
(2011) 07 DEL CK 0370
In the Delhi High Court
Case No : Writ Petition (C) 3436 of 1996

EX. CT. Ram Phal	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 27-07-2011

Acts Referred:

Border Security Force Rules, 1969 — Rule 45, 48(3)

Citation : (2011) 2 ILR Delhi 358

Hon'ble Judges : Sunil Gaur, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : S.R. Kalkal, for the Appellant; Anuj Aggarwal, Bhupinder Sharma and Dy. Commandant, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Taking cognizance of an offence Report dated 22.5.1994 and conducting proceedings contemplated by Rule 45 of the BSF Rule 1969 i.e. the hearing of the charge and forming an opinion that Record of Evidence was required to be prepared, drawing up a formal charge, the Commandant of Unit to which the Petitioner was attached directed Deputy Commandant Y.M. Upadhyay to complete proceedings pertaining to Record of Evidence.

2. Statement of 10 witnesses were recorded during Record of Evidence.

3. Summarising the deposition of 10 witnesses, all of whom were permitted to be cross-examined, it may be noted by us that HC Harbans Singh PW-1, deposed that on 21.5.1994 at about 19:45 hours when CHM Lachhi Ram was holding Roll Call, Ct.Ram Phal i.e. the Petitioner and Ct.Uday Pal Singh made a complaint that since the Cook Ct.Satbir Singh, was not cooking enough chapaties the 2 could not partake that evening meal. He i.e. HC Harbans Singh inquired from Ct.Satbir Singh as to why he had cooked less chapaties, to which Ct.Satbir Singh replied that in the past chapaties used to be wasted and this was the reason he cooked less chapaties today. He said that constables should inform him in advance the

number of chapaties they would like to eat so that wastage of ration could be prevented. That while responding to him, Ct.Satbir Singh used uncivilised language. Due to uncivilised language used by Ct.Satbir Singh, one Ct.Sunil Dutt started arguing and CHM Lachhi Ram had to take all of them including HC Harbans Singh to the Coy. Commander. On the way to the office of the Coy. Comdr., Ct.Ram Phal and Ct.Uday Pal Singh used uncivilised language against him i.e. HC Harbans Singh. Both of them accused him by saying that ever since he became the mess Commander he was procuring false bills from shop keepers and also that he had deliberately left them at the market, which allegations he i.e. HC Harbans Singh denied. An inquiry was thereafter conducted as regards the allegations made by them. As the same were found to be baseless by the Coy. Comdr. the 2 were called the next day i.e. on 22.5.1994 and when told that the allegations made by them the previous day were false they immediately retaliated by taking off their cap and belt and threw the same. The Coy. Comdr. left for patrolling duty and he i.e. HC Harbans Singh returned to place back the Mess Register and as he came back, the two i.e. Ct.Ram Phal and Ct.Uday Pal Singh threatened him stating that they would kidnap his children and abused in the name of his sister. Seeing their aggressive stand he i.e. HC Harbans Singh ran to the living barracks where Nk.G.P.Tiwari, Ct.Radhey Shyam, Ct.Rajesh Kumar, LNK Dvr.R.Morandi and Sweeper Kiran Pal were present. He sought their help. Ct.Ram Phal and Ct.Uday Pal Singh entered the room and mercilessly beat him as he was being rescued and taken to a safe place i.e. Signal Center, the 2 constables continued to assault him. Nk.G.P.Tiwari contacted the Coy.Comdr. who reached at the Signal Center. He i.e. HC Harbans Singh was sent to the Battalion Headquarter for medical treatment since as a result of the beating he sustained a swelling on the left side of his forehead and got injury on the upper lip, and swelling below the right eye and lacerated wound on the left leg.

4. HC Harbans Singh was cross-examined by the Petitioner and the only question he put to him pertain to the circumstances under which they could not board the Battalion vehicle at the market on 21.5.1994, to which HC Harbans Singh replied that the same was purely accidental and not due to any intentional act of his.

5. Nk.G.P.Tiwari PW-2, deposed facts in sync with PW-1 except the facts deposed by PW-1 of what happened in the office of the Coy. Comdr. In other words, he corroborated PW-1 of having seen PW-1 being chased by the Petitioner and Ct.Uday Pal Singh and being assaulted. Question as to why Ct.Sunil Dutt who had also triggered the matter by arguing at the evening Roll Call was not made an accused, he stated that Ct.Sunil Dutt was not involved in any beating.

6. Ct.Radhey Shyam PW-3 corroborated PW-1 with respect to having seen PW-1 being chased by the Petitioner and Ct.Uday Pal Singh and being mercilessly beaten. He confirmed that he and Nk.G.P.Tiwari rescued PW-1 and took him out of the room. Relevant would it be to note that despite of opportunity granted, Petitioner did not cross-examined PW-3.

7. Sweeper Kiran Pal Singh PW-4, LNK Dvr.R.Morandi PW-5 and Ct.Rajesh Kumar

PW-6, deposed in sync with PW-3 i.e. stated that they saw the Petitioner and Ct.Uday Pal Singh chase and assault PW-1.

8. Ct.Joy Deb Ghosh PW-7 deposed that he attended the Roll Call on 21.5.1994 and that on said day Ct.Ram Phal and Ct.Uday Pal Singh had made a grievance about the inadequate chapaties being available. Relevant would it be to note that regarding the incident which took place on 22.5.1994 he said that he knew nothing of what had happened except that he had made an entry regarding open arrest of the Petitioner and Ct.Uday Pal Singh.

9. HC Lachhi Ram PW-8 deposed that on 21.5.1994, when he held the Roll Call, Ct.Ram Phal and Ct.Uday Pal Singh told the CHM of inadequate chapaties being cooked. He i.e. HC Lachhi Ram inquired from Ct.Satbir Singh as to why he had cooked less chapaties to which Ct.Satbir Singh said that he did so to stop wastage by responding in uncivilised language. Ct.Sunil Dutt intervened and started arguing with Ct.Satbir Singh. He took all of them including HC Harbans Singh to the Coy. Comdr. where Ct.Ram Phal and Ct.Uday Pal Singh levelled allegations against HC Harbans Singh stating that he was fudging mess bills and was obtaining blank bills from shopkeepers and in the evening he had deliberately left them in the market which allegation was denied by HC Harbans Singh. That an inquiry into the allegations was conducted and found to be baseless on 22.5.1994. Petitioner and Ct.Uday Pal Singh retaliated to the decision of the Coy.Comdr. by taking off and throwing away their cap and belts. After a little while he heard shouts of Nk.G.P.Tiwari and rushed to barrack room where he saw Petitioner and Ct.Uday Pal Singh beat and abuse HC Harbans Singh. He took HC Harbans Singh to the Signal Center and informed the Coy. Comdr. who reached the Signal Center. Ct.Ram Phal and Ct.Uday Pal Singh were disarmed. He saw injuries on the person of HC Harbans Singh.

10. Relevant would it be to note that HC Lachhi Ram was not cross-examined.

11. Deputy Commandant B.S. Sarna PW-9 deposed that he was the Coy. Comdr. and that on receiving telephonic information from CHM Lachhi Ram about the incident in question, he reach the Signal Center to take charge of the situation.

12. ASI (Compounder) M.K. Roy Chowdhary PW-10 deposed that on 22.5.1994 he had examined HC Harbans Singh and gave him medical treatment pertaining to the injuries, which we note were the ones disclosed by HC Harbans Singh in his testimony during Record of Evidence proceedings.

13. Record produced before us shows that after departmental witnesses were examined, Petitioner Ct.Ram Phal was given an opportunity to make a statement and was cautioned, in view of Rule 48(3), that the statement which he would be making can be used against him and that he had an option not to make any statement. Ct.Ram Phal agreed to make a statement in which he stated that HC Harbans Singh had deliberately ensured that he and Ct.Uday Pal Singh were left in the market on 21.5.1994 and that his and Ct.Uday Pal Singh's allegations of inadequate chapaties being cooked and PW-1 mismanaging the affairs in the

mess were correct. He stated that their grievances were not being redressed. Pertaining to the incident of 22.5.1994, he stated that with respect to their grievances, the Coy. Comdr. called him and told him that having checked the records he had found nothing amiss. The Coy. Comdr. told them that they were unnecessarily spreading ill feelings and that he would ensure that the 2 lost their uniform. Thereafter, the Coy. Comdr. left. He i.e. Ct.Uday Pal Singh and Ct.Sunil Dutt went back to their living barracks. As he went to wash hands in the bath room he met HC Harbans Singh who was coming from the opposite side. HC Harbans Singh taunted saying that he would teach him a lesson for reporting against him. He retorted that what lesson HC Harbans Singh could teach him and that HC Harbans Singh hit him on his mouth. He caught hold of him and then a fight started between him and HC Harbans Singh and continued for 2-3 minutes. As they reached the living barrack, HC Harbans Singh entered the barrack. The fight continued there also. During fight he did not notice as to who exactly was present but recognised Nk.G.P.Tiwari and Sweeper Kiran Pal who tried to intervene. In the meanwhile, Ct.Uday Pal Singh also came. HC Harbans Singh abused Ct.Uday Pal Singh and swore in the name of his sister. He returned to his barrack and so did Ct.Uday Pal Singh. After sometime Coy. Comdr. called him Ct.Sunil Dutt and Ct.Uday Pal Singh and directed them to deposit their arms.

14. Suffice would it be note that during Record of Evidence the Petitioner admitted having assaulted HC Harbans Singh but claimed that he was provoked, a version he never put to any of the witnesses of the prosecution whose evidence was recorded during Record of Evidence.

15. Considering the Record of Evidence, the Commandant formed an opinion that the Petitioner needs to be tried at a Summary Security Force Court. Petitioner was intimated that he would be tried the next day.

16. As per the record, when the indictment was read out to the Petitioner, he pleaded guilty and based on the admission of

guilt, the Commandant directed Petitioner's dismissal from service.

17. Petitioner alleges that he never pleaded guilty.

18. The original record produced before us shows that it has been recorded that when the indictment was read at the trial the Petitioner pleaded guilty. But we find that the Petitioner has not signed the plea of guilt. Now, if a person pleads guilty to a charge, the least what is required to be done is to obtain the signatures of the accused under the plea of guilt, for the reason this was to be the only evidence, if there is a dispute, whether or not the accused pleaded guilty.

19. In a similar situation noting that the plea of guilt was sans the signatures of the accused, in the judgment reported as 2008 (152) DLT 611 Subhash Chander v. Union of India and Ors., the conviction and punishment based upon the plea of guilt was negated. It was held that it would be permissible to try the accused at a re-convened Summary Security Force Court.

20. Since we have found a fundamental error, we do not deal with the issues whether at all the Petitioner was given adequate time to defend himself at the trial or whether or not he was given an opportunity to engage a defence assistant, for the reason all these were to be irrelevant once we hold that the Petitioner needs to be re-tried.

21. Accordingly, we disposed of the writ petition quashing the order dismissing the Petitioner from service as also the Petitioner's conviction at the Summary Security Force Court. We permit the department to try the Petitioner afresh. We leave it open to the competent authority to determine as to in what manner the period post levy of penalty of dismissal from service till Petitioner reinstatement pending trial would be reckoned.

22. The Petitioner would be reinstated forthwith.

23. No. costs.