

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

LPA No. 275/2025 c/w

LPA No. 288/2025

Reserved on: 03.12.2025

Pronounced on: 11.12.2025

Uploaded on: 11.12.2025

Whether the operative part or full
judgment is pronounced: "FULL"

Akhand Prakash Shahi, Aged 36 Years
S/o Om Prakash Shahi
R/o Nawtan Post Office Bariyarpur,
District Deoria (UP)
Presently Assistant Commandant STC
Airport Humhama.

...Petitioner(s)/Appellant(s)

Through: Mr. Danish Majid Dar, Adv. with Ms Mehjabeena, Adv.

Vs.

1. Union of India

Through Director General

Border Security Force Block No. 10, 5th Floor,
CGO Complex, Lodhi Road, New Delhi-
110003.

2. Inspector General STC,

BSF Kashmir, Srinagar, Border Security
Force, Kashmir Srinagar

...Respondent(s)

Through: Mr. Nazir Ahmad, Adv.
Mr. Sehar Mufti, Adv. vice Mr. Viqas Malik, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

J U D G M E N T

Per Sanjeev Kumar, J

LPA No. 275/2025

1. This intra-court appeal by the appellant is directed
against an order and judgment dated 14th of November 2025

passed by the learned Single Judge of this court [“Writ Court”] in WP (C) No. 3128/2023 titled Akhand Prakash Shahi vs. Union of India and Ors., whereby the Writ Court has dismissed the writ petition filed by the appellant holding that no prejudice would be caused to the appellant in case both the criminal case as well as the departmental proceedings are allowed to proceed simultaneously.

2. Before we advert to the grounds of challenge urged by the learned counsel appearing for the appellant, we deem it appropriate to set out few facts.

3. On the basis of a complaint lodged by one lady ASI, (Ministerial) of BSF against the appellant, who at the relevant time was posted as Assistant Commandant STC Airport, Humhama Srinagar, FIR No. 108/2022 for commission of offence punishable under Section 376 IPC came to be registered at Police Station Dwarka (North) New Delhi.

4. Upon registration of the FIR, the investigation was set into motion and on completion thereof, a charge sheet was submitted before the competent court of law. The appellant has been granted bail in the said case. However, after the framing of the charges he is facing the trial before the competent court of criminal jurisdiction at Delhi.

5. Having regard to the nature of charges levelled by the lady officer and keeping in view the gravity of the offence, the

respondents, in exercise of their powers under Rule 40A(1) of BSF Rules, placed the appellant under suspension vide order dated 24th April 2023. The order of suspension dated 24th April 2023 was later confirmed in terms of order dated 15th May 2023.

6. It seems that simultaneously with the launching of criminal proceedings against the appellant, the respondents also ordered a court of inquiry to enquire into the allegations levelled by the lady ASI against the appellant. This was done by respondents in terms of order dated 28th October 2023.

7. Aggrieved by the order of initiating Court of Inquiry dated 28th October 2023, the appellant filed WP(c) No. 2871/2023 before a Bench of this court which came to be disposed of vide order dated 22nd November 2024 on the basis of a statement made by the learned counsel for the appellant that the said writ petition had been rendered infructuous. The appellant filed yet another writ petition, i.e., WP(C) No. 3128/2023 to throw challenge to the letter of rejection dated 7th November 2023 as also the proceedings initiated against him under Rule 173 of BSF Rules, 1969.

8. The rejection order dated 7th November 2023 as also the Court of Inquiry ordered by the respondents under Rule 173 of BSF Rule is challenged by the appellant primarily on the ground that in the face of criminal trial pending against the appellant before a competent court of law, parallel disciplinary

inquiry/proceedings on the self-same charges cannot be commenced by respondents. It was contended by the appellant before the Writ Court that in case the departmental proceedings and criminal proceedings are permitted to proceed simultaneously, it would seriously impact and prejudice the defence which the appellant is entitled to take in the criminal trial.

9. The Writ Court, having considered the rival contentions in the light of legal position enunciated by the Hon'ble Supreme Court in several judgments, came to the conclusion that the departmental proceedings and the proceedings in the criminal case could proceed simultaneously as there was no legal or statutory bar for pursuing both the proceedings simultaneously. The court also took note of the fact that it was not a case where complicated questions of fact and law were required to be determined in the departmental proceedings. The Writ Court also noted that since the appellant had in his various representations made before the respondents rendered his explanation to the allegations levelled against him, as such, there was no chance of the appellant being prejudiced in the matter of taking an appropriate defence before the trial court. The Writ Court having found no merit in the petition proceeded to dismiss the writ petition in terms of its judgement which is called in question before us.

10. The impugned judgment is challenged on the ground that the Writ Court has failed to appreciate that permitting the departmental inquiry and the criminal proceedings to proceed simultaneously would put the appellant to serious prejudice in the matter of taking a defence before the criminal court. He would argue that regard being had to the nature of allegations made by the complainant, the enquiry officer conducting disciplinary proceedings would be required to decide the complicated questions of law and facts which the disciplinary authority/ enquiry officer would have no expertise to decide.

11. Having heard the learned counsel for the parties and perused the material on record, we are of the considered opinion that the judgment passed by the Writ Court is correct both on facts and law and, therefore, does not call for any interference. Strictly speaking, we do not find it a case where respondents are pursuing the criminal prosecution and the disciplinary proceedings simultaneously. The criminal case for commission of offence under Section 376 IPC against the appellant is pending trial before the competent court of criminal jurisdiction at New Delhi. The criminal court has already framed the charges and the trial is proceeding further. The respondents have not yet initiated any disciplinary proceedings. What is sought to be initiated by respondents in terms of Rule 173 is not the departmental proceedings but only a Court of Inquiry ordered by respondents to investigate

the allegations levelled by the lady officer constituting misconduct.

12. The Court of Inquiry under the BSF Rules 1969 is only a fact-finding inquiry ordered to collect evidence so as to facilitate the BSF authorities in deciding its future course of action. We reiterate that the findings returned by the Court of Inquiry, which is a fact-finding body, shall be in the nature of a preliminary report which shall facilitate the BSF authorities to decide as to whether the disciplinary proceedings against the delinquent are required to be initiated or not. At the stage of Court of Inquiry, there is no departmental proceeding initiated or commenced against the delinquent, though the finding of such Court of Inquiry may form the basis of taking a decision by the competent authority about future course of action. It is thus evident that by ordering the court of inquiry or even asking the appellant to appear and record his statement would not prejudice him in any manner.

13. Rule 170 of the BSF Rules deals with composition of court of inquiry, whereas Rule 173 lays down procedure for conducting proceedings of a court of inquiry. Rule 174 prescribes the matters in which Court of Inquiry may be held. For facility of reference, Rule 174 is reproduced hereunder:-

“174. Courts of Inquiry when to be Held.-(1) A Court of Inquiry may be held to investigate into any disciplinary matter or any other matter of importance.

(2) In addition to a Court of Inquiry required to be held under Section 62, a Court of Inquiry shall be held in the following cases:-

- (a) (i) All unnatural deaths of persons subject to the Act or of other persons within the force lines, an immediate report shall be sent through the messenger to the officer-in-charge of the Police Station within whose jurisdiction the place of such unnatural death is.
- (ii) In cases when such report cannot, for any reason be delivered within a reasonable time, a Court of Inquiry shall be held into such unnatural death.
- (iii) Immediately on receipt of information of an unnatural death the Commandant or the seniormost officer of the Battalion present shall prepare a report on the performa set out in Appendix XIII.
- (b) All injuries sustained by persons subject to the Act which are likely to cause full or partial disability. The court shall in such case determine whether such injuries were attributable to service or not.
- (c) All financial irregularities, losses, theft and misappropriation of public or force property, where it is necessary to obtain the order of a superior officer on such irregularities, loss, theft or misappropriation.
- (d) All losses of secret documents and any other material of secret or above security classification. Such a Court of Inquiry shall be ordered by an officer or authority superior to the unit Commandant having the lost document or material on its charge.
- (e) All damage to private persons or property in respect of which there is likely to be a claim against the Government or the force.”

14. From reading of Rule 174, it is evident that a Court of Inquiry may be held to investigate into any disciplinary matter or any other matter of importance. The allegations made by the lady officer against the appellant, if accepted on their face value, do *prima facie* constitute misconduct and therefore a disciplinary matter. Having regard to the nature of allegations made, the respondents have decided to hold a Court of Inquiry before any decision is taken with regard to initiation of

disciplinary proceedings against the respondent. The Court of Inquiry would thus afford an opportunity to the appellant to put forth his explanation and persuade the authorities not to go for any disciplinary proceedings against him.

15. For the foregoing reasons, we are of the considered opinion that in this case, the BSF authorities have yet to take a decision with regard to initiation of departmental/disciplinary proceeding against the appellant and that being the position, the argument of the learned counsel for the appellant, that the criminal proceedings and the departmental proceedings cannot proceed simultaneously is premature. The apprehension of the appellant that he may be exposed to disclosing his defence during the Court of Inquiry and that may prejudice his defence before the criminal court is also without any substance and cannot be accepted.

16. The Court of Inquiry, as already held, is only a fact-finding inquiry to verify the allegations made by the complainant in her complaint so as to facilitate the authorities to take an appropriate decision in the matter. It would be to the benefit of the appellant that he appears before the Court of Inquiry and persuades it that in view of the pendency of a criminal trial, no departmental proceedings on the self-same charges should be initiated. Needless to say, that during the Court of Inquiry, the appellant cannot be forced to make any self-incriminating statement. He shall have option to even remain silent during these proceeding.

17. For the foregoing reasons, we are of the considered opinion that the writ petition filed by the appellant to challenge the initiation of Court of Inquiry on the ground that departmental proceedings and the criminal trial for self-same charges cannot proceed simultaneously, is premature and without substance. There are no departmental proceedings initiated or commenced by the respondents as on date and what is ordered by respondents is only a Court of Inquiry which is nothing more than a fact-finding inquiry to verify the allegations made by the lady officer so as to facilitate the competent authority to take further course of action.

18. Otherwise also, the learned Single Judge has very elaborately and succinctly brought out the legal position obtaining on the subject from the judicial precedents cited at bar and has applied the same to the facts of the case. Though the learned Single Judge has taken the 'Court of Inquiry' as a step towards initiation of departmental proceedings and opined that in the given circumstances, there is no bar statutory or otherwise to hold departmental proceedings simultaneously with the criminal trial. While we have no reason to dispute the proposition of law discussed by the Writ Court, yet we are of the opinion that in the instant case, the respondents are yet to take a decision with regard to initiation of disciplinary proceedings and, therefore, the writ petition was otherwise premature.

19. For the foregoing reasons and the observation made above, we find no merit in this appeal, same is accordingly dismissed.

LPA No. 288/2025

1. This intra-court appeal is directed against an order and judgment dated 14th November 2025 passed by the learned Single Judge of this court in WP(C) No. 1876/2025 titled Akhand Prakash Shahi vs. Union of India & Ors. whereby the writ petition of the appellant challenging his suspension has been dismissed.

2. The facts leading to the filing of this petition have already been given in LPA No. 275/2025 and are therefore not reiterated here. On the basis of serious allegation levelled by lady officer of BSF, a case FIR No. 108/2022 for offences under Section 376 IPC was registered against appellant at police station Dwarka, New Delhi. The investigation stands completed and final report submitted to the competent court of criminal jurisdiction. The criminal court has also framed the charges and has called upon the appellant to face the trial. Pending investigation and the criminal trial for the heinous offences of 376 IPC against the appellant, he was placed under suspension. The order of suspension is being periodically reviewed and an informed decision taken therein for its extension.

3. The impugned suspension order was challenged by the appellant in WP(C) No. 1876/2025 primarily on the ground that there is unreasonable delay in completing the departmental proceedings and, therefore, the order of suspension deserves to be revoked.

4. Having heard the learned counsel for the parties and perused the material on record, we find that the argument raised by the learned counsel for the petitioner is totally misconceived and untenable in law. The appellant has been placed under suspension upon registration of FIR in a serious offence of rape punishable under Section 376 IPC. This FIR was registered on the complaint made by a lady officer working in the BSF. The departmental inquiry in the matter has not yet been ordered. What is ordered by the BSF authorities is only a Court of Inquiry which is nothing more than the fact-finding inquiry to verify the veracity of the allegations levelled by the lady officer, so as to enable the competent authority to decide about the future course of action. The pendency of non-existent departmental inquiry or its procrastination without any reason, therefore, cannot be urged as a ground to seek revocation of the suspension order. The suspension of the appellant has nothing to do with the departmental proceedings which are yet not initiated by the respondents. The appellant is under suspension for the reason that he is facing a criminal trial before the criminal court on a charge under Section 376 IPC.

5. For the reasons we have given above and the reasons which the Writ Court has given elaborately in the judgment impugned, we find no merit in this appeal and the same is accordingly dismissed.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:

11.12.2025

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