(2011) 01 DEL CK 0243

In the Delhi High Court

Case No : Writ Petition (C) 304 of 1994

Nahar Singh, Ex. Lance Naik — APPELLANT

Vs

CISF and Others — RESPONDENT

Date of Decision : 07-01-2011

Acts Referred:

Citation : (2011) 01 DEL CK 0243

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

Bench : Division Bench

Advocate : Pallav Shishodia and Madhurima Tatia, for the Appellant; Saroj Bidawat and Hari Om Sharan, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Facts which are not in dispute are that the Petitioner was working as L. Naik under CISF and was deputed for duty at a Unit of Bharat Heavy Electrical Limited (BHEL) at Haridwar and on 11.02.1993 was on duty at the weigh bridge from 13:30 hrs to 21:30 hrs and that a tanker bearing No. HYW 3982 loaded with LDO came to the Unit of Bharat Heavy Electrical Limited (BHEL) for unloading LDO. Now, the consignment had to be weighed and the procedure followed was that while making entry into the precincts of the unit, the loaded tanker would be weighed at a weigh bridge and after decanting the liquid from the tank, the empty tanker would be reweighed at the weigh bridge. The difference in weight of the loaded tanker and the decanted tanker would yield the weight of the LDO which was delivered at the Unit. Further admitted fact is that the booklet containing the ''weighment slips'' was kept at the weigh bridge. Further undisputed fact is that pertaining to the tanker HYW 3982, two weigh slips Ex.PW-1 (Exhibit-3) and Ex.PW-1 (Exhibit-4) were prepared, both bearing the signatures of the Petitioner. The first exhibit is a leaf out of book No. 14, vide serial No. 1364 and the latter is out of the same book, but at serial No. 1367. Further admitted fact is, the contents of the exhibit Ex.PW-1 (Exhibit-3) has cuttings and over writings.

2. Here onward we would record the facts in dispute, but before that we would record that a bare perusal of Ex.PW-1 (Exhibit 3) reveals to the naked eye, that as a result of the cuttings and overwriting an attempt has been made to convert 11220 kg into 17920 kg; this is evident from the fact that over the first numeral ''2'' the numeral ''9'' has been overwritten and the second numeral ''1'' has been converted into the numeral ''7''. This is against the entry pertaining to the gross weight. There is no corresponding entry pertaining to ''Tare weight''. No entry has been recorded against column ''Net Weight''. The second exhibit is a complete document recording gross weight to be 17920 kg. The ''Tare weight'' recorded is 7530 kg. Net weight recorded is 10090 kg, which we note is an apparent calculation mistake, for the reason 17920 kg - 7530 kg = 10390 kg and not 10090 kg.

3. With the afore-noted admitted facts, it is time to note the other facts with respect where-to instant writ petition needs to be decided.

4. It came to be reported that manipulation has been done at the weigh bridge to facilitate a wrong recording of actual quantity of LDO delivered through the tanker in question at the Unit in question. A fact finding inquiry was conducted by a team consisting of 5 persons, one of whom was Inspector N.K. Yadav. A statement purportedly made by the Petitioner was recorded on 19.02.1993, as per which, the Petitioner made a confessional statement that he did so on being induced to receive bribe in sum of `1,000/-, which he took.

5. The Petitioner thereafter suddenly and abruptly left the Unit and thus 2 articles of charges were framed against him as per Memorandum dated 29.03.1993. The first article of charge alleged against the Petitioner was of accepting illegal gratification in the sum of `1000/- while on duty by making interpolations in the weigh slips. It was alleged that the said act was gross misconduct and against the Rules of CISF. Second article of charge alleged against the Petitioner was of unauthorizedly absenting from duty w.e.f. 20.02.1993 till 24.02.1993 in respect whereof it was alleged that the said act is indicative of his negligence towards official duty and in contravention of Rules of a disciplined Force. In the statement of imputation it was stated that one Sh. Virender Singh has received the money from the driver of the tanker and had handed over the same to the Petitioner as illegal gratification.

6. The Petitioner refuted the charges and disowned his statement purportedly recorded on 19.2.1993, explaining the two weigh slips, not disputing that he had authored the same and that the first had cuttings and overwriting thereon, in the written response to the charge sheet, the Petitioner explained as under

In fact, there came an L.D.O. Tanker No. HYW 3982 on 11.2.1993 which on being weighed was found to be 17220 kg. In weight. But when the driver pointed out that the weight was not correct I , the applicant, got it weighed again and it was found to be 17920 kg. in weight. It was due to this reason that the figure 17720 kg. gross weight was amended to read as 17920 kg. And because there was correction in the Receipt No. 1364, the person posted at weighbridge cancelled the same and issued a new Receipt No. 1367 instead thereof. The applicant made entry of the correct weight, taken before him, of the L.D.O. Tanker on 11.2.1993 in the receipt in question and no forgery has been made in the figures of the weight of the said tanker therein.

7. At the inquiry various witnesses were examined. Inspector N.K. Yadav, one of the 5 persons who had conducted the preliminary inquiry proved the confessional statement made by the Petitioner on 19.2.1993. He also proved various exhibits which were seized during preliminary inquiry which included the two weigh slips. Shri Virender Singh deposed that he had received `1,000/- from the driver of the tanker and had handed over the same to the Petitioner on 11.2.1993 and that in his presence the weigh slip Ex.PW-1 (Exhibit 3) was interpolated and as it got defaced the Petitioner prepared the weigh slip Ex.PW-1 (Exhibit 4).

8. The Inquiry Report indicted the Petitioner and was supplied to him by the Disciplinary Authority. After considering the response of the Petitioner, who explained the two weigh slips as per his written response to the charged memo and pertaining to the second charge stated that being unwell, he left for his house and wrote a leave application which he sent by post and due to being mentally disturbed he did not return till his family members counseled him to return, finding no merit in the explanation, the Disciplinary Authority levied the penalty of dismissal from service vide order dated 2.9.1993 against which the appeal filed was rejected on 29.10.1993.

9. Original record of the inquiry which has been produced before us has been seen.

10. It is urged by learned senior counsel for the Petitioner that Sh. Virender Singh, as per his testimony had facilitated the receipt of illegal gratification stated to have been received by the Petitioner and thus it is urged that the tainted testimony of an accomplice could not be the foundation of the indictment. Qua the deposition of Sh.N.K. Yadav it is urged that admittedly, Insp.N.K. Yadav was not a witness when the two weigh slips were drawn.

11. Suffice would it be to state that even at a criminal trial the evidence of an accomplice is admissible, but subject to the rule of caution requiring corroboration thereto. Thus, it cannot be said that the testimony of Virender Singh is useless evidence. We shall be dealing with the issue of corroboration a little later.

12. Qua the testimony of Insp.N.K. Yadav it has to be noted that he was one out of a 5 member team who recorded the statement of the Petitioner on 19.2.1993 and obtained his signatures thereon. The incident in question is dated 11.2.1993 and it is not a case where the Petitioner did not have time to think and state what he wanted to state. But, we shall deal with this issue a little later.

13. Men may lie, but circumstances do not lie. The two weigh slips Ex.PW-1

(Exhibit 3) and Ex.PW-1 (Exhibit 4) are documents admittedly drawn up by the Petitioner and his explanation qua them has been noted by us hereinabove.

14. The explanation is a blatant concoction and renders an explanation which hardly inspires confidence. If indeed the Petitioner is correct and that on Ex.PW-1 (Exhibit 3) he wrongly noted the weight to be 17220 kg and corrected the same to 17920 kg and in the process (due to overwriting) required an uncorrected weigh slip to be drawn up the logical thing would be that the next leaf bearing No. 1365 would have been used and not the leaf at the serial No. 1367. This nails the indictment against the Petitioner.

15. With reference to the confession made by the Petitioner on 19.2.1993, it has to be kept in mind that the Petitioner was fully aware of having drawn up two weigh slips and it is apparent that he had been thinking as to whether he could render a satisfactory explanation and finding none chose to make a clean breast of what had happened when he appeared at the fact finding inquiry on 19.2.1993.

16. We have no reasons to believe that the fact finding team would contrive a document.

17. On the issue of corroboration to the evidence of Virender Singh, whose testimony does show, his being an accomplice, we find corroboration through the medium of the two weigh slips as also the confessional statement made by the Petitioner.

18. Suffice would it be to state that to the naked eye it is apparent that there are two interpolations in Ex.PW-1 (Exhibit 3). The figure 11220 kg has been converted to 17920 kg. The explanation of the Petitioner of thereafter preparing Ex.PW-1 (Exhibit 4) is illusory for the reason under the circumstances explained by the Petitioner the leaf bearing No. 1365 i.e. the leaf immediately succeeding leaf No. 1364 would have been utilized and not the leaf at serial No. 1367.

19. Within the confines of credibility of evidence to sustain a verdict of guilt at a departmental inquiry we find sufficient credible evidence against the Petitioner.

20. It is then urged that there is no evidence of financial loss caused to BHEL. The argument is rejected for the reason the evidence establishes that a tanker having gross weight 11220 kg was shown as having gross weight 17920 kg and after unloading the weight of the tanker was 7530 kg. It is apparent that an attempt was made to inflate the quantity of LDO delivered and it is apparent that if the manipulation was not detected BHEL would have made payment of an excess quantity weighing 6000 kg.

21. On the issue of the Petitioner unauthorizedly absenting himself from duty, the explanation rendered is worthy of no credence. The Petitioner was living in the barracks in the unit and the Commander was also in the same barracks. We find it strange that the Petitioner would have written a leave application sitting in the barracks and sent it by post, in respect whereof there is no proof, when he had the benefit of the camp office being in the same precincts. It is apparent that

the Petitioner was disturbed on account of having no explanation for what he did and after making the confession absconded from the unit.

22. It is lastly urged that the penalty imposed is disproportionate.

23. Instances of illegal gratification hardly surface by the very nature of the transactions being to the benefit of both wrong doers. It has to be kept in mind that the Petitioner is a member of a Disciplined Force and thus we see no scope to interfere with the penalty imposed.

24. The writ petition is dismissed.

25. No costs.