
(2012) 08 DEL CK 0097
In the Delhi High Court
Case No : Writ Petition (C) 1203 of 2000

Sanjeet Singh

APPELLANT

Vs

Director General, Bsf and Others

RESPONDENT

Date of Decision : 01-08-2012

Acts Referred:

Citation : (2012) 08 DEL CK 0097

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : Vimla Sinha, for the Appellant; R.V. Sinha, Advocate and Dy. Comdt. Bhupinder Sharma, Law Officer, BSF, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The petitioner pleads that the ex-parte inquiry conducted by the Inquiry Officer i.e. the Assistant Commandant is mala-fide being the result of a finding returned without giving an opportunity of being heard to the petitioner. To make good the said assertion it is pleaded that the petitioner rendered blameless service of approximately six years and that on March 24, 1999 it was falsely alleged that the petitioner and one Ct. O.P. Pandey physically assaulted a superior officer HC Manik Chandra Chaudhary. The petitioner alleges that immediately after the incident, the Commandant of the Battalion issued a charge-sheet to Ct. O.P. Pandey, but none to the petitioner. The petitioner alleges that he was summoned as a witness during Court of Inquiry proceedings and that Asstt. Comdt. R.C. Dhariwal completed the Court of Inquiry proceedings and that based thereon a fresh charge-sheet was drawn against the petitioner without a Court of Inquiry being conducted. The petitioner then alleges that Asstt. Comdt. R.C. Rajput was directed to conduct the Record of Evidence at which prayer made by the petitioner to supply documents was denied. It was followed by petitioner being tried at a Summary Security Force Court and upon being found guilty was dismissed from service. Everything is gibberish. From an Inquiry Officer being appointed and an inquiry conducted, to a Court of Inquiry

proceedings and therefrom to a Record of Evidence and then a trial at a Summary Security Force Court, the petitioner has just about said everything.

2. The record, consisting of two parts i.e. the SSFC trial and Record of Evidence has been produced.

3. The record pertaining to Record of Evidence proceedings evidences that an offence report, envisaged by Rule 43 of the BSF Rules 1969, was presented before the Commandant of the 76th Bn. on April 21, 1999 in which it was stated that HC Manak Chand Chaudhary was assaulted by the petitioner and Ct. Om Prakash Pandey on March 24, 1999 at about 12:00 hours at Bij behera TAC Headquarters near ORs Mess. 8 persons were named as witnesses. The petitioner and Ct. Om Prakash Pandey were marched up to the Commandant, who after hearing them decided to draw up a charge and direct preparation of Record of Evidence; this being the requirement of Rule 45 of the BSF Rules 1969. Asstt. Comdt. R.C. Rajput was directed to complete the Record of Evidence. The charge-sheet was drawn clearly listing the charge that the petitioner and Ct. Om Prakash Pandey had assaulted a superior officer at 12:00 hours near ORs Mess on March 24, 1999.

4. The proceedings commenced on May 20, 1999 and were completed by Asstt. Comdt. R.C. Rajput on June 10, 1999 and during which HC Manak Chandra, L/ Nk. J.N. Mishra, Ct. Laxmi Kant, Ct. Chandan Burman, HC S.B. Subba, Ct. Deepankar Vishwas and HC D.Marandi were examined as witnesses. All of them were examined in the presence of the petitioner and Ct. Om Prakash Pandey. The petitioner and Ct. O.P. Pandey cross-examined the witnesses. On each and every page of the testimony, the signature of the respective witness, the petitioner and Ct. O.P. Pandey were obtained. Thereafter, in compliance with Rule 48(3) of the BSF Rules 1969, after being told that the petitioner and Ct. O.P. Pandey have a right to make a statement in defence, but which may be used against them, the petitioner and Ct. O.P. Pandey made statements in defence.

5. The record of the second file would reveal that taking cognizance of the Record of Evidence, on June 16, 1999, the Commandant decided that it was a fit case to hold a trial and accordingly he drew up a charge-sheet on June 16, 1999 in which petitioner and Ct. O.P. Pandey were charged for the offence of using criminal force against a superior officer, in that, at around 12:00 hours on March 24, 1999 the two together assaulted HC Manik Chaudhary in ORs Mess with stick and fist blows at Bij Behara TAC HQ 76 Bn. BSF.

6. The next day the two charged jawans were brought before the Court. The charge was read out. Both pleaded not guilty. The witnesses who were examined during record of evidence were summoned as witnesses of the prosecution. all the witnesses deposed and suffice would it be to state indicted petitioner and Ct. O.P. Pandey as the ones who assaulted HC Manik Chaudhary. The exact role played by each i.e. Ct. O.P. Pandey assaulting with a hockey stick and the petitioner inflicting fist blows was graphically described. All the witnesses were

tendered for being cross-examined by the petitioner and Ct. O.P. Pandey. Some were cross-examined by both accused, and some by only the petitioner.

7. Thereafter the petitioner made a statement in defence and so did his co-accused.

8. Verdict of guilt being returned, the penalty was levied. We only highlight that the witnesses of the prosecution stood by the indictment.

9. Learned counsel for the petitioner now says, that she has nothing to argue, because obviously her client took the learned counsel for a ride.

10. But, why should the learned counsel have pleaded about an Inquiry Officer being appointed and an inquiry being conducted and thereafter plead that a Court of Inquiry was held. The BSF Act 1969 neither envisages a departmental inquiry nor a Court of Inquiry, the former is to be found in Civil Services and the latter pertaining to Army personnel. Under the BSF Act the disciplinary action is contemplated with Rule 43 where a superior officer takes cognizance of an offence report and if he feels that a cognizance offence is disclosed, and by cognizance offence we mean an offence as per the BSF Act 1968, he hears a charge in the presence of the accused as per Rule 45, which means that a formal charge is drawn and at this stage the Commandant only hears the witnesses orally. If he feels that the accused needs to be remanded for preparing a Record of Evidence or for preparing an Abstract of Evidence, he so directs. An officer is appointed to prepare the Record of Evidence or the Abstract of Evidence and thereafter the matter is sent to the Commandant who considers the Record of Evidence or the Abstract of Evidence as the case may be and if he opines that a trial is warranted, a charge-sheet is re-drawn and served upon the accused. Giving opportunity of at least 24 hours, the accused are produced in Court where the arraignment takes place and if the accused pleads not guilty, witnesses are examined.

11. Since no challenge is made with respect to the evidence led against the petitioner, we need not discuss the testimony of the witnesses, but would simply highlight that their evidence brings out that Ct. O.P. Pandey assaulted HC Manik Chaudhary with a hockey stick and the petitioner inflicted fist blows on HC Manik Chand Chaudhary. We dismiss the writ petition, but refrain from imposing costs since the petitioner is without a job.