
(2011) 07 DEL CK 0408
In the Delhi High Court
Case No : Writ Petition (C) 2145 of 1998

Ashok Kumar

APPELLANT

Vs

DG. BSF and Others

RESPONDENT

Date of Decision : 11-07-2011

Acts Referred:

Border Security Force Act, 1968 — Section 26
Border Security Force Rules, 1969 — Rule 45, 48(3)

Citation : (2011) 07 DEL CK 0408

Hon'ble Judges : Sunil Gaur, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Rishikesh, for the Appellant; Ankur Chibber and Bhupender Sharma, Deputy Comdt./Law Officer for BSF, for the Respondent

Judgement

Pradeep Nandrajog, J.—Learned Counsel for the Petitioner urges on the proportionality of the punishment inflicted upon the Petitioner and gives up all other points urged in the writ petition.

2. The backdrop facts are that on 18.3.1996 Petitioner was charge sheeted for having committed an offence punishable u/s 26 of the BSF Act 1968. It was alleged that on 26.2.1996, Petitioner was detained for dak duty at BOP Rania, which he did not perform and was found in a state of intoxication.

3. Completing the proceedings pertaining to hearing of the charge under Rule 45 of the BSF Rule, the Commandant of the unit directed the Record of Evidence to be prepared at which proceedings 4 persons were examined. Sharwan Singh stated, as per the charge, that the Petitioner was detained for dak duty and sought permission of the Coy Commander to proceed to Amritsar and make a STD call to his wife. The Petitioner came to him to collect the dak. He told the Petitioner that the same was not ready and he should revert after some time. The Petitioner never reverted. He was found missing at the evening roll call and for which GD entry Ex.A was made. L/NK Rajesh Kumar deposed that in his presence the Petitioner sought permission to go to the market at Amritsar and

the Coy Commander Prem Sagar Sharma gave permission and told that the Petitioner could do so after completing dak duty and that at the evening roll call the Petitioner was found missing. At about 11 in the night, the Coy Commander Prem Sagar Sharma brought the Petitioner at BOP in a vehicle and he could detect the Petitioner in a state of intoxication. Prem Sagar Sharma, Coy Commander deposed that the Petitioner had been permitted by him to go to the market at Amritsar so that he could make a STD call at his home, but after performing dak duties. He learnt that the Petitioner went to Amritsar without performing dak duties. Since the Petitioner did not return to BOP Rania till about 8.30 PM he prepared a log Ex. C in which he entered Petitioner's absence. The next day, civilians informed him that a BSF personnel was lying in Village Rania. He reached the spot and saw the Petitioner lying in an intoxicated condition, unable to speak coherently and he brought the Petitioner to the Unit. O.Y. Varghese deposed that the Petitioner left BOP Rania without collecting the dak.

4. Record shows that the officer drawing up the Record Of Evidence granted opportunity to the Petitioner to cross-examine the witness but the Petitioner declined to do so.

5. Petitioner made a statement contemplated by Rule 48(3) of the BSF Rules 1969 stating that he left BOP Rania without collecting dak as he has to make an urgent call to his wife as their relationship were strained and he wanted to counsel her. Being stressed, on the way back to BOP Rania, he consumed alcohol and since he was so drunk which rendered him incapacitated he requested the civilian to report to Coy Commander.

6. Considering the Record Of Evidence, the Commandant directed the Petitioner's trial at a Summary Security Force Court; at which trial the Petitioner pleaded guilty.

7. Convicting the Petitioner and with reference to the service record which showed that in the past for having consumed alcohol and disobeying lawful command, the Petitioner had been awarded 28 days RI in force custody, the Court sentenced the Petitioner to be dismissed from service against which statutory petition filed has been rejected.

8. From the facts noted herein above and in particular the statement made by the Petitioner in defence at the Record Of Evidence it is apparent that the Petitioner admitted the charge. At the trial he pleaded guilty.

9. The question would be on the proportionality of the punishment.

10. The Petitioner joined service in the year 1989, exact date not known to us, but the year can be gathered by us with reference to the number assigned to the Petitioner. It commences with "89".

11. In our opinion, it would be a penalty disproportionate to the gravity of the offence for not completing the job assigned and being drunk; penalty being of dismissal from service. It cannot be lost sight of that Jawans of BSF and other

Para Military Forces perform duties which are stressful. Sitting on the current jurisdiction for the 6th months, we find a man power shortage in each and every Central Para Military Force and as against the universal norms followed, the force requiring 20% personnel in reserve, we find that in India there are hardly any reserved personnel either in the Indian Army or a Central Para Military Force. This results in the Commandants or the Regimental Heads not being able to sanction leave as and when required by the Jawans and this becomes a source of mental tension for these poor Jawans, who usually come from rural backgrounds and are not able to handle stress, except by drowning the same in liquor. In the instant case, the Petitioner was having a domestic problem and obviously was under a mental stress. He consumed a peg or two in excess to drown his sorrow and grief, as any other person sharing his socio economic background would. We are not justifying what the Petitioner did, but note as aforesaid as a mitigating circumstance.

12. In the circumstances we disposed of the writ quashing the penalty of dismissal. We call upon the Director General BSF to reconsider the matter qua levy of penalty and levy such penalty as he may deem fit, but other than that of dismissal or removal from service. The penalty would be of a kind where the Petitioner does not lose his service.

13. As regards the period post levy of penalty of removal from service i.e. the impugned penalty till Petitioner's reinstatement, which would be the automatic consequence of our present direction, Director General BSF would pass an order contemplated under FR 54 with respect to the period post dismissal till reinstatement, which order learned Counsel for the Petitioner states would not be questioned by the Petitioner.

14. Necessary order would be passed within a period of 6 weeks from today.

15. No costs.