
(2011) 03 DEL CK 0432
In the Delhi High Court
Case No : Writ Petition (C) 4218 of 1994

Onkar Singh

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 17-03-2011

Acts Referred:

Citation : (2011) 03 DEL CK 0432

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

Bench : Division Bench

Advocate : Narender Datt Kaushik, for Arun Bhardwaj, for the Appellant; R.N. Singh and A.S. Singh, for the Respondent

Judgement

Pradeep Nandrajog, J.—The Petitioner, Onkar Singh, was appointed to the post of Constable in CISF in the year 1983. In the year 1992 he was attached to a Unit of the Force posted at HMT Factory, Rani Bagh, Nainital, Uttar Pradesh for purposes of providing security to the said Public Sector Undertaking. As per practice, 14 force personnel, one of whom was the Petitioner, were on duty during the first shift duration on 7.12.1993. It was alleged against the Petitioner that after completing the first shift duty, as the 14 force personnel proceeded to leave the precincts of the factory unit of which they were in charge of security, on being frisked 2 packets containing watch parts belonging to the HMT factory were recovered from the personal possession of the Petitioner.

2. The Assistant Commandant framed the charge-sheet dated 01.01.1994 alleging the following article of charge:

ARTICLE-I

DETAILS OF CHARGES AGAINST No. 834330450

CONSTABLE ONKAR SINGH, HMT, RANI BAGH

SECTION-1

No. 834330450 Constable Onkar Singh was on duty in the first shift from 06:00 hrs to 14:00 hrs on 7.12.93 at Press Shop of HMT, Rani Bagh. ASI Raghubir Singh placed for 2nd shift duty was checking the staff of 1st shift after completion of their duty and was allowing them to leave after search. Constable Onkar Singh came at 14:15 hrs at the Mahila Gate No. 3. ASI Raghubir Singh during the search found two packets of watch parts hidden in the jersey of Constable Onkar Singh. By stealing the parts of watches from Press Shop (Duty Post) during duty, Constable Onkar Singh spoiled the image of forces and showed a high sense of indiscipline and lack of integrity.

DETAILS OF MISBEHAVIOUR AND MISCONDUCT SHOWN IN

THE LIST OF CHARGES OF NO. 834330540 CONSTABLE

ONKAR SINGH.

SECTION-1

No. 834330540 Constable Onkar Singh was deployed at Press Shop in the first shift i.e. from 06:00 to 14:00 hrs. After completion of first shift duty, ASI Raghubir Singh deployed for 2nd shift was allowing the Constable Members to leave after checking and making their search. When Constable Onkar Singh was checked/searched, two packets hidden in his jersey were recovered by ASI Raghubir Singh. Constable Paras Ram, Constable Chandra Bhan, Constable Harpal Singh and Constable B.P. Barne were present at the time of checking/search. Recovered packets were opened before the Constable Members and were shown to them. These watch parts were kept in packets and hidden in jersey of Constable Onkar Singh with the intention of theft. The recovered parts were got tested by the Department of Expert Management. The Management proved that they were parts of watches, belonging to the Press Shop and were the property of HMT. In this way he spoiled the image of Services by stealing the parts of watches by hiding them in the jersey and showed indiscipline to a great extent and doubtful integrity.

3. In reply to the charge-sheet issued to him, vide reply dated 05.01.1994 the Petitioner denied the allegations against him. Vide order dated 10.01.1994 the Group Commandant detailed Sh. A.K. Kalia, Assistant Commandant, CISF Unit as the Inquiry Officer.

4. 6 prosecution witnesses were examined, all of whom were purportedly the eye-witnesses, to prove the charge.

5. ASI Raghubir Singh PW-1 deposed that on 07.12.1993 he was posted on duty at the control room of HMT Unit CISF, where he was to frisk and check the constables returning from their duties before they left the factory premises. At about 14:15 hours he searched the Petitioner and found 2 packets containing watch parts hidden in his jersey. That the said search/recovery had taken place in the presence of Ct. Paras Ram (PW-2), Ct. Chandra Bhan(PW-3), Ct. Harpal Singh (PW-4) and Ct.B.P. Barde (PW-5). He had reported the said incident to Coy

Commander at 15:00 hours who directed him to withhold the G.D. entries and detain the Petitioner. In the meantime the inspector came to the control room and on obtaining information regarding the incident he went to the office of Assistant Commander to convey the information to the Coy Commander over the phone.

6. Relevant would it be to note that the General Duty Entries No. 313, 314 and 325 were the subject matter of cross-examination of the witness and G.D. Entry No. 313 records the time 14:10 hours and the date 7.12.1993 of the entry being made and records that the 14 force personnel, 1 of whom was the Petitioner, had handed over the weapons issued to them at the control room and had left for their residence. GD Entry No. 314 records the time 14:20 hours and the date 7.12.1993 of the entry being recorded and notes that ASI Raghubir Singh had on checking Ct. Onkar Singh at about 14:15 hours recovered 2 packets of watch part from his possession and that Ct. Chander Bhan, Ct. Paras Ram, Ct. Harpal Singh and Ct.B.P. Barney were present when the recovery was made, report of the incident was given by him to Insp. Mani Ram who came to the control room at 3:00 PM. GD Entry No. 325 records the time 21:00 hours and the date 7.12.1993. The information recorded is that on opening the packets recovered from Onkar Singh click watch parts were detected in the packets.

7. It is but obvious that GD Entry No. 314 was not contemporaneously recorded evidenced by the fact that the substance of the entry records that Insp. Mani Ram came to the control room at 3:00 PM and there was an apparent disconnect between the time of the entry i.e. 14:20 hours and its contents of Insp. Mani Ram coming to the control room at 3:00 PM. With respect to the GD Entry No. 325 there was an issue of the contents of the packets being noted at 21:00 hours, pertaining to an alleged recovery which took place at 14:15 hours.

8. One would thus expect the witness to be cross-examined and indeed he was. On being cross-examined, he answered questions No. 1 to 5 as under:

Q-1: Whether the time 14:10 hours entered/registered in roznamcha/GD No. 313 is correct or wrong?

Ans: Correct.

Q-2: In the statement you have mentioned that you informed the Inspector at 15:00 hours, whereas roznamcha entry No. 314, time 14:20 hours, you have mentioned that you informed immediately. What is correct in these 2 statements?

Ans: Both the statements are correct because the said GD entries were held back till 23:50 hours.

Q-3: Whether no information was entered against the roznamcha No. 313, 14:10 hours till 23:50 hours?

Ans: No.

Q-4: As per your statement no information was entered/registered, then how

come against roznamcha No. 314, time 14:20 hours and 21:00 hours entered against roznamcha No. 314 in which allegations have been made against me?

Ans: I had noted all these things in a separate piece of paper which I entered at 23:40 hours in the roznamcha.

Q-5: As per your statement your duty was over at 22:00 hours, so did you give your charge after 23:40 hours?

Ans: Yes, charge was given at 23:50 hours.

9. Relevant would it be to note that the witness admitted that GD Entry No. 314 was held back till 23:50 hours i.e. the witness admitted having ante-timed the GD Entry. He was further cross-examined regarding the steps taken by him after the recovery of watch parts/2 packets from the Petitioner to which he stated that he had not counted the watch parts instead Ct.B.P. Barney had weighed the parts on a machine. That the articles recovered from the Petitioner were not sealed after seizure and that the signatures of the Petitioner were not obtained on the seizure memo. He denied the suggestion made to him by the Petitioner that he had falsely implicated the Petitioner on account of a prior enmity.

10. Ct. Paras Ram PW-2 deposed that on 07.12.1993 after completing his duty at the HMT Unit, he had gone to the control room at about 14:10 hours as per usual procedure for the routine search/frisking which was being done by ASI Raghbir Singh on that day. After he was checked, he was on his way out when he heard someone say "nikal...nikal" i.e. "take out - take out" and saw Petitioner hand over a khaki colour packet to ASI Raghbir Singh. Thereafter he returned to the lines and at 17:30 hours he was called by the Inspector who showed him the packets recovered from the Petitioner by ASI Raghbir Singh which contained watch parts.

11. In his cross-examination he stated that the packet shown to him by the inspector was of the same colour as the one which was recovered from the Petitioner by ASI Raghbir Singh at the time of search. He identified the packets shown to him at the inquiry as the packets recovered from Petitioner and the parts shown as the ones which were shown to him by the Inspector on 07.12.1993.

12. Ct. Chandra Bhan PW-3 deposed that on 07.12.1993 he saw ASI Raghbir Singh recover 2 packets from the jersey of the Petitioner and that the said 2 packets were shown to him there and then, which were containing parts of watches. Later during the day he was called by the Inspector who recorded his statement.

13. In his cross-examination he stated that after seeing the contents of the packets he left for the lines and that the Petitioner had been detained at the control room. He further stated that the contents shown to him at the inquiry were the same as the ones recovered from the possession of the Petitioner. He denied the suggestion that he had left the premises before Petitioner was

searched and had not witnessed any recovery.

14. Ct. Harpal Singh, PW-4 deposed that on 07.12.1993 at about 14:00 hours ASI Raghubir Singh called him and showed him 2 packets which the ASI stated were recovered from the Petitioner and that at that time the Petitioner was standing near the control room. In his cross-examination he stated that he was shown the contents of the 2 packets at 16:00 hours which consisted of various parts of watches and he identified the packets and the contents shown to him at the inquiry as being the same as that shown to him by the ASI. He further stated that the Petitioner had left for the lines at about 14:15 hours.

15. Ct. B.P. Barne PW-5, deposed that on 07.12.1993 he was performing his duties as a company writer when at about 14:15hours ASI Raghubir Singh showed him 2 packets and told him that they were recovered from the Petitioner during search. He was then shown the contents of the packet which consisted of various parts of watches. In his cross-examination he stated that at the time he was shown the contents of the two packets, the Petitioner was present near the control room and that he i.e. the Petitioner left for the lines at about 14:15 hours. He further stated that the seizure register/memo was prepared by him upon the information given by ASI Raghubir Singh and that the packets had not been sealed till then i.e. at about 17:00 hours.

16. Insp. Mani Ram PW-6, deposed that he was the Company Commander and that on 07.12.1993 at about 15:00 hours he was telephonically informed about the recovery of 2 packets from the Petitioner containing watch parts stolen from the HMT Factory, Ranibagh. That he went to the spot upon receipt of the said information and made inquiries about the incident from ASI Raghubir Singh, Ct.B.P. Barne and Ct. Harpal Singh. In his cross-examination he stated that on his asking, ASI Raghubir Singh had informed him that Petitioner could not be detained as the Petitioner had sneaked out/left while he was busy doing some work. That he had asked ASI Raghubir Singh to keep a separate account of the incident and to withhold the GD entries till he returns from Haldwai where he had gone to report the incident to the Group Commandant. He further stated that no report/complaint of theft had been received from the HMT plant and that the parts listed/noted as belonging to J.G.M. of the HMT plant in the property certificate Ex.1 were the same parts that were found in the 2 packets recovered from the Petitioner.

17. Relevant would it be to note that the testimony of Ct. Harpal Singh, Ct.B.P. Barne and Insp. Mani Ram would be of not much use inasmuch as they do not claim to be witnesses to the recovery of any packets from the Petitioner, but state that they were later on called and were told by ASI Raghubir Singh that he had recovered 2 packets from the Petitioner and that the said 2 packets contain watch parts.

18. It is only the testimony of ASI Raghubir Singh and that of Ct. Paras Ram and Ct. Chander Bhan which incriminates the Petitioner.

19. The testimony of the said 3 witnesses has to be evaluated with reference to the stand taken by the Petitioner of being falsely implicated at the instance of ASI Raghubir Singh in the context of an issue which he had raised in the past pertaining to assignment of guard duties. As per the Petitioner, he and the 13 other force personnel on first shift duty had left by making GD Entry No. 313 which records the time of departure as 14:10 hours.

20. GD Entry No. 313 has been proved at the inquiry and indeed records a departure entry by 14 force personnel, 1 of whom was the Petitioner, recording the time 14:10 hours. It is not the case of the department that the first shift duty was over at 14:00 hours.

21. As per ASI Raghubir Singh, he had frisked the Petitioner at the Ladies Gate No. 3 which was at the boundary of the HMT Factory and had recovered 2 packets from him and we have Ct. Paras Ram PW-2 and Ct. Chander Bhan PW-3 supporting his version. But it assumes importance that ASI Raghubir Singh neither sealed the packets, nor made any contemporaneous entry in the GD Register, facts admitted to by him. As per him, he made the entry in the General Diary at 23:40 hours and ante-timed the same. On the contents of the packets statedly recovered, we have conflicting evidence. Whereas Ct. Chander Bhan PW-3 claims to have seen the contents of the packets at the time of recovery, Ct. Paras Ram, Ct. Harpal Singh and Ct. B.P. Barney as also Insp. Mani Ram claim that the packets were opened and contents shown to them by ASI Raghubir Singh at around 17:00 hours. That Insp. Mani Ram who statedly came to the spot at around 3:00 PM did not find the Petitioner at the spot is also relevant. As per him, ASI Raghubir Singh told him that the Petitioner could not be detained as he had sneaked away while he i.e. ASI Raghubir Singh was busy doing some work. What was that work? Nothing has been stated. If Ct. Paras Ram PW-2 and Ct. Chander Bhan PW-3 were present when the recovery was made, why did ASI Raghubir Singh not utilise their services to ensure that the Petitioner did not flee.

22. We find that neither the Inquiry Officer, nor the Disciplinary Authority, nor the Appellate Authority have adverted to aforesaid features of the evidence. They have simply parroted the version deposed to by ASI Raghubir Singh and substantially reiterated by Ct. Paras Ram and Ct. Chander Bhan. Neither authority has bothered to juxtapose the statement of the Petitioner that after the 14 force personnel left recording the departure at 14:10 hours vide GD Entry No. 313, he was falsely implicated by ASI Raghubir Singh, who we note has admittedly committed 4 very serious errors in recording the truth. The first is his admittedly ante-timing GD Entry No. 314. The second is in not sealing the 2 packets which were statedly recovered from the Petitioner. The third is his not obtaining any signatures of the Petitioner on the seizure memo. Lastly, his act of opening the packets and in respect whereof there are conflicting versions as to when they were opened. His version of the Petitioner not being detained as the Petitioner had slipped away is not very inspiring and has to be weighed in the context of the Petitioner's defence that he had left after first shift duty was over.

23. In the decision reported as *Moni Shankar Vs. Union of India (UOI) and Another*, , non-adherence to the requirement of the procedure to be followed at a trap coupled with discrepant ocular evidence was held entitling a Court of Judicial Review to set aside a verdict of guilt at a departmental inquiry for the reason it was held that where the cumulative effect of the illegality/irregularities reached a level of infirmity that the proceeding stood vitiated, relief had to flow to the charged officer.

24. Suffice would it be to state that the procedure of keeping a General Duty Register at the gate requiring GD Entries to be recorded was provided to avoid false implication and in the instant case we find that the procedure laid down has been given a complete go-by in view of the admissions made by ASI Raghbir Singh that he ante-timed GD Entry No. 314. Another infirmity vitiating the seizure is the signature of the Petitioner not being obtained on the seizure memo, a fact admitted by ASI Raghbir Singh.

25. It is settled law that the Inquiry Officer has to discuss not only the incriminating evidence but even the evidence favourable to the delinquent. Not doing so vitiates the inquiry report. When this aspect is brought to the notice of the Disciplinary Authority, the order passed by the Disciplinary Authority must reveal an application of mind on the subject. If the issues are not discussed, it would prima facie establish a non-application of mind. Similar is the duty cast upon the Appellate Authority.

26. We dispose of the writ petition setting aside the impugned order dated 30.3.1994 passed by the Disciplinary Authority dismissing Petitioner from service and also set aside the order dated 23.6.1994 passed by the Appellate Authority dismissing the appeal filed by the Petitioner.

27. We direct the Petitioner to be reinstated in service. Needless to state, an order has to be passed by the Competent Authority with respect to the period post dismissal from service till reinstatement of the Petitioner as contemplated by FR-54 and for which we direct the Competent Authority to pass a reasoned order as to in what manner the said period would be reckoned for the service record of the Petitioner. Needful would be done within 4 weeks from today.

28. No costs.