

(2011) 09 DEL CK 0399
In the Delhi High Court
Case No : Writ Petition (C) 1600 of 1998

Chandan Singh	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 22-09-2011

Acts Referred:

Citation : (2011) 09 DEL CK 0399

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

Bench : Division Bench

Advocate : Anil Gautam and Satya Sahrawat, for the Appellant; Saroj Bidawat and Bhupinder Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.

CM No. 13371/2011

For the reasons stated in the application delay in filing CM No. 13370/2011 is condoned.

CM No. 13370/2011

For the reasons stated in the application, the application is allowed.

WP (C) No. 1600/1998 is restored to its original position.

WP (C) No. 1600/1998

1. Briefly noted, with respect to the testimony of Ex. HC Puran Singh who had superannuated as a Head Constable from BSF, the Petitioner and Nk.Raj Kumar became friendly with him and started visiting his house in spite of he i.e. Ex. HC Puran Singh cautioning them that being out of bound area, the two should not visit his house. On 30.6.1997 when he i.e. Ex. HC Puran Singh, his wife and children were sleeping, his wife heard sound from the adjoining room where-

from business of selling tea was being carried out by him and as he entered the room he saw a man lying on the floor, who he struck with a stick and as the person screamed, from the voice he could recognize that it was Nk.Raj Kumar. At that very moment somebody poked a bamboo from the door and called out the name of Nk.Raj Kumar, he could recognize from the voice that the said person calling for Nk.Raj Kumar was Chandan Singh, the Petitioner.

2. Nk.Raj Kumar and the Petitioner Chandan Singh were subjected to a Security Force Court Trial. Both were held guilty and visited with a penalty of dismissal from service.

3. Though there is no evidence, but it appears to be a case

where the presence of Ex. HC Puran Singh's second wife, a woman of young age, was attracting Nk.Raj Kumar and the Petitioner.

4. Unfortunately for the Petitioner he rushed to this Court questioning the penalty levied against him and had he availed the remedy of appeal, he would have got the same benefit as was given to Nk.Raj Kumar, qua whom the penalty was set aside due to a technical error at the trial. For reasons not known, setting aside the penalty due to a technical error at the trial, it was not directed that Nk.Raj Kumar be re-tried. Thus, Nk.Raj Kumar is merrily serving.

5. As regards the writ Petitioner, he happened to land up with a lawyer, whose conduct of finding mindless writ petitions has been adversely commented upon in various orders. The mindless writ petition i.e. the instant one, being one amongst at least 40 filed in this Court in which it has been adversely commented upon against the learned Counsel, who for reasons best known to him resorted to reckless cut, copy and paste, unmindful of the facts of different cases. Learned Counsel for the Petitioner concedes that the useless pleadings in the writ petition has compelled this Court to issue Rule and set the writ petition for hearing in normal course. The counsel concerned cheated upon the Petitioner by not appearing when the writ petition came up for hearing, resulting in the same being dismissed. It is only while seeking restoration that learned Counsel informed the Court, a fact not pleaded in the writ petition, that Nk.Raj Kumar had already been reinstated when he filed the appeal against the sentence imposed upon him.

6. The fact pertaining to Nk.Raj Kumar is conceded to by learned Counsel for the Respondents.

7. Accordingly, we dispose of the writ petition declaring that Petitioner would be entitled to parity with Nk.Raj Kumar, whose role in the episode was graver than that of the Petitioner. The technical error in the trial as determined by the Appellate Authority which has resulted in Nk.Raj Kumar being reinstated without being subjected to a re-trial, must enure to the benefit of the Petitioner as well. We quash the impugned order dated 12.7.1997 and direct that Petitioner should be reinstated in service, but without any back-wages. We deny back-wages for

the reason the pleadings in the writ petition are useless, as conceded to by learned Counsel for the Petitioner. The Petitioner never took the plea in the writ petition on which he is succeeding. He never availed the remedy of appeal. He has contributed to the mess.

8. Compliance be made with the instant decision within 8 weeks from today.

9. No costs.