

Rajesh Kumar Vs. Union of India and ors.

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Court : Delhi

Decided On : Sep-23-2011

Judge : Pradeep Nandrajog; Sunil Gaur, Jj.

Appeal No. : W.P.(C) 6540/1998

Appellant : Rajesh Kumar

Respondent : Union of India and ors.

Advocate for Def. : Ms.Archana Gaur, Adv.

Advocate for Pet/Ap. : Mr.Abhishek Aggarwal; Ms.Neelam Jain; Mr.K.K.Kota, Adv.

Judgement :

1. The petitioner was appointed as a constable under Central Industrial Security Force on 23.06.1987 and posted to CISF Unit VSTPP Vidhyanagar, Madhya Pradesh. In the month of March 1996 a complaint was made against the petitioner to the Commandant, stating that on 20.3.1996, in a state of intoxication the petitioner abused and assaulted L/Nk.Dharamvir Singh Challia also referred to as DVS Challia.

2. Taking cognizance of the complaint and the fact that L/Nk. Dharamvir Singh Challia was hospitalized for 8 days, the Commandant issued a Memorandum of Charge listing 3 articles of charge against the petitioner which read as under:-

CHARGE-I

CISF No.874050118 Ct.Rajesh Kumar, on 20.3.96 consumed liquor and in the state of intoxication abused CISF No.8038054 LNK Dharambir Singh and disturbed peace in the unit lines. This above mentioned conduct of the member of force symbolizes/means gross indiscipline and misconduct.

CHARGE-II

CISF No.874050118 Ct.Rajesh Kumar on 20.3.96 at 2045 hrs in the state of intoxication slapped CISF No.8038054 LNK Dharambir Chalia which symbolizes/means gross indiscipline and misconduct.

CHARGE-III

CISF No.874050118 Ct.Rajesh Kumar on 20.3.96 at 2145 hrs, in the state of intoxication again beat CISF No.8038054 LNK Dharambir Singh Chalia and this conduct symbolizes/means gross indiscipline and misconduct."

3. It be highlighted that though charges listed were 3, they relate to the same incident, which allegedly took place on 20.3.1996 and the substance of the allegation is that under influence of liquor petitioner firstly abused L/Nk.Dharamvir and disturbed peace in the Unit, followed by slapping Dharamvir and concluding the event by beating him. As would be noted from the facts hereinafter, the incident is separated by 1 hour and we could say that the drama was enacted in two Parts i.e. Part-I and Part-II; separated by a very short interval of time. In Part-I, after abusing L/Nk.Dharamvir it is alleged that the petitioner slapped him and in Part-II of the drama, after about an hour, petitioner picked up a stick and inflicted injuries on L/Nk.Dharamvir.

4. Considering petitioner's response dated 13.4.1996, where the plea of denial was taken, finding the response requiring evidence to be led, the Commandant appointed Asstt.Comd.T.D.Goswami as the Inquiry Officer and suffice would it be to note that at the inquiry 10 witnesses were examined by the department and in spite of opportunity granted, petitioner examined none.

5. Of the 10 witnesses examined, 2 witnesses Ct.K.R.Tupe PW-6 and Nk.Trilok Singh PW-7 stated that they knew nothing of the incident and thus testimony of 8 would be relevant to be noted inasmuch as learned counsel for the petitioner had urged at the hearing that it is a case of no evidence.

6. SI Narender Singh PW-1 deposed that on 20.3.1996 at about 19:50 hours Insp.S.Mishra informed him that L/Nk. DVS Challia has been assaulted and that he has complained to the Assistant Commandant who is on his way to the unit. He went to the Quarter Guard room where Insp.Harish Pandey and Insp.F.Ram were present along with the petitioner and L/Nk.DVS Challia and were enquiring about a fight between the petitioner and L/Nk.DVS Challia, upon which the petitioner said that he had not beaten anybody. Both, the petitioner and L/Nk. DVS Challia were counselled and sent back to the unit line. That after sometime he heard some noise coming from a barrack. The BHM and the Sentry on duty along with him went to the barrack and saw that the vest of L/Nk. DVS Challia was soiled with food. Upon enquiry L/Nk. DVS Challia stated that the petitioner had beaten him but all other personnel present in the barrack claimed to not have seen anything. That he noticed injury marks on the chest of L/Nk. DVS Challia and so they took him to quarter guard room from where as per orders of Insp.F.Ram, he i.e. L/Nk. DVS Challia was taken to the hospital where he was admitted in the emergency ward.

7. On being cross-examined by the petitioner he stated that the petitioner did not appear to be intoxicated. On being questioned by the Inquiry Officer he stated that he had not witnessed any fight. That he had seen injury marks on the left side of chest of L/Nk. DVS Challia but he could not say for certain whether those marks were lathi wounds or stab wounds.

8. Insp. Faujdar Ram PW-2, deposed that on 20.3.1996 at about 21:30 hours L/Nk. DVS Challia telephonically informed him about petitioner having beaten him and requested him to come to the unit line immediately. On reaching he enquired about the incident from other personnel staying in the barrack but all said in unison that they had not witnessed any fight. After counselling both the petitioner and L/Nk.D.V.S.Challia, he returned to his barrack. At about 22:20 hours the Duty Officer over the telephone informed him that another fight had taken place

between the petitioner and L/Nk. DVS Challia. On reaching the quarter guard room he saw L/Nk. DVS Challia sitting on the floor and on his vest there were marks of cooked vegetable. Upon asking L/Nk. DVS Challia stated that the petitioner had beaten him with a lathi and showed him injury marks on his chest. None of the personnel in the barrack claimed to have seen the incident and the petitioner too denied having beaten anybody. L/Nk. DVS Challia was sent to the hospital and was admitted therein for treatment. On 21.3.1996 he made a report about the incident and submitted it to the Commandant and upon his orders conducted a preliminary enquiry and submitted its report to the Commandant on 22.3.1996.

9. Insp.Harish Pandey PW-3, deposed that on 20.3.1996 at about 21:20 hours the Commandant telephonically informed him about a fight between the petitioner and L/Nk. DVS Challia and asked him to look into the matter. On reaching the unit lines he enquired from both the petitioner and L/Nk. DVS Challia about the incident. The petitioner denied having beaten L/Nk. DVS Challia. That he got the incident reported in the General Diary vide GD entry No.453 dated 20.3.1996 at about 21:20 hours. That he went back to his residence where he again got a telephone call from SI Narender Singh that the petitioner had once again beaten L/Nk. DVS Challia who was in a critical condition. On reaching the Quarter Guard room he met L/Nk. DVS Challia who was crying and who told him that the petitioner had beaten him with a lathi and showed him the injury marks. That since he was in a bad shape, he sent him with Insp.F.Ram to the hospital.

10. On being cross-examined by the petitioner he stated that L/Nk. DVS Challia told him that the petitioner slapped him and assaulted him with a lathi and threatened to kill him. That on the day of the incident the petitioner did not seem intoxicated to him. On being questioned by the Inquiry Officer he stated that L/Nk. DVS Challia showed him the injury marks on his back and that he was crying in pain. That upon enquiring it transpired that L/Nk. DVS Challia used to abuse a lot which was the reason behind the fight on 20.3.1996.

11. Ct. S.K.Swain PW-4 deposed that on 20.3.1996 at about 20:45 hours after having his dinner when he went outside his barrack he heard L/Nk. DVS Challia abusing loudly. Upon asking L/Nk. DVS Challia told him that the petitioner slapped

him. On being cross-examined he stated that he did not see the petitioner assault L/Nk. DVS Challia and neither did the petitioner seem to be intoxicated. On being questioned by the Inquiry Officer he stated that he had seen L/Nk. DVS Challia have a glass of alcohol on 20.3.1996 at about 20:00 hours.

12. Naik Chandrasekhar PW-5, deposed that on 20.3.1996 he saw L/Nk. DVS Challia going out of his barrack with other personnel and there were injury marks on his back.

13. Ct.D.S.Bhist PW-8 deposed that on reaching his barrack at about 21:35 hours on 20.3.1996 he saw food on the floor near the bed of L/Nk. DVS Challia.

14. Ct.A.K.Swain PW-9, deposed that on 20.3.1996 at about 20:45 hours he saw the petitioner and L/Nk.D.V.S.Challia talking in their local language. He then went out to wash his utensils. On his way back to the barrack he saw L/Nk. D.V.S Challia leaving with a few personnel and upon asking L/Nk. D.V.S Challia told him that the petitioner has slapped him.

15. L/Nk. D.V.S. Challia PW-10 deposed that on 20.3.1996 when he returned to the unit line he saw that garbage was lying on his bed. He tried to enquire from other personnel as to who had put the garbage, but nobody took responsibility for the same. He decided to go to the Mess instead and as he was about to leave, the petitioner, in an intoxicated condition, stabbed him several times with a knife on his back and also slapped him. He tried to contact the BHM S.K.Nath, duty officer and the Coy Commander Insp.Faujdar Ram but could not get in touch with them, upon which he went to the quarter guard room and telephonically reported the matter to Insp. Harish Pandey whom immediately came to the quarter guard room and summoned the petitioner. The petitioner in front of everybody present in the quarter guard room said 'Madarchod tum chhoti jaati ke ho kisne aapko bharti kar diya'. He then showed his wounds to Insp.Harish Pandey. In the mean time Coy Commander Insp.Faujdar Ram also reached the quarter guard room and asked the petitioner as to why he assaulted him i.e. PW-10 but the petitioner said nothing and returned to his line. He was then told that a report of the incident has been noted in the general diary and was asked to go back to his unit line and rest. That Nk. Chnadrashkhar, Nk. Trilok Singh, Ct. S.K.Swain, Ct. A.Swain, Ct.K.R.Tupe

and Ct.D.S.Bisht had witnessed the assault as they were standing near him at that time. That on the same day at about 21:45 hours while he was having his dinner the petitioner once again assaulted him with a lathi (bamboo stick) on his back as a result of which the food from his plate fell on him and he started crying. The petitioner while assaulting him shouted abuses at him and said that he would kill him and his family as he had lodged a complaint against him (petitioner) in the general diary. Hearing noise of the fight, the BHM and the duty officer came to the spot and soon thereafter the Coy Commander and Insp. Harish Pandey also came and asked the petitioner as to why he restarted the fight despite being told not to misbehave to which the petitioner replied 'Maine pehle toh thoda bohot mara tha baad mein meri GD hui, maine gusse mein fir dobara lathi se mara'. He was then taken to the hospital at about 11 pm by Insp.F.Ram, duty officer and driver Ram Gopal and was admitted for treatment. That he had also informed the Assistant Commandant about the incident.

16. On being cross-examined by the petitioner he stated that though many personnel saw petitioner assault him but none came to his rescue and that probably none of them would depose in his favour as they had also consumed alcohol with the petitioner. That he had not lodged a complaint in the Police Roznamcha about the petitioner assaulting him with a knife and a lathi. That the doctor at the hospital gave a discharge certificate wherein he noted the nature of injury on his person.

17. On being questioned by the Inquiry Officer he stated that neither did he have enmity with any force personnel nor was he a member of any group formed by personnel amongst themselves. That the petitioner held a grudge against him because the petitioner wanted to befriend him as they were from the same state but he did not accept the proposal. That the petitioner had slapped him beat him with a lathi and stabbed him with a knife as a result of which he was admitted in the hospital for treatment.

18. Relevant would it be to note that certain documents are found attached with the Inquiry Report but none have been tendered as evidence during the Inquiry. These documents include a discharge certificate, copies of Roznamcha Register

and a letter to the commandant by Insp.F.Ram reporting the incident of 20.3.1996. In the discharge certificate dated 28.3.1996 issued by VSTPP hospital, bearing name of L/Nk. D.V.S. Challia, it stands recorded that on 20.3.1996 L/Nk. D.V.S. Challia was admitted in the hospital and was diagnosed of contusion on lower back. Further, in the copy of the Roznamcha register at entry No.453 dated 20.3.1996 made at about 21:20 hours it stands recorded that L/Nk.D.V.S.Challia using company telephone called the Assistant Commandant of the unit and told him that the petitioner abused and threatened to kill him. In this regard Insp.Harish Pandey arrived at the unit lines and after making enquiries from and counselling the petitioner and L/Nk.D.V.S.Challia, they were sent back to their barracks. In the entry No.454 made at about 22:15 it stands recorded that there was a commotion in the barrack at 22:15hours and to investigate the same SI Narender Singh, BHM and the Sentry on duty went to the barrack where L/Nk.D.V.S.Challia told them that the petitioner beat him. Enquiry was made from the personnel present in the barrack but they claimed to have not seen anything. That L/Nk.D.V.S.Challia was in a critical condition for which reason he was sent to the hospital and was admitted in the emergency ward.

19. In the letter addressed to the Commandant, Insp.F.Ram reported about the incident in the manner narrated in his deposition and in addition it is recorded that there were 3 injury marks on the back of L/Nk.D.V.S.Challia one of which looked critical and that the petitioner was reeking of alcohol.

20. At the close of the prosecution evidence, on being questioned by the Inquiry Officer, the petitioner stated that he had not assaulted L/Nk.D.V.S.Challia and that L/Nk.D.V.S.Challia had consumed alcohol beyond his capacity because of which he probably lost balance and fell somewhere and got hurt. He denied having abused L/Nk.D.V.S.Challia and stated that he had no enmity with him.

21. In view of the evidence led during the Inquiry the inquiry officer held charge No.1 and 3 as partially proved and charge No.2 as not proved as per the report dated 29.8.1996 which was sent to the petitioner for his response and considering the same, vide order dated 13.12.1996 the Commandant inflicted penalty of removal of service upon the petitioner. Appeal preferred against the order dated

13.12.1996 being rejected vide order dated 31.5.1997 instant writ petition was filed.

22. Highlighting that as per the report of the Inquiry Officer it was not proved that the petitioner was intoxicated nor was it proved that the petitioner slapped L/Nk.Dharamvir Challia, but held it to be proved that petitioner firstly abused L/Nk.Dharamvir Challia and then beat him with a stick, we proceed to consider the argument advanced i.e. that it is a case of no evidence.

23. The testimony of L/Nk.Dharamvir Challia brings out that there was garbage on his bed and nobody in the barrack owned responsibility thereof and he has explained that since everybody was consuming alcohol in the barrack, lest even they be in trouble, nobody was willing to depose that petitioner assaulted him. Though the medical record of the petitioner has negligently not been proved at the inquiry, though we find the same to be a part of the listed documents through which the charge was proposed to be proved, we have the evidence of not only L/Nk.Dharamvir Challia of being injured, but also the testimony of Nk.Chandershekhar who has categorically stated that when L/Nk.Dharamvir Challia was going out of the barrack with other personnel there were injury marks on his back. Insp.Fauzdar Ram PW-2 who had reached after hearing about the incident has also stated that L/Nk.Dharamvir Challia had showed him injury marks on his chest. SI Narender Singh PW-1 who has likewise reached the barrack also has stated that he noted injury marks on the chest of L/Nk.Dharamvir Challia who was taken and admitted in the emergency ward of a hospital.

24. Thus, not only from the mouth of the injured, from the mouth of 2 independent witnesses we have evidence that L/Nk.Dharamvir Challia had injury marks on his person when he was in the barrack at about 9:30 hours on 20.3.1996.

25. The injured had given a reason of why others had not deposed against him and the fact that L/Nk.Dharamvir Challia was injured is proof of the fact that somebody injured him. It is not the case of the petitioner that injuries were self inflicted. It is the case of the petitioner, as per his statement made before the inquiry officer, that L/Nk.Dharamvir Challia suffered the injuries when he slipped and fell under influence of alcohol. We do not find any such suggestion given to

PW-1, PW-2 or PW-5 that when L/Nk.Dharamvir Challia was seen injured by them he told them that he had suffered the injuries due to a fall suffered while under influence of alcohol. We find that this suggestion was given to L/Nk.Dharamvir Challia, who denied the same.

26. For reasons which we cannot fathom, the inquiry officer has held that it was not proved that petitioner had slapped L/Nk.Dharamvir Challia though L/Nk.Dharamvir Challia has categorically so said, but that would hardly matter for the reason there is evidence that the petitioner assaulted L/Nk.Dharamvir Challia with a stick and if the discharge certificate of L/Nk.Dharamvir Challia is looked into it would show that he remained hospitalized for 8 days from 20.3.1996 till 28.3.1996 and indeed the long period of hospitalization is proof of the fact that he needed medical treatment for such a long time. The document not proved at the trial does not mean that there is no evidence on the issue for the reason L/Nk.Dharamvir Challia has deposed that he was hospitalized and PW-1, PW-2 as also PW-3 have categorically stated that L/Nk.Dharamvir Challia, being in a bad shape, was sent to the hospital and was admitted. In fact, PW-3 has categorically stated that when he saw L/Nk.Dharamvir Challia he found him crying and in a critical condition stating that petitioner had beaten him with a lathi and he showed him the injury marks.

27. It cannot be said to be a case of no evidence. It is true that L/Nk.Dharamvir Challia may have stated during inquiry that apart from beating him with a stick, petitioner inflicted knife injuries on him, but we find that there was no allegation in the charge that the petitioner inflicted knife injuries on L/Nk.Dharamvir Challia and it is apparent that L/Nk.Dharamvir Challia has given a somewhat exaggerated version. Even if we apply the principle of caution in evaluating evidence evolved by Courts, being that, a witness who is partially reliable and partially unreliable needs corroboration at a domestic inquiry, on the reliable part of the testimony of L/Nk.Dharamvir Challia, we find corroboration through the testimony of PW-1, PW-2, PW-3 and PW-5 who have categorically stated that they saw L/Nk.Dharamvir Challia in an injured condition and he told them that it was the petitioner who had caused the injuries.

28. It is unfortunate that the Inquiry Officer was negligent in not bothering that the prosecution led evidence to prove the listed documents. The Presenting Officer was also negligent. But in spite thereof we find sufficient evidence.

29. Negating the plea that it is a case of no evidence, highlighting that assaulting a superior officer is a serious misconduct by a member of a Central Para Military Force, we find no scope to mitigate the penalty for the reason we do not find the same disproportionate to the gravity of the offence. Dismissing the writ petition we refrain from imposing costs.

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