
(2000) 01 P&H CK 0098

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 14276 of 1998 and Treated as Criminal Writ No. 1025 of 1999

Sher Singh, Ex. Head Constable

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-01-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 125 PLR 264

Hon'ble Judges : T.H.B. Chalapathi, J

Bench : Single Bench

Advocate : G.S. Viridi, for the Appellant; P.N. Pande, for Ashutosh Mohunta, for the Respondent

Final Decision : Allowed

Judgement

T.H.B. Chalapathi, J.—The petitioner filed this petition for quashing the orders dated 22.4.1997 passed by the 4th respondent and the orders dated 30.6.1997 and 26.11.1998 passed by respondents No.3 and 2 respectively confirming the orders of the 4th respondent dated 22.4.1997.

2. The petitioner was working as Head Constable in Indo Tibetan Border Police Force (hereinafter referred to as ITBPF). He was tried by the Court Martial for the following charges:-

a) Failed in exchange of guards in time as per the duty register No.870020755 C/GD Rishikesh Ray came for taking charge of the Guard duty at 2225 instead of 2000.

b) Failed to prevent the guards on duty for Bank security from taking liquor. No.870151628 LNK/GD Diwan Singh, No.907040213 C/GD Hem Kumar and No.870020755 C/GD Rishikesh Ray found in the state of intoxication during the Bank security.

c) Failed to maintain the right turnout of the Guard employee No.870020755 C/GD Rishikesh Ray who was deputed on 31.3.1997 night from 2200 to 2400 PM as Guard, come on his duty at 2225 PM in civil clothes.

3. The Summary Court Force initiated proceedings against him. The above charges have been framed on the following averments:

4. The petitioner as a member of the Indo Tibetan Border Police Force was deputed for guard duty in State Bank of India, Kikar Branch, Bathinda. According to the petitioner, he was on duty on 31.1.1997 from 5 P.M. to 9 P.M. and after that he took his dinner and went to sleep. At about 10.25 P.M. he heard a gunshot and immediately rushed to the Guard Post and he found Sepoy Santosh Kumari lying in a pool of blood and he further narrated that Sepoy. Rishikesh Rai who was to come to duty at 10 P.M. had come late on duty and when questioned by Santosh Kumar, the said Rishikesh Raj fired from point blank at Santosh Kumar from his carbine killing him instantaneously. Then RishiKesh was overpowered and his fire-arm was snatched and he was locked inside a room by the 2nd Commander and the petitioner reported the occurrence. Thereafter, the petitioner was placed under suspension along with all the Guards at the Police Posts and the court of Inquiry was convened on the next day and the petitioner was illegally charge sheeted on the ground that he was in a state of intoxication and failed to exercise command and control over the guard personnel.

5. The Summary Force Court assembled on 17.4.1997 and the petitioner pleaded not guilty to the above referred charges. On 19.4.1997 two witnesses have been examined. PW-1 stated that on the night of 31.3.1997 at about 10.30 P.M. he was informed by Salig Ram about a shoot out incident which took place at State Bank of India, Kikar Branch, Bathinda and ordered him to reach the site of incident. He proceeded to State Bank of India Kikar Branch accompanied by Assistant Commandant Bhagwan Singh. They reached the Bank at around 11 P.M. and he saw the blood stained dead-body of Ct/GD Santosh Kumari near counter on the right side. He asked the petitioner about the incident who was the first Guard Commander. When he was answering, PW-I1 found intense smell of liquor coming from his mouth. He also found the second Guard Commander L.NK/GD Diwan Singh and sentry Hem Kumar to have consumed liquor since intense smell of liquor was coming from their mouths. Then he decided to replace the guard immediately and ran up to Battalion Headquarters. On further inquiry from the Guard Personnel, he was told that Rishikesh Rai was kept inside a room next that of Bank Manager's office room. He wanted to inquire from him. Rishikesh Rai was brought before him and he was also found to have consumed liquor. Then he directed Bhagwan Singh, Assistant Commander to file the F.I.R. with the local police. He further stated that both the first and second Guard Commanders were jointly and separately responsible for the security and discipline of the guard personnel. When petitioner was found inside the bank, he was in uniform with his personal weapon. In the cross-examination by the petitioner, he stated that besides intense smell of liquor, the eyes of the petitioner were red and he

was staggering in his legs and was speaking incoherently and the petitioner failed to reply his questions satisfactorily. He also stated that the petitioner had consumed liquor and was in a state of intoxication.

6. Assistant Commander Bhagwan Singh (PW-2) deposed that on the night at about 10.30 P.M. on 31.3.1997 he was informed that a shoot out incident took place at the State Bank of India, Kikar Branch. Then immediately he informed Salig Ram who ordered him to reach the place of the incident and while he was putting his uniform he was again informed that a Constable had died in the shoot-out incident and he passed on this information also to the Commandant. Then he and PW-1 reached the Bank and saw Santosh Kumar lying dead with the blood at the counter of the Bank. He saw Sher Singh and Diwan Singh standing near the main entrance of the Bank. Hem Kumar was on sentry duty on the currency chest and talking to these persons, he found smell of liquor. He also stated that PW-1 started inquiring from them and told him to lodge an F.I.R. and then he went to lodge the F.I.R. with the local police. To a question put by the petitioner, PW-2 replied that intense smell of liquor was coming from the mouth of the petitioner and his eyes were red and the petitioner was searching for words and graping for words while answering to the questions. He further stated that the petitioner consumed liquor. He was not capable to perform his duty to a desired standard.

7. PW-3 L.NK/GD Diwan Singh has not stated anything against the petitioner.

8. On closure of the evidence, the Summary Court Martial found that irrespective of the trial, the general character of the petitioner is fair.

9. After consideration of the material placed before him, the punishment of dismissal from service was awarded by the 4th respondent.

10. This Court cannot re-appreciate the evidence of the Summary Force Court as held by the Apex Court in Union of India v. Himmat Singh Chahar JT 1999 (5) S.L.T. 151. it has been held therein that the power of judicial review cannot be a power of an Appellate Authority permitting the High Court to re-appreciate the evidence and in coming to a conclusion that the evidence is insufficient for the conclusion arrived at by the competent authorities in Court Martial proceedings.

11. The finding recorded by the Summary Force Court is that the petitioner consumed the liquor since PW-1 and PW-2 who have been examined by the Summary Force Court clearly stated that intense smell of liquor was coming from the mouth of the petitioner. But the point for consideration is. whether on the said finding, extreme penalty of dismissal from service can be imposed.

12. The Apex Court in its decision in Dinesh Rai v. Union of India and Ors., Special Leave to Appeal (Civil) 7380 of 1996 dated 6.2.1996 observed as follows:-

"In our opinion, this was not a case where extreme penalty of dismissal should have been imposed. After all drunken brawl was between two other members of

the party which was held by the petitioner. In the circumstances, the matter is sent back to the Disciplinary Authority to consider and pass some "minor punishment like withholding of two or three increments, but without cumulative effect."

13. In *Narayanan Nair v. State* AIR 1952 Tra 239, it has been held as follows:-

"The word "intoxication" applies only to the excessive use of intoxicating liquors or drugs. And the state of intoxication may be taken to be practically equivalent to a state of drunkenness, so that the person in intoxicated was incapable of knowing the consequences of his action.

It is further held that where the certificate of the Medical Officer stated that the accused was in a state of drunkenness for the following reasons, viz. smell of brandy from nose, redness of his eyes, very rapid pulse and tremors of his hands, These findings are absolutely insufficient to hold that the accused was in a state of intoxication."

14. In a recent decision of the Division Bench of this Court in *State of Haryana v. Ram Partap* 1998(1) R.S.J. 192, it has been held that in case a Constable happens to have consumed alcohol, but not under the influence of alcohol, his case would not come under the phrase "'gravest act of misconduct" as contemplated under rules.

15. In the present case, the duty of the petitioner was over. Thereafter, the petitioner had his dinner. On hearing the gun-shot, he came out and found the dead-body of Santosh Kumar in a pool of blood and he informed his higher authorities who came at the place of the occurrence and found the petitioner smelling of alcohol.

16. From a close reading of the proceedings of the Summary Force Court; I find that there is nothing to suggest that the petitioner was on duty when he was found smelling of alcohol. In such a situation, I am of the opinion that the extreme penalty of dismissal from service is not warranted as held by the Apex Court in *B.C. Chaturvedi v. Union of India*: JT 1995(8) 65 that where the punishment shocks the conscience of the Court, the court can appropriately mould the relief either directing the disciplinary authority to reconsider the penalty imposed.

17. In view of the observations of the Apex Court in *Dinesh Rai v. Union of India and Ors.*, referred to above and having regard to the facts and circumstances of the case, I am of the opinion that the minor punishment of stoppage of three increments without cumulative effect would suffice in the interest of justice.

18. I accordingly allow the criminal writ petition, set aside the order of dismissal from service and impose a punishment of stoppage of three increments without cumulative effect on the petitions for the offence of consuming liquor.