

Sher Singh Vs. Uoi and ors

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Court : Delhi

Decided On : Sep-05-2011

Judge : Pradeep Nandrajog; Sunil Gaur, Jj.

Acts : CCS (Pension) Rules - Rules 41, 24

Appeal No. : W.P.(C) 6988/2001

Appellant : Sher Singh

Respondent : Uoi and ors

Advocate for Def. : Mr.Bhupinder Sharma, Adv.

Advocate for Pet/Ap. : Mr.Sanjoy Ghose; Mohd.Farrukh, Advs.

Judgement :

1. Heard learned counsel for the petitioner and perused the record.
2. Of the various averments made in the writ petition and grounds urged in support of the prayer, learned counsel urges that there is no evidence to sustain the first and second charge. Counsel highlights that 5 witnesses of the prosecution have deposed only with respect to Charge No.III.
3. Counsel urges that the verdict of guilt at the Summary Security Force Court Trial returns petitioner guilty of all 3 charges and penalty imposed is of dismissal from service. It is urged that the penalty has to be set aside for the reason it is

premised as if petitioner is guilty of all 3 charges.

4. Alternate submission made is that if all 3 charges stand proved, penalty of dismissal from service is disproportionate to the gravity of offences.

5. 3 charges on which the petitioner was tried at the Summary Security Force Court Trial reads as under:-

"The accused No.89401396 Const.Sher Singh of „C Coy.5 Bn BSF is charged with:-

IST CHARGE DISOBEYING IN SUCH MANNER AS TO BSF ACR SHOW A WILFUL DEFIANCE OF SECTION 21(1) AUTHORITY, A LAWFUL COMMAND GIVEN PERSONALLY BY HIS SUPERIOR OFFICER IN THE EXECUTION OF HIS OFFICE.

in that he, while undergoing 14 days RI given by Shri N.D.Bahuguna, Offg.Comdt, 5 Bn BSF on 31.12.99 for having committed an offence of absenting himself without leave punishable U/S 19(a) of the BSF Act, on 1.1.2000 when ordered by No.85102980 HC V.B.Karjagi, duty NCO of that day, to carry out pack drill, denied saying "MAIN ISS SAJJA KO NAHIN MANTA AUR PACK DRILL NAHIN TAHLUNGA" and words to this effect, and did not carry out the pack drill and thereby disobeyed the orders given by his superior officer.

IIND CHARGE DISOBEYING IN SUCH MANNER AS TO BSF ACT SHOW A WILFUL DEFIANCE OF SEC-21(1) AUTHORITY, A LAWFUL COMMAND GIVEN PERSONALLY BY HIS SUPERIOR OFFICER IN THE EXECUTION OF HIS OFFICE

in that he, on being released from the Quarter Guard on completion of 14 days RI given to him, when ordered by No.75001299 HC Ram Pal Singh on 14.1.2000 to take his uniform belt and cap, arrogantly refused to take over his belt and cap.

III RD CHARGE ABSENTING HIMSELF WITHOUT LEAVE BSF ACT

SEC-19(A) in that he, at Bn HQ (Sunderbani), J&K on 26.3.2000 absented himself without leave and reported voluntarily on 22.6.2000 (AN).

Total period of absence w.e.f. 26.3.2000 to 22.6.2000 (AN) for 89 days.

(D.S.RATHORE)

COMMANDANT

5th Bn. B.S.F.

6. The original record of the trial produced would reveal that SI/RM Joginder Ram PW-1, HC Ranbir Singh PW-2, HC V.B.Karjagi PW-3 and SI S.D.Sharma PW-4 deposed with respect to Article I of the charge. The testimony establishes that while undergoing 14 days RI, required to carry out pack drill, petitioner refused saying that he does not accept the punishment.

7. Pertaining to the second charge, HC Ram Pal Singh PW-1, Ct.P.K.Hazarika PW-2, Shri N.D.Bahuguna PW-3 deposed with respect to Charge No.II and their evidences establish that the petitioner refused to take his uniform belt and cap after he completed 14 days RI and the refusal was in an arrogant manner.

8. Record further shows that HC Dalip Singh PW-1, Ct.Rajinder Narjary PW-2, SI Sangram Singh PW-3, Ct.Krishan Lal PW-4 and SI S.D.Sharma PW-5 have deposed with respect to the 3rd charge and we highlight that their testimony establishes that the petitioner had absented himself without leave as alleged as per the 3rd charge.

9. Thus, the argument that the first 2 charges have been held established without any evidence is incorrect.

10. It appears that the basis of the plea is the Commandant of the Unit who acted as the Court, listing the various prosecution witnesses as PW-1 onwards separately for each charge.

11. On the issue of the proportionality of the sentence, record shows that this was not the first misdemeanor which was detected.

12. The petitioner had 11 years service and was penalized twice. Once for unauthorisedly possessing 8 bottles of rum for which 14 days RI was inflicted on

22.10.1991. Second punishment was for being unauthorized absence for 9 days and for which 7 days extra duty as a penalty was inflicted apart from 14 days RI.

13. Record shows that on 3 occasions petitioners unauthorized absence was condoned and regularised.

14. ACR record of the petitioner is also not very healthy. An adverse remark has been entered for the year 1997 that petitioner was careless, talkative, disobedient and a habitual drinker, and that except for drawing salary he had no inclination to work. For the year 2000, the adverse entry recorded is that the petitioner is a disobedient soldier. He does not obey the command of the seniors and enters into a verbal quarrel. He is a habitual drinker and was not recommended for promotion.

15. It is settled law that past conduct can always be considered on the issue of proportionality of the penalty imposed.

16. At this stage, learned counsel for the petitioner prays that since the petitioner has a family consisting of 3 minor children, notwithstanding penalty of dismissal from service being inflicted, it may be directed that in terms of Rule 41 of the CCS (Pension) Rules, a compassionate allowance be sanctioned and be paid to the petitioner.

17. We note that as per the mandate of Rule 24 of the CCS (Pension) Rules, dismissal or removal of a government servant from service or post entails forfeiture of past service, and so is the mandate of sub-rule 1 of Rule 41, but the proviso thereof empowers the Competent Authority, who has dismissed or removed from service a government servant may sanction a compensation pension.

18. While dismissing the writ petition without any order as to costs, we observe that if the petitioner makes a representation to the Competent Authority who has dismissed the petitioner from service, the authority concerned would consider the request in terms of the proviso to sub-rule 1 of Rule 41 of the CCS (Pension) Rules and if it is opined that it is a deserving case or there are special circumstances, i.e. a case is made out within the proviso to sub-rule 1 of Rule 41

of CCS (Pension) Rules, compensation pension would be disbursed.

19. If the petitioner were to make a representation as aforesaid, necessary decision would be taken and conveyed to the petitioner within 6 weeks and if request is accepted, compensation pension would be disbursed as per the Rules.

20. Noting the facts herein above, we see no scope to mitigate the quantum of penalty and thus we dismiss the writ petition but refrain from imposing costs.

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