

(2012) 08 DEL CK 0442

In the Delhi High Court

Case No : Writ Petition (C) 905 of 1998

Ex. Constable Shashi Dutt Sharma

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Citation : (2013) 1 SCT 591

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

Bench : Division Bench

Advocate : Anil Gautam and Mr. D.K. Sharma, for the Appellant; Barkha Babbar, Advocate and Dy. Comdt. Bhupinder Sharma, Law Officer, BSF, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Learned counsel for the petitioner concedes at the outset that none of the grounds pleaded in the writ petition are worthy of any consideration, but prays that on the subject of the penalty being disproportionate to the gravity of the offence, the order dismissing petitioner from service be set aside and an appropriate penalty be levied. At the Summary Security Force Court trial the petitioner was tried for: Firstly, being intoxicated; Secondly for having violently pushed Subedar Prabhat Singh (criminal intimidation); and lastly for having used unparliamentary language against all jawans and superior officers while manhandling Ct. Satish Chand Pandey.

2. Learned counsel for the parties concede that what happened on February 06, 1995 at 21:40 hours has been best described by PW-10 Asstt. Comdt. Anil Kumar, who, at the trial deposed as follows:

IRLA - 6028 Shri. Anil Kumar, AC of 45 Bn BSF being duly affirmed is examined by the Court.

I am serving in 45 Bn BSF since Aug 1994 and was posted in F Coy. At present also I am doing as Coy Comdr in F Coy. (The witness identified the accused Ct.

S.D. Sharma who was present in the Court). On 06 Feb 95 I was taking dinner in my room at about 2115 hours I heard loud noise in the camp area. Since I was not having any telephone in my room I came in officer's mess and talked to the exchange operator who informed me that the noise was from QG area. I talked to Guard Comdr in QG who informed me that Ct. S.D. Sharma had consumed liquor and he quarreled with guard personnel and now making unparliamentary language to others. I informed the matter to Shri. Brijesh Kumar, DC who was the Adjt, he told me to go to the QG and enquired the matter. I then came in QG at about 2130 hours. Where I saw a good gathering. Ct. Arienjay Kumar was on sentry duty, the other persons consisting of Guard Comdr, HC Ramesh Lal, BHM Mulkhraj, duty NCO Suraj Singh, HC Raj Kamal, L/Nk Susham Kumar, Ct. S.C. Pandey, Ct. Ashok Kumar were all standing surrounding Ct. S.D. Sharma who was standing with his hands folded. Ct. S.D. Sharma was shouting and telling that he wanted justice, he wanted to meet officers just now otherwise he would shoot two persons. I in the first go did not meet Ct. S.D. Sharma and enquired the matter from the other personnel who were surrounding Ct. S.D. Sharma. They all told me the story of fighting between Ct. S.D. Sharma and Ct. S.C. Pandey and also showed the mark of bruises on the face of Ct. S.C. Pandey which he received because of beating by Ct. S.D. Sharma. They also told that under the influence of liquor Ct. S.D. Sharma also spoke ill about officers, SOs and others apart from quarrelling with guard personnel. While I was talking to the persons, Ct. S.D. Sharma observed me and he became silent. I then came close to him and enquired why he had quarreled and abused others. The accused Ct. S.D. Sharma was knowing that an officer had come did not come in attention, he was standing with his hand folded. He was staggering and stammering while speaking and also smelling very badly with foul smell. He told that he had meted out excessiveness and wanted justice so he wanted that he should be put before the officers just now for justice. He also told that everyone here had beaten him and he had received injury on the face in the eye region. I tried to locate the injury on his face and observed that there was some minor bruises on his face which he might have received during fighting with Ct. S.C. Pandey. I told him that his condition was not allowing him to see the officers just now and he was also to stay in closed cell during night and his justice would be met in the morning. I got the adjacent room of Prisoner's cell vacated and Ct. S.D. Sharma was motivated to stay in that room for the night which he willingly did. In the meantime adm SO Bachan Singh also arrived their (sic) who then took him to Unit MI Room for medical examination. Thereafter I alerted the guard personnel and went from QG and reported the whole matter to Shri Brijesh Kumar, DC.

3. We note that in his statement by way of defence, the petitioner has claimed that the jawans had caught him and poured alcohol down his gullet, a version, which learned counsel for the petitioner very fairly concedes is incorrect.

4. From the statement of Asstt. Comdt. Anil Kumar it stands established that the petitioner had consumed alcohol and was having a verbal duel, during which the petitioner was using unparliamentary language. By the time Asstt. Comdt. Anil

Kumar, on hearing commotion reached the place of the occurrence, he saw an injury in the eye region of the petitioner and bruise marks on the face of Ct. S.C. Pandey. In an inebriated condition, the petitioner was demanding justice. He was staggering and stammering.

5. What was the justice demanded by the petitioner? Let us note the testimony of Ct. S.C. Pandey, PW-4. At the trial he deposed:

I am serving in 45 Bn BSF since March 89 and since then posted in C Coy. (The witness identified the accused in the court). On 6 February 1995 our duty was in Q.G. Nk.(now HC) Ramesh Lal was our Guard Comdr. Ct. S.D. Sharma, Ct. Ashok Kumar, Ct. Arienjay Kumar and myself were the guard personnel. Head Constable Ramesh Lal was in HQ Coy Kote for issuing arms to the night securities. It was about 1800 hours. Ct. S.D. Sharma and Ct. Arienjay Kumar both went to mess and brought our night meal. Ct. Ashok Kumar was on security duty from 17:00 hours to 19:00 hours and I was to replace him at 19:00 hours so I was present in the Q.G. HC Ramesh Lal after finishing his job came to sentry Ct. Ashok Kumar whom I was going to replace and informing that he was going for natural call left the Q.G. Prior to that Ct. S.D. Sharma also left Q.G. for natural call. I at 19:00 hours replaced Ct. Ashok Kumar. At about 19:45 hours when I was on sentry duty, I heard exchange of hot words among the guard personnel namely Ct. S.D. Sharma, Ct. Ashok Kumar and Ct. Arinejay Kumar. On hearing noise of quarrel, I enquired why they were abusing each other. Ct. S.D. Sharma was abusing Ct. Purushottam Singh for taking away his (Ct. S.D. Sharma) radio. I told not to make "Halla-Gulla" let somebody should go and bring his radio from Ct. Purushottam Singh. Ct. Ashok Kumar immediately went to Ct. Purushottam Singh and both came with the radio and handed over to Ct. S.D. Sharma. Ct. S.D. Sharma was taking his night meal and within himself uttering abusive language to Ct. Purushottam Singh. In the meantime HC Ramesh Lal Guard Commander also came back in the QG where he found Ct. S.D. Sharma making noise. HC Ramesh Lal enquired from Ct. S.D. Sharma for his cause of annoyance. The time passed while HC Ramesh Lal trying to pacify Ct. S.D. Sharma and at 21:00 hours I was relieved by next sentry Ct. Arienjay Kumar. I was about to go to bed to rest, Guard Commander Ct. Ramesh Lal told me to take care of Ct. S.D. Sharma who was from my coy. He also told that, in case Ct. S.D. Sharma was not stopping himself from making unparliamentary language against Unit personnel he would go and complain against him (Ct. S.D. Sharma). I went to Ct. S.D. Sharma who was sitting near the bukhari in Q.G. and tried to pacify him as I found him for no big cause he was making hue and cry and abusing his colleagues. He also made unparliamentary language against officers when anybody went him to tell stop abusing. He was uttering words "CHHORI CHOD OFFICER LOG MERA KYA KAR LENGE". When to control him I went near Ct. S.D. Sharma who gave me a strong boxing on my face which heart (sic) me at my left eye region Ct. S.D. Sharma also hold me from my jersey to beat me further, then HC Ramesh Lal intervened and while trying to get both of us separated my jersey was badly torn. I after being released by the accused ran away from Q.G. with

fear as Ct. S.D. Sharma was looking fearful. He was not in sense and falling here and there under the influence of liquor. I thought he would harm me bodily if he saw me again. After about 10 minutes BHM HC Mulkhraj came in the lines and told me to retrace to Q.G. where Sub Prabhat Singh was wanting me for questioning. I came in the Q.G. along with BHM where I saw Sub Prabhat Singh was talking to Ct. S.D. Sharma. Before Sub Prabhat Singh could speak to me I saw Ct. S.D. Sharma violently pushed Sub Prabhat Singh, due to which Sub Prabhat Singh fell down on the ground. Ct. S.D. Sharma who was not able to control himself also fell down on Sub Prabhat Singh. BHM and others who were present there helped Sub Prabhat Singh to stand and Ct. S.D. Sharma was separated. Sub Prabhat Singh then did not speak to anybody and went to inform Adjt on telephone present in the Q.G. After informing Adjt., Sub Prabhat Singh immediately left the Q.G. Thereafter Shri Anil Kumar, AC also came in the Q.G. and after making him to realize his mistake and finding him in intoxicated state Ct. S.D. Sharma was confined in a closed room adjacent to the Prisoner's cell in the Q.G. Thereafter as per the instruction of Adjt., ADM SO and Duty SO took us to MI room for medical examination. HC Ramesh Lal, Ct. S.D. Sharma and myself were medically examined at MI room by HC/NA Sant Lal. HC/NA Sant Lal observed that out of us Ct. S.D. Sharma had consumed liquor. He also came at Q.G. and examined others to find out if anyone had taken or consumed liquor. Ct. S.D. Sharma was after medical examination again put in the closed room and in his place someone was detailed for the night duties.

6. From the testimony of Ct. S.C. Pandey it is apparent that the petitioner was upset and was abusing Ct. Purushottam Singh for having taken away his radio. To pacify the petitioner, Ct. Ashok Kumar went to Ct. Purushottam Singh and returned with the radio, but petitioner kept on uttering abusive language with reference to Ct. Purushottam Singh. The Guard Commander, HC Ramesh Lal, came to pacify the petitioner but requested Ct. S.C. Pandey to do so. As Ct. S.C. Pandey tried to pacify the petitioner, the petitioner started abusing all and sundry and boxed him on his face. Being under the influence of alcohol, petitioner was not able to control himself and had pushed Subedar Prabhat Singh.

7. It is apparent that Ct. Purushottam Singh having taken petitioner's radio (in fact a transistor) had angered the petitioner. After doing his duty, the petitioner consumed alcohol and rather than restrict himself to a peg or two, probably gulped down a pint and obviously lost his senses. Thereafter, he became a victim of circumstances, and poor Ct. S.C. Pandey, who went to comfort the petitioner became a victim; being on the receiving end. In the melee Subedar Prabhat Singh got pushed.

8. The petitioner did not act out of malice.

9. Learned counsel for the respondent says that it was an act of indiscipline and further urges that no indiscipline needs to be brooked in Para Military Forces.

10. We are conscious of discipline to be maintained by officers of Para Military

Forces because they carry arms and situations may become explosive. But, each incident has to be weighed on its own facts.

11. The petitioner was not armed. He never acted out of malice. We cannot ignore the pains of separation faced by jawans from the family and the solitude in which they find themselves. Performing duties at all odd hours and in hostile and difficult terrain; stationed in areas where telecast is not available, the only means to overcome the solitude and loneliness is a transistor/radio and perhaps some alcohol. The petitioner was angry at a temporary loss of one meaningful belonging which he had. He took recourse to the other (alcohol). We do not blame him for his state of mind; simultaneously clarifying that we are not to be understood that if a brother jawan picks up your transistor, you should get drunk and throw a tantrum; but cannot once again help ourselves in not recording that the situation in which the humble jawans find themselves is sometimes overwhelming, when even a rational person may lose momentary self control.

12. For the incident in question, the circumstance which led the petitioner to do what he did, we are of the firm opinion that the penalty of dismissal from service is disproportionate to the gravity of the offence.

13. Allowing the writ petition and quashing the penalty of dismissal from service inflicted upon the petitioner, we direct petitioner to be reinstated in service, but without any backwages and this loss of wages would be sufficient penalty. With no backwages paid, the period interregnum levy of penalty of dismissal from service till petitioner is reinstated shall be treated as spent on duty for purposes of pension. Compliance be made within six weeks from today. No costs.