

43. In view of the foregoing constitutional provisions and judicial pronouncements, we conclude that the respondent, being a member of the Border Security Force, an armed force of the Union, falls within the special constitutional framework contemplated by Article 33. His prosecution before a General Security Force Court for the alleged fatal shooting of Head Constable Chander Bhan within the BSF campus at Bandipora on 27.11.2017 attracts the statutory system established for adjudicating offences and maintaining discipline within the Force. Article 33 permits Parliament, by law, to restrict fundamental rights, including rights under Article 21, to the extent necessary to ensure the proper discharge of duties and the maintenance of discipline; however, membership of the Force or the gravity of the accusation does not, by itself, dispense with constitutional safeguards. The decisive consideration is the connection between the impugned restriction and those constitutionally recognised purposes. Read harmoniously with the provisions governing inspection, defence, review and confirmation, Rule 129 regulates the stage at which copies of proceedings become obtainable, while preserving the safeguards available within the statutory scheme. Its distinction between proceedings awaiting confirmation and proceedings that have been confirmed bears a rational relationship to the orderly operation of that scheme. On this construction, the requirements of Article 33—coverage of the person concerned and a legally authorised restriction connected with duty and discipline—stand satisfied. We accordingly hold that Rule 129 of the Border Security Force Rules, 1969 is constitutionally valid, and that the regulated

postponement of copies until confirmation cannot, without more, be treated as an unconstitutional denial of the respondent's fundamental rights.

(iii) Whether denial of certified copies during the pendency of trial, when the accused is afforded inspection of the proceedings under Rule 120, amounts to violation of the fundamental right to a fair trial?

44. The answer must also be in the negative. Inspection is not a denial of access. The statutory right of inspection is substantive. Rule 120 permits the accused to inspect the proceedings at all reasonable times before the Court is closed to consider the finding. The right of inspection, when read with the right of representation, participation in trial, cross-examination and defence, provides the accused with meaningful access to the material forming part of the proceedings.

45. The Constitution guarantees a fair opportunity to defend; it does not prescribe that such opportunity must invariably take the form of possession of certified copies. The distinction between **access to proceedings** and **possession of copies** must therefore be maintained. The former is integral to fairness. The latter is subject to legislative regulation. The respondent was given the former. The latter was postponed by a rule forming part of a constitutionally permissible special procedure. Hence, there is no violation of Article 21.

46. The statutory confirmation mechanism assumes particular significance. Section 107 provides that no finding or sentence of a General Security Force Court or Petty Security Force Court shall be valid except insofar as it is confirmed in accordance with the Act. Section 108 identifies the authorities competent to confirm the findings and sentences of General Security Force Courts. Rule 129 is directly aligned with this statutory structure. It is therefore incorrect to characterise the Rule as creating an arbitrary deprivation of the accused's rights. The Rule corresponds with the legislative determination that the proceedings remain subject to confirmation and review before the finding and sentence acquire final statutory validity.

47. The Supreme Court's jurisprudence concerning military courts also recognises the distinctive nature of confirmation proceedings. In ***S.N. Mukherjee v. Union of India, (1990) 4 SCC 594***, a Constitution Bench

considered the special statutory structure applicable to court-martial proceedings and confirmed that the statutory scheme governing confirmation could validly differ from ordinary administrative adjudication. While ***S.N. Mukherjee*** (supra) concerned the requirement of reasons for confirmation and not the precise issue of copies, the judgment reinforces the broader proposition that court-martial and military justice procedures constitute a special statutory field which must be considered within their own legislative framework.

Effect of Nahar Singh Yadav

48. We have carefully considered the reliance placed upon ***Nahar Singh Yadav v. Union of India, (2011) 1 SCC 307***. The principle that a person facing a criminal charge must be afforded a fair trial and sufficient time and facilities for preparing his defence is undoubtedly binding. However, the judgment cannot be read as prescribing a universal procedural formula applicable irrespective of the statutory jurisdiction in which the trial takes place. Fairness is contextual. The Court must examine the procedure as a whole. Here, the accused was not denied representation, participation, cross-examination, inspection or the opportunity to lead defence. The statutory framework expressly provided inspection of the proceedings. Therefore, the essential safeguard identified in ***Nahar Singh Yadav*** was not extinguished. The respondent seeks to convert a principle requiring an effective opportunity to defend into an absolute right to possess a copy of the record at every stage. That proposition finds no support in ***Nahar Singh Yadav***.

The Learned Single Judge's Approach

49. The learned Single Judge proceeded substantially on the reasoning that a defence counsel cannot remember everything stated by prosecution witnesses and that possession of copies would facilitate effective cross-examination and defence. With respect, this reasoning establishes the utility of copies, but not their constitutional indispensability. Courts are required to distinguish between a statutory entitlement, a procedural convenience and a fundamental right. A physical copy may undoubtedly be useful. It may even be preferable in many cases. But where Parliament has legislated a special procedure and has authorised the accused to inspect the proceedings, the

constitutional court cannot substitute its own preferred procedure unless the statutory procedure crosses the constitutional threshold of manifest unfairness.In the present case, that threshold has not been crossed.

No Violation of Article 21

50. Article 21 does not prohibit reasonable procedural regulation. The respondent's right under Article 21 is the right to a fair procedure. The procedure prescribed by the BSF Act and Rules provides: (a) constitution of a duly authorised Security Force Court; (b) representation and assistance of the accused; (c) recording of proceedings; (d) opportunity to participate in the trial; (e) opportunity to cross-examine prosecution witnesses; (f) inspection of proceedings under Rule 120; (g) review of proceedings; (h) confirmation of finding and sentence; (i) right to obtain copies after confirmation under Rule 129; and (j) further statutory remedies available under the Act.

51. The existence of this comprehensive scheme militates against the conclusion that Rule 129 produces an unfair trial. We are therefore unable to agree with the learned Single Judge that postponement of copies, by itself, violates Article 21.

Whether the Respondent Suffered Constitutional Prejudice

52. It is equally important to distinguish between the possibility of prejudice and established constitutional prejudice. The respondent asserts that inspection was inadequate and that copies were necessary for an effective defence. However, no material has been brought to our notice demonstrating that the respondent was actually prevented from inspecting the proceedings, prevented from cross-examining a material witness, prevented from putting a material contradiction to a witness, or prevented from raising a specific defence because inspection was denied. The constitutional validity of a statutory rule cannot be determined merely on an assumption that every accused would necessarily be prejudiced by its operation.The existence of a possibility that a copy may assist a defence is not sufficient to invalidate a rule which forms part of a special statutory procedure.

(iv) What relief, if any, is the respondent entitled to?

This issue stands already discussed and finding returned in paragraph nos. 29 to 33 hereinabove.

Conclusion

53. The controversy in the present case arises from a grave incident within the BSF campus at Bandipora on 27.11.2017, in which respondent No. 1 is alleged to have shot dead his colleague, Head Constable Chander Bhan, resulting in his prosecution under Section 302 RPC before a General Security Force Court. Against this backdrop, the appeal turns upon the proper balance between the constitutional guarantee of a fair trial and the special statutory procedure governing trials before Security Force Courts. The seriousness of the accusation underscores the importance of lawful adjudication, without diminishing the respondent's entitlement to procedural fairness or prejudging his guilt. There can be no doubt that an accused tried before a General Security Force Court is entitled to a fair trial. Article 21 does not cease to apply merely because the accused is a member of the Border Security Force. Equally, however, fairness under Article 21 does not require the Court to disregard the special procedure which Parliament has created for a disciplined armed force. The BSF Act constitutes Security Force Courts as special statutory courts. Section 87 makes the Evidence Act applicable, subject to the provisions of the BSF Act. Rule 120 provides for inspection of the proceedings, while Rule 129 regulates the supply of copies and postpones the entitlement thereto until confirmation, where confirmation is required. Rule 130 addresses exceptional cases involving security considerations, and Sections 107 and 108 establish the confirmation mechanism. These provisions form an integrated statutory scheme. The principle enunciated by the Supreme Court in *G.S. Bajwa*, that inspection of proceedings at reasonable times may satisfy the requirements of natural justice and that there is no absolute right to day-to-day copies of proceedings, supports the validity of the impugned rule.

54. The requirement that restrictions under Article 33 must be connected with the proper discharge of duties and the maintenance of discipline is equally applicable. Rule 129, however, forms part of the comprehensive procedural framework governing Security Force Courts, including the

confirmation and review of their proceedings, and cannot be isolated from that statutory context. Article 33 therefore cannot be treated as irrelevant to the special procedural framework created for members of the Force. The learned Single Judge, in our view, placed excessive emphasis upon the utility of possessing copies and insufficient emphasis upon the legal significance of the statutory provision for inspection and the safeguards embedded in the overall scheme.

55. The allegation that the respondent wilfully abandoned his designated picket while on active duty and fatally shot his colleague within the campus bears directly upon the discipline and mutual trust essential to the functioning of the Force. A member entrusted with arms for the discharge of official duties assumes a solemn responsibility towards both the institution and those serving alongside him. If established, the use of those arms to perpetrate a lethal assault upon a colleague would constitute a profound betrayal of that responsibility and a serious threat to unit cohesion and institutional order. Such conduct calls for firm application of the law through the prescribed adjudicatory process. Its gravity, however, cannot substitute for proof, extinguish procedural safeguards, or foreclose consideration of any legally relevant defence or mitigating circumstance. Our determination of the constitutional validity of Rule 129 rests upon the statutory framework and its safeguards, independently of the merits of the accusation.

56. We are, therefore, unable to sustain the judgment under appeal. For the foregoing reasons, the appeal is **allowed**. The judgment and order dated **28.04.2022**, passed by the learned Single Judge in **WP(C) No. 255/2020**, is, therefore, **set aside**. Consequently, Rule 129 is held to be **constitutionally valid and not *ultra vires* Part III of the Constitution of India, particularly Article 21 thereof**, when read harmoniously with Sections 87, 107 and 108 of the Border Security Force Act, 1968 and Rules 120, 121, 128 and 130 of the Border Security Force Rules, 1969. It is further held that the opportunity available to the accused under **Rule 120 to inspect the proceedings at all reasonable times before the Court is closed to consider its finding**, read with the other safeguards available under the Act and Rules, constitutes a legally sufficient procedural safeguard. Non-supply of certified copies of the proceedings before confirmation of the finding and sentence does not, by

itself, amount to a violation of the fundamental right to a fair trial under Article 21.

57. The competent authorities shall proceed in the matter accordance with the Border Security Force Act, 1968 and the Border Security Force Rules, 1969. It is made clear that nothing contained in this judgment shall be construed as an expression of opinion on the merits of the case and it shall have no bearing on the final adjudication of the respondent's guilt or punishment.

58. Record produced by learned counsel for the appellants is returned to him in the open court.

(M. A. Chowdhary)
JUDGE

(DR. PUSHPENDRA SINGH BHATI)
CHIEF JUSTICE

Srinagar
22.10.2026
Abdul Qayoom, Secy.

Whether approved for reporting? : Yes.