

(2011) 08 DEL CK 0075
In the Delhi High Court
Case No : Writ Petition (C) 5707 of 2008

Surender Kumar		APPELLANT
	Vs	
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 11-08-2011

Acts Referred:

Border Security Force Rules, 1969 — Rule 44, 45

Citation : (2011) 08 DEL CK 0075

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

Bench : Division Bench

Advocate : H.G.R. Khattar, for the Appellant; Bhupinder Sharma, Dy. Cmdt., BSF, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Yet another case of loose and laconic pleadings.

2. Employed under BSF as a Constable, it was reported to the Commandant, that under the influence of alcohol the Petitioner assaulted his superior officer HC Sunil Kumar Jha on 6.6.2007 at around 9:30 hours. It was also reported in the office report that when medically examined at the Samudaya Swasthaya Kendra at 11:40 hours, the Petitioner was found having consumed alcohol but was not under its influence.

3. Taking cognizance of the offence report and complying with Rule 44 of the BSF Rules, hearing of the charge as per Rule 45 was conducted by the Commandant who directed Record of Evidence to be prepared.

4. 3 witnesses were examined by the officer preparing the Record of Evidence; being HC Sunil Kumar Jha, the person assaulted, HC Vijay Kumar Singh and HC Satyavir Singh.

5. Considering the Record of Evidence the Commandant directed Petitioner's trial at a Summary Security Force Court.

6. Formal charge pertaining to use of criminal force against a superior officer was framed; indictment pertaining to acting under the influence of alcohol was dropped.

7. Before the Court, HC Sunil Kumar Jha PW-1 deposed that on 6th June at about 7:45 hours when he was counting the troops of B. Coy. who had fallen in for weapon cleaning, Petitioner threw bark of pomegranate. He ignored the same. At about 9:30 hours when he was talking to his daughter over the mobile phone, Petitioner came and twisted his left ear. He ignored the same. After 10-15 minutes, Petitioner returned and abused him using filthy language: MAIN TERI THANEDARI TERI (EXPLICIT) MAIN DAAL DOONGA. He found Petitioner to be intoxicated. He went to Insp. Hansa Dutta and narrated the event. As he was writing a complaint against the Petitioner, the Petitioner came and aggressively questioned as to why he was writing and before he could look up, Petitioner slapped him on his face and tried to run away. He shouted for help. Petitioner was caught.

8. HC Vijay Kumar Singh PW-2 deposed that at around 9:30 hours when he was drinking water he saw HC Sunil Kumar Jha writing something on a piece of paper and Petitioner was saying something to HC Sunil Kumar Jha and then he saw Petitioner slap HC Sunil Kumar Jha on the right shoulder.

9. HC Satyavir Singh PW-3 deposed that at about 8:50 hours on 6th June as he went to take water he saw HC Sunil Kumar Jha and Petitioner having a scuffle and abusing each other.

10. Considering the past service record of the Petitioner, which showed that on 7.8.1995, 22.3.1996 and 24.4.1996 he had been indicted and on one occasion for using criminal force against his superiors and was awarded rigorous imprisonment for various days, penalty of dismissal from service was inflicted upon the Petitioner.

11. Arguing the writ petition learned Counsel urges that despite repeated requests by the Petitioner to summon one Babu Lal Jee Prashar who was a peon, the witness was not summoned, and this has prejudiced the defence.

12. We have referred to hereinabove about loose and laconic pleadings.

13. When and before whom and in what manner Petitioner requested the witness to be summoned has not been pleaded. Was it during Record of Evidence or was it at the trial. None has been pleaded.

14. Be that as it may, the counter affidavit makes a denial of the said plea and indeed the record would show that after prosecution led at the trial, the Petitioner stated that he does not intend to lead any defence evidence.

15. It is thus urged that by not examining Insp. Hansa Dutta, who has been referred to in the testimony of HC Sunil Kumar Jha, prejudice has been caused to the Petitioner.

16. We marvel at the argument. As per HC Sunil Kumar Jha, after he was abused by the Petitioner he reported the same to Insp. Hansa Dutta and that when he was writing the written complaint, Petitioner assaulted him.

17. Now, nobody has said that Insp. Hansa Dutta had witnessed the incident and thus we see no scope for an argument that a relevant witness was withheld.

18. Be that as it may, if more than one person has witnessed the incident, the department need not cite each and everyone as a witness. If the Petitioner had wanted to examine Insp. Hansa Dutta, he could do so.

19. 3rd argument advanced is that the 3 witnesses cannot be believed inasmuch as whereas PW-1 deposed to the time of incident at around 9:30 so does PW-2, PW-3 talks of the incident being at 8:50 hours.

20. This is quibbling with words. Witnesses do not remember time as if they were a time machine. People remember time with approximation.

21. Be that as it may we are not to sit in appeal.

22. It is then urged that the penalty was levied with reference to 3 past indictments, one of which wrongly and incorrectly records the nature of the punishment. Counsel highlights that the department has taken into account as if in the past, on 7.8.1995, 7 days' RI was inflicted upon the Petitioner for using criminal force against his superior officer and highlights the matter of fact was that in reality Petitioner was confined to the lines for 7 days vide penalty dated 7.8.1995 for using criminal force against his superior officers.

23. With reference to the competent authority treating that on 7.8.1995 the Petitioner was awarded RI for 7 days and the fact being that the Petitioner was confined in the lines for 7 days, counsel seeks to urge that the penalty levied is misdirected inasmuch as a wrong fact has been taken note of.

24. We do not agree. Law is settled. On the question of penalty past conduct can be considered. This has happened in the instant case. The department noted that even in the past the Petitioner had earned 3 penalties and one of which was using force against a superior officer. Instant indictment was also of using force against a superior officer. It was the nature of the act and the offence which mattered and not the penalty levied. Thus, it hardly mattered whether on 7.8.1995, for the wrong of using criminal force against a superior officer, penalty imposed was to undergo RI for 7 days or penalty imposed was to undergo confinement in the lines for 7 days.

25. Being a member of a Disciplined Force and keeping in view the fact that the Force is armed; noting incidents where jawans have killed superior officers on trivial incidents, we do not find the penalty levied upon the Petitioner to be disproportionate. It has to be kept in mind that there were 3 previous penalties and one of which was of using force against a superior officer.

26. The requirement of discipline in an Armed Force is much higher than that in a

civil service; not that we mean to say that indiscipline can be brooked in a civil service. We simply want to highlight that the standards of discipline to be maintained for a force which is armed is much higher.

27. The writ petition is dismissed.

28. No costs.