
(2011) 04 DEL CK 0013
In the Delhi High Court
Case No : WP (C) 2774 of 1996

Ex. Const. Jandel Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-04-2011

Acts Referred:

Border Security Force Act, 1968 — Section 1, 2

Border Security Force Rules, 1969 — Rule 142, 142(2), 157, 27(2), 38

Citation : (2011) 04 DEL CK 0013

Hon'ble Judges : Suresh Kait, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Bishram Singh, for the Appellant; Barkha Babbar, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The Petitioner, enrolled with the Border Security Force as a constable was sent to its Academy at Tekanpur in the year 1980 and after completing his basic training was appointed as a constable with the Force on 10.10.1981. After several postings in different units, he was attached to the 94th Bn. on 17.03.1993 where he performed duties of an Adjutant. It was complained against the Petitioner that on 15.01.1995 he was found creating a nuisance in front of civilians in a state of intoxication and that when brought to the barracks he assaulted a sentry Ct. Puran Mal who was on duty and damaged the telephone of GD office by kicking it.

2. There is a dispute regarding what happened on 15.01.1995 after the alleged incident. Whereas the Petitioner alleges that on 15.01.1995 he was placed under close arrest in BSF custody without being informed about the particulars of the charge levied upon him, the Respondents allege to the contrary and submit that the Petitioner was put under close arrest in BSF Custody on 30.01.1995 for his Summary Security Force Court trial under Rule 38 of the BSF Rules 1969.

3. As per the record, on 17.01.1995 proceedings pertaining to hearing of the

charge were conducted at 17:45 hours where the Commandant examined Nk. Vikram Singh, L/Nk. Sube Singh, SIJ. Malakar, HC Ram Bahadur and Ct. Puran Mal Yadav and ordered: "ROE to be ordered". A Charge Sheet was prepared by the Commandant wherein 3 charges were levied upon the Petitioner as under:

CHARGE SHEET CHARGE No. I INTOXICATION BSF ACT-1968 SEC-26 In that he, at Bn. HQ Pokaran on 15.01.95 at about 2300 hrs was found in a state of intoxication. CHARGE No. II BSF ACT-1968 SEC-40 AN ACT PREJUDICIAL TO GOOD ORDER AND DISCIPLINE OF THE FORCE In that he, at Bn. HQ Pokaran on 15.01.95 at about 2340 hrs assaulted No. 94633949 Const. Puran Mal Yadav the line sentry.

CHARGE-III INJURY TO PROPERTY BSF ACT-1968 SEC-33 In that he, at Bn. HQ on 15.1.95 at about 2355 hrs willfully kicked the Telephone of GD Office thus resulted in damaging the telephone, the property of the Govt.

4. There is further dispute between the parties regarding the charge sheet being served upon the Petitioner. As per the Petitioner he was not served with the charge-sheet and the charges were not read over to him as required by Rule 63 of BSF Rules 1969; the Respondents assert that the Petitioner was duly served with a copy of the Charge Sheet in respect whereof we find no signatures obtained acknowledging receipt of the charge sheet by the Petitioner, but the record shows that when the officer assembled on 20.1.1995 to record the evidence, Petitioner duly appeared and cross-examined the 5 witnesses who were examined on 20.1.1995 and there from it can be inferred that the Petitioner was served with the charge sheet inasmuch as the line of cross-examination adopted by the Petitioner could not have been so adopted unless he knew what was he charged of.

5. We may highlight that neither the BSF Act nor the Rules framed there under require acknowledgement to be obtained when a charge sheet is served and the authorities rely upon the principle that official acts are presumed to have been done as required by law unless the contrary is proved by he who alleges to the contrary. This position remained till around the year 1998, by which time the authorities realized that it would be advisable to obtain the signatures of the accused when charge sheet was served and dealing with writ petitions filed by the jawans and officers of Central Para Military Forces we find that somewhere in the middle of the year 1998 the department became more vigilant to obtain the signatures of the accused when charge sheet was served. It is apparent that this dispute is a dying dispute inasmuch as this Court is left with about 180 writ petitions pertaining to Central Para Military Forces which were filed till the year 1998.

6. 5 witnesses were examined by the prosecution at the stage of the Record of Evidence and all of whom were cross-examined. The 5 witnesses were the same 5 persons who were examined by the Commandant at the stage of hearing of the charge and whose names have been noted by us in para 3 above. After the

statements of 5 witnesses was recorded, Petitioner was given an opportunity to make a statement in defiance, which he did and he stated:

I No. 80001431 Ct. Jandel Singh have been working in BSF since 2.8.1980. On 15.1.1994, I was at Pokarn Market there I met one of my friend. He offered me wine but I declined as it doesn't suit me but I can take beer. Then I consumed two bottles of beer. Then I lost my sense and then a BSF vehicle came and took me to OR barrack. I have doubt that my thela wala/friend has mixed something in the beer. As I slept in barrack, the sentry Ct. Puran Mal Yadav on duty came to woke me up. As I was not awakening 4 to 5 men started beating me. Then BHM and GD Clerk came and took me to GD Office.

BHM and GD Clerk were talking in themselves of telephone. I told to them as I were beaten, so I will telephone to Adj. As I approached towards telephone and caught the hand piece, someone thwarted me from behind and hand piece was damaged. Then I was taken to my barrack and I slept there.

(Reproduced in verbatim by us and hence the spelling and grammatical mistakes)

7. The Record of Evidence was placed before the Commandant. Considering the evidence and the defiance the Commandant ordered for a Summary Security Force Court to be convened and the trial commenced on 30.01.1995 on the same charge sheet which was served upon the Petitioner when Record of Evidence was directed to be drawn. As per the record of the trial proceedings, the charge sheet was translated and read over to the Petitioner and on the Petitioner pleading not guilty to the 3 charges, the trial commenced.

8. Record evidences that Dy. Commandant Jai Deo Singh acted as the friend of the accused and the charge was read over to the accused i.e. the Petitioner who pleaded not guilty to the 3 charges, but it stands recorded thereafter that the accused has pleaded guilty and thus the provisions of Rule 142(2) of the BSF Rules have been complied with. Thereafter, evidence of the prosecution witnesses have been recorded.

9. It may be noted here and now that a typed printed proforma has been used by the Court and in the blank spaces in the typed proforma, in hand, proceedings have been written pertaining to the plea of not guilty and it appears that the Court has inadvertently not scored off the printed proforma which pertains to what needs to be retained if at the trial an accused pleads guilty.

10. 4 prosecution witnesses were examined to establish the charges against the Petitioner.

11. Nk. Vikram Singh PW-1 deposed that on 15.01.1995 at about 22:30 hours he was returning from Pokran Railway Station when on the way he saw a crowd of civilians watching a BSF Jawan i.e. the Petitioner, who was creating nuisance in a drunken condition. He brought the Petitioner to the barracks and leaving him there, he went to report the matter to BHM Ram Bahadur (PW-3). BHM Ram Bahadur sent the sentry on duty Ct. Puran Mal (PW-4) to call the Petitioner to the

GD room/office. That after some time he heard cries and words like "Sentry ko peet diya". On reaching the barracks he saw Ct. Puran Mal (PW-4) lying on the floor and the Petitioner was caught by 2-3 Jawans/constables as he was getting out of control. That he was accompanied by HNK Sube Singh (PW-2) and HC Ram Bahadur (PW-3) who also witnessed the events taking place at the barrack. Thereafter, the Petitioner was taken to the GD Room. That he i.e. PW-1 reached the GD room after the Petitioner as he had lagged behind, and on reaching there he saw that the telephone of the GD room was broken; HC Ram Bahadur told him that the Petitioner damaged the telephone. After reporting the matter to the senior officers, he returned to the barracks. On being cross-examined, he stated that he did not know as to why the BHM had called the Petitioner to the GD Room.

12. L/Nk. Sube Singh PW-2 deposed that on 15.01.1995 at about 23:00 hours he was awoken by Nk. Vikram Singh (PW-1) and HC Ram Bahadur (PW-3) and was informed that the Petitioner was found in a drunken condition and was told that he had created some problems before civilians. Thereafter, BHM Ram Bahadur (PW-3) directed Sentry on duty Ct. Puran Mal (PW-4) to call the Petitioner to the GD room. After some time on hearing cries of "Bachao Bachao" along with Nk. Vikram Singh (PW-1) and HC Ram Bahadur (PW-3) he went to the barracks where he saw that the Petitioner was caught by 2-3 jawans. That in the GD room the Petitioner continuously abused him and HC Ram Bahadur (PW-3) who directed him to report the matter to senior officers. That before he could call the senior officers, Petitioner kicked the telephone and broke the phone. That foul smell of liquor was coming from the mouth of the Petitioner. He clarified that he reached the barrack after PW-1 and PW-3 as he had to lock the room in which he was sleeping. In his cross-examination he stated that the telephone was kept on a small table in the GD room.

13. HC Ram Bahadur PW-3 deposed that on 15.01.1995 at about 22:30 hours Nk. Vikram Singh (PW-1) came to him and told him that he i.e. PW-1 had found the Petitioner in the town in a drunken condition where the Petitioner had created some problems and that he had left the Petitioner in the barracks. That he i.e. PW-3 sent the sentry on duty, Ct. Puran Mal (PW-4), to call the Petitioner. After some time he heard cries of "Bachao Bachao" coming from the barracks and on reaching he saw that the Petitioner was caught by 2-3 jawans and the Petitioner was abusing loudly. The Petitioner was thereafter taken to the GD room where the Petitioner started abusing him i.e PW-3. That while he was making enquiries about the incident from Ct. Puran Mal (PW-4), he heard noise of something break and saw that the telephone was lying on the floor and on asking he was told that the Petitioner had kicked the telephone. The matter was then reported to the senior officers. He further stated that the Petitioner was reeking of alcohol. In his cross-examination he stated that after hearing cries of help from the barracks he reached the spot accompanied by PW-1 and that PW-2 also arrived soon thereafter.

14. Ct. Puran Mal PW-4 deposed that on 15.01.1995 he was on sentry duty when at about 22:30 hours Nk. Vikram Singh (PW-1) came to meet HC Ram Bahadur (PW-3). Thereafter, PW-3 asked him to call the Petitioner to the GD office. On reaching the barracks he saw that the Petitioner was asleep; he tried to awaken the Petitioner and asked him to go to the GD office at which the Petitioner hurled abuses at him. That he went back to BHM PW-3 and reported the matter who once again asked him to go to the Petitioner and make him come to the GD room. That when he awoke the Petitioner, the Petitioner started beating him and manhandled him on which he shouted "Bachao Bachao". That hearing his cries, BHM and a few Jawans came and took Petitioner away. In his cross-examination, he stated that at the time Petitioner was beating him, he did not fight back as he was stunned to see Petitioner's conduct.

15. At the closing of the prosecution evidence, the Petitioner was called upon to make his defiance statement which the Petitioner declined to make and also refused to produce defiance evidence.

16. In view of the evidence led at the trial the Court returned a verdict of guilt qua all the charges.

17. In the proceedings pertaining to the sentence the Court took into consideration prior punishments recorded in the service record of the Petitioner which were 3 in number and passed a sentence that the Petitioner be dismissed from service which was approved by the Confirming Authority i.e. the Deputy Inspector General BSF.

18. Aggrieved by the sentence imposed, the Petitioner filed a statutory petition on 29.06.1995 challenging the impugned order dated 30.01.1995. The petition was rejected vide order dated 08.01.1996 being devoid of merit.

19. The Petitioner filed the present writ petition challenging the order of sentence dated 30.01.1995 and order dated 08.01.1996.

20. First plea urged by learned Counsel for the Petitioner was that the hearing of charge provided under Rule 45 of the BSF Rules 1969 was not conducted by the Commandant as a result of which, it was stated, a right of the Petitioner was violated and a prejudice was caused to him. That a further prejudice was caused to the Petitioner when a copy of the charge sheet was not given to him as a result of which, it was urged, the Petitioner was handicapped in properly/ effectively defending himself at the trial.

21. Relevant facts pertaining to the said plea have been noted by us in paras 2 to 5 above and suffice would it be to state that the record records that hearing of charge was conducted and charge sheet was supplied to the Petitioner. It may be true that signatures of the Petitioner have not been obtained when hearing of charge was conducted and when charge sheet was served upon him, but that does not mean that hearing of charge was not conducted and charge sheet was not served. As noted by us in paragraph 4 hereinabove, from the fact that the

Petitioner cross-examined 5 witnesses whose statements were recorded at the time of Record of Evidence and his statement in defiance show that the cross-examination and the statement in defiance was targeting the charge sheet. We can safely infer that the Petitioner had with him the charge sheet not only at the time when Record of Evidence was prepared but even when the trial was conducted.

22. The second plea urged was that at the trial the Dy. Comdt. Jai Deo Singh was thrust upon the Petitioner as a friend of the accused and that the Petitioner was not given an opportunity to call a friend of his choice.

23. We find that it is not pleaded in the writ petition that the Petitioner desired a particular person to be appointed as his friend at the trial. The record produced also does not evidence any such request being made with respect to the name of a particular person. The only plea in the writ petition is that appointment of Dy. Comdt. Jai Deo Singh as a friend of the accused was in violation of Rule 157.

24. The Rule simple states that during a trial at a Summary Security Force Court an accused may take assistance of any person, including a legal practitioner as he may consider necessary.

25. In the absence of any pleading that the Petitioner had desired a particular person to act as his friend and that he never desired Dy. Comdt. Jai Deo Singh to act as his friend, we find nothing worthy to be considered with respect to the plea urged.

26. The subject needs a little more discussion. In what manner was Dy. Comdt. Jai Deo Singh thrust upon the Petitioner? We find no assertion of fact with respect to the pleadings in the writ petition. Now, somebody being forced upon somebody would be a matter of fact and inference. What are the facts constituting the act of thrusting somebody on somebody have to be pleaded.

27. The next plea urged was that the Commandant conducting the trial had a bias against the Petitioner, which as stated, was evident from the fact that at the start of the trial it was recorded that the Petitioner had pleaded not guilty and thereafter it was recorded that the Petitioner had pleaded guilty and with respect to the plea of guilt proceedings under Rule 142 have been followed by the Commandant, but instead the Commandant proceeded to record the prosecution evidence and conducted the trial as though the Petitioner had pleaded not guilty.

28. The plea has been founded upon an apparent mistake committed by the Commandant, who used the statutory proforma and did not score of the irrelevant part thereof. It is settled law that a mistake which is inconsequential and has caused no prejudice has to be ignored. It be noted as a matter of fact, that the Commandant correctly recorded that the Petitioner has pleaded "Not Guilty" to the charge and thus has rightly proceeded to record evidence. That he forgot to cut the part of the printed proforma which pertains to the procedure to be adopted upon a plea of "Guilty" being entered, is thus neither here nor there.

The mistake committed by the Commandant is no proof of any kind of mala-fide. On the contrary, the fact that the Commandant has recorded evidence clearly establishes the bona-fide of the Commandant who knew that having pleaded "Not Guilty", the guilt of the Petitioner had to be established by the department and for which evidence was required to be led with opportunity given to the Petitioner to cross-examine the witnesses and lead evidence in defiance, an opportunity which was granted and availed of at the trial by the Petitioner who cross-examined the witnesses but self denied the right to make a statement in defiance and produce witnesses in defiance.

29. The next plea urged was that the time of incident recorded in the charge sheet is materially different than the time of the incident emerging from the statements and testimonies of the witnesses examined at the Record of Evidence and the trial, which as urged, shows that the story was concocted.

30. It be noted that as per the charge sheet, the time when the Petitioner was found in a state of intoxication was 23:00 hours and the time when he assaulted Ct. Puran Mal Yadav was 23:40 hours and the time when he damaged the telephone at the GD office was 23:55 hours. While deposing at the trial, PW-1 has referred to the time being 22:30 hours when he found the Petitioner drunk and creating nuisance in a public place. PW-2 has given the time 23:00 hours when PW-1 and PW-3 came to him to inform him about the Petitioner being drunk and creating nuisance in a public place. PW-4 has stated the time 22:30 hours when PW-1 came to him and informed him about the Petitioner being brought back to the Unit upon being found drunk and creating nuisance in a public place.

31. Witnesses recollect time by rough approximations and not as if a clock in their body has recorded the exact time which is being narrated at a subsequent stage. Trivial differences with respect to time would not make a case to label the same as discrepancies.

32. That apart, at the Record of Evidence stage, the Petitioner made a statement which admits of his having been intoxicated and the telephone being damaged. The question therefore of there being any contrivance to concoct a story is completely ruled out.

33. It was then urged that SI Joginder Malakar who was examined at the Record of Evidence stage was unexplainably dropped at the trial and wherefrom learned Counsel would seek to urge that the department had deliberately withheld a witness who could have deposed favourably to the Petitioner.

34. We marvel at the plea. SI Joginder Malakar had made a statement inculcating the Petitioner during Record of Evidence. What has happened is that SI Joginder Malakar was not available when the trial was conducted and thus we find nothing wrong in the department dropping him as a prosecution witness. That apart, the Petitioner could have produced him as a witness in defiance by requiring the Court to summon him as a defiance witness. The Petitioner has not

done so.

35. The next plea urged was that the Petitioner was not drunk evidenced by the fact that as per the prosecution he was produced before the BHM Ram Bahadur Singh and this production could not have been done if Petitioner was drunk inasmuch as Rule 37(2) of the BSF Rules 1969 prohibit an intoxicated person to be brought before a superior officer for investigation of his case until he has become sober.

36. Superior officer has been defined under Clause "w" of Sub-Section 1 of Section 2 of the BSF Act to mean such person who is in command of a member of the Force. There is no assertion in the writ petition that the Petitioner was under the command of BHM Ram Bahadur Singh. That apart, the object behind Rule 37(2) is not to produce a Force personnel who is intoxicated before his superior officer till the person becomes sober so that an unpleasant situation of a drunk Force personnel committing further misdemeanor while not in his senses is avoided. Thus, even if the Rule is breached, it would not mean that an inference needs to be drawn that the person was not intoxicated. That apart, as noted by us hereinabove, in his defiance statement during Record of Evidence the Petitioner admitted his being intoxicated but tried to shift the blame on his friend (whose existence has remained a mystery) by stating that when he i.e. the Petitioner consumed beer his friend probably spiked the same with some intoxicating drug.

37. We may note that all pleas urged were technical in nature and have been dealt with by us, hopefully to the best of our ability. Indeed, in the teeth of the evidence led and even in view of the fairy tale story narrated by the Petitioner by way of his defiance statement during Record of Evidence, there is hardly any scope for any counsel to have urged on the merits of the conviction. This appears to be the reason why nothing was argued on the merits of the evidence led.

38. The writ petition is dismissed.

39. No costs.