

Rakesh Kumar Sharma Vs. Uoi

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Court : Delhi

Decided On : Aug-05-2011

Judge : Pradeep Nandrajog; Sunil Gaur, Jj.

Acts : [Border Security Force Act 1968](#) - Section 35

Appeal No. : W.P.(C) 2797/1998

Appellant : Rakesh Kumar Sharma

Respondent : Uoi

Advocate for Def. : Ms. Jyoti Singh; Ms.Archana Gaur; Mr.Bhupinder Sharma, Adv.

Advocate for Pet/Ap. : Mr.Anil Gautam, Adv.

Judgement :

1. Appointed as an Asstt.Commandant under BSF in the year 1984 the petitioner earned a promotion as Deputy Commandant in the year 1989 and needless to state each year ACRs were written as per the procedure prescribed.

2. For the year 1993-94 the Initiating Officer i.e. the Commandant of the battalion Sh.G.S.Shekhawat penned an adverse remark in the confidential roll which was conveyed to the petitioner under cover of a letter dated 13.8.1993 with an opportunity given to the petitioner to respond there- against. The petitioner

submitted his representation which was rejected vide order dated 15.5.1996 and against the rejection the petitioner preferred a representation to the President of India which was rejected vide order dated 13.11.1997.

3. The adverse remark conveyed to the petitioner, being the portions underlined, reads as under:- "An officer of middle structure whose physical appearance of an average standard. His Physical fitness could be stated as just satisfactory since he avoided participation in FPET on one pretext or the other. His sincerity and dependability is uniformly satisfactory and but at times tends to become casual for which needs constant chasing to get the results. His administration ability is satisfactory. The overall performance in the operations during the period under report was found to be satisfactory. He has participated in operations including operations in Batmaloo area."

4. The result was that Departmental Promotion Committees which met on 19.3.1997 and 29.9.1997, considered the adverse remarks while appraising the petitioner and it is obvious that the said adverse remark influenced the committee in not declaring petitioner fit for promotion.

5. The instant petition lays a challenge to the adverse remarks and learned counsel argued that there was no material to justify the adverse remarks.

6. It was urged by learned counsel for the petitioner that only on one day, due to being unwell petitioner did not participate in the FPET i.e. the physical fitness test. This, counsel urged would not justify a remark that the petitioner avoided to subject himself to a test. Counsel urged that there was no material to show that the petitioner at times tended to show casualness and needed constant chasing around.

7. On perusal of the record produced before us by the respondent, we note that there are 12 letters addressed to the petitioner by the superior officer during the year i.e. 1993-1994, highlighting the flaws in the performance of duties by the petitioner and nudging him to pull up his socks.

8. A letter dated 15.04.1993 highlights the poor functioning of the RHQ office run under the command of the petitioner. It was pointed out therein that there were unnecessary delays in finalisation of pending matters for which the petitioner was called upon to give reasons. The letter dated 15.04.1993 reads as under:-

"2001/ISD/Stn/4Bn/93

C/o 56 APO

April" 93

It has been put to my notice that communications made by this office with RHQ are not attended/responded in time. The details of reminders issued frequently to expedite the reply is also attached with this letter for your information.

On perusal of enclosed details, it is clear that neither OC RHQ himself nor the official concerned has paid any attention in disposing off the matters as a result finalisation of pending matters has considerably been delayed. It appears that the functioning of RHQ office has been left in the hand of dealing clerks and no supervision of OC Rear exists.

In view of above, you are directed to look into the matters personally and intimate the reasons for non submission of timely reply of the communications originated by Tac HQ. Your reply on the subject must reach this office by 25th April"93 positively.

It is once again reiterated and directed that personal attention be paid towards proper and smooth functioning of RHQ office to avoid delay caused in submission of reply and accumulation of pending work.

Yours

Sd/-

(G.S. SHEKHAWAT)

Shri R.K.SHARMA,

DY. COMMANDANT,

OC RHQ 4 BN BSF"

9. Another letter dated 23.05.1993 records grave errors made by the petitioner while conducting a court of inquiry inasmuch as he conducted the same without due orders. It shows the casual and irresponsible attitude of the petitioner towards his duties. The letter is reproduced verbatim below:-

"Dated, the 23 May"93.

To

Shri R.K.Sharma, DC

OC Rear HQ

4 Bn BSF

**Sub: COI REGARDING DAMAGE OF BREECH BLOCK OF LMG
BREN 303 BUTT NO. 42 BODY NO. S- 2950**

The COI proceeding on the subject received to this office without covering letter which is un-acceptable due to following observations:-

- 1. Intimate reasons why COI has not been forwarded with proper covering letter.**
- 2. The date of commencing COI is overwritten which is not acceptable from the audit points of view.**

3. The signature of witness No.4 is not the actual signature, such practice in the office functioning/procedure is clearly undesirable and objectionable.

4. On going through the correspondence on the subject, it is revealed that the COI was initially ordered in favour of Shri Megh Singh Ex-AC vide this office signal No.Q/7402 dated 22 Sept"92 but the COI in question could not be conducted by Sh. Megh Singh EX-AC, the then OC RHQ upto the date of his retirement i.e. 30/11/92. Subsequently on asking by this HQ, OC RHQ vide signal No.Q/7407 dated 13 Jan"93 informed that since Sh. Megh Singh AC detailed to conduct the subject COI has been proceeded on superannuation retirement as such order may be amended in favour of Sh. R.K. Sharma, DC to conduct the COI. Accordingly this office vide order No.2001/ ISD Q/4Bn /BOO /Arms /COI /92 /742 dated 24 Jan"93 issued order in favour of Sh. R.K. Sharma, DC but it is not understood how the officer has conducted the COI on 22/11/92 i.e. before issuing amendment order by this office. In this regard this office has reminded the enquiry officer repeatedly vide signal No. Q/7401 dated 13 Feb"93, Q/7402 dated 24 Feb"93, Q/7406 dated 5/3/93, Q/7407 dated 12/3/93, Q/7402 dated 20/3/93, Q/7409 dated 27/3/93 and Q/7413 dated 4/4/93. It is surprising that enquiry officer has submitted the COI proceeding to this office after making personnel (illegible) of communications without covering letter and in uncongenial manner.

In view of above, you are hereby directed to re- conduct COI on the subject according to the procedure and submit same to this office by 15 June"93 positively for taking further action to this end.

(G.S. SHEKHAWAT)

COMMANDANT

4 BN BSF"

10. Letters dated 1.8.1993 and 7.8.1993 inform the petitioner about the work left incomplete by the petitioner inasmuch as he did not complete the court of inquiries assigned to him despite several reminders and he was advised to complete assigned work on time and show more dedication to his duties. The letter dated 1.8.1993 read as under:-

"Dated 1 Aug"93

To

Shri R.K.Sharma

Dy Commandant

Sub: - NON-COMPLETION OF COIs PROCEEDINGS

During my visit to Rear HQ in Dec"92, it was brought to my notice that documents pertaining to Pump Set Motor and Kirloskar engine are missing and not traceable. In addition to above, it was also brought to my notice that retrieved electrical and wooden items of damage basna type accommodation No.1, 2 & 5 were also found missing. Besides this, it was also brought to my notice that the recovery of water and electricity charges has been made from the occupants but the amount in question has not been deposited into the Govt. treasury.

2. I immediately ordered COI vide letter No.Estt/COI/4 Bn/92/5884-87, 5888-91 and 5892-96 dated 23/12/92 and briefed you to complete the same immediately so that defaulters could be dealt with and proper record of Govt. properly is maintained.

3. Even after elapse of seven months and several reminders, the above COIs could not be completed by you. Later on, you took the plea that presence of SI/QM G B Singh is required to finalise the pending COIs. Accordingly SI/QM G B Singh was made available to you who reported at RHQ on 14/6/93, but surprisingly the COI proceedings have still not been submitted even after two month of presence of SI/QM at Rear HQ. Such inordinate delay speaks about the casual approach of yours towards the task assigned.

4. I am constrain to advise you that COIs and other tasks assigned to you should be taken seriously and completed within the stipulated period.

5. The above COIs be completed and submitted by 20th Aug"93.

(G.S. SHEKHAWAT)

COMMANDANT

4 BN BSF"

11. The letter dated 7.08.1993 reads as under:-

"To

Shri R.K.Sharma

Dy Commandant

Sub: - NON-COMPLETION OF COIS

It has been reported to me that the following COIs given to you has not yet been submitted duly completed inspite of several reminders sent by concerned branches:-

a. Loss of Laminated I/Card in r/o HC Y Manjoor Singh ordered vide Letter No.3034-37 dated 19/4/93.

b. Loss of Railway Warrant bearing No. 7642/0100 dated 22.4.93 issued in favour of Const Arun Kumar of this unit

2. I am constrain to inform you that from the past record I have observed that the task/COIs given to you has never been completed in time. This is not the correct practice and I take a serious note of it. It is my sincere advise to you that you should take the assigned tasks seriously and complete the same within the stipulated time failing which same will be reflected in your performance report.

(G.S. SHEKHAWAT)

COMMANDANT

4 BN BSF"

12. Another letter dated 16.08.1993 records the instance of non-compliance of orders by the petitioner despite several reminders and an unjustified delay in the completion of the work assigned. Similarly in letter dated 24.03.1993 it stands recorded that the petitioner failed to follow instructions given to him and neglected his duties. Letters dated 16.08.1993 and 24.03.1993 are reproduced below:-

"To

Shri R.K.Sharma

Dy Commandant

4 Bn BSF

Sub: - HANDING/TAKING OVER OF BP MOTOR CYCLE
NO.TRM/9774 BETWEEN 4 AND 70 BN BSF/

Your kind attention is invited to this HQ signal No.Q/7432 dated 30/4/93 followed by reminder No.Q/7431 dated 25/5/93 savingram No.5903 dated 22/6/93, signal No.Q/7434 dated 15/7/93 and savingram No.6958 dated 25/7/93, on the subject.

2. The above mentioned vehicle was transferred to 70 Bn BSF vide Sector HQ Tripura (North) order No.SHQ(N)/MT/41/TRA-Veh/92-93/3528-30 dated 17/3/93. In compliance of the same you were intimated vide this office signal followed subsequent reminders to hand-over the vehicle to 70 Bn BSF immediately.

3. A period of more than three months have elapsed, but the motor cycle was not handed-over to 70 Bn BSF to the reasons best known to you. The higher HQr has asked the reason for non compliance of orders.

4. In view of above, you are hereby directed to intimate the circumstances under which motor cycle could not be handed-over to 70 Bn BSF inspite of repeated instructions sent by this HQ as mentioned under reference, so that suitable reply can be sent to higher HQ.

5. Your reply on the subject must reach this office by 25th Aug"93 positively.

(G.S. SHEKHAWAT)

COMMANDANT

4 BN BSF

To

Shri R.K.Sharma

Dy Commandant

Sub: - NON-FOLLOWING OF INSTRUCTIONS ISSUED BY HEAD OF OFFICE/

Your kind attention is invited to the instructions/charter of duties, sub heading „Administration”, para-„C”, sub para-vi issued by the under-signed vide letter No.2001/ISD/Stn/4Bn/92/7379- 82 dated 20th Sept”92.

2. I was surprised to see that BRO has not been published by RHQ since Feb”93. The BRO of Feb”93 has been published in July”93. This shows that you have failed in carrying out the assigned duties being OC RHQ in accordance with the instructions issued vide our letter under reference. You are, therefore, advised that in future instructions issued from this office may be complied with meticulously and casual approach towards the assigned duties be avoided.

G.S. SHEKHAWAT)

COMMANDANT

4 BN BSF"

13. Letter dated 25.08.1993 records that since the time the petitioner had taken over duties as the Deputy Commandant the petitioner had not maintained the cash book of the mess and several RHQ personnel were found to have not paid the mess bills. It stands clearly recorded that the petitioner was briefed in person by his commandant regarding the duties to be performed despite that he failed to perform them efficiently thereby causing monetary loss to the department. The letter dated 25.08.1993 reads as under:-

"To

Shri R.K.Sharma

Dy Commandant

4 Bn BSF

Sub: - NON-FOLLOWING OF INSTRUCTIONS ISSUED BY HEAD OF OFFICE/

It has brought to my notice by the second-in- Command that a sum of Rs.17,265.44 were found outstanding as on 25th jl"93 as mess bill of various unit personnel in the RHQ mess.

2. It has also been brought to my notice that the cash book of officers mess at RHQ has not at all maintained since your taking over as OC RHQ.

3. In this regard I would like to mention that before your move to RHQ as OC RHQ, I had personally briefed you about the various tasks to be carried out and accordingly the instructions were also issued vide letter No.2001/ISD/Stn/4Bn/92/7379-82 dated 20 Sept"92 mentioning duties of OC RHQ so that nothing is overlooked, but I am surprised by the reports submitted by second-in-command after his recent visit to RHQ.

4. You are, therefore, directed to intimate the reasons for not maintaining the officers mess cash book and accounts for such a long period and being OC RHQ why the mess documents of RHQ mess have not been checked every month thereby causing such a huge amount as outstanding. No efforts were taken by you to recover the above outstanding dues.

5. Your reply in this regard must reach this office by 31st Aug"93 for my perusal.

(G.S. SHEKHAWAT)

COMMANDANT

4 BN BSF"

14. Letter dated 31.08.1993 is a reminder of letter dated 25.8.1993 reproduced above, reminding the petitioner to submit the clarification called for by the department and for re-conducting the court of inquiry. The letter dated 31.08.1993 is reproduced below:-

"To

Shri R.K.Sharma

Dy Commandant

Sub: - NON-COMPLIANCE OF ORDERS/INSTRUCTIONS

A COI was ordered in favour of Shri Megh Singh, Ex-AC the then OC RHQ vide this HQ signal No.0/7402 dated 22/9/92 to enquire into the circumstances under which breach block of LMG bren 303, but No.42, body NO.S-2950 got damaged. Since the officer proceeded on retirement with effect from 30th Nov"92 after attaining the age of superannuation, could not complete the said COI.

2. Accordingly on request of OC RHQ, the amendment order was issued by detaining yourself as presiding officer to conduct the subject COI vide this office order No.2001/ISD/Q/4Bn/BOO/Arms/COI/92/742 dated 24th Jan"93.

3. In this regard this office has sent several reminders to the PO vide signal No.Q/7401 dated 13/2/93, Q/7402 dated 20/3/93, Q/7409 dated 27/3/93 and Q7413 dated 4/4/93. In spite of issue of so many reminders, the proceeding of above COI could not be sent by you. However, in the month of May"93 the proceedings were received without any covering letter or dispatch number.

4. On scrutiny of the proceedings of COI sent by you, the followings revealed which was not only irregular, but needed further elucidation:-

a. The court assembled on 22/11/92 and the PO has recorded the statement as on 22/11/92 whereas no such order existed/passed from this HQ in your favour as PO.

b. The statements have not be recovered by PO in his own handwriting.

c. The signature of witness NO.4 Sh Megh Singh, Ex-AC is not his actual signature, but some body else has signed in his place which needs detailed investigation under section 35 of BSF Act and Rules 1968.

5. Keeping in view of above, in this regard a letter was sent to you asking clarification on the above observations vide our letter No.4058 dated 23 rd May”93, but surprisingly till to-day no response has been received from you. In this letter you were also asked to re-conduct the subject COI and submit the same by 15th June, but more than two and half month have been elapsed and COI in question has not been submitted by you.

6. In view of above, you are hereby directed to explain the followings;-

How the court assembled on 22/11/92 and recorded the statement when there was no such order in this..."

15. We may note that with respect to the FPET conducted, a letter dated 25.9.1993 highlights on the issue evidencing that not only the petitioner but the entire team under his command was found to be physically unfit. The letter dated 25.9.1993 reads as under:-

"Dated 25 Sept"93

To

Shri R.K.Sharma

Dy Commandant

Coy Commander „A" Coy

Sub: - ANNUAL INSPECTION OF COY

Though the prior information was given to you in person by me regarding conduct of FPET and inspection of Coy, the following shortcomings were noticed on 24th Sept"93 when I reached for the same:-

- a. Starting point and finishing point for two mile run was not marked.**
- b. Route was neither marked nor correctly measured.**
- c. No flags/sentries were detailed to avoid short cutting by the troops while participating for two mile run.**
- d. More than ten boys were found without water bottle. On asking about same, no satisfactory answer could be given, through regular monthly kit condemnation is being carried out.**
- e. 9" ditch was not properly marked/measured.**
- f. Out of 67 personnel appeared in two mile run below 35 years, only three could achieve excellent position which is not accepted since 90 percent of coy strength is young and below 30 years.**

g. The following personnel of your coy failed in various test which clearly reflects the poor standard of your coy personnel and it appears that due to attention has not been paid towards improvement of physical fitness of toops:-

i. six feet wall : 06 failed

ii. Monkey rope : 27 failed

iii. Nine feet ditch : 16 failed

iv. Fireman lift : 07 failed

2. Moreover, I was surprised that you as coy commander also reported sick after knowing fully well the programme and did not participate in the test.

3. In view of above, I would like to re-test the personnel on 27th Sept"93, who had failed in the various obstacles and left out who could not attend the test due to obvious reasons.

(G.S. SHEKHAWAT)

COMMANDANT

4 BN BSF "

16. Another letter on the subject, dated 29.09.1993 reads as under:-

"Dated 29 Sept"93

//MEMORANDUM//

On 24th Sept" 93 while carrying out annual inspection of your coy, FPST of your coy personnel was conducted in which you did not participate and pretended sick though nothing of that sort was visible from your appearance as well as conduct on the

ground. However, you were exempted on that day.

2. But on 27th Sept'93 at about 0700 hrs, when I reached STC for taking FPET of left outs of your coy, you again reported sick and did not participate in FPET. On asking you stated that you are sick and unable to participate in FPET. However, after three hours or so you were seen with your coy in the operational area being conducted in area of responsibility of 26 Bn BSF. On my asking about your sickness, you stated that now I am well and can undertake task in the operation. It shows clearly that you were not sick but feigned sickness to avoid FPET.

3. It has seen that whenever this test has been conducted, you have some how manipulated and not participated in this. This clearly shows that you are

physically weak and do not possess adequate stamina to undertake the FPET prescribed in the Force.

4. You are, therefore, directed to intimate your fitness when you can participate in the FPET so that test can be conducted accordingly. If you do not participate in FPET, this may be reflected in your performance report for which you will be responsible.

(G.S. SHEKHAWAT)

COMMANDANT

4 BN BSF"

17. Lastly, letters dated 7.10.1993 and 22.12.1993 once again highlight the lackadaisical attitude of the petitioner towards his duties which letters are reproduced as below:-

"IN LEU OF MSG FORM

OP IMMEDIATE

FROM: TAC HQ 4 BN

UNCLAS

TO : „A” COY DTO: 071800

NO. A/70514

**.....
.....**

FOR SH R.K. SHARMA, DC COY COMDR „A” COY(.) LEAVE OFFICER (.) YOUR SIG A/7001 OF OCT 06(.) FOLLOWING CASES/MATTERS REQUIRED FINALISATION BEFORE CONSIDERING YOUR CASE FOR GRANT OF LEAVE (.) EX ONE (.) CASH BOOK OF OFFICERS MESS RHQ AND RATION CASH BOOK WHICH IS ESSENTIAL DOCUMENT HAS NOT BEEN SIGNED BY YOUR DURING YOUR TENURE AS OC RHQ (.) TWO(.) COI REGARDING OVERSTAYAL OF NO.89254503 CONST SHEELDHWAJ SINGH OF „A” COY NOT YET SUBMITTED TO THIS OFFICE (.) THREE (.) COI PERTAINING TO PREMATURE RESOLING OF TYRES OF VEH NO: PBJ-3016 STAFF CAR SUBMITTED BY YOU HAS BEEN FOUND INCOMPLETE AS PER INSTRUCTIONS LAID DOWN ON THE SUB AND ITS DISCREPANCIES ARE REQUIRED TO BE RECTIFIED BY PO///

**.....
.....- COMMANDANT**

4 BN BSF"

" Dated, the 22 Dec”93.

To

Shri R.K.Sharma, DC

OC Rear HQ

4 Bn BSF

Subject: COURT OF INQUIRY

It has been brought to my notice that court of inquiries given to you vide this office order No.2001/Estt/ISD/COI/4Bn/93/7664 dated 29.09.93 and No.2001/ISD/Prov/93/7750-53 dated 06/10/93 has not yet been submitted by your inspite of several reminders as stated below:-

a. A/7006 dated 18/10/93

b. A/7005 dated 25/10/93

c. A/7003 dated 10/11/93

d. L/No.8709 dated 20/11/93

e. A/7001 dated 25/11/93

f. L/No.10063 dated 15/12/93

In this regard Offg Commandant has also reminded you vide signal No.A/7001 dated 25th Nov"93 to complete the same before proceeding on 10 days earned leave.

Inspite of several reminder the courts of inquiries have not yet been submitted. This has been seen in the past also that none of the inquiry given to you has ever been submitted in time. In some of the cases the inquiries were transferred to some other officers since you could not complete the same even after

elapse of five to six months.

I am constrained to advise you that both the COIs mentioned above be completed before proceeding on court without fail.

(G.S. SHEKHAWAT)

COMMANDANT

4 BN BSF"

18. It is apparent that during the year, contemporaneous to the shortcomings found, letters were written to the petitioner informing him to buck himself up and improve his working. Petitioner's casual approach towards work and the requirement of his being chased to complete the work was pointed out to him. Petitioner's avoidance to participate in the FPET was pointed out to him as also the fact that not only he but even persons under his command were found to be wanting in the physical standards to be achieved.

19. Finding sufficient material on record where-from the subjective satisfaction of the Initiating Officer can sufficiently be justified, we dismiss the writ petition but refrain from imposing any costs.

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