
(2014) 01 DEL CK 0075
In the Delhi High Court
Case No : Writ Petition (C) 2793 of 2001

Satish Kumar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-01-2014

Acts Referred:

Citation : (2014) 01 DEL CK 0075

Hon'ble Judges : Pradeep Nandrajog, J; Jayant Nath, J

Bench : Division Bench

Advocate : H.S. Dahiya, for the Appellant; Richa Kapoor, Ms. Saahila Lamba, Advocates for R-1 and Mr. Bhupinder Sharma, Dy. Commandant, BSF, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The petitioner challenges the order dated July 27, 1999 passed by the Summary Security Force Court (SSFC) holding petitioner guilty of the two charges framed against him and as a result ordering petitioner to be dismissed from service. The petitioner was serving as a Constable in BSF and was attached to the 72 Bn. The statutory petition filed by the petitioner against the said dismissal was rejected by the Competent Authority vide order dated March 27, 2000. As per the record of the battalion the petitioner had been unauthorizedly absent from duty with effect from July 02, 1999 till July 11, 1999 and in fact had absconded. Thereafter on July 13, 1999, the petitioner absconded once again at 11:05 hours but was apprehended by the army personnel at water point Ghotaru just at the Indo-Pak border and handed over to the Commandant of the Battalion. Brought before the Commandant along with an offence report, after conducting hearing of the charge as envisaged by Rule 45 of the BSF Rules, 1969, the Commandant decided that the petitioner had to be remanded for preparing a record of evidence and for which Dy. Commandant A.S. Sandhu was the officer named. Before him 12 witnesses were examined.

2. We note that the same 12 witnesses were examined at the SSFC Trial, and as

would be noted hereinafter the witnesses deposed same facts which they had stated during recording of evidence, save and except some variations in respect whereof we would be dealing with the issue raised by the petitioner at the appropriate stage of the decision. In sum and substance the testimony of the 12 witnesses was proving that the petitioner firstly absconded on July 02, 1999 at 09:00 hours till he returned back at 12:20 hours on July 11, 1999, but absconded once again two days after at 11:05 hours on July 13, 1999. He was apprehended soon after by army personnel at water point Ghotaru at the Indo-Pak border.

3. The record of evidence was placed before the Commandant and the petitioner was produced before him. The Commandant proceeded under Rule 51 of the BSF Rules, 1969 by directing the petitioner to be tried at a SSFC Court. He drew up two charges as under:-

CHARGE SHEET

The accused No: 88855620 Rank: Constable Name: SATISH KUMAR of his Unit, is charged with:

4. The petitioner was brought before the Court and arraignment took place. As per the original record produced before us the Court had permitted Subedar (DECH) Ganesh Lal Yadav to act as the friend of the accused.

5. The record would reveal that the petitioner pleaded "Not Guilty" to the two charges and thus evidence was led at the trial.

6. Asst. Comdt. Anurag Mani PW-1 deposed that, on July 01, 1999, while posted at BOP-35 under his command the petitioner sought permission to go to TAC HQ for redressing of the bandage on his head and also to get some medicines for headache. Accordingly, he permitted the petitioner to go to TAC HQ at Garsia at 07:15 hours. He learnt later on that the petitioner had left TAC HQ Garsia but did not return. Vide signal dated July 11, 1999, he sought confirmation from the Battalion Headquarter whether petitioner had reported at the Battalion Headquarter and received the information that the petitioner had not reported at the Battalion Headquarter. He deposed that the petitioner returned after 9 days on July 11, 1999 at 12:20 hours. He deposed that when questioned, why he left the TAC HQ Garsia without permission, the petitioner informed him that he desired to meet his family and children and therefore he went to Meerut. The petitioner stated that no action could be taken against him except to punish him for up to 28 days in force custody. The petitioner threatened to desert the outpost once again if he sent a desertion report to the Battalion Headquarter. The petitioner told him that he was not interested in serving BSF. That on July 13, 1999, HC Nathu Singh (PW-3) informed him that the petitioner had once again deserted the outpost at Jamrau and therefore he sent a signal to the Battalion Headquarter.

7. Relevant would it be to note that the petitioner did not cross-examine PW-1.

He declined to do so.

8. HC Assa Ram PW-2, deposed that on July 02, 1999, the petitioner asked him not to mark the petitioner's attendance in the attendance register since he was going home. On being cross-examined by the petitioner, PW-2 stated that since the petitioner was of another company he did not ask him any reason for the request made by the petitioner.

9. HC Nathu Singh PW-3 deposed in sync with PW-1. The witness was not cross-examined in spite of opportunity granted.

10. HC Khagen Hiloidhari PW-4, deposed that on the petitioner's return to the company on July 11, 1999 at 12:00 hours, he was produced before the coy commander before whom he stated that he left TAC HQ Garsia to go to his home town Meerut on his own on July 01, 1999. That on July 13, 1999, the petitioner was not seen at the BOP or in the barracks and that everybody was talking about his absence. The witness was not cross-examined in spite of opportunity granted.

11. Ct. Gopal Singh PW-5 deposed that he made the GD entries when on July 01, 1999 petitioner was sent to TAC HQ Garsia for treatment and when he returned on July 11, 1999, as also on July 13, 1999 when he was informed by PW-3 that the petitioner had absconded. The witness was not cross-examined in spite of opportunity granted.

12. L. Nk. Debashis Roy PW-6, deposed that he was the Coy Clerk and that the petitioner left the BOP on July 01, 1999 for medical treatment but returned on July 11, 1999 and that when required to give a written explanation of his conduct the petitioner threatened to desert once again. That on July 13, 1999 the petitioner deserted once again. The witness was not cross-examined in spite of opportunity granted.

13. Ct. R. Shiva Kumar PW-7 deposed in sync with PW-1, PW-3 and PW-6 regarding petitioner's refusal to give a written explanation and threatening to desert once again when he came to the BOP on July 11, 1999. The witness was not cross-examined in spite of opportunity granted.

14. SI Hansa Dutt PW-8 deposed that on July 13, 1999, he was serving in "C" Company in the 133rd Bn. and was informed that a constable in BSF uniform had been apprehended near Ghotaru water point under suspicious circumstances. He reported the matter to his adjutant Sh. K. Talukdar (PW-9) who asked him to bring the constable to Ghotaru administrative base. The constable was not possessing his identity card and on inquiry told that he was a constable with the 72nd Bn. and told his name as Ct. Satish Kumar. On being cross-examined, PW-8 stated that it had been raining that day and that when he reached Ghotaru water point to bring the petitioner the weather had cleared.

15. Dy. Comdt. K. Talukdar PW-9 deposed in sync with PW-8. In addition he deposed that the petitioner requested him not to hand him over to the escort party and he should be allowed to go, a request which he declined. The witness

was not cross-examined in spite of opportunity granted.

16. SI Sukchain Singh PW-10 and HC C. Krishnan PW-11 deposed that they had escorted the petitioner from Ghotaru administrative base of the 133rd Bn. to the 72nd Bn. The witnesses were not cross-examined in spite of opportunity granted.

17. Asst Comdt. R.K. Singh PW-12 deposed that on July 12, 1999, while discharging the duties of Adjutant at the 72nd Bn., he received a detailed report about the petitioner's absence without leave from July 02, 1999 to July 11, 1999; and on July 14, 1999 he was informed that the petitioner had deserted from BOP Jamrao. On July 14, 1999, he received an emergency signal from 133rd Bn. that the petitioner was apprehended at water point Ghotaru. He received another signal from 133rd Bn. informing him of petitioner showing violent behaviour with a request that he should send an escort party to collect the petitioner from administrative base Ghotaru and therefore he sent an escort party led by PW-10. The witness was not cross-examined in spite of opportunity granted.

18. The petitioner did not call upon any witnesses in his defence and declined to make any oral or written statement before the SSFC.

19. In view of the evidence led at the trial, the Court held petitioner guilty of both charges and ordered his dismissal from service on July 27, 1999. Statutory petition filed was rejected on March 27, 2000.

20. It is the case of the petitioner that while working as a constable with the 72nd Bn. which was deputed at the Indo-Pak border at Jaisalmer, he got injured when a camel kicked him on his forehead and that being seriously hurt, Assistant Commandant Anurag Mani (PW-1) sent him for treatment at Jaisalmer and that he did not abscond.

21. Except for arguing the point, learned counsel for the petitioner could take the argument no forward. The testimony of the 12 witnesses of the prosecution would evidence that on July 01, 1999 the petitioner was permitted to go to the TAC HQ and therefrom the hospital for treatment. The petitioner did not report back for as many as 9 days. The testimony of PW-1 would reveal that when he returned the petitioner told PW-1 that he had gone to Meerut to meet his family. That the petitioner threatened PW-1 that he would desert the outpost once again if a report regarding desertion was lodged against him would evidence the belligerent attitude of the petitioner.

22. It was then urged that the petitioner was not put on duty and that is why he left the BOP to visit the Battalion Headquarter on July 13, 1999 to meet superior officers. Now, no such line of cross-examination has been adopted. In fact, as noted above, only 2 out of the 12 witnesses were subjected to a cross-examination, and that too on a limited point.

23. It was further urged that on July 13, 1999 the petitioner did not abscond because he left in an official vehicle and he got down at Ghotaru water point to

relieve himself and the vehicle left before he could board. Now, no such line of cross-examination was adopted. We have noted above the testimony of Ct. Gopal Singh PW-5 who has deposed of making 3 GD entries: (i) the first when the petitioner was sent to the headquarters on July 01, 1999, (ii) when the petitioner returned on July 11, 1999 and (iii) when the petitioner left the outpost again. No such suggestion was given to the witness that the petitioner left in the official vehicle. Ct. Gopal Singh has categorically stated that he made the GD entry on July 13, 1999 when PW-3 informed him that the petitioner had left the outpost once again without any permission.

24. It is important to note that the army personnel at the border had apprehended the petitioner and since he was in BSF dress a message was flashed to the BSF Headquarter. The testimony of Assistant Commandant R.K. Singh PW-12 would evidence that the petitioner was showing violent behaviour and this was the reason why an escort party had to be sent to bring him from the 133rd Bn.

25. It was then urged that there were discrepancies in the statements made by PW-1, PW-3, PW-4, PW-5 and PW-6 vis-?-vis what they stated at the recording of evidence and at the trial.

26. The alleged discrepancy pertaining to PW-1 is that during recording of evidence he had stated that he had assured the petitioner that if his case got serious he would be sent to the Battalion Headquarter for treatment; a statement not made at the trial.

27. Now, this is too trivial a discrepancy to discredit PW-1.

28. The discrepancy vis-?-vis PW-3 to PW-6 with respect to their statements made during recording of evidence and at the trial is that during recording of evidence all of them stated that the petitioner told them that he was being treated by a civilian doctor and at the trial they did not say so.

29. Now, this is also a very trivial variation and can hardly be called a discrepancy.

30. The petitioner then urged that he did not understand what was going on at the trial.

31. We have noted hereinabove that at the trial the petitioner was represented by a friend of the accused who was an officer of the rank of a Subedar.

32. The next point urged was that the petitioner was denied 24 hours mandatory period between serving the charge sheet upon him and commencement of the trial.

33. The record would reveal that the charge sheet was drawn up on July 24, 1999 and the trial commenced on July 27, 1999. Unfortunately, the time when petitioner received the charge sheet has not been written anywhere, but we find that no such objection was taken when the trial commenced.

34. The last contention urged was that the penalty is disproportionate to the gravity of the offence.

35. The testimony of the witnesses of the prosecution and in particular that of Assistant Commandant Anurag Mani PW-1 would evidence that the petitioner was adopting a belligerent stand. After he deserted for 9 days he told Assistant Commandant Anurag Mani that what could the authorities do except to punish him for 28 days force custody. He threatened that he would desert once again if a report was submitted to the Headquarter. Corroboration is to be found to the belligerent attitude of the petitioner in the testimony of L. Nk. Debashis Roy. He told that he was not interested in serving BSF. When petitioner deserted once again on July 13, 1999, he was apprehended by the army authorities at the border within a few hours. The testimony of Dy. Commandant K. Talukdar and Assistant Commandant R.K. Singh would evidence that even at the second stage the petitioner was fairly belligerent.

36. Therefore, we do not find the penalty disproportionate. The writ petition is dismissed but without any orders as to costs.