

(2007) 08 DEL CK 0171
In the Delhi High Court
Case No : Writ Petition (C) 1509 of 1999

Jaipal Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-08-2007

Acts Referred:

Army Act, 1950 — Section 69, 70
Army Rules, 1954 — Rule 11, 12, 13, 14, 15
Constitution of India, 1950 — Article 226

Citation : (2008) 146 DLT 337 : (2009) 1 SLJ 440

Hon'ble Judges : Vikramajit Sen, J; S.L. Bhayana, J

Bench : Division Bench

Advocate : R.N. Sharma, for the Appellant; Rao Vijay Pal and Richa Kapoor, for the Respondent

Final Decision : Dismissed

Judgement

1. The Petitioners have invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus or certiorari or any other appropriate writ, order, direction, thereby quashing the Order of Termination/Dismissal passed by their Commandant vide Orders dated 6.8.1997 passed under Rule 13(3)(iii)(v) of the Army Rules, 1954 (Rules for short). It has further been prayed that the Respondents be directed to reinstate the Petitioners into the Indian Army with effect from the date of their discharge with all consequential benefits.

2. The incident which led to the Discharge of the Petitioners occurred on the night of 3/4th July, 1997, in respect of which a Court of Inquiry assembled on 5th July, 1997 presided over by Lt. Col. V.K. Gautam, accompanied by Capt. M.K. Naidu and Nb Sub Baljit Singh. The first witness to be examined was Sub B.S. Rawat, who has deposed that the Petitioners were detailed to man No. 3 Sentry Post at Prisal Camp, Jammu and Kashmir but on the night of 3/4th July, 1997, both were found missing there from. On finding the Post deserted the witness

searched for both the Petitioners in their living barrack as well as in adjoining areas. The witness heard sounds of distress from a house in the vicinity at approximately 0240 H on 4th July, 1997. On reaching there he discovered the Petitioners arguing with Mr. Khajer Mohd. Sheikh, who had raised an alarm that the Petitioners had come to molest his daughter and daughter-in-law. The Petitioners were taken into custody. The second witness, BHM Mukhdev Singh, has deposed that at approximately 0300 H on 4th July, 1997 he was informed that the Petitioners were found in the house of Mr. Khajer Mohd. Sheikh and that he lodged them in the Quarter Guard. The 3rd witness is Capt. S. Bhardwaj who has stated that at 0255 H on 4th July he received a telephone call from Sub Adj. informing him that Post No. 3 was found deserted. He was informed of the incident on reaching the Quarter Guard. On his query the Petitioners admitted that they left the Sentry Post without Orders and had gone to the house of Mr. Khajer Mohd. Sheikh to check it out. As Mr. Sheikh did not open the door they had broken open the window. They admitted that they had committed a mistake by leaving their Post. The 4th witness was Hav Tej Singh who has stated that he heard distress sounds from the house of Mr. Sheikh and on reaching there he found Sub B.S. Rawat and the Petitioners and Mr. Sheikh in the latter's house. He then recounted the interrogation of the Petitioners at the spot and his account corroborates the version of the other witnesses. He then escorted the Petitioners back to the Rajasthan Peshawar Gate and to the Quarter Guard. Mr. Sheikh appeared as the 5th witness before the Court of Inquiry and he has also corroborated the version recorded above. Petitioner Satvir Singh was also examined as the 6th witness. He has stated that he had deserted the Sentry Post without Orders; that when Mr. Sheikh refused to open the door he got angry and wanted to teach him a lesson. He also admitted that he made a mistake in leaving the Post and going to a house for Search without Orders. In response to a Court question - "Did you pull and hug Khajer Mohmd Sheikh's daughter and daughter-in-law?" he answered - "I just pulled her as she was trying to threaten me." Petitioner Jaipal Singh has, for all intents and purposes, made a Statement similar to that of Petitioner Satvir Singh. In response to Court question he stated that Satvir Singh had given him the idea that militants were probably hiding in Mr. Sheikh's house. He has admitted that he pulled and hugged Mr. Sheikh's daughter and daughter-in-law as they had threatened him.

3. The Findings and the Opinion of the Court, with which the Commanding Officer agreed, are as follows:

FINDINGS OF THE COURT

1. No 3184427K Sep Satvir Singh and No 2885897x Rfn Jaipal Singh were on sentry duty at Post No. 3 on night 03/04 Jul 97.
2. The two OR decided and left the post together on night 03/04 Jul 97.
3. At about 0150h on 04 Jul 97 they went to the house of Mr. Khajer Mohd Sheikh and misbehaved with his daughter Shahina Akhter and Gulshan Akhter

the daughter-in-law in that:

- (a) They bodily pulled Shahina Akhter and Gulshan Akhter.
- (b) They effected unauthorised entry into the house of Khajer Mohmd Sheikh.
- (c) They made advances towards Shahina Akhter and Gulshan Akhter.

Presiding Officer Sd/-x-x-x-x-x-x-x-x-x-x

(IC-37496X Lt Col V.K. Gautam)

Members 1. Sd/-x-x-x-x-x-x-x-x-x-x-x-x

(RC-719M Capt M.K. Naidu)

2. Sd/-x-x-x-x-x-x-x-x-x-x-x-x

(JC-418279A No Sub Bajit Singh)

OPINION OF THE COURT

1. No 3184427K Sep Satvir Singh and No 2885897X Rfn Jaipal Singh are guilty of misconduct and behavior not befitting a soldiers.

2. No31848427K Sep Satvir Singh and No 2885897K Rfn Jaipal Singh are not fit for retention in service and the service of both the OR should be terminated.

Presiding Officer Sd/-x-x-x-x-x-x-x-x-x-x

(IC-37496X Lt Col V.K. Gautam)

Members 1. Sd/-x-x-x-x-x-x-x-x-x-x-x-x

(RC-719M Capt MK Naidu)

2. Sd/-x-x-x-x-x-x-x-x-x-x-x-x

(JC-418279A No. Sub Bajit Singh)

4. Learned Counsel for the Petitioners has contended that no Show Cause Notice was issued to the Petitioners but this is belied on a perusal of Annexure R-8 which is dated 8.7.1997 and is a Show Cause Notice. It has been received by the Petitioners and this fact has been duly affirmed by two witnesses. The contention is meritless. Learned Counsel for the Petitioners has also contended that the Petitioners were in detention since 22.6.1997 in connection with the alleged molestation of another civilian lady. This has been categorically denied by the Respondents who have drawn our attention to the records indicating that the fire arms of the Petitioners were resumed by the Authorities on 4.7.1997, thereby manifesting the falsity in the Petitioners' allegation that they were under detention with effect from 22.6.1997. Learned Counsel for the Petitioners have also submitted that the Petitioners' signatures on blank pages had been forcibly taken by the Court of Inquiry. We have perused the records and find this charge to be incredible, keeping in perspective the hand-written proceedings and the

signatures of the Petitioners at various places on the pages. It would require extraordinary ingenuity, intricate planning and careful collusion between the members of the Court of Inquiry as well as the several witnesses appearing thereat, to fit the pages with the Petitioner's signatures on them. We do not find any truth in the Petitioner's accusations. For the purposes of the present Writ Petitions we have no reason whatsoever to disbelieve the factual matrix put forth by the Respondents. The allegation that the Petitioners were not present at the Court of Inquiry; that they were not given any opportunity to defend themselves; and that they were not granted an opportunity to cross-examine the witnesses is without substance.

5. It is quite apparent that the Petitioners had admitted that they had left their Sentry Post and had also entered and searched the house of Mr. Sheikh without any permission and authorisation. The Petitioners could, at the most, have examined the witnesses on the question of whether they had attempted to molest the daughter and daughter-in-law of Mr. Sheikh. The Respondents have obviously not intended or proposed to take any action on the molestation aspect of the charges. This being the position Sections 69 and 70 of the Army Act, 1950 are of no avail to the Petitioners.

6. Learned Counsel for the Petitioners have also drawn our attention to Chapter-III of the Rules dealing with the Dismissal, Discharge etc. Rules 11 to 13 deal with Discharge; Rule 13A to 15 with Termination; Rule 15A with Release on Medical Grounds; Rule 16 with Release; Rule 16A and B with Retirement. Rule 17, which is in pari materia with Rule 22 of the BSF Act, covers cases of dismissal or removal by the Chief of Army Staff and/or any other officer. It was on the basis of this Rule that learned Counsel for the Petitioners had attempted to convince us to quash the impugned Order on the ground that a Show Cause Notice had not been issued. Our finding on this fact is against the Petitioners.

7. The impugned Orders dated 6.8.1997 in respect of both the Petitioners reads as follows:

Sanction By The Competent Authority For Termination of Services on Unbecoming Conduct By No. 3184427-K Sepoy Satvir Singh of 9 Rastriya Rifles Battalion

1. No. 3184427-K Rank Sepoy Name Satvir Singh enrolled in the Army on 27 Oct 90 and posted to 9 Rashtriya Rifles Bn on 15 May 94. On night 03/04 Jul 97, while on duty at post No. 3 left his post, broke into Mr. Khajer Mohd. Sheikh house and misbehaved with Miss Shahina Akhter (daughter) and Mrs. Gulshan Akhter (daughter-in-law) of Mr. Khajer Mohd Sheikh for gaining personal favors, when the ladies tried to object to his demands. He manhandled the lady. His unbecoming conduct involved the following:

(a) Leaving the post on night 03/04 July 97.

(b) Effecting unauthorised entry into the house of Mr. Khajer Mohd. Sheikh.

(c) Manhandling Miss Shahina Akhter (daughter) and Mrs. Gulshan Akhter (daughter-in-law) of Mr. Khajer Mohd. Sheikh with a view of molest and gaining personal favors.

2. In view of the above his services are terminated as he is found unsuitable for military services under Army Rule 13(3) III item (v) on the power vested in me.

Case File No.:365/2/A1 Sd/- HQ 3 Sect RR (SS Ahlawat) C/O 56 APO Brig 06 Aug'97 Cdr

Sanction By The Competent Authority For Termination of Services on Unbecoming Conduct By No. 2885897-X RFN Jaipal Singh of 9 Rastriya Rifles Battalion

1. No. 2885897-X Rank Rfn Name Jaipal Singh enrolled in the Army on 25 May 88 and posted to 9 Rashtriya Rifles Bn on 14 Aug 94. On night 03/04 Jul 97, while on duty at post No. 3 left his post, broke into Mr. Khajer Mohd. Sheikh house and misbehaved with Miss Shahina Akhter (daughter) and Mrs. Gulshan Akhter (daughter-in-law) of Mr. Khajer Mohd Sheikh for gaining personal favors, when the ladies tried to object to his demands. He manhandled the lady. His unbecoming conduct involved the following:

(a) Leaving the post on night 03/04 July 97.

(b) Effecting unauthorised entry into the house of Mr. Khajer Mohd. Sheikh.

(c) Manhandling Miss Shahina Akhter (daughter) and Mrs. Gulshan Akhter (daughter-in-law) of Mr. Khajer Mohd Sheikh with a view of molest and gaining personal favors.

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8. It is true and trite that the Rules postulate Discharge from service as well as Termination of service. There is a substantial difference in the connotation of these two words. It is evident to us, however, that Brig S.S. Ahlawat employed the word "termination" as it is used in common parlance, synonymous with the word Discharge as dealt with in Rules 11 to 13. The word "terminated" ought not to have been used; instead the word Discharge should have been employed. However, since there is a specific reference to Rule 13(3)(iii)(v) of the Rules, there is no remaining iota of doubt that the Petitioners were "discharged" from the Army. The Discharge Certificate also mentions Rule 13(3)(iii)(v). We are, Therefore, of the view that the Petitioners have been Discharged from the Army as contemplated by a conjoint reading of Rules 11 to 13 of the Rules.

9. The Petitions are devoid of merit and are dismissed. The natural consequence should be the imposition of costs. We, however, refrain from imposing costs since

the Petitioners discharge from the Indian Army has already visited them with severe consequences.