

(2012) 08 DEL CK 0301

In the Delhi High Court

Case No : Writ Petition (C) No. 3512 of 1999

Ex. Constable Narender Bahadur Singh

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 14-08-2012

Acts Referred:

Border Security Force Act, 1968 — Section 41(e), 46, 74(2)
Penal Code, 1860 (IPC) — Section 420

Citation : (2012) 08 DEL CK 0301

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : Anirudh Shukla, for Mr. Anil Gautam, for the Appellant; Barkha Babbar, Advocate with Dy. Comdt. Bhupinder Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Singh, J.—The petitioner who in the year 1985 joined BSF as a Constable has filed the present writ petition seeking prayer for quashing the order of dismissal dated 7th October, 1996 passed by a Summary Security Force Court by the Comdt. 25 Bn BSF on a charge u/s 41(e) of Border Security Force Act, 1968 for accepting Rs. 20,000/- from one Nanak Chand for procuring enrollment of two persons namely Satbir Singh and Shiv Kumar in BSF. The case of the petitioner is that the provisions of BSF Rule 45 were never complied with by the Commandant and no hearing of the charge was conducted as per the said provision. The charge was wrongly framed u/s 41(e) of the BSF Act, 1968 because even if it is assumed that the petitioner had accepted the bribe, the charge could at best have been framed u/s 420 IPC read with Section 46 of the BSF Act, 1968.

2. It is alleged by the petitioner that the punishment awarded is excessively harsh and disproportionate. The petitioner has referred some other instances where, accused persons were tried and convicted by General Security Force Court on charges u/s 41(e) of the BSF Act, 1968 but none of the accused therein

were dismissed from service and only minor punishments were awarded, but in the case of petitioner he was held guilty and order was passed for dismissal of service.

3. Being aggrieved by the order dated 7th October 1996, the petitioner submitted a statutory petition to the Director General, BSF on 6th October 1997 to set aside the order and reinstatement of service but, no response was received by him. Another such petition was submitted by him to the Director General of the BSF on 4th July 1998 which was turned down by the order dated 29th October 1998. He seeks re-instatement in service with effect from 7th October, 1996 with full back wages and all consequential reliefs.

4. In the counter-affidavit, it is submitted by the respondents that while working as Security Aide to the Deputy Director (Air) a complaint was received by Vigilance Branch against the petitioner who struck a deal with Shri Nanak Chand to get his candidates enrolled in BSF and had asked for Rs. 45,000/- in return. Nanak Chand paid Rs. 20,000/- to the petitioner and the balance Rs. 25000/- was to be paid on final enrollment. The petitioner was put up on an offence report on 19th February, 1996 before he commandant. He pleaded not guilty to the charge. He was placed under open arrest under Unit Order No. Estt/D-530/ROE NES/25/96/3208-09 dated 19th February, 1996 and directed to engage defense counsel for his SSFC trial and to produce list of his defense witnesses. The SSFC court found the petitioner guilty and sentenced him to be dismissed from service.

5. During the SSFC proceedings, seven witnesses were produced from the prosecution.

6. At the trial (i) PW-1 Satbir Singh deposed that he came in contact with the petitioner when he visited his brother Sh.Tej Pal Singh in Sarojini Nagar who is a seller of plastic and steel items. His brother had spoken to Nanak Chand who was running a fruit shop on footpath like his brother. He also met the petitioner and after looking his physique, the petitioner assured that he would be enrolled in BSF. The witness further stated that his brother asked him that a sum of Rs. 20,000/- be given. He did not know what for. His brother had asked for the money and he managed the same and gave it to his brother. He did not bother to ask his brother about the purpose for which money was required. Since his height was less, he got rejected. Although he is not aware about any transaction as had taken place regarding his enrollment as he only gave the said amount to his brother, nor he was aware about the motive of the petitioner. The petitioner did not cross-examine PW-1 despite of opportunity granted to him,

ii) PW-2, Tej Pal Singh deposed that he was running a footpath shop selling plastic and steel items at Sarojini Nagar, New Delhi. He developed friendship with Nanak Chand. He wanted to enroll his younger brother Satbir Singh in BSF. He came to know from other shopkeeper that Nanak Chand was having good contact with BSF person who used to visit his shop. He requested Nanak Chand for

enrollment of his brother in BSF. After ten days Nanak Chand assured that his brother could be enrolled, but it would cost Rs. 25,000/- as gratification for the enrollment. He paid Rs. 20,000/- to Nanak Chand but did not obtain a receipt from him. He raised another Rs. 5,000/- with his own resources and gave this amount also to Nanak Chand for getting his brother enrolled in BSF. He further deposed that before handing over the money, his brother Satbir Singh was shown to Const.Narender Bahadur (petitioner herein) by Nanak Chand who told that his brother was fit enough to get enrolled in the BSF. The witness further stated that his brother could enroll in BSF therefore, he asked the petitioner to return his money, the petitioner told him that agreement was between him and Nanak Chand whom he would return back the money and asked him to collect the money from Nanak Chand. When he met Nanak Chand the next day he asked him to return back Rs. 25,000/- immediately which was given to him, as PW-2 was not interested in getting his brother enrolled in BSF through him. Nanak Chand assured him that there was going to be recruitment at Chhawla Camp. Nanak Chand took his brother at Chhawla Camp but there was no recruitment. After about two days, the entire amount of Rs. 25,000/- was returned to him.

iii) PW-3 Nanak Chand deposed that he had approached the petitioner to get his nephew enrolled in BSF and the petitioner assured him that he would arrange the enrollment of his nephew namely Shiv Kumar Sharma in BSF but, a sum of Rs. 25000/- would be required for arranging it, however, on his request reduced the amount to Rs. 20,000/-. Thereafter, PW-2 Tej Pal also approached PW-3 Nanak Chand to get his brother enrolled into BSF. PW-3 Nanak Chand approached the petitioner, who agreed to arrange his enrollment for a sum of Rs. 25000/-. Petitioner told him to get both the boys for appearing in the enrollment test at Delhi. Thus, total sum of Rs. 45,000/- received by him which he kept in his possession. Accordingly, both Shiv Kumar and Satish were called from their villages. When they reported, petitioner intimated that the enrollment rally had been cancelled and he asked them to wait for some more time. The petitioner further called both the candidates for appearing for recruitment test at Mainpuri in the month of July/August and demanded Rs. 20,000/- in advance which PW-3 Nanak Chand gave him. However, none of the candidates got enrolled in BSF and neither the petitioner returned the money. The witness further stated that he believed the petitioner to be an honest person, man of his word, so he did not hesitate to give the petitioner advance of Rs. 20,000/- for the enrollment of both the boys. However, both the candidates Satbir Singh and Shiv Kumar could not get enrolled and they demanded their money back. He already had Rs. 25,000/- out of Rs. 45,000/-. He asked the petitioner to return back the amount of Rs. 20,000/-. The petitioner told him that he would be able to pay the amount in piecemeal from his monthly pay. The witness further deposed that since pressure from Shiv Kumar was high and he was insulted, he immediately raised some loan and returned back Rs. 20,000/- to Shiv Kumar, but till the date of his evidence, PW 3 Nanak Chand could not get his money of Rs. 20,000/- back from the

petitioner. In his re-examination by Court, PW-3 Nanak Chand stated:-

I had developed friendship with Const. Narender Bahadur who kept me in dark stating that he is a head constable in BSF and close to very senior officers and he was capable of helping the people get enrolled in BSF.....

iv) PW-4 Shiv Kumar stated in his examination-in-chief that he had approached PW-3 Nanak Singh to help him get enrolled in any force who told him that he has a friend in BSF who had agreed to get him enrolled in BSF, but, it will cost Rs. 20,000/-. He immediately paid him Rs. 10,000/- and paid Rs. 10,000/- later. He also stated that Rs. 20,000/- were handed over to the petitioner in his presence. But, the petitioner was not able to get him enrolled in BSF and he came to Delhi and asked Nanak Chand to return back money. Nanak Chand approached petitioner to return back the amount since he had become overage and enrollment was not permissible in future and he got back his Rs. 20,000/- from Nanak Chand in piecemeal.

v) PW-5 Suresh Singh deposed that he was living with his business partner Nanak Chand. He recognized the petitioner sitting beside him in the Court. He deposed that Nanak Chand informed him that the petitioner was a reliable person and he would not let him down for the amount demanded by him. He saw Nanak Chand, Tej Pal and Shiv Kumar along with the petitioner sitting inside the room and they were engrossed in talk concerning transaction of money to get them enrolled. The petitioner was demanding Rs. 20,000/- for giving to the enrolling officer for getting Shiv Kumar and Satish enrolled in BSF and later on, he came to know that Rs. 20,000/- was paid to the petitioner as demanded by him for enrollment.

vi) PW-6 is HC Mohinder Singh who recognized Nanak Chand and Suresh Singh who were present in CGO Complex office as well as his signatures at the places on petitioner's written statement. PW-7 Vijender Kumar deposed that he met Jagat Bahadur, brother of the petitioner. He recognized the petitioner sitting beside him in the room. He managed to get a room on rent for the petitioner at P-102, Pillangi Gaon, Sarojini Nagar Market, New Delhi. Six defence witnesses were also examined.

7. The respondents had initiated action on a complaint received by Vigilance Branch against the petitioner who while working as Security Aide to Deputy Director (Air) had struck deal with Nanak Chand. In case the statement of all the witnesses are read together, it appears to us that the petitioner was known to Nanak Chand and he agreed to get enrolled PW-1 and PW-4 in BSF.

8. The amount was paid for recruitment in BSF of Satbir Singh and Shiv Kumar. The prosecution witnesses PW-2 and PW-4 have specifically stated that the amount was handed over to the petitioner by PW-3 Nanak Chand in their presence. In cross-examination of the said witnesses, the petitioner failed to demolish the case of the prosecution in his defence.

9. The respondents submit that the statutory petition against the conviction by SSFC was also considered by DG but the same was rejected by him. The rejection order was sent to the petitioner through registered post. The petitioner's representation was also rejected being devoid of merit. It was also alleged that the petitioner was put before Comdt. 25 Bn BSF on proper offence report dated 19th February, 1996 who pleaded not guilty.

10. The ground taken by the petitioner in the writ petition that he was not allowed to engage defence counsel during his SSFC trial and he had also not received copy of the charge-sheet are false and frivolous. The petitioner was allowed vide communication dated 3rd October, 1996 by the unit for engaging defense counsel during his SSFC trial and to produce list of his defense witnesses. A copy of the charge sheet and ROE were also handed over to the petitioner on 24th September, 1996 as per record available.

11. The petitioner had submitted an application on 6th October, 1996 for detainment of defending officer. Sh.K.L.Dhar, Asstt. Comdt. was already detained as friend of petitioner vide unit order dated 24th September, 1996.

12. The Summary Security Force Court was held at New Delhi on 7th October, 1996 for trial of the petitioner on a charge u/s 41(e) of BSF Act, 1968 and the petitioner was found guilty.

13. Section 41(e) lays down the specific offence of acceptance of gratification for various purpose which is re-produced below:

(e) Directly or indirectly accepts or obtains or agrees to accept, or attempts to obtain, for himself or for any other person any gratification as a motive or reward for procuring the enrolment of any person, or leave of absence, promotion or any other advantage or indulgence for any person in the service, or it may thus be seen that when there is a specific offence specified under the BSF Act, there is no need to try a person u/s 46 of the Act which deals with civil offences. It is, therefore, denied that provisions of Section 74(2) of Act and rules 158 of BSF rules were circumvented.

14. The petitioner being proved to be guilty. The testimony of PW-1, Satbir Singh, PW-2, Tejpal Singh, PW-3, Nanak Chand and PW-4, Shiv Kumar at the court of inquiry proceedings have gone against the petitioner. The petitioner cross-examined PW-2 to PW-6, but was not able to demolish the case of other side to his innocence. The record produced before us would reveal that the petitioner was tried in a fair manner. Thus, the petitioner has been rightly charged u/s 41(e) of the BSF Act, 1968.

15. On the aspect of penalty imposed, the petitioner is not entitled to take the ground to compare his case with two other cases. It cannot be said that the penalty levied is excessive and in past, for similar offence a lesser penalty was levied to other person as each case dependent upon its own circumstances. It is he who got involved in a corruption case to get enrollment done and being a

Government Servant he has to suffer the consequences. There is no merit in the writ petition, the same is accordingly dismissed. No costs.