

(2012) 08 DEL CK 0323

In the Delhi High Court

Case No : Writ Petition (C) No. 906 of 1998

Arjun Singh

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 01-08-2012

Acts Referred:

Citation : (2012) 08 DEL CK 0323

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

Bench : Division Bench

Advocate : Syed Mehdi Imam, for the Appellant; Barkha Babbar, Advocate along with Mr. Bhupinder Sharma, Dy. Comdt./Law Officer, BSF., for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.

C.M.No.939/2012

1. 181 days delay in seeking restoration of the writ petition vide C.M.No.938/2012 is condoned.

2. C.M.No.939/2012 is allowed.

C.M.No.938/2012

1. For the reasons stated in the application, order dated 19th May, 2011 dismissing writ petition in default of appearance is recalled and the writ petition is restored for hearing on merits.

2. Application stands disposed of.

WP(C) No. 906/1998

1. Arguments heard. With reference to the pleadings in paragraphs 6 and 7 of the writ petition, learned counsel for the petitioner urges that the Insp.(T) Karam Chand was inimical towards the petitioner. Petitioner alleges in said paragraphs

that Insp.(T) Karam Chand was having an evil eye on the wife of the petitioner. Petitioner alleges that the highhandedness of Insp.(T) Karam Chand went to an extent when he refused leave to the petitioner. According to the petitioner, Insp. (T) Karam Chand lodged a false complaint against the petitioner pertaining to an incident which was nothing but a figment of imagination of Insp.(T) Karam Chand. As per the petitioner, Insp.(T) Karam Chand contrived to lodge a false report that the petitioner had assaulted him on 09:35 hrs at the Unit Lines on 23rd August, 1997.

2. In counter-affidavit, respondents denied any humiliation inflicted upon the petitioner by Insp.(T) Karam Chand and affirmed the incident.

3. The record produced before us would reveal that the petitioner was tried for having voluntarily caused grievous hurt to Insp.(T) Karam Chand on 23rd August, 1997 at about 09:45 hours at the Battalion Headquarter of 34th Bn. BSF at Radhabari.

4. At the trial, Insp.(T) Karam Chand appeared as witness No. 1 and deposed that a day prior i.e. on 22nd August, 1997, he learnt that a vehicle was going towards the border and he directed Naib Bahadur Singh to issue a proper movement order. He learnt that day that petitioner had refused to perform duties as required to be performed by ASI B.C. Katoch. Through Naib Bahadur Singh, he summoned the petitioner and told the petitioner that he should perform duties at 19:00 hrs. The petitioner refused to perform duty at night saying that he could not sleep during the day. Accordingly, Naik B.L. Patil was detailed to perform night shift duty. He thereafter prepared a monthly progress report in which he had to mention the performance of such company personnel who had more than three negative entries. He accordingly prepared the report Exhibit "K". The next day i.e. 23rd August, 1997 at about 09:30 hrs. when he was called by the Commandant, and as he was proceeding to the office of the Commandant, but the petitioner, having a stick in his hand hit him on his forehead and also on the left arm. He started bleeding. Battalion Havildar Major Bhag Chand rescued him. ASI C.K. Barman, HC Gajab Singh and Naib B.L. Patil also reached and managed to remove petitioner from the place. He was thereafter taken to M.I. room wherefrom he was shifted to the base hospital where he received five stitches.

5. Insp.(T) Karam Chand was cross-examined by the petitioner and only four questions were put to him pertaining to the time when he had returned from Cipher, the date when he sent the monthly report, whether he had perused the application dated 31st May, 1997 submitted by the petitioner and whether petitioner knew about his reporting about the petitioner to the superior officers.

6. We wish to highlight that the witness was not cross-examined with reference to any incident pertaining to the witness and petitioner's wife.

7. ASI B.C. Katoch, appeared as witness No. 2 and deposed in sync with PW.1 with respect to the incident of 23rd August, 1997. He corroborated Insp.(T)

Karam Chand with respect to his testimony of being brought to M.I. room with injuries. We find it relevant to note that the witness did not claim to be an eye-witness pertaining to the injuries sustained by Insp.(T) Karam Chand.

8. The witness was cross-examined and suffice would it be to state that the questions, being two in number, pertained to the event of 22nd August, 1997.

9. PW-3 HC Bhag Chand, referred to as the Battalion Havildar Major by Insp.(T) Karam Chand, corroborated Insp.(T) Karam Chand with respect to his having seen the petitioner assaulting Insp.(T) Karam Chand. The witness was cross-examined and suffice would it be to state, nothing worthwhile emerges from the cross-examination to discredit HC Bhag Chand.

10. ASI C.K. Barman and HC Gajab Singh, the two persons who were stated as having reached the place of the occurrence, as deposed to by Insp.(T) Karam Chand, appeared as PW-4 and PW-5. They corroborated PW-1 with respect to the petitioner having assaulted Insp.(T) Karam Chand.

11. Naib Bahadur Singh who appeared as PW-6 corroborated the fact of having taken Insp.(T) Karam Chand to the M.I. room and his being further removed to the base hospital.

12. Const. Ranjit Singh produced the GD entry Exhibit "L" which is a contemptuous record, as per serial No. 16 whereof at page 189 it stand recorded that BHM Bagh Chand (PW-3) had reported the incident of petitioner assaulting Insp.(T) Karam Chand.

13. The 8th and the last witness was Dr. J.R. Das, who deposed of being on duty of M.I. room and having rendered immediate medical aid to Insp.(T) Karam Chand who was bleeding from the head. He deposed that he suspected a fracture of left ulna, and being a major injury, he referred Insp.(T) Karam Chand to the base hospital. He deposed that thereafter, with reference to the discharge certificate, he found that Insp.(T) Karam Chand had to undergo an invasive procedure after anesthesia was administered to him on 26th August, 1997 to repair an olecranon fracture.

14. After the prosecution examined the 8 witnesses, the petitioner was called upon to make a statement in defence. He took time to file a written statement of defence, which he did. As per the written statement of defence, the petitioner never took a stand as pleaded in the writ petition. On the contrary, he stated that as he was proceeding to the canteen to take tea on 23rd August, 1997, at about 09:15 hrs. he saw Insp.(T) Karam Chand lying in a drain. He helped him to get up. The Inspector told him that "I should leave" and thus he left.

15. The story projected by the petitioner in the writ petition, of Insp.(T) Karam Chand alleging a false incident against him, is belied from the record. Insp.(T) Karam Chand received injuries as alleged by him and for which there is instant proof in the form of testimony of PW-8. The medical discharge certificate of Insp. (T) Karam Chand shows him being hospitalized and under anesthesia being

operated upon to correct a slipped bone which had occurred due to the fracture. Three persons who were eye-witnesses to the incident have corroborated Insp. (T) Karam Chand. The innocent statement made by the petitioner that he saw Insp.(T) Karam Chand lying in a drain and helped him is too sweet to be accepted because a simple fall injury would not have caused the injury which was suffered by Insp.(T) Karam Chand.

16. On the subject of penalty to be levied, suffice would it be to state that assaulting a senior officer and that too grievously is a serious offence. That apart, the past service record of the petitioner reveals that till he was dismissed from service on 19th September, 1997, having joined service on 19th September, 1986 i.e. in 11 years, petitioner had earned four penalties and four warnings.

17. Dismissal from service under the circumstances cannot be called a penalty which shocks the judicial conscience. There is no merit in the writ petition and the same is hereby dismissed. But there shall be no orders as to costs since the petitioner is without a job.