

(2011) 04 DEL CK 0112
In the Delhi High Court
Case No : Writ Petition (C) 4379 of 2007

Dhirendra Kumar Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-04-2011

Acts Referred:

Border Security Force Act, 1868 — Section 21(2)
Border Security Force Act, 1968 — Section 20, 26
Border Security Force Rules, 1969 — Rule 45, 48, 51

Citation : (2011) 04 DEL CK 0112

Hon'ble Judges : Pradeep Nandrajog, J; Indermeet Kaur, J

Bench : Division Bench

Advocate : Arvind Kumar Tiwary, for the Appellant; Anuj Aggarwal and Gaurav Khanna, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Vide order dated 14.11.2007 the Disciplinary Authority i.e. the Commandant of the Unit, after Petitioner's trial at a Summary Security Force Court inflicted the penalty of dismissal from service and the appeal filed has been turned down vide order dated 14.12.2007; both orders being under challenge.

2. On receipt of a complaint that on 18.10.2006 having quarreled with HCK.S. Pandian when HCK.T. Bezgamwar was required to intervene and report the matter to the Coy. Commander, Petitioner assaulted HCK.S. Pandian and caused an injury to HCK.T. Bezgamwar, the officiating commandant i.e. the Deputy Commandant of the Unit held proceedings under Rule 45 of the BSF Rules 1969 and finding a case for recording evidence, drew up a charge as under:

CHARGE SHEET

The accused No. 99002667 Const. Dhrendra Kumar Singh "C" Coy.93 Bn.BSF is charged with:

BSF Act-1968

Section-20(a)

ASSAULTING HIS SUPERIOR OFFICER

In that he,

At about 1915 hrs on 18/10/06 at BOP Churakhori assaulted No. 88009708 HC K S Fandian and No. 76102034 HCK.T. Bezgamwar and injured them.

BSF Act-1868

Section 21(2)

DISOBEYING A LAWFUL COMMAND GIVEN BY HIS SUPERIOR OFFICER

In that he,

At about 1600 hrs on 18/10/06 at BOP Churakhori he denied to perform the duty when order by Platoon HC No. 95262001 HC Vijay Singh.

BSF Act-1968

Section-26

INTOXICATION

In that he,

At about 1600 hrs on 18/10/06, BOP Churakhori found in a state of intoxication.

3. It was directed that Assistant Commandant R.S. Rangra would record the evidence at the stage of "Record of Evidence" but realizing that the Petitioner was directly under Assistant Commandant R.S. Rangra who was the Post Commander, it was directed that Deputy Commandant D.S. Rawat would conduct the proceedings pertaining to "Record of Evidence".

4. Brought before Deputy Commandant D.S. Rawat, the record shows that the Petitioner was given full opportunity to cross-examine all witnesses who were examined.

5. 7 witnesses were examined at the Record of Evidence; being HCK.S. Pandian, HCK.T. Bezgamwar, Ct. Bangan Gouda, HC Vijay Singh, Assistant Commandant Ranjit Singh, Dr. Jagdev Singh CMO and SIR.K. Sharma and suffice would it be to note that Dr. Jagdev Singh deposed having examined the Petitioner on 4.7.2006 at about 21:25 hours and having found Petitioner under influence of alcohol.

6. HCK.S. Pandian deposed of having seen Petitioner drink and picking up a quarrel with him and when HCK.T. Bezgamwar intervened and contacted the senior officer over the telephone, angered by the senior officer being informed, Petitioner assaulting HCK.T. Bezgamwar and injuring him in the right eye.

7. HCK.T. Bezgamwar, fully corroborated HCK.S. Pandian and deposed that

Petitioner assaulted him after he contacted the Post Commander to inform Petitioner being drunk and quarreling with HCK.S. Pandian. Ct. Bangan Gouda corroborated the previous two witnesses and so did HC Vijay Singh. Assistant Commandant Ranjit Singh deposed of receiving telephonic information from HCK.T. Bezgamwar of Petitioner being drunk and quarrelling with HCK.S. Pandian and thereafter receiving information of Petitioner having assaulted HCK.T. Bezgamwar having the grouse of being the informant of the incident. SIR.K. Sharma was a witness to the character and with respect to the service record of the Petitioner proved 3 penalties being levied in the past upon the Petitioner who had rendered 7 years" service till then.

8. We must note that Petitioner was given full opportunity to cross-examine all the witnesses and we must highlight that while cross-examining the witnesses no line of defence was taken that it was the Petitioner who picked up the telephone to contact the Post Commander and when HCK.T. Bezgamwar tried to snatch the telephone from the Petitioner, during jostling, HCK.T. Bezgamwar got injured in the eye. Relevant would it be to note that the line of cross-examination adopted qua HCK.T. Bezgamwar was that when he i.e. HCK.T. Bezgamwar was speaking to the Post Commander, Petitioner had tried to snatch the telephone receiver and in the process HCK.T. Bezgamwar got injured.

9. At the Record of Evidence after the 7 witnesses were examined and cross-examined, Petitioner made a defence statement as under:

STATEMENT OF ACCUSED

I, No. 99002667 CT Dhirendra Kumar states that:

At about 1645 hrs on 18/10/06 I took 2peg Rum from HCK.S. Pandian we both consumed the liquor then we took dinner together we both were detailed for 1st ACP duty. After taking meal HC K.S. Pandian slept on his bed. Post. Cmdr. HC Vijay Singh told me to wake up HC K.S. Pandian. When I went to wake up HC Pandian he told me who are you to wake up me let me sleep. I told HC Vijay Singh that HC K.S. Pandian is abusing me and he is not ready for the duty. HC Vijay Singh told me that both of you may rest you will go in 2nd ACP. Then HC K.S. Pandian asked me in loud voice whey you have woke up me. Thus we started talking in loud voice other person of the Barrack told us to not to make noise in the Barrack, so we came out in open we were talking in loud voice only. Then HC K.T. Bezgamwar came and reported the matter to Coy Comdr.HC K.S. Pandian told me to stop HC Bezgamwar from reporting against us. It went to HC K.T. Bezgamwar I told him to not to report but he reported the matter. Then I took the telephone to take to Coy Comdr but he stopped me and pushed me away from the telephone and tried to snatch telephone handset from me. In that hustle-bustle HC K.T. Bezgamwar got injury in his right eye. I never hit him with boxing but I do not know how he got the injury. HC K.T. Bezgamwar shouted that "meri aankh main mar diya" then sentry reached there. HC K.S. Pandian also came there and started to call others that CTD.K. Singh has beaten HC K.T.

Bezgamwar and save him. HC K.S. Pandian told me that you have injured the old man. Then I went to HC K.T. Bezgamwar and apologized and asked him to forgive me but he did not listen to me and told that I have reported the matter to Coy Cmdr. HC K.S. Pandian came to me and told why you has injured the old man and started to quarrel with me I hit him with boxing. He ran away fell on the ground and got injuries. He went towards the fire-fighting print and took the Pick-axe I tried to snatch Pic-axe from hi. When I snatched Pic-axe from him he got injury on is head due to wooden handle. Then I went out side the gate and I was waiting for Coy Comdr. Coy Comdr. reached there I wished him and told that I have consumed 2 peg liquor due to which the incident has happened I am standing out side the gate because I am afraid of HC K.S. Pandian, I have consumed the liquor for which you can punish me. If was the more Practice in Chura Khuri BOP. No body from the post was ready to perform duty with HCK.S. Pandian. Normally I was detailed with him for duty. He used to consuming liquor in the ACP. So many time I have requested the post Comdr. to not to put me on duty with HCK.S. Pandian. The above statement is read over to the accused in the language he understands and signs it as correct.

10. The Record of Evidence was placed before the Commandant as per the requirement of Rule 51. A formal charge sheet was thereupon drawn dropping the third charge on which the Record of Evidence was drawn i.e. the charge sheet at which trial was held being the charge sheet dated 10.11.2006 lists only two charges as under:

CHARGE SHEET-I

APPENDIX-IV

[Rule 52(2)]

The accused No. 99002667 Const. Dhrendra Kumar Singh "C" Coy.93 Bn.BSF is charged with:

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At about 1600 hrs on 18/10/06 at BOP Churakhori he denied to perform the duty when order by Platoon HC No. 95262001 HC Vijay Singh.

11. As per law, the Commandant had to preside over the Summary Security Force Court and when brought before the Commandant and charge(s) read out, the Petitioner pleaded guilty, as to be found in the original record produced.

12. Noting that the Petitioner had assaulted a superior officer and disobeyed orders of a superior officer; considering the past record, penalty of dismissal from service has been inflicted.

13. It is urged by learned Counsel for the Petitioner that the Commandant could not have changed the officer who had to record the Record of Evidence and thus urges that since the trial of the Petitioner was predicated at the evidence recorded at the Record of Evidence, the trial is vitiated.

14. The argument is rejected for the simple reason no Rule prohibits the Commandant to replace the officer who has been nominated to conduct proceedings pertaining to Record of Evidence. The justification of the Respondents to change the officer to conduct the Record of Evidence is sound. Indeed, Assistant Commandant R.S. Rangra was the Post Commander of the Petitioner and lest Petitioner alleged a bias on account of his having personal knowledge of the incident, there is good justification to replace him and direct Record of Evidence to be prepared by another officer i.e. Deputy Commandant D.S. Rawat.

15. The second plea urged is that during Record of Evidence the Petitioner was declined an opportunity to produce defence witnesses is negated for the simple reason we do not find any such request being ever made. On the contrary after 7 witnesses of the prosecution were examined, on 2.11.2006, under the signatures of the Petitioner it stands clearly recorded that with reference to the provisions of Rule 48 Petitioner was asked whether he wished to call any witness to which the Petitioner answered: "No. I do not wish to call any witnesses." That apart, neither in the writ petition nor during arguments has any name been disclosed as the ones whom Petitioner desired to be examined as his witnesses.

16. It is then urged that Assistant Commandant V.L. Joshi was thrust upon the Petitioner to act as his friend at the trial.

17. Record shows that an opportunity was given to the Petitioner before the trial commenced, to nominate any person, even a legal practitioner, to defend the Petitioner at the trial and on 13.11.2006, in writing, the Petitioner informed that he does not desire to nominate anybody to act as the friend of the accused and for this reason Assistant Commandant V.L. Joshi was suo moto nominated to act as the friend of the accused.

18. It is urged that the Petitioner never pleaded guilty and his signatures were obtained on blank papers and on some papers on which something was written in English.

19. The plea is not acceptable to us for the reason record shows that Assistant Commandant V.L. Joshi was acting as the friend of the accused and if no trial as alleged took place and instead Petitioner was made to sign blank papers or his signatures were obtained on pre-typed pages, said officer would have certainly objected to what was happening.

20. Suffice would it be to state that at the stage of Record of Evidence sufficient damaging incriminating evidence has surfaced against the Petitioner and his version in defence is hardly worthy of any credence and it appears to be a case where the Petitioner thought it best to plead guilty and then raised issues with respect to the plea of guilt.

21. Be that as it may, we prefer to go by the record which shows that the Petitioner pleaded guilty at the trial.

22. No other ground has been urged at the hearing and thus we dismiss the writ petition noting that in his 7 years and 2 months' service this was the 4th misdemeanour committed by the Petitioner and thus the penalty cannot be called disproportionate.

23. No costs.