

Daya Ram Vs. Uoi and ors.

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Court : Delhi

Decided On : Jan-03-2014

Judge : Pradeep Nandrajog

Appellant : Daya Ram

Respondent : Uoi and ors.

Judgement :

\$~R-5 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision: January 03, 2014 + W.P.(C)7205/2000 DAYA RAM Petitioner Represented by: Mr.M.M.Singh and Mr.Sunil Singh, Advocates versus UOI AND ORS. Represented by: Respondents Ms.Barkha Babbar, Advocate CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MR. JUSTICE JAYANT NATH PRADEEP NANDRAJOG, J.(Oral) 1. Heard learned counsel for the parties.

2. At the outset, we record that learned counsel for the petitioner gives up challenge to the penalty levied with reference to the plea urged in the writ petition that the petitioner could not have been tried for a second time pertaining to the two charge sheets dated February 13,1999.

3. Reason appears to be that proceedings pertaining to the first joint trial were set aside by the competent authority when record was put up for confirmation finding deficiency in the trial warranting de novo trial on the same two charge sheets.

4. The petitioner was tried at a Summary Security Force Court with respect to two charge sheets; the first alleging two charges and the second only one. The first charge sheet reads as under:

FIRST CHARGESHEET The accused No.94633526 Constable Daya Ram of 131 Bn BSF, attached with 43 Bn BSF, attached with 43 Bn BSF is charged with:FIRST CHARGE DIRECTLY ACCEPTING FOR HIMSELF BSF ACT GRATIFICATION AS A MOTIVE FOR SECTION-41(e) PROCURING ENROLMENT OF A PERSON IN THE SERVICE In that he, at Battalion Headquarters, 131 Bn BSF, SriGanganagar on 28/4/97, accepted a sum of Rs.6,000/- (Rupees six thousand) only from Shri Kishan Lal Meghwal, S/o Shri Tulsi Ram R/o Village: Kabirbasti, Distt: Sri Ganganagar for procuring enrolment of said person as cobbler in the BSF. SECOND CHARGE BSF ACT DIRECTLY ACCEPTING FOR HIMSELF GRATIFICATION AS A MOTIVE FOR PROCURING ENROLMENT OF A PERSON IN THE SERVICE in that he, at Battalion Headquarters, 131 Bn BSF SriGanganagar, during first week of May97, accepted a sum of Rs.2,000/- (Rupees two thousand) only from Shri Kishan Lal Meghwal S/o Shri Tulsi Ram R/o Village: Kabirbasti, Distt: Sri Ganganagar for procuring enrolment of said person as cobbler in the BSF.

5. The second chargesheet reads as under:

SECOND CHARGE SHEET The accused No.94633526 Constable Daya Ram of 131 Bn BSF attached with 43 Bn BSF is charged with:BSF ACT DOING A THING WITH INTENT TO DEFAUD SECTION30f) In that he, at Sriganganagar (Rajasthan) on 6/6/97, with intent to defraud, collected carpenter tools costing Rs.1,355.10 from M/s.Dhiraj Iron Stores, Sriganganagar against Bill No.126 and 127 dated 6/6/97 on behalf of Commandant signed and the bill showing his Regimental No.as 8618711 and rank L/NK.

6. We are informed that pertaining to the first charge sheet seven witnesses were examined and pertaining to the second charge sheet only two witnesses were examined.

7. Trial being joint, the Presiding Officer of the Court held petitioner guilty of the two charges pertaining to the first charge sheet and the sole charge pertaining to the second charge sheet and proceeded to inflict the penalty of dismissal from service as per the decision dated April 23, 1999.

8. The Confirming/Reviewing Officer set aside the finding of the Courts pertaining to the two charges as per the first charge sheet. The finding of guilt recorded pertaining to the sole charge as per the second charge sheet was upheld. Sentence of dismissal from service was upheld.

9. Since petitioner was finally absolved of the indictment pertaining to the first charge sheet we need not note the testimony of the seven witnesses examined by the department pertaining to the first charge sheet.

10. Pertaining to the second charge sheet, testimony of Sohan Lal, the sole proprietor of M/s.Dhiraj Iron Store, Sriganganagar as also that of cobbler Kishan Lal, who were examined as PW-1 and PW-2 would evidence that on June 06, 1997 the petitioner accompanied by Kishan Lal went to the shop of Sohan Lal and handed over to him a list Exhibit M (wrongly typed as Exhibit A) of carpenter tools. He received the goods valued at ` 1355.10. He also took from Sohan Lal two bills No.126 and 127 dated June 06, 1997 totalling ` 1355.10. The two bills are drawn in the name of Commandant, SEC H.Q.DG.HQ SGNR (Raj.) 11. The testimony of PW-1 and PW-2 would reveal that when PW-1 created a hue and cry by repeatedly going to the Sector Headquarter so that he could receive payments for the goods delivered to the petitioner, the petitioner went to PW-1 and paid him ` 1355.10. From the fact that the petitioner received the goods from PW-1 and required PW-1 to draw up the bills in the name of the Commandant, it is apparent that the petitioner tried to hoodwink and cheat PW-1. The petitioner purchased the goods purportedly in the name of the Commandant but retained the goods. He apparently did so under the belief that PW-1, a poor shopkeeper, would not be ever able to access the Commandant of the Headquarter for the reason it is difficult for civilians to enter BSF Camps.

12. Under the circumstances, it has to be held that there is sufficient evidence to sustain the indictment pertaining to the second charge sheet.

13. But the question would arise whether the penalty of dismissal is shockingly disproportionate to the gravity of the offence.

14. Now, the Commandant levied the penalty of dismissal from service holding the petitioner guilty of both indictment pertaining to the two charge sheets. The indictment pertaining to the first charge sheet was of receiving money on two occasions from Kishan Lal to get him a job, and indeed if the indictment was sustained the penalty of dismissal would be justified. It is apparent that influenced by the fact that both indictments stood the Commandant levied the penalty of dismissal from service. When the Reviewing/Confirming Authority, upon review of the evidence, held that the first indictment would not be sustained, it was expected that reasons would be given why in spite thereof penalty of dismissal from service was being upheld. The misdemeanour by the petitioner is of receiving goods worth ` 1355.10 from Sohan Lal and hoodwinking Sohan Lal into believing that he would receive the payment from the BSF authorities. The fact was that the petitioner received the goods which he appropriated for himself.

15. The penalty of dismissal from service is shockingly disproportionate.

16. We dispose of the writ petition setting aside the penalty of dismissal from service inflicted upon the petitioner and direct that petitioner be reinstated in service.

17. The disciplinary authority would be free to levy such penalty as would be warranted keeping in view the observations made by us hereinabove.

18. In what manner the period interregnum the petitioner being dismissed from service till reinstatement should be treated?.

19. The competent authority shall pass the necessary order and for which the competent authority shall be guided by FR54.

20. Needful shall be done within six weeks of receipt of certified copy of the present decision.

21. No costs. (PRADEEP NANDRAJOG, J.) JUDGE (JAYANT NATH, J.) JUDGE
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