

(2017) 12 RAJ CK 0013
In the Rajasthan High Court
Case No : 1126 of 2017

Union of India

APPELLANT

Vs

Ram Karan Singh S/o Shri Lal Gujar

RESPONDENT

Date of Decision : 05-12-2017

Acts Referred:

[Border Security Force Act, 1968](#), [Section 20](#)/
[Section 20\(a\)](#) - Striking or threatening superior officers -
Striking or threatening superior officers
[Border Security Force Rules](#)

Citation : (2017) 12 RAJ CK 0013

Hon'ble Judges : Dinesh Chandra Somani

Bench : SINGLE BENCH

Advocate : Sumati Bishnoi, S.S. Raghav

Final Decision : Allowed

Judgement

1. On 12/07/1998 at 11.00 hrs. a farewell party was organized at BOP Varanhar in District Barmer. The party was over by 12.30 hrs. Liquor was served at the party. Head Constable A.P. Ravindran, the officer superior to the respondent who was holding the post of Lance Naik made a complaint that the respondent assaulted him. As per Rule 43 of the BSF Rules, 1969 an offence report was submitted to the Commandant of the Battalion who considered the same as per Rule 45 and remanded the matter for preparation of record of evidence in terms of clause (iii) of sub-Rule 43 of Rule 45. The charge in respect whereof record of evidence had to be drawn was for an offence under Section 20(a)

of the BSF Act, 1968 i.e. using criminal force against a superior officer. The record of evidence was placed before the Commandant who was of the opinion that the respondent needs to be tried and thus a charge-sheet was served upon the respondent and he was directed to be tried before a Summary Security Force Court. Proceedings commenced on 06/08/1998. At the arraignment the respondent pleaded not guilty and thus the prosecution laid evidence.

2. The first witness of the department was HC A.C.

Ravindran who deposed that after the farewell party was over he went to the barrack and slept. After some time to ease himself he came out of the barrack. The respondent called him by name and as he proceeded to the respondent, he assaulted him. As he fell down on the ground the respondent sat on his chest and tried to press his throat. He shouted for help. As he cried for help, Constable Narayan Kasdekar and Constable Charwa Oran rescued him. Platoon Commander SI Magan Singh, HC Chokha Ram and Lance Naik Surinder Kumar also reached there. HC Chokha Ram requested him to move to the barrack and when he was leaving, the respondent hit him with a fist blow on his back. Respondent picked up a farmer implement "belcha" and tried to break open the lock of the armory. The Force Personnel rushed towards the armory and apprehended the respondent and took him to the room of the Platoon Commander. The witness was cross-examined by the respondent and admitted that liquor was served at the party. Various questions were put to the witness regarding the distance of towers in the BOP. Relevant would it be to highlight a question was put to the witness whether during the quarrel the respondent was hurt. The witness replied "may be".

3. The second witness was Constable Charwa Oran and he

corroborated the testimony of PW1. The witness was cross-examined and obviously since he had not seen the origin of what had happened, replied that he could not answer as to what triggered the incident.

4. Third witness of the prosecution was Inspector (illegible) Magan Singh. He also corroborated the testimony of PW1.

5. Fourth witness was Subedar Jagmohan Singh Negi who deposed that he was informed about the incident. By the time he reached the spot the two had been separated. He informed that SI Magan Singh and SI B.S. Rawat told him that the respondent had picked up a "belcha" and ran towards the Kot and tried to break open its lock. That the respondent was intoxicated when he saw him.

6. No defence evidence was led by the respondent. The respondent was held guilty and visited with the penalty of dismissal from service. Appellate remedy has failed.

7. In the aforesaid backdrop of the facts, the respondent filed writ petition pleading that Rule 47 of the BSF Rules prohibited an offence under Section 20(a) to be dealt with summarily and that a court of enquiries had to be held as required by Rule 173 of the BSF Rules, 1969. This contention of the respondent has found favour of the learned Single Judge.

8. Holding that for the said reason the sentence had to be set-aside the learned Single Judge has held that the penalty levied was disproportionate and as a result having quashed the respondent's termination from service has levied the penalty of two annual grade increments to be withheld.

9. Now, if trial was vitiated the question of substituting any penalty does not arise.

10. The question in appeal therefore is to decide whether the reasoning of the learned Single Judge is correct.

11. Section 20 of the BSF Act, 1968 reads as under:-

"20. Striking or threatening superior officers.- Any person subject to this Act who commits any of the following offences, that is to say,- (a) uses criminal force to or assaults his superior officer; or (b) uses threatening language to such officer; or (c) uses insubordinate language to such officer; shall, on conviction by a Security Force Court,- (A) if such officer is at the time in the execution of his office or, if the offence is committed on active duty, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and (B) in other cases, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned. Provided that in the case of an offence specified in clause (c), the imprisonment shall not exceed five years."

12. Suffice it to state that as per clause (a) of the Section using criminal force against a superior officer is an offence and the trial has to be before a Security Force Court. As per para (A) of the Section if the offence was committed on active duty the sentence could be to suffer imprisonment for a term extending upto fourteen years and as per para (B) in other cases it could be to suffer imprisonment for a term which may extend upto ten years. In both cases lesser punishments could be inflicted.

13. The learned Single Judge has reason that in the instant case a court of enquiry had to be ordered. Rule 174 deals with court of enquiries. It reads as under:-

"174. Courts of inquiry when to be held.- (1) A Court of inquiry may be held to investigate into any disciplinary matter or any other matter of importance. (2) In addition to a Court of inquiry required to be held under section 62, a Court of inquiry shall be held in the following cases:- (a) (i) All unnatural deaths of persons subject to the Act or of other persons within the Force lines, an immediate report shall be sent through the messenger to the officer-in-charge of the Police Station within whose jurisdiction the place of such unnatural death is. (ii) In cases when such report cannot, for any reason be delivered within a reasonable time, a Court of inquiry shall be held into such unnatural death. (iii) Immediately on receipt of information of any unnatural death the Commandant or the senior most officer of the Battalion present shall prepare a report on the proforma set out in Appendix XIII. (b) All injuries sustained by persons subject

to the Act which are likely to cause full or partial disability. The Court shall in such case determine whether such injuries were attributable to service or not. (c) All financial irregularities, losses, theft and misappropriation of public or Force property, where it is necessary to obtain the order of a superior officer on such irregularities, loss, theft or misappropriation. (d) All losses of secret documents and any other material of secret or above security classification. Such a Court of inquiry shall be ordered by any officer or authority superior to the unit Commandant having the lost document or material on its charge. (e) All damage to private persons or property in respect of which there is likely to be a claim against the

Government or the Force."

14. Sub-rule (1) of Rule 174, using the word "may", would ex-facie show that a court of enquiry may be held to investigate into any disciplinary matter. Sub-rule (2) mandates court of enquiries to be held in cases specified in clauses (a) to (e) and we find that none was attracted in the instant case. As per the learned Single Judge, Rule 47 of the Rules prohibited a charge for an offence under clause (a) of Section 20 to be dealt with summarily. The learned Single Judge has equated the same to a trial at summary Security Force Court, overlooking the fact that when an offence report is taken by the Commandant under Rule 43, hearing takes place in a summary manner as contemplated by Rule 45 and after recording statements of witnesses in a summary manner the Commandant can award punishments or dismiss the charge or remand the accused for preparation of record of evidence or remand the accused for trial by Summary Security Force Court. The prohibition under Rule 47 is for the Commandant not to proceed summarily as per Rule 45 if the offence relates to clause (a) of Section 20.

15. Rule 45 reads as under:-

"45. Hearing of the charge against an enrolled person.-(1) The charge shall be heard by the Commandant of the accused in the following manner:- (i) The charge and statements of witnesses, if recorded, shall be read over to the accused. (ii) If written statements of witnesses are not available, or where the

Commandant considers it necessary to call any witness, he shall hear as many witnesses as he may consider essential to enable him to determine the issue. (iii) Wherever witnesses are called by the Commandant, the accused shall be given opportunity to cross-examine them. (iv) Thereafter, the accused shall be given an opportunity to make a statement in his defence.] (2) After hearing the charge under sub-rule (1), the commandant may,-] (i) award any of the punishments which he is empowered to award, or (ii) dismiss the charge, or (iii) remand the accused, for preparing a record of evidence or for preparation of an abstract of evidence against him, or (iv) remand him for trial by a Summary Security Force Court: Provided that, in cases where the Commandant awards more than 7 days' imprisonment or detention he shall record the substance of evidence and the defence of the accused: Provided further that, he shall dismiss the charge if in his opinion the charge is not proved or may dismiss it if he considers that because of the previous character of the accused and the nature of the charge against him it is not advisable to proceed further with it: Provided also that in case of all offences punishable with death a record of evidence shall be taken: [Provided further that in case of offences under sections 14, 15, 17, 18 and offence of "murder" punishable under section 46 of the Act, if the accused has absconded or deserted, the Commandant shall hear the charge in his absence and remand the case for preparation of the record of evidence.]"

16. As noted above taking cognizance of the offence report, the Commandant heard the respondent as required by Rule 45 and prima facie made out the finding offence related to clause (a) of Section 20 being directed preparation of record of evidence. Considering the record of evidence decision was taken to try the respondent at a Summary Security Force Court.

17. The legal reasoning by the learned Single Judge is obviously faulty and overlooks scheme of the Act and the Rules as hereinabove discussed.

18. Finding no infirmity in the trial and adequate evidence to sustain the verdict of guilt, the question remains whether the penalty inflicted is disproportionate to the gravity of the offence.

19. At a party when alcohol was served the respondent appears to have taken a peg or two in excess. What triggered the incident remains a mystery. Record of the trial would show that as

required by law the summary of the entries of the service book was placed before the court. Same show that the respondent's general character was not satisfactory.

20. The respondent had served for 12 years, 2 days and 11 months. Under the circumstances, the penalty levied cannot be interdicted by this Court.

21. The appeal is allowed. The impugned decision dated 22/03/2017 is set-aside. Writ petition filed by the respondent is dismissed. The penalty inflicted is restored.