

(2016) 03 DEL CK 0241
In the Delhi High Court
Case No : W.P. (C) 12654/2005

Ramesh Kumar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 10-03-2016

Acts Referred:

Border Security Force Act, 1968 — Section 26

Citation : (2016) 4 ADDelhi 281

Hon'ble Judges : Hima Kohli and Sunil Gaur, JJ.

Bench : Division Bench

Advocate : R.K. Shukla, Advocate, for the Appellant; Ashwani Bhardwaj, CGSC, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.—1. The petitioner has assailed the order dated 11.2.2003 passed by the respondent/BSF inflicting upon him the punishment of dismissal from service. A glance at the facts of the case is necessary. The admitted facts of the case are that the petitioner had joined the respondent/BSF as a Constable in the year 1998. The incident in question relates to the year 2003 when on 9.2.2003, the petitioner was charge-sheeted for intoxication. After hearing the charge, an officer was appointed for recording the evidence on 31.1.2003, which was duly concluded on 4.2.2003. Four witnesses were produced by the prosecution during the Recording of Evidence (in short "the ROE"), namely, PW-1 Head Constable Shyam Nath Singh, PW-2 Head Constable Louis Kujur, PW-3 Head Constable C.H.M. Rao and PW-4 Assistant Commandant Harbhajan Singh.

2. On perusing the evidence, a prima facie case was found against the petitioner and a Summary Security Force Court (SSFC) was ordered against him. Though the petitioner was afforded an opportunity to make his submission and call his witnesses, he had declined to do so. The SSFC was conducted under Section 26 of the BSF Act, 1968 which prescribes that any person found in a state of intoxication, whether on duty or not, shall, on conviction by a Security Force

Court, be liable to suffer imprisonment for a term that may extend upto six months or such less punishment as mentioned in the Act.

3. The SSFC was held on 11.2.2003 by the Commandant, 19th Battalion, BSF and in the course of the said proceedings, the petitioner had pleaded "guilty" and asked for mitigation of punishment by stating that he be pardoned for his mistake. At the end of the said proceedings, the petitioner was inflicted the punishment of dismissal from service. Aggrieved by the aforesaid order, after a period of one and a half years, on 23.8.2004, the petitioner filed an appeal which was dismissed as being time barred, vide order dated 10/13.12.2004. Thereafter, the petitioner filed the present petition in the year 2005 assailing the dismissal order.

4. The petitioner has assailed the impugned order on the ground that this is a case of "no evidence" as there is not an iota of evidence that he was found in a state of intoxication. Mr. R.K. Shukla, the petitioner's counsel submitted that a perusal of the testimony of the witnesses produced by the respondents would reveal that their statements were contradicting each other, which ought to be sufficient for discarding them as being unreliable. Much stress was laid on the fact that as per the chargesheet, the time of consuming liquor by the petitioner was shown as about 17.30 hrs., whereas PW-1 had stated that the time of the alleged misconduct was 15.45 hrs., PW- 2 and PW-4 had given the timing as 16.00 hrs. and PW-3 had said that the misconduct had taken place at 15.00 hrs. It was thus urged that the petitioner had been falsely implicated in the case.

5. The next ground taken to assail the impugned order is that the petitioner had not been medically examined and in the absence of any such examination, it cannot be presumed that he was in a state of intoxication. Learned counsel for the petitioner had argued that the petitioner could not have been held guilty unless and until there is some evidence to prove preponderance of probability which is missing in this case. In support of the said submission, learned counsel had cited judgments in the cases of Dharam Pal vs. State of Haryana & Ors., 1989 (5) SLR 569, Ram Kishan vs. State of Haryana & Ors., 1990 (2) SLR 488 and Roop Singh Negi vs. Punjab National Bank & Ors., , AISLJ IX-2009(3) 14.

6. It was further argued that at the time of the incident, the petitioner was not on duty and in such circumstances, it could not be stated that he had committed any misconduct. Reference was made to the judgment in the case of Rattan Lal vs. State of Haryana, , 1983 (2) SLR 159 to contend that in similar circumstances where charges against the petitioner therein were that he was found under the influence of liquor while not on duty, the order of penalty was quashed. A feeble attempt was also made to argue that the petitioner had not been afforded any legal assistance. Lastly, learned counsel for the petitioner had canvassed that the punishment of dismissal from service imposed on the petitioner was too harsh and disproportionate to the offence.

7. Per contra, Dr. Ashwani Bhardwaj, learned counsel appearing for the

respondents had submitted that there was no contradiction in the statements of the prosecution witnesses all of whom had found the petitioner in a state of intoxication. He pointed out that the petitioner was afforded an opportunity to make a statement and produce witnesses in defence, but he had declined to do so. Further, he had pleaded "guilty" and asked for mitigation of punishment. In such circumstances, it was urged that even if the evidence was not reliable as alleged by other side, the petitioner could not be permitted to wriggle out of his own admission of guilt. It was also submitted that the past conduct of the petitioner while in service for a period of over 14 years, was unimpressive inasmuch as he had been punished on seven occasions and on four occasions, he was punished for being in a state of intoxication.

8. The contention of the petitioner that no legal assistance was afforded to him was rebutted by the learned counsel for the respondents, who had stated that the petitioner had never made any request for engaging a legal practitioner and in any case, vide order dated 9.2.2013, he was given a "friend of accused", namely, Shri Neeraj Dubey, Deputy Commandant. Copies of the ROE and the chargesheet was also supplied to the petitioner on the same day. It was thus urged that there was no procedural lapse in conducting the SSFC and there was sufficient evidence to indict the petitioner for the charge levelled against him.

9. We have considered the arguments advanced by the learned counsels for the parties and carefully perused the pleadings and the records. On examining the testimony of the prosecution witnesses, it emerges that apart from a minor discrepancy with regard to timing of the incident, which ranges between 15.00 hrs to 16.00 hrs. as against the timing recorded in the charge sheet which was recorded as 17.30 hrs., i.e., an hour and a half later, there is no material inconsistency in their deposition which could make them unreliable. In fact, each of the witnesses had testified that the petitioner was in a civil dress, visibly intoxicated and not in his senses on the date of the incident.

10. As for the contention of the learned counsel for the petitioner that the respondents had not arranged for the petitioner to be medically examined to establish as to whether he was in a state of intoxication, it has been satisfactorily explained by learned counsel for the respondents that on the date of the incident, the petitioner was posted in "F" Coy, 19th Battalion, BSF that was deployed at the Indo-Pak International Border of the Punjab Frontier and there was no facility at the border for making the petitioner undergo a medical examination and conducting a medical examination on the next day would have been a futile exercise. In any event, the aforesaid aspect would have weighed had the petitioner pleaded not guilty to the charge levelled against him, but the records reveal that the petitioner had pleaded guilty and even asked for mitigation of punishment.

11. The argument that the absence of legal assistance would vitiate the entire proceedings, is taken note of only to be rejected as the records do not reveal that the petitioner had ever submitted a request for seeking any legal assistance.

In fact, the respondents have filed a copy of the letter dated 9.2.2003 addressed by the petitioner to the Commandant stating inter alia that Shri Neeraj Dubey, Deputy Commandant be appointed as a "friend of accused" to defend his case. On receiving the said letter, on the very same date, the officer named by the petitioner was appointed as a "friend of accused". Further, though the petitioner was called upon by the respondents to submit a list of witnesses that he intended to produce, he did not avail of the said opportunity. Even the cross-examination of the prosecution witnesses did not bring forth anything material in support of the petitioner's defence that he had not consumed liquor at the time of the incident. In fact, PW-1 had specifically stated in his testimony that on the date of the incident, i.e., on 28.1.2003, at the time of the evening Roll call at 18.00 hrs., the petitioner was found absent and on checking, was found asleep in the barracks.

12. Again, the argument that PW-2 and PW-3 had testified that the petitioner "looked like he was intoxicated", does not amount to his being actually intoxicated, is found to be of no consequence in the light of the fact that the petitioner had himself pleaded "guilty" to the charge of intoxication levelled against him. In these circumstances, the submission made by learned counsel for the petitioner that it is a case of "no evidence" and on this ground, the impugned punishment inflicted on the petitioner ought to be set aside, is found to be devoid of merits.

13. As for the submission made by learned counsel for the petitioner that the punishment of dismissal from service is too harsh and disproportionate to the offence, the records reveal that it was not the first occasion when the petitioner was found intoxicated. It is relevant to note that Rule 151 of the BSF Rule prescribes that where the finding on any charge is "guilty", the court is required to record the general character, age, service, rank or any recognized acts of gallantry or distinguished conduct of the accused. Further, details are also required to be recorded with respect to the previous convictions of the accused and any previous punishment awarded to him that are relevant.

14. In terms of the aforesaid Rule, prior to the verdict of the court during the SSFC proceedings, a summary of the entries made in the petitioner's record were recorded which reveal that in the previous period of one year, punishments were awarded to him thrice and in his service spreading over 14 years 1 month and 23 days, he had been awarded seven punishments. The details of the punishments inflicted on the petitioner have been summarized in para 7 of the counter affidavit, which mention that he was punished for being inebriated on four occasions on 23.8.2000, 3.10.2001, 10.6.2002 and 25.8.2002. To top it all, when the petitioner was brought to the Battalion Headquarters for participating in the SSFC proceedings on 11.2.2003, he was found in a state of intoxication, which has been noted by the Chief Medical Officer in his report dated 11.2.2003, a copy whereof has been filed with the counter affidavit. The aforesaid records clearly demonstrate that the petitioner was a habitual offender and this factor

had certainly weighed with the SSFC at the time of awarding him the sentence of dismissal from service.

15. Given the past service record of the petitioner, reliance placed by counsel for the petitioner on the decisions in the cases of Dharam Pal (supra), Ram Kishan (supra) and Rattan Lal (supra), would not be of any assistance for the reason that in the case of Dharam Pal (supra), the court had noticed that it was a stray incident of the petitioner therein consuming liquor; in the case of Ram Kishan (supra), it was observed that the respondents had not returned any finding that the petitioner therein was incorrigible or unfit for police services and in the case of Rattan Lal (supra), the court had observed that the petitioner therein could not have been proceeded against for any misconduct as he was not on duty at the relevant time and nor was he misbehaving.

16. Unlike the aforesaid cases, in the instant case, it has been clearly brought out by the respondents that the petitioner has been a habitual offender and on four previous occasions he has been found to be intoxicated and inflicted punishments. The crowning glory is that even during the course of the SSFC proceedings, the Chief Medical Officer had found him in an intoxicated state. Furthermore, unlike the cases cited by learned counsel for the petitioner, the facts of the present case reveal that the petitioner was deployed at a sensitive place like the Indo-Pak International Border of the Punjab Frontier, which is additionally a smuggling prone area, and a high level vigilance would be expected from the BSF personnel posted in that area. Moreover, the evidence on record reveals that the petitioner had returned to duty after availing 29 days of earned leave. In such circumstances, he was expected to be mentally and physically fit for going back to duty and serve at his place of posting with diligence and dedication. Instead, immediately on joining duty, he was found in an inebriated condition, which is most irresponsible and absolutely unacceptable.

17. As for the contention of the counsel for the petitioner that the petitioner's admission of "guilt" alone could not indict him since there was no direct evidence, it has been noted above that sufficient evidence was produced by the respondents which points towards his guilt. As a result, the decision of the Supreme Court in the case of Roop Singh Negi (supra) would also not come to his aid, nor can the petitioner be permitted to argue that there was no preponderance of probability in the present case. In fact, this is not a case of "no evidence". Rather, it is a case of "sufficient evidence", which amply meets the requirement of burden of proof that has been satisfactorily discharged by the respondents.

18. In view of the aforesaid facts and circumstances and the evidence brought forth by the respondents, we are of the opinion that conclusion drawn by the SSFC based on the evidence adduced and fortified by the plea of guilt on the part of the petitioner, were sufficient to discharge the requirement of burden of proof placed on them. Further, we have not noticed any procedural lapse during the course of the SSFC, nor has learned counsel for the petitioner placed before this

Court any material to invoke the doctrine of probability for us to interfere with the punishment inflicted on the petitioner on the ground of unreasonableness or disproportionality.

19. We therefore hold that there is no illegality, arbitrariness or perversity in the impugned order that would permit intervention in judicial review. Accordingly, the present petition is dismissed as being devoid of merits, with no orders as to costs.