

(2006) 02 KAR CK 0009

In the Karnataka High Court

Case No : Writ Appeal No's. 2986 and 3161 of 2005

Constable Basavaraj

APPELLANT

Vs

The Union of India (UOI) and The Director General, Border
Security Force
 The Union of India (UOI) and The
Director General, Border Security Force Vs Constable
Basavaraj

RESPONDENT

Date of Decision : 24-02-2006

Acts Referred:

Border Security Force Act, 1968 — Section 20 (a)

Citation : (2007) ILR (Kar) 485

Hon'ble Judges : Cyriac Joseph, C.J;Manjula Chellur, J

Bench : Division Bench

Advocate : Chandrashekar P. Patil, in W.A. No. 2986/2005 and Aravind Kumar, ASG in W.A. No. 3161/2005, for the Appellant; Arvind Kumar, ASG in W.A. No. 2986/2005 and Chandrashekar P. Patil, W.A. No. 3161/2005, for the Respondent

Judgement

Cyriac Joseph C.J.

1. Both these appeals are filed against the same judgment and hence they were heard together and are being disposed of by this common judgment.
2. The writ appeals arise from W.P.No. 1469/2002. The appellant in W.A. No. 2986/2005 is the petitioner in the writ petition. The appellants in W.A.No. 3161/2005 are the respondents in the writ petition.
3. The challenge in the writ petition was against the orders dated 7-10-2001 and 27-2-2002 produced as Annexures-"A" and "K". As per Annexure-"A", the petitioner Basavaraj who is a constable in the Border Security Force was dismissed from service with effect from 7-10-2001. As per Annexure-"K" order, the statutory petition filed by the writ petitioner against the dismissal from service was rejected.
4. On the basis of an incident which took place on 30-7-2001 in the special train

carrying troops from Samba to Farrakka, proceedings were initiated against the petitioner and he was tried by the Summary Security Force Court (SSFC) under the BSF Act. The allegation was that during a quarrel between Head Constable Puran Singh and Head Constable B. Balakrishnan, the petitioner intervened and while separating the quarrelling Head Constables, the petitioner assaulted his superior officer Puran Singh who fell down and sustained injuries. The SSF Court found the petitioner guilty of charge u/s 20(a) of the BSF Act and on the basis of the finding of the Court the competent authority dismissed the petitioner from service. Though the petitioner filed a statutory petition before the 2nd respondent, it was dismissed by the 2nd respondent. Though the petitioner had raised various contentions in the statutory petition, he was informed through Annexure-"K" letter that after a detailed consideration and careful scrutiny of the facts and circumstances of the case, IG BSF South Bengal rejected his petition being devoid of merit. No reasons were stated in Annexure-"K" order. Aggrieved by Annexures-"A" and "K" the petitioner filed the writ petition.

5. In the impugned judgment, the learned single Judge found that the order of conviction passed against the petitioner was not a speaking order and that there was no application of mind by the authority concerned. Though the learned single Judge observed that strict discipline shall be maintained in the Force, he also pointed out that the respondents have not placed on record any material to show whether any action was initiated against P.W.1 and P.W.2 for their quarrelling. Learned single Judge also pointed out that when P.W.2 was recalled and reexamined he emphatically deposed that he had not seen the petitioner hitting Puran Singh by way of boxing and that the head of Puran Singh might have struck with some hard surface. The learned single Judge has observed that the SSF Court was biased and prejudiced against the petitioner and that the proceedings initiated against the petitioner was with some sinister motive and to settle the scores. The learned single Judge has further held that even if the case of the prosecution is accepted as true and that the same was proved, it does not call for the major penalty of dismissal from service. The learned single Judge has also found fault with the competent authority for not considering the statutory petition of the petitioner with application of mind and for not disposing of the same stating reasons, However, since the petitioner was dismissed from service with effect from 7-10-2001, the learned single Judge refrained from remanding the matter to the competent authority for fresh consideration as it would prolong the litigation. Accordingly, the impugned orders were set aside and the respondents were directed to reinstate the petitioner in service. However, the learned single Judge held that though the petitioner is entitled to continuity of service he will not be entitled for monetary benefits.

6. The writ petitioner is aggrieved by the denial of monetary benefits. The respondents in the writ petition are aggrieved by the quashing of the order of dismissal.

7. We have heard the learned Counsel for the appellants and the respondents.

We have also considered the materials placed on record. The standard of proof required in departmental proceedings is not the same as the standard of proof required in a criminal prosecution. It would appear that this aspect was overlooked by the learned single Judge. Even according to the petitioner Basavaraj, the incident of quarrel between Head Constable Puran Singh and Head Constable Balakrishna had taken place and the petitioner had intervened. The area of dispute is only with regard to the acts done by the petitioner in the process of separating the quarrelling superiors. There are different versions regarding the cause of injury suffered by Puran Singh. According to the prosecution, it was caused when Puran Singh fell down as a result of the boxing like punching given by the petitioner. According to the petitioner, Puran Singh might have suffered injury when he fell down due to the movement of the box on which he was standing. From a perusal of the materials placed on record, it is evident that the petitioner had used force for separating the quarrelling Head Constables and that as a result of such use of force, Puran Singh had fallen down and suffered injuries. We are not inclined to take the view that the SSF Court was biased or prejudiced against the petitioner. At the same time, we agree with the learned single Judge that there were deficiencies in the evidence in the case. We also agree with the learned single Judge that considering the context and circumstances of the incident and the conduct of the parties, the penalty of dismissal from service was highly disproportionate and totally unwarranted. As rightly pointed out by the learned single Judge, the petitioner had intervened in the quarrel between the two Head Constables only with the intention of separating them and preventing the quarrel. The prosecution had no case that there was any rancor between Puran Singh and the petitioner. At the worst it could be said that the petitioner used excessive force to separate the quarrelling Head Constables. We are also of the view that the conduct of the petitioner amounted to misconduct. Therefore he cannot be totally absolved from any penalty. At the same time, the decision regarding the appropriate penalty should be left to the competent authority. On our query, learned Assistant Solicitor General informed the Court that proceedings were initiated against Puran Singh and Balakrishna also and that while Puran Singh was let off and Balakrishna was severely reprimanded.

8. In the above circumstances, we concur with the learned single Judge that the penalty imposed on the petitioner was highly excessive and disproportionate and that the penalty of dismissal from service or removal from service is not warranted in the circumstances of the case, While upholding the decision of the learned single Judge to quash Annexures-"A" and "K" and the direction to reinstate the petitioner in service forthwith, we grant liberty to the respondents in the writ petition to take a fresh decision with regard to the penalty to be imposed on the petitioner. We make it clear that we are not interfering with the direction of the learned single Judge that the petitioner will be entitled to continuity of service but will not be entitled for monetary benefits. The writ petitioner shall be reinstated in service within one week from today. The

petitioner shall report to the 2nd respondent forthwith.

9. The impugned judgment will stand modified to the extent indicated above.

10. Writ appeals are disposed of in the above terms.