

(2011) 07 DEL CK 0288

In the Delhi High Court

Case No : Writ Petition (C) No. 5502 of 1997

P.B. Bansal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-07-2011

Acts Referred:

Border Security Force Act, 1968 — Section 108, 11(1), 113, 41
Border Security Force Rules, 1969 — Rule 22(3)
Constitution of India, 1950 — Article 1, 226, 5

Citation : (2011) 07 DEL CK 0288

Hon'ble Judges : Sunil Gaur, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Anil Gautam, for the Appellant; Bhupinder Sharma, Dy. Commandant, BSF, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The Petitioner was enrolled with the Border Security Force on 27.06.1966. He was promoted to the rank of Subedar Major (Hindi Translator) in November 1989 and was posted at the Headquarters of BSF at New Delhi.

2. A complaint of Petitioner receiving illegal gratification to manage transfer-postings was received and taking cognizance of the offence report the Commandant drew up a Charge Sheet dated 2.11.1992 alleging the following charges:

FIRST CHARGE BSF BSF ACT SEC 41(e)

ACCEPTED FOR HIMSELF GRATIFICATION AS A REWARD FOR PROCURING THE TRANSFER OF A PERSON IN THE SERVICE

in that he, at New Delhi, during the year 1988-91 accepted a sum of Rs. 600/- (Rupees six hundred) only, from No.66777358 Constable Chhabi Ram for procuring his transfer from 33 Bn BSF to BSF Academy Tekanpur.

SECOND CHARGE BSF BSF ACT SEC 41(e)

AGREEING TO OBTAIN FOR HIMSELF GRATIFICATION AS A MOTIVE FOR PROCURING TRANSFER OF A PERSON IN THE SERVICE

in that he, at New Delhi, during the year 1991, agreed to obtain Rs. 1200/- (Rupees one thousand two hundred) only, from No.79777004 NK SukhleshwarPatgiri of 191 Bn BSF for procuring his transfer from 191 Bn BSF to a place nearer his home town.

THIRD CHARGE BSF BSF ACT SEC 41(e)

AGREEING TO OBTAIN FOR HIMSELF, GRATIFICATION FOR PROCURING TRANSFER OF A PERSON IN THE SERVICE

in that he, at New Delhi, during the year 1991, agreed to obtain Rs. 1200/- (Rupees one thousand two hundred) only, from No.87007025 Constable DipulGogoi of 191 Bn BSF for procuring his transfer from 191 Bn BSF to a place nearer his home town.

FOURTH CHARGE BSF BSF ACT Sec 41(e)

AGREEING TO OBTAIN FOR HIMSELF GRATIFICATION AS A MOTIVE FOR PROCURING THE ENROLMENT OF A PERSON IN THE SERVICE

in that he, at New Delhi, during the year 1991, agreed to obtain Rs. 10,000/- (Rupees ten thousand) only from No.89243425 Constable Babu Ram of 191 Bn. BSF, for procuring the enrolment of his cousin Sh. Rajender Prasad Chowdhary s/o Sh. ChoteLalChowdhary, r/o Village ChanuwaMarhi, Distt. Basti (U.P.) in the BSF.

3. Completing proceedings pertaining to the hearing of the charge and opining that Record of Evidence needed to be drawn up, vide order dated 2.11.1992 the Commandant appointed Deputy Commandant S.K.Verma to prepare the Record of Evidence, who recorded the testimony of various witnesses and thereafter recorded the statement of the petitioner and forwarded the Record of Evidence to the Competent Authority. After considering the Record of Evidence, vide order dated 16.09.1994 the Competent Authority convened a General Security Force Court (herein after referred to as the ?GSFC?) to try the petitioner as per the charge sheet dated 23.3.2004, which we note lists the same charges for which hearing of the charge was held, and also an additional charge, probably in view of the evidence recorded during Record of Evidence, which 5th charge reads as under:

FIFTH CHARGE BSF BSF ACT Sec 41(e)

AGREEING TO OBTAIN FOR HIMSELF GRATIFICATION FOR PROCURING APPOINTMENT OF A PERSON IN THE SERVICE

in that he, at New Delhi, during the year 1992, agreed to obtain Rs. 7,000/- (Rupees seven thousand) only, from No.770025047 ASI (Clerk) Bhudeo Singh of 173 Bn BSF for procuring his appointment as Junior Hindi Translator in the BSF.

4. At the trial conducted by the GSFC 12 witnesses were examined by prosecution. The Petitioner did not lead any evidence in his defence but made a statement wherein he denied the charges levied upon him and alleged mala fide on behalf of the JAD, Vigilance and CI.

5. The General Security Force Court returned a verdict of guilty qua the first and fifth charge and exonerated the Petitioner of the other three i.e. the second, third and the fourth charge. The penalty of forfeiture of 5 years' service for purposes of pension and severe reprimand was inflicted upon the Petitioner.

6. As required by law, the record of the trial was sent to the Inspector General BSF for confirmation as contemplated by Section 108 of the Border Security Force Act 1968 (hereinafter referred to as "The Act"). Vide order dated 28.04.1995, exercising powers u/s 113 of the Act, the Inspector General returned the record to the GSFC to revise/reconsider the punishment obviously for the reason the Inspector General found the penalty not being proportionate to the gravity of the offence. Vide its revision order dated 03.05.1995 the GSFC decided to adhere to the previous sentence awarded and forwarded the record to the Inspector General for confirmation of the findings and the sentence. Vide order dated 15.09.1995 the Inspector General BSF confirmed the finding of the GSFC but did not confirm the sentence awarded by the Court.

7. In exercise of power u/s 11(1) of the BSF Act 1968 read with Rule 22(3) of the BSF Rules 1969, vide order dated 1.09.1995 the Inspector General levied the penalty of dismissal from service without pension upon the Petitioner whose mercy petition to the Director General BSF resulted in the penalty being mitigated to that of reduction to the next lower rank i.e. Subedar Junior (Hindi Translator).

8. Aggrieved by his conviction at the GSFC and the final punishment imposed, the Petitioner filed the instant petition being further aggrieved by the fact that as a result of the penalty levied he could not earn a promotion on 13.5.1996.

9. Of the many contentions raised by way of grounds in the writ petition, at the hearing of the writ petition, arguments were advanced only on one point that it is a case of no evidence. It was highlighted that Ct. Chabbi Ram the person who allegedly gave bribe and for which Article 1 of the charge was drawn up and ASI Bhudeo Singh the person who allegedly gave bribe and for which Article 5 of the charge was drawn up, examined as PW-1 and PW-6 denied having paid any money to the Petitioner.

10. Since Petitioner has been exonerated of the second, third and the fourth charge, we highlight that it would be useless to note the evidence led pertaining to said charges and suffice would it be to note that out of 12 witnesses of the

prosecution examined at the trial, testimony of 8 relate to Article 1 and Article 5 of the charge and thus we briefly note what they said at the trial.

11. Const. Chabbi Ram PW-1, deposed that in the year 1986 he had applied for a transfer to BSF Academy Tekanpur in relation to which he visited the Academy, where in a casual discussion, he mentioned the issue of his transfer to the salesman of the canteen. The salesman advised him to take assistance from the Petitioner, who was standing nearby, informing him that he could do so as the Petitioner used to visit the headquarters frequently. Hearing so, the Petitioner had promised to help him in the transfer and that thereafter he i.e. PW-1 was transferred to the BSF Academy Tekanpur in the month of May 1988. He did not depose of making any payment to the Petitioner, but on being questioned by the court, he stated that he had no intimate relation with the Petitioner and had only occasional meetings with him at the BSF Academy and that the Petitioner never told him that his transfer was due to efforts made by him.

12. After a few witnesses were examined, Ct. Chabbi Ram was re-summoned and re-examined by the Court, wherein he stated that the Petitioner had spent Rs. 800/- on the marriage of his i.e. Ct. Chabbi Ram's daughter and returning the same Rs. 400/- had been paid to the Petitioner by his i.e. Chabbi Ram's wife and further Rs. 200/- were returned by him through Ct. Ramsubhag Tripathi who had taken a loan from him and rather than return the money to him i.e. Ct. Chabbi Ram he told Ct. Ramsubhag Tripathi to pay Rs. 200/- to the Petitioner.

13. JAD Aridamanjit Singh PW-3, deposed that in the year 1992 he received information from a person that the Petitioner is managing the posting and transfers of BSF personnel for illegal gratification and the informant handed him two letters written by Ct. Ramsubhag Tripathi and ASI/Clk Budheo Singh, addressed to the Petitioner, in connection with managing the transfer of a few BSF personnel and recruitment of one Bhudeo Singh as a Junior Hindi Translator. As requested by the informant, he retained photocopies of these letters, being Ex."M", "N" and "O" and returned the original to the source, lest the Petitioner and his associates become suspicious of the source. He made enquiry from Const. Ramsubhag Tripathi pertaining to the letter written by him to the Petitioner, whereupon he i.e. Ct. Ramsubhag Tripathi handed over to him, two letters, Ex. "R" and "S" stating that they were written to him by the Petitioner. After sometimes he made enquiries from ASI/Clk Bhudeo Singh who informed him that he had paid Rs. 7,000/- to the Petitioner for purposes of his recruitment as Junior (Hindi Translator).

14. On being cross-examined by the Petitioner he stated that he could not reveal the name of the source/informant as it would be against public interest and professional ethics.

15. L/Nk. Ramsubhag Tripathi PW-4, deposed that he had asked Ct. Chabbi Ram to discuss the matter of his transfer to the BSF Academy in Tekanpur with the Petitioner and that Ct. Chabbi Ram told him that the Petitioner promised to help

him. That sometime in the year 1989 he got a letter from Ct. Chabbi Ram wherein he requested him to pay the balance amount of Rs. 200/- to the Petitioner which was the loan amount taken by him from Ct. Chabbi Ram. Accordingly he paid Rs. 200/- to the Petitioner. He further deposed that on a few occasions he had requested the Petitioner to assist him in matters pertaining to recruitment and transfer of a few individuals.

16. It may be highlighted that PW-4 admitted having paid Rs. 200/- to the Petitioner but stated that he did so inasmuch as he i.e. PW-4 owned Rs. 200/- towards Ct. Chabbi Ram and since Ct. Chabbi Ram told him to pay over the said sum to the Petitioner, he did so by way of loan being returned and hence not by way of an illegal gratification.

17. Being confronted with his statement recorded at the Record of Evidence in which he had implicated the Petitioner, L/Nk. Ramsubhag Tripathi said that he deposed under duress of the personnel of "G" Branch and with respect to the photocopy of the letter, Ex."M" said that he was forced to write and sign the letter by JAD Aridamanjit Singh. We would highlight that the Court recorded the demeanour of the witness, being shaky and reluctant and consuming excess time to respond to the questions.

18. SI/Clk Budheo Singh PW-6, deposed that during his service under the Petitioner at TC&S Hazaribagh he developed cordial relations with the Petitioner which were maintained thereafter through letters and occasional meetings. That sometime in the year 1990 he received a letter from the Petitioner requesting financial help from the ensuing marriage of his daughter, in reply where to he enquired from the Petitioner as to how much amount would be required for the marriage, Rs. 5000/- or Rs. 10,000/- to which the Petitioner responded that he would inform him in due time. He further deposed that along with the letter Ex."N", the application for his appointment to the post of Junior Hindi Translator and other annexures were sent to the Petitioner for his perusal, to see if they were in order. But no reply was received by him from the Petitioner.

19. Relevant would it be to note that when confronted with his statement recorded at the Record of Evidence, he said that under duress and threats by the "G" group people he had given a statement to JAD Aridamanjit Singh at the headquarters and at the ROE, as he was afraid to state anything to the contrary under fear of being charged for giving false statements. On being confronted with the following extract from the letter Ex."O" : "AAPNE JO PAISE KE BARE MAIN LIKHA HAI PURANRUPE SE TAYAR HAIN. SIRF AAPKE AADESH KA INTJAR HAI. TEST KAB HO RAHA HAI LIKHIYE GA." He stated that he was referring to the money required for the marriage of the daughter of the Petitioner and was simultaneously questioning regarding the date of the test of Junior Hindi Translator.

20. On being questioned by the court, he pleaded ignorance regarding the details of the family of the Petitioner such as names, number and age of Petitioner's

children.

21. Brigadier J.M. Kapoor PW-9, deposed that the statement Ex."P" of the Petitioner was recorded by him during hearing of the charge.

22. Relevant would it be to note that no suggestion was given to the witness that the statement Ex."P" was written by the Petitioner at his instance.

23. JADB.P. Shah PW-10, deposed that as per the general policy sponsorship for inter-frontier transfer were done by the officers of the force and other dignitaries. That as per the record of the Establishment Branch the name of Ct. Chabbi Ram was sponsored by the Petitioner to be transferred to the BSF Academy at Tekanpur and his transfer was approved on 27.02.1990. He produced the record pertaining to the transfer of Ct. Chabbi Ram to the BSF Academy in Tekanpur, including the application Ex. "Q-II" made by Ct. Chabbi Ram seeking transfer to BSF Academy Tekanpur. (We note that Ex. "Q-II" records that case of Ct. Chabbi Ram was sponsored by the Petitioner).

24. ADR.K. Dawivedi PW-11, deposed that he identifies the handwriting of the Petitioner as the Petitioner had worked under him for about two years and that letters Ex."R" and "S" and application Ex.Q-II are in the handwriting of the Petitioner.

25.B.P. Kapoor PW-12, deposed that the application Ex. "Q-II" was given to him by the Petitioner. He made the endorsement on the application Ex. "Q-II" to the effect that the Petitioner has sponsored the case of Const. Chabbi Ram for transfer. The application was not sent through a proper channel as no diary/ receipt number is recorded in the said application.

26. Having noted the relevant oral and documentary evidence, we recapitulate the argument which we have to deal with. As noted in para 9 above, of the many contentions urged by way of pleadings in the writ petition, learned Counsel for the Petitioner urged only one point: that it is a case of no evidence. We remind ourselves that of the 5 charges framed against the Petitioner he has been convicted of only charge No. 1 and 5 i.e. of having accepted illegal gratification in sum of Rs. 600/- from Ct. Chabbi Ram to secure his transfer to BSF Academy Tekanpur and of obtaining illegal gratification in sum of Rs. 7,000/- from ASI Bhudeo Singh to procure his appointment as a Junior Hindi Translator.

27. From the evidence we have noted hereinabove, it would be apparent that pertaining to the first charge the testimony of Ct. Chabbi Ram PW-1, JAD Aridamanjit Singh PW-3, L/Nk. Ram Subhag Tripathi PW-4, Brig.J.M. Kapoor PW-9, JADB.P. Shah PW-10, ADR.K. Dawivedi PW-11 and B.P. Kapoor would be relevant.

28. The documentary evidence which would be relevant would be Ex."M" and Ex."R".

29. Since men may lie but documents cannot lie, we reproduce the relevant

extract of Ex."M" and Ex."R", but before that would note that Ex."M" is photocopy of a letter which the prosecution claims was written by L/Nk. Ram Subhag Tripathi PW-4 to the Petitioner and Ex."R" is the original letter written by the Petitioner proved through the testimony of PW-11. As per the testimony of PW-3 his source had handed over to him photocopies of 3 letters, one of which was Ex."M" and since the issue at hand pertains to illegal gratification, it would be apparent that the department would like to protect the names of the informants and not expose their intelligence network and for this reason we find a good reason for the department to not expose the source. We would highlight that the author of the letter PW-4 did admit that he wrote the letter but claims that he did so under compulsion by PW-3. As regards Ex."R", we find that it has been proved through the testimony of a witness under whom the Petitioner had worked, who could recognize the handwriting of the Petitioner.

30. The relevant portion of letter Ex. "M" which was written to the Petitioner by PW-4 reads as under:

.....I do not understand your instructions regarding sending further amount of Rs. 500/- because when I was coming on transfer Chabbi Ram had given me a sum of Rs. 500/- in total. I had sent Rs. 300/- to Chabbi Ram and gave remaining amount of Rs. 200/- to you. The amount of Rs. 300/- was given by him in connection with the expenditure incurred by him on travelling to and fro Delhi for the purposes of his transfer. Rest Sir I had already told you the matter of transfer of two persons.

As per your instructions I have fixed a sum of Rs. 1,200/-with the said persons that is why I had written a letter to you. You send a message of illness of my family from there so that I can get a leave for 15 days and hand over the sum of Rs. 2,400/- to you. Translated Version)

31. The relevant portion of letter Ex.?R? written by the petitioner and proved by PW-11 reads as under:

...I have received your Rs. 200/-. The amount of Rs. 400/-of Chabbi Ram are still required to be paid..... It would take some time to do the work of other two persons whose names you have written so refuse them. Post less letters. We also stay outside. Rest we will talk on meeting. Do not even write in the letter. (Translated version)

32. Now, Ex."R" itself is a proof that the Petitioner acknowledged having received Rs. 200/- from PW-4 and clearly mentions that Chabbi Ram has still to pay him Rs. 400/-. The letter records that some time would be taken to do the work of other persons whose names he had written. The Petitioner writes in the letter that rest they would talk on meeting and told him not to write on the subject in the letters.

33. Commonsense tells us that the Petitioner was acknowledging receipt of Rs. 200/- for an illegal purpose and was demanding the balance Rs. 400/- was

cautioning PW-4 that such kind of subjects should be discussed orally and not in writing. We find a mirror of the same subject in Ex."M" and thus it is sufficient for us to conclude that Ex."M" was a contemporaneous letter written by PW-4. It also assumes importance that the question of Ex."M" being forcibly got written does not arise inasmuch as the letter is on an inland cover being posted through the post office where R.S. Tripathi was stationed and bears the postal stamp endorsement as is found on all inland letters. It is unbelievable that Aridamanjit Singh would force PW-4 to write a letter on a postal envelope and then go to the place where PW-4 was working and manage from the postal authorities a postal seal affixation having an anti date on the letter.

34. The testimony of Ct. Chabbi Ram would show that he admitted having directed Ct. Ram Subhag Tripathi to pay Rs. 200/- to the Petitioner and the testimony of Ct. Ram Subhag Tripathi proves his having so paid. The theory of the stated marriage of Chabbi Ram's daughter and in relation to money being spent by the Petitioner and loan being returned does not stand to any logic or reasoning and in any case is completely belied by the contents of the letter Ex."R" which is in the handwriting of the Petitioner. It assumes relevance that Ex."QII" is indisputably containing an endorsement by the Petitioner of having sponsored Ct. Chabbi Ram's transfer to BSF Academy Tekanpur. Chabbi Ram's version of having casually spoken to the Petitioner on the subject is at least an admission of the fact that he did require and sought Petitioner's help in the matter.

35. We have found enough reasons, based on evidence, to hold against the Petitioner on charge No. 1 and do not venture into a full re-appraisal of the evidence on the subject since we are exercising jurisdiction under Article 226 of the Constitution of India and are not to sit as an Appellate Court.

36. As regards charge No. 5 we find that the relevant evidence would be the testimony of PW-3, PW-6 and PW-11. The relevant documentary evidence would be Ex."N" and Ex."O" both of which are photocopies. Both are claimed by the department to be in the handwriting of Bhudeo Singh and relevant would it be to note that Bhudeo Singh admits having written the letters but claims that he was replying to the request by the Petitioner for financial help at the marriage of the daughter of the Petitioner.

37. Relevant would it be to note that in Ex."O" Bhudeo has written: "AAPNE JO PAISE KE BARE MAIN LIKHA HAI PURANRUPE SE TAYAR HAIN. SIRF AAPKE AADESH KA INTJAR HAI. TEST KAB HO RAHA HAI LIKHIYE GA." His explanation that reference of the money in the letter was pertaining to Petitioner's request for financial help for the marriage of his daughter is illogical. The first sentence of the letter contains the affirmation of Bhudeo Singh that he was ready with the money qua which Petitioner had written a letter to him. The second sentence is Bhudeo Singh telling the Petitioner that he was awaiting further instructions. The third sentence is the query as to when would the exam be conducted. If Bhudeo's explanation is correct, that he was responding to the Petitioner's

request for financial help pertaining to the marriage of the Petitioner's daughter, he would have written in the letter that he was forwarding the money to the Petitioner and not to inform the Petitioner that he was ready with the money and was awaiting a signal from the Petitioner so that he could send the money and simultaneously query as to when could the exam be held.

38. When parties write about illegal transactions, they would obviously write in a manner where the real is intended to be hidden, and at the same time, a meaning is conveyed. The circuitous use of words in the letter by Bhudeo is apparent. Commonsense guides the route to determine the true meaning of the letter. Bhudeo's admission that he sent his application pertaining to the test of Junior Hindi Translator to the Petitioner for onward transmission to the department is another piece of evidence against the Petitioner.

39. There is enough evidence against the Petitioner and thus we hold that the argument of it being a case of no evidence requires to be rejected.

40. The Petitioner has been proved to be receiving illegal gratification and thus while dismissing the writ petition we impose cost quantified in sum of Rs. 11,000/- payable by the Petitioner to the Respondents.