
(2012) 07 DEL CK 0662
In the Delhi High Court
Case No : Writ Petition (C) 3906 of 1999

Akhilesh Kumar

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 19-07-2012

Acts Referred:

Citation : (2012) 07 DEL CK 0662

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : Anil Gautam, for the Appellant; A.S. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Learned counsel for the petitioner restricts his submission to the proportionality of the penalty imposed upon the petitioner and cites two decisions of this Court. The first is the decision dated March 25, 2010 in WP(C) No.7782/2008 "Bhupinder Singh vs. UOI & Ors." and the second is the decision dated July 11, 2011 in WP(C) No.2145/1998 "Ashok Kumar vs. DG BSF & Ors.", which decision has been authored by one of us : Pradeep Nandrajog, J. In Ashok Kumar's case, penalty of dismissal was found to be disproportionate to the gravity of the offence and the facts were that Ashok Kumar had sought permission from the Coy Commander to proceed to Amritsar and make a STD call to his wife with whom he was having strained relations and Ashok Kumar had desired to speak to his wife and reason with her to await his return from duty to their matrimonial house and not precipitate the issue by returning to her parents' house. The Coy Commander granted the necessary permission but with the condition that Ashok Kumar could leave for Amritsar after distributing the dak.

2. Without distributing the dak, Ashok Kumar left for Amritsar and did not return to the border out-post even till dark and his absence was noted at 8:30 PM. Civilians informed BSF personnel that a BSF jawan was lying intoxicated in village

Rania. The person turned out to be Ashok Kumar.

3. Being guilty of not performing his duty and making a nuisance of himself while in dress, thereby lowering the image of BSF, penalty of dismissal was inflicted.

4. Holding the penalty to be disproportionate, it was noted that the offence was of not completing the job assigned and being drunk. It was noted that Ashok Kumar had been granted the permission to leave the border out-post. Noting that Ashok Kumar was having a matrimonial problem and he had left, with permission, the border out-post to make a STD call to his wife, it was opined that there was evidence of Ashok Kumar being under stress and his act of consuming alcohol was opined to be an act of despair to overcome grief by consuming alcohol and under the circumstances it was held that the penalty of dismissal from service was disproportionate. Setting aside the penalty, DG BSF was requested to pass a fresh order pertaining to penalty, with the limitation that the penalty would be of a kind where Ashok Kumar does not lose the job.

5. As regards Bhupinder Singh he was charged for quarrelling with civilians, absenting himself from duty for a few hours without leave, visited a place out of bound for the ranks and having consumed alcohol.

6. Penalty imposed was of dismissal from service.

7. The mitigating circumstance found by the Court was the young age of Bhupinder Singh who was then 26 years of age. The Division Bench did not substitute the penalty but directed DG BSF to reconsider what appropriate penalty needs to be imposed.

8. In the instant case, the charge against the petitioner is of leaving the border out-post Phoolbari and reaching an area declared out of bound for BSF Force personnel on account of the fact the area was inhabited by civilians where men and women live with their children. BOP Phoolbari is on the Indo-Bangladesh border and many a Bangladeshi migrants/refugees have settled in the area. Though not on record, we take judicial notice of the fact that there have been instances of BSF personnel allegedly committing atrocities on the women folk in this area, and this explains the area to be declared out of bound for BSF force personnel. It was alleged against him that he went to the out of bound area and visited the house of one Urmila Roi. Promila Sarma PW-6 has deposed to said fact and so has Amar Roi PW-5. BSF officers who reached the place have so deposed. As per PW-5 and PW-6 when petitioner was detected within the precincts of the compound of the house of PW-5, his wife raised a hue and cry. People gathered. Somebody reported the matter to the nearby BSF camp. Petitioner was rescued.

9. At the trial, the petitioner has pleaded guilty and we find from the record that when record of evidence was prepared, petitioner did not cross-examine the seven witnesses examined by the prosecution and refused to make a statement in defence. We find that in his statutory representation, copy annexed as

Annexure P-7 to the writ petition, it is stated by the petitioner that the house in question was at a shouting distance from the border out-post and due to this reason relationship between BSF personnel and the inmates of the area was cordial and that on the day of the incident petitioner went out of the border out-post and as he passed by the house of Urmila Roi she started talking to the petitioner while standing in her courtyard and other inmates of the house objected. We find this stand contrary to the testimony of the witnesses examined at the Record of Evidence who have categorically stated that the hue and cry was raised when petitioner entered the courtyard of the house and the crowd then restrained petitioner from leaving the courtyard and reported the matter to the Unit Incharge at the border out-post.

10. PW-5 husband of Urmila Roi has deposed at the record of inquiry that he is a mason.

11. We need not speak much. But it is apparent that it is not a case of the petitioner innocently walking out of the border out-post. He appears to be on the prowl, his prey appears to be a woman.

12. The area in question was declared out of bound for Force Personnel. Petitioner ought not to have gone to the area. He had no business to enter the courtyard of a residential house. That the situation did not turn explosive is a matter of chance and good fortune. The incidents of Force personnel molesting poor and illiterate village ladies requires such kind of deviant behaviour to be viewed seriously.

13. We have our doubt that the penalty would not shock the judicial conscience, merely because the situation did not turn explosive. Discipline has to be maintained in the armed forces and in particular in relation to the persons who carry arms in their dealing with poor civilians and especially ladies and that too when it is dark. The petition is dismissed but without any order as to costs since the petitioner is without a job.