

(2011) 11 DEL CK 0127

In the Delhi High Court

Case No : Writ Petition (C) No. 4323 of 1999

Head Constable Krishan Singh

APPELLANT

Vs

Director General/Border Security Force and Another

RESPONDENT

Date of Decision : 16-11-2011

Acts Referred:

Citation : (2011) 11 DEL CK 0127

Hon'ble Judges : Sudershan Kumar Misra, J;Anil Kumar, J

Bench : Division Bench

Advocate : Nemo, for the Appellant; Anuj Aggarwal, Gaurav Khanna, Advocates with Mr. Bhupinder Sharma, BSF, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner has challenged the order dated 14th August, 1996 holding him guilty of the charge of disgraceful conduct of an unnatural kind on 22nd January 1996 by hugging Constable Altaf Ahmad of his company, who was on sentry duty and attempting to open the fly of the trousers of the said person. The petitioner was punished with reversion from the rank of Head Constable to that of Naik with effect from 13th August, 1996.

2. The petitioner challenged his reversion on the ground that a proper enquiry was not conducted and that the allegations were made against him with the sole purpose of destroying his future promotions on account of vested interests of his seniors, who had a vindictive attitude towards him. The petitioner alleged that the sole purpose of imposing the punishment of reversion on the petitioner to a lower rank was to ruin his career so that he would not get any promotions in the future, due to the order of reversion being passed by the summary court-martial. According to the petitioner, the order of reversion was passed in contravention of the rules and regulations and in violation of the principles of natural justice. The petitioner alleged that the enquiry report is also based on conjectures, surmises and extraneous grounds. According to him, his defense was completely overlooked and not even considered. The petitioner also contended that

punishment awarded to him was disproportionate to his alleged misconduct, as he had an unblemished record and, therefore, he ought not to have been reverted to a lower rank.

3. The pleas and contentions of the petitioner were contested by the respondents contending, inter-alia, that while the petitioner was posted at Sriganganagar (Rajasthan) as Head Constable in 131 Battalion BSF during the year 1996 he had got involved in a scuffle on 22nd January, 1996 with Constable Altaf Ahmed of the same unit. On 23rd January, 1996 a report about the indecent behaviour of the petitioner with Constable Altaf Ahmed was received from the Company Commander. On receiving the said report the Company Commander was directed to submit a detailed report regarding the concerned matter. On the basis of the statements of the relevant witnesses it had transpired that while Constable Altaf Ahmed was on sentry duty and the petitioner was looking after the duty of another Constable Havaladar Major as he was sick, the other personnel of the company had heard a hue and cry and, therefore, when they reached the spot of incident they found the petitioner grappling with another Constable. It was also divulged that at the time Constable Altaf Ahmed was shouting that the petitioner had behaved with him indecently by soliciting him for unnatural act. The petitioner defended himself by saying that he had scolded the other Constable as he was not found on place of his duty, which is why he was suddenly attacked by him.

4. On conducting the preliminary enquiry it had transpired that the petitioner was in a state of intoxication at the time of the quarrel. A one-man court of enquiry presided over by Sh.T.W. Powar, 2IC was conducted to find out the circumstances under which the quarrel between the petitioner and the other Constable had occurred. For conducting the court of enquiry the petitioner and the other Constable were posted out of "D" company, where they had been posted at the time of incident. During the investigation seven witnesses including the petitioner and the other Constable were examined and their statements were recorded. The witnesses who had deposed against the petitioner were read over to the petitioner and he was given an opportunity to cross examine the witnesses, which was availed by him. Therefore, the petitioner cross-examined Constable Altaf Ahmed and other witnesses who had deposed against him. In accordance with the rules and on the basis of the evidence recorded, the petitioner was found guilty of intoxication and solicitation of Constable Altaf Ahmed.

5. Meanwhile, the petitioner was placed under suspension with effect from 24th February, 1996. On completion of the recording of the evidence by the recording officer, the Commandant had noticed certain shortcomings and, therefore, additional evidence was recorded on 8th March, 1996. The recording of the evidence was therefore, completed by the recording officer on 23rd March, 1996. After completion of recording of the evidence, the suspension of the petitioner was also found to be unnecessary and, therefore, it was revoked with effect from 16th April, 1996 and it was proposed that the petitioner be tried by a Summary

Security Force Court since a prima facie case of disgraceful conduct of unnatural kind was established against the petitioner.

6. Since the petitioner was to be tried by the Summary Security Force Court, the petitioner was advised to nominate one officer as friend of the accused during the trial and the petitioner was also asked to submit his list of witnesses if any in his defense. The petitioner had nominated Sh. Sohan Singh, Deputy Commandant as his friend during the Trial and the copies of all the relevant documents pertaining to the trial, were given to the petitioner against a proper receipt of 5th August, 1996. The petitioner was tried by the Summary Security Force Court from 8th August, 1996 up to 13th August, 1996 and was thereafter, awarded the punishment of reduction of rank from the Head Constable to the rank of Naik.

7. The respondents also disclosed that after the recommendations of the Fifth Pay Commission, and in view of the rationalization of the rank structures in CPMF all the existing Naiks had been merged with the rank of Head Constable and, therefore, the rank of the petitioner was also merged with the rank of Head Constable with effect from 10th October, 1997.

8. Though the petitioner has alleged that proper enquiry was not conducted against him however, no details have been alleged in the writ petition as to how the enquiry conducted against him was not proper. The petitioner has also not filed a rejoinder to the counter affidavit filed on behalf of the respondents, refuting the pleas and contentions raised by the respondents. It has also not been denied that the petitioner was properly represented by a friend during trial and that the copies of the relevant documents were given to the petitioner including the statements of the witnesses who had deposed against the petitioner during the recording of the evidence, and who were duly cross-examined by the petitioner. This has also not been denied that the rank of Naik has been merged with that of Head Constable pursuant to the recommendations of the Fifth Pay Commission.

9. No one had been appearing on behalf of the petitioner, therefore, the court issued a notice to the petitioner at the address given in the Memo of Parties pursuant to the order dated 8th August, 2011. The Court Notice had been served and a service report was duly received stating that the notice was duly served on Head Constable Krishan Singh on 27th August, 2011, in the presence of Chowkidar Satish.

10. No one is still present on behalf of the petitioner despite the service of notice. The writ petition was taken up for hearing but since no one was present on behalf of the petitioner, the matter was passed-over.

11. Even after pass-over, no one is present on behalf of the petitioner.

12. Under the circumstances, this Court is left with no option but to dismiss the writ petition in default of appearance of the petitioner or anyone on behalf of the

petitioner.

13. Dismissed in default.