

(2011) 03 DEL CK 0565
In the Delhi High Court
Case No : Writ Petition (C) 5273 of 2006

Jagraj Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-03-2011

Acts Referred:

Border Security Force Act, 1968 — Section 19, 26
Border Security Force Rules, 1969 — Rule 63(2), 63(3), 63(4), 63(6)

Citation : (2011) 03 DEL CK 0565

Hon'ble Judges : Suresh Kait, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Mohan Kumar, for the Appellant; Barkha Babbar, for UOI, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Arguments were partly heard on 7.3.2011.

2. In view of Sub-rule (6) of Rule 63 of the Bsf Force Rules 1969, learned Counsel for the Petitioner does not press the argument which he had urged on the last date of hearing; of the Petitioner being granted less than 4 days? time to prepare the defence. The reason is obvious. Requirement of 4 days? time to be granted to prepare a defence is the requirement of Sub-rule (2), (3) and (4) of Rule 63. As per Sub-rule (6) of said rule the said provisions do not apply if the trial is before a Summary Security Force Court.

3. Petitioner has been tried at a Summary Security Force Court.

4. The record of the Summary Security Force Court shows that after the Petitioner was brought before the Court and arraignment took place, 2 charges were read out and qua charge No. 1 it stands recorded that the Petitioner pleaded "Not Guilty". Qua charge No. 2 it stands recorded that the Petitioner pleaded "Guilty".

5. However, we note that the plea of guilt has not been signed by the Petitioner.

6. Learned Counsel for the Respondents would submit that the Summary Security Force Court trial evidences that notwithstanding plea of guilt being noted qua charge No. 2, evidence has been led on said charge as well. Thus, counsel submits that the plea of guilt recorded may be ignored and it be treated that the Petitioner pleaded "Not Guilty" to both charges.

7. The charge against the Petitioner, being 2 in number, reads as under:

The accused No. 89007157 Constable Jagraj Singh of 97 Bn BSF is charged with:

First Charge Bsf Act u/s 19(d) Without Sufficient Cause, Failing To Appear, At The Time Fixed At The Place Appointed for Duty / in that he, at BOP Khurka on 22/10/02 at about 221700 hours detailed for Ambush duty on Ambush No. 5 along with HC R.M. Mishra and CT Sumesh T R, failed without sufficient cause to proceed along with party. Second Charge Bsf Act u/s 26: Intoxication in that he, at Bop Khurka on 22/10/02 at about 221705 hrs was found in a state of intoxication.

8. It is urged by learned Counsel for the Petitioner that the charges are vague. Time and place of the incident has not been stated.

9. We are surprised at the submission for the reason the place of the incident has clearly been stated. It is BOP Khurka. The date 22.10.2002 has been stated. The time pertaining to the 1st charge has been clearly stated. It is 17:00 hours. The time of the 2nd charge has also been clearly stated. It is 17:05 hours.

10. As regards the evidence pertaining to the 2 charges, suffice would it be to state that Asstt. Cmdt.K.B.C. Nair PW-1, Ct. Sumesh PW-2, HCR.M. Mishra PW-3, HCI.C. Vergesh PW-4 and Ct. Dharamvir Singh PW-5 have deposed facts which bring home both charges. In a nutshell, their testimony brings out that at the evening roll call at 16:30 hours, Petitioner was clearly told that he was detailed for ambush duty No. 5 and that the ambush party would leave at 17:00 hours. He was clearly informed that the other 2 members of the ambush party would be HCR.M. Mishra and Ct. Sumesh. Whereas Ct. Sumesh and HCR.M. Mishra reached the place where the 3 had to assemble and proceed on duty as ambush No. 5, Petitioner did not reach. An attempt was made to locate the Petitioner. He was found in an inebriated condition near the cook house. So highly intoxicated was he that he was unable to speak and stand. All witnesses have proved that the Petitioner was reeking with liquor.

11. Learned Counsel for the Petitioner seeks to highlight that from the testimony of the witnesses it is apparent that the duty time was 17:15 hours. Counsel highlights that as per the charge the Petitioner did not report for duty at 17:00 hours. Counsel submits that the Petitioner could have reported for duty at 17:15 hours.

12. The argument is nothing but quibbling. We Indians have the habit of speaking loosely. Required to report for duty at 17:00 hours, witnesses do tend to say "Paanch Sawa Paanch" i.e. 17:00 hours or 17:15 hours.

13. We have not to sit as an Appellate Court. We may only highlight that at 17:05 hours the Petitioner was found in a state of stupor. He was dead drunk. He could not even speak and stand. Where was the occasion for the Petitioner to report for duty at 17:15 hours?

14. Penalty levied is of dismissal from service. Past service record of the Petitioner is extremely poor. Indisputably, in the past, under noted penalties were levied upon the Petitioner:

(a) 7 days RI awarded in Force Custody on 22.12.1995 for committing offence u/s 19(a) of BSF Act 1968 "ABSENTING HIMSELF WITHOUT LEAVE".

(b) 28 days RI awarded in Force Custody on 18.03.1996 for committing offence u/s 19(a) of BSF Act 1968 "ABSENTING HIMSELF WITHOUT LEAVE".

(c) 14 days RI awarded in Force Custody on 21.02.1997 for committing offence u/s 19(a) of BSF Act 1968 "ABSENTING HIMSELF WITHOUT LEAVE".

(d) 28 days RI awarded in Force Custody on 7.7.1997 for committing offence u/s 19(a) of BSF Act 1968 "ABSENTING HIMSELF WITHOUT LEAVE" and u/s 26 of BSF Act 1968 "INTOXICATION".

(e) 28 days RI awarded in Force Custody on 9.4.2002 for committing offences u/s 26 of BSF Act 1968 i.e. intoxication.

(f) 7 days RI awarded in Force Custody on 10.07.2002 for committing an offence u/s 19(d) of BSF Act 1968.

(g) Further the Petitioner while on active duty on border with his Coy/Platoon committed an offence u/s 19(d) and 26 of the BSF Act on 22.10.2002.

15. It is settled law that past service record can always be considered on the issue of quantum of penalty which is levied for the latest misdemeanour.

16. Petitioner had joined service on 18.12.1988. He has earned as many as 8 penalties during his service tenure. The latest indictment as per the charge-sheet is dated 31.10.2002. In other words, in 14 years as many as 8 penalties have been levied. 17. Discipline is of paramount importance in Central Para-Military Forces. The department has enough tolerated the Petitioner and we find no infirmity in the decision taken that "enough is enough". Penalty of dismissal from service cannot be called shockingly disproportionate in the facts and circumstances of the instant case.

18. The writ petition is dismissed.

19. No costs.

20. Record of Summary Security Force Court has been returned to the Respondents in Court today.