

(2006) 07 DEL CK 0176

In the Delhi High Court

Case No : Writ Petition (C) No. 3256 of 2006

Harish Chandra Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-07-2006

Acts Referred:

Border Security Force Act, 1968 — Section 117, 16, 20
Border Security Force Rules, 1969 — Rule 167, 48(2), 48(3), 49
Constitution of India, 1950 — Article 226

Citation : (2006) 07 DEL CK 0176

Hon'ble Judges : Swatanter Kumar, J;G.S. Sistani, J

Bench : Division Bench

Advocate : F.C. Sharma, for the Appellant; Barkha Babbar, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—Harish Chander Singh, Constable, joined the service in Border Security Force on 15.9.1997. According to the petitioner he had not only worked satisfactorily but because of the services rendered by him, he was rewarded twice by the Commandant, once for winning the first prize in shooting and the second time for good maintenance of arms. He was posted on the strength of "B" Coy of 124 Battalion of respondent No. 4 in Mamdot, Ferozpur, Punjab. On 23rd and 24.5.2002, the petitioner was tried by a Summary Security Force Court for the following charges:

(a) CHARGE-I BSF Act, 1968 LEAVING HIS PICQUET WITHOUT ORDERS

Section 16(d) FROM HIS SUPERIOR OFFICER

In that he, While deployed at Section P.P. Gazni Khunder minor bridge on 03 Mar' 02, left the said picquet at about 1230 hrs without orders from his superior officer

(b) CHARGE-II Section 20(a) ASSAULTING HIS SUPERIOR OFFICER

In that he, after visiting BOP DRD Nath on 03 Mar'02 at about 1330 hrs assaulted No. 66422456 SI Puran Singh of "B" Coy with his uniform belt resultantly SI Puran Singh sustained injuries on his head/shoulder.

True copy of Charge Sheet is annexed as Annexure P-1.

2. After the said trial, the petitioner was found guilty of the article of charges and was awarded a sentence of "DISMISSAL FROM SERVICE". Name of the petitioner was struck off the strength of the Unit on 24.5.2002 itself, vide an order of the same date. Copy of the said order has been annexed to the writ petition as Annexure 1. The petitioner being aggrieved from the said order and after having received a copy of the proceedings of the trial, preferred a statutory appeal on 16.8.2003. The statutory appeal of the petitioner was also rejected by respondent No. 2, the Director General, Border Security Force, vide his order dated 4.9.2003.

3. It is the pleaded case of the petitioner that he was available at his post at the time of occurrence and he was seen entering his post at about 1325- 1330 hrs. by PW6, Constable Kashmir Singh. It is also pleaded that the post where he was deployed i.e. Ghazni Khunder minor bridge was nearly 5 kms away from the place of occurrence, as such he could not have committed the offence for which he was charged. The petitioner had not pleaded guilty of all the articles of charges and the findings of the Commandant that he was guilty of charges was not based on any evidence. In fact, according to the petitioner neither any complaint was made nor anybody was injured. The petitioner was not afforded any opportunity to make his statement. The statements of 10 prosecution witnesses were recorded on 6.3.2002 and 7.3.2002 and the petitioner was also asked to make his statement, which he declined, as such the entire enquiry was contrary to law.

4. One of the major grounds taken by the petitioner is that in accordance with Rule 49 of the BSF Rules, the abstract of evidence which was prepared ought to have been supplied to him which was not supplied and there was a statutory violation of specific Rules as well as principles of natural justice. It is also stated by the petitioner that he was not even granted 24 hours to make his statement as per rules. The commandant on 20.5.2002 had informed the petitioner that he would be tried by SSFC on 23.5.2002 and he was even given liberty to choose "Friend of accused" and was even permitted to engage a counsel. According to the petitioner he was not permitted to engage a counsel and sufficient time was not given to him.

5. On the above premise the petitioner challenges the legality and correctness of the orders dated 24.5.2002 and 4.12.2003, the same being vocative of the Rules; principles of natural justice and the findings of the court being not supported by any evidence on record.

6. The respondents who appeared on advance notice, filed no counter and in fact, there was no specific notice to do so but they produced the original records

of the case.

7. We had heard the learned Counsel appearing for the parties at some length. Apparently, the petitioner was dismissed from service vide order dated 24.5.2002. He had filed a statutory appeal against the said order which also was rejected by the Appellate Authority vide its order dated 4.12.2003. Admittedly, the appellant had received the said order but for this long period of three years no legal action was taken. The present writ petition has been filed by the petitioner in the year 2006. Of course, there is no period of limitation prescribed for filing a writ petition but undue and unexplained delay in approaching the court under Article 226 of the Constitution of India would always tilt the equities against the petitioner. In fact, in the petition the petitioner has nowhere stated why he was approaching the court after a considerable lapse of time.

8. Besides the above reasons, we would now discuss the merits of the case. The charges against the petitioner are of serious nature. As per the findings recorded by the Summary Security Court, the Article of charges have been proved.

The contention of the petitioner that the findings are not based upon any evidence is without any merit. The statements of various PWs which were recorded by the Court during the trial have been placed on record. PW-10, Gurbaksh Singh on oath stated as under:

On 03.03.02 at about 1340 hrs. SI Puran Singh of "B" Coy 124 Bn BSF reported me over telephone that Ct Harish Chander Singh of "B" Coy 124 Bn BSF man handled and criminally assaulted on me by web belt, resultantly, I sustained serious injuries on my head and back side of the body. In the mean time I got instructions from Sh. Prahlade Singh Off. Comdr 124 Bn BSF over telephone and I immediately rushed to the place of incident in govt. Veh. while I was on way to BOP DRF Nath SI Puran Singh met me at Village Gazniwala, who came there for taking first Aid/Treatment in a Lt Veh (Jonga) since the SO was in injured condition. I brought him in my vehicle to Bn HQ Mamdot for medical check up and treatment. On way I also brought Ct. Harish Chander Singh with me to Bn HQ for necessary investigation about the incident. When I was returning back to Bn HQ, Sh. P B Ghosh, ACF Coy Comdr "B" Coy 124 Bn BSF was also met near village Khunder. I stopped him and told to investigate the matter on reaching of BOP DRF Nath.

9. Sub Inspector Sh. Puran Singh who appeared as PW3, stated as under:

On 3.3.02 at about 1328 hrs, when I was busy with some official work in the Platoon Office located at BOP DRD Nath, Ct. Harish Chander Singh surprisingly entered in the office and criminally assaulted on me with his web belt, resultantly I sustained serious injuries on my head and back, seeing his criminal act, I also cried ?AREYE HARISH YEH KYA KAR RAHA HAI? but he continuously whipping by belt, as such, I became unconscious about 2 minutes. After a few minutes, when I came to normal, matter was reported to Sh Prahlad Singh 2IC Offg Comdt 124 Bn BSF and Sh. Gurbax Singh DC (CM) over telephone. I left BOP DRD Nath for

taking first Aid/treatment at Village Gazniwala but in the meantime Sh. Gurbax Singh DC (QM) reached there and I was brought to unit MI Room (Mamdot) for treatment. Medical checkup and treatment given by Dr. A.K. Rai (CMO) 124 Bn BSF.

10. Besides other witnesses and records of the unit, these two witnesses sufficiently proved that the petitioner had committed an act of indiscipline, insubordination and had assaulted his senior. Rule 49 provides that the abstract of evidence shall be given to the accused and an opportunity provided to him to make a statement, if he so desires, in accordance with the provisions of Rule 48 (3) of the Border Security Rules, 1969. There appears to be no violation of these Rules. From the records produced by the petitioner himself before the Court it is clear that he was supplied with statement of all the witnesses and his statement under Rule 48 (2) was also recorded. Equally without merit is the contention of the petitioner that the accused was not granted opportunity to cross-examine the witnesses and this again is in violation of provisions of Rule 48(2). From the evidence placed on records, it is clear that the petitioner was given opportunity to cross-examine each and every witness but he declined to cross-examine the witnesses on his own accord. Having given up his right to cross-examine the witnesses, the petitioner now cannot turn back to say that he was not given an opportunity to cross-examine the prosecution witnesses. He disclosed his defense which hardly is in line with what has been pleaded by the petitioner in the present petition. In his petition u/s 117 of the Border Security Force Act, read with Rule 167 the petitioner had taken up various grounds including that abstract of statements has to be furnished to the accused. The trial was completed within a short period and abstract of statement was given to the petitioner which would be substantial compliance to the provisions of Rule 49 and would not vitiate the proceedings. Keeping in view the gravity of the offence that he assaulted his superior with a belt and injured him while on duty, he definitely does not call for any sympathy. Discipline of the forces can hardly be compromised and such untoward incidents are required to be dealt with by the authorities sternly and in accordance with law. The view taken by the appellate authority does not suffer from any procedural defect much less that it is in violation of the specific rules.

11. In view of our aforesaid discussion, we find no merit in this petition and the same is dismissed while leaving the parties to bear their own costs.