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Ravinder Singh Vs. Uoi and ors.

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Court : Delhi

Decided On : Apr-04-2013

Judge : S.Ravindra Bhat

Appellant : Ravinder Singh

Respondent : Uoi and ors.

Advocate for Def. : Dr. Ashwani Bhardwaj, Shri. S.P. Sharma

Advocate for Pet/Ap. : Shri. Arun Bhardwaj, Shri. N.D. Kaushik

Judgement :
* IN THE HIGH COURT OF DELHI AT NEW DELHI Pronounced on:

04. 04.2013 + WP(C) No.6183/2002 RAVINDER SINGH ..... Petitioner Through: Shri Arun Bhardwaj & Shri N.D. Kaushik, Advocates. Versus UOI & ORS. ..... Respondents Through: Dr. Ashwani Bhardwaj with Shri S.P. Sharma, Advocates. CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE VALMIKI J.

MEHTA MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT) % 1. The petitioner, under Article 226 of the Constitution of India challenges his dismissal from the Indo Tibetan Border Police, (ITBP) dated 5-5-2001, as illegal and disproportionate.

2. The Petitioner joined ITPB as Constable(GD) on 01/04/1994. On 26/12/1999 he was issued a movement order to proceed to ITBP Academy, Mussoorie to attend

the Commando course starting on 3/1/2000. On 27/12/2999 the Petitioner, along with another constable (GD), Mahender Singh (Escort) left for the course, with arms/ammunition and was given departure to TC Chandigarh with the direction to leave TC Chandigarh to WP (C) No.6183/2002 Page 1 ITBP Academy on 30/12/1999. On 29/12/1999 the Petitioner left for his hometown along with arms/ammunition. On 2/1/2000 he left his home to report to the ITBP Academy, Mussoorie. He boarded the bus from Meerut and reached the ITBP Academy the same day but his 9mm pistol, BUT, body, magazine, cleaning rod and pistol pouch were missing upon his reaching the destination. The Petitioner again left for his house. On 4/1/2000 the Petitioner reported back to the ITBP Academy. On 5/1/2000 he informed the CHM (Commando Course) and also to the Commandant (CW), ITBP Academy Mussoorie about loss of arms and ammunition. The same day the petitioner went along with Adjutant of Academy to PS Mussoorie and lodged an FIR regarding loss of pistol.

3. On 6/1/2000 the Petitioner was placed under suspension; disciplinary proceedings were ordered against him. An Enquiry Officer was appointed and the statements of Constable Ravinder Singh and Constable Mahender Singh were recorded on 07-01-2000. The E.O. examined the delinquent person and submitted his findings/report for further necessary action. The statements of two witnesses, PW-1 and PW-2 were recorded on 19/12/2000. On 20/12/2000 the statement of PW-3 was recorded. On 21/12/2000 the statement of PW-5 and PW-6 were recorded. On 22/12/2000 the statement of Petitioner was recorded. ITPB directed on 1/5/2001 that a Summary Force Court to be held on 04/05/2001 to try the Petitioner under Sections 35(b), 43 & 21 (d) of ITBP Act, 1992 for the misconduct alleged. On 05/05/2001 the punishment order of removal from services was passed by the Commandant Second Battalion ITBP. The petitioner was aggrieved, and preferred an appeal to the Director General; this was however rejected on 24 th August, 2001. On 19/09/2001 the Petitioner preferred a revision petition to the WP (C) No.6183/2002 Page 2 Director General, ITBP against the orders passed by the Commandant and the DIG, imposing the penalty of removal from services and rejection of his appeal. No order was passed by the Directorate General, ITBP on the revision petition even after the lapse of six months. Consequently the petitioner approached this Court by filing the present writ petition.

4. The relevant provisions invoked by the ITBP under the Indo Tibetan Border Police Force Act, 1992, (the Act) in the present case are extracted below:

21. Absence without leave.-Any person subject to this Act who commits any of the following offences, that is to say,--(a) absents himself without leave; or (b) without sufficient cause overstays leave granted to him; or (c) being on leave of absence and having received information from the appropriate authority that any battalion or part thereof or any other unit of the Force, to which he belongs, has been, ordered. on active duty, fails, without sufficient cause, to rejoin without delay; or . (d) without sufficient cause fails to appear at the time fixed at the parade or place appointed for exercise or duty; or (e) when on parade, or on the line of march, without sufficient cause or without leave from his superior officer, quits the parade or line of march; or (f) when in camp or elsewhere, is found beyond any limits fixed, or in any place prohibited, by any general, local or other order, without a pass or written leave from his superior officer; or (g) without leave from his superior officer or without due cause, absents himself from any school or training institution when duly ordered to attend there., shall; on conviction by a Force Court, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned. ********** WP (C) No.6183/2002 ********** Pag

35. Making away with equipment.- Any person subject to this Act who commits any of the following offences, that is to say,--(a) makes away with, or is concerned in making away with, any arms, ammunition, equipment, instruments, tools, clothing or any other thing being the property of the Government issued to him for his use or entrusted to him; or (b) loses by neglect anything mentioned in clause (a); or (c) sells, pawns, destroys or defaces any medal or decoration granted to him, shall, on conviction by a Force Court, be liable to suffer imprisonment for a term which may extend, in the case of the offences specified in clause (a), to ten years, and in the case of the offences specified in the other clauses, to five years, or in either case such less punishment as is in this Act mentioned. ********** **********
43. Violation of good order and discipline. - Any person subject to this Act who is guilty of any act or omission which, though not specified ill this Act, is prejudicial to good order and discipline of the Force shall, on conviction by a Force Court, be

liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

5. The charge of violation of Section 35 was based on the allegation that on 27/12/2999 the Petitioner along with Constable/GD Mahender Singh (Escort) and with Arms/ammunition was given departure to TC Chandigarh with the direction to leave TC Chandigarh to ITBP academy on 30/12/1999. But on 29/12/1999 he left for his hometown along with arms/ammunition without escort, proper leave and permission of the competent authority. While proceeding to the ITBP academy from his home, the petitioner lost his 9mm pistol BUTT No. -2, Body No.- T-13564, Magazine 01 (one) including one spare, cleaning rod and pistol pouch. The charge of absence without leave, under Section 21 was based on the allegation that the petitioner had to leave to the ITPB Academy on 30 th December, 1999; he failed to report to the Academy in time, and reported 6 days late, on WP (C) No.6183/2002 Pag

5. 1/2000 and kept himself absent for 6 days without sufficient cause. Likewise the charge of violation of good order and discipline was based on the allegation that the petitioner left for his hometown without escort, proper leave and permission of the competent authority.

6. Counsel for the petitioner contends that he called up at his home and he found out that there was some urgency at home for which reason he left for home on 29/12/1999 and reached there on 30/12/1999. He stayed there for 2 days and then moved for the ITBP Academy. Counsel also argues that on his way from home to the ITBP Academy, Mussoorie, near Dehradun the petitioners physical condition deteriorated and he started vomiting in the bus. For about half an hour he lost his senses and during this period someone might have opened his suitcase and stolen the pistol/other articles. When he reached the ITBP Academy and went to deposit arms/ ammunition, upon opening his suitcase he found that his 9 mm pistol, BUT, body, magazine, cleaning rod and pistol pouch were missing. He could not react to the situation and immediately left for home in search of the lost articles thinking that he might have left them at his residence. These were bona fide explanations which ought to have been duly considered. Instead, the GSFC

overlooked such reasonable explanation and mindlessly returned the verdict of guilt, which was not based on any objective material. It was submitted in this context that the respondents could not establish that the petitioner had unauthorizedly absented himself, because he was originally expected to report on 3rd January, 2000.

7. It was submitted that the enquiry was conducted in secrecy and the petitioner was not given proper and reasonable opportunity to defend himself in violation of principles on natural justice. The order for WP (C) No.6183/2002 Page 5 constituting a Summary court was made on 01/05/2001 and the Summary Court was constituted on 04/05/2001. Consequently, the petitioner was given just a day to submit the name of his friend of choice by 03/05/2001. It is submitted that the petitioner had a clean and unblemished service record and the ITBP recovered the value of lost pistol from him and therefore, he should not be punished twice for the same offence. It is argued that no reasons were given for the extreme penalty of removal from services. That penalty does not find mention under the relevant provision, and is harsher than the disciplinary orders mentioned there. It is lastly urged that the petitioner was treated in a discriminatory manner, because his escort was let off with a lighter punishment.

8. Section 35 of the Indo Tibetan Border Police Act, 1992, the contravention of which the petitioner was charged states that a person subject to this Act who commits any of the offences, that is to say.(a) makes away with, or is concerned in making away with, any arms, ammunition, equipment, instrumentsissued to him for his use or entrusted to him; or (b) loses by neglect anything mentioned in clause (a) would on conviction by a Force Court, be liable to suffer imprisonment for a term which may extend, in the case of the offences specified in clause (a), to ten years, and in the case of the offences specified in the other clauses, to five years, or in either case such less punishment as is in this Act mentioned.

9. The substance or gist of the misconduct the petitioner was charged with was of his unauthorizedly leaving for his native place and absenting himself, as well as reporting 6 days late, to the ITBP Academy, and his losing the firearm issued to him. The explanation given that his mother was unwell, during the submissions, is

insubstantial, and does not find place in WP (C) No.6183/2002 Page 6 any document placed on the record. On the other hand, he merely stated in the appeal preferred by him that some urgency occurred which led him to rush to his village or native place. There is not a shred of evidence or material to indicate what that urgency was and whether it involved a close family member. This defence was plainly vague; nothing was proffered by way of explanation, in the form of any document or even oral evidence of such family member. The Appellant was to report on a particular day; he however did not do so. The explanation of his having to attend to an emergency is devoid of merit. The Court does not find any infirmity with the finding of the Force Court in this regard.

10. So far as the charge of losing the firearm goes, the petitioner merely stated that whilst on his way from Meerut to the Academy, he was taken ill and lost consciousness, and when he reached the Academy, he found that the weapon was missing. While such an eventuality is undoubtedly feasible, this Court has to consider whether the findings of the Force Court is reasonable and within the bounds of probability. If the weapon had indeed been lost, as alleged by the petitioner, the least expected of him was to report it immediately to the local police station, before taking any step towards searching it. No such action was taken. That the weapon was lost during the period of the petitioners unauthorized furlough, only heightens his negligence. This Court cannot be unmindful of the public policy consideration which weighed with Parliament when it enacted Section 35 (b) which proscribed such conduct, and even made it a punishable offence. The member of a disciplined force, who is entrusted with firearms is expected to display utmost vigilance and care whilst it is in custody, and guard it from misuse or loss. If the petitioner had lost it under the circumstances that he WP (C) No.6183/2002 Page 7 alleges, the least he could have done was to lodge a contemporaneous report, and subject himself to a medical test or examination. The explanation is strangely silent whether the petitioner did or did not care to open his belongings to check if everything was in order, when he allegedly regained consciousness; what is also not known is whether the suitcase or bag or any luggage in which he had stored the weapon, was locked. The absence of these details, and the Petitioners omission to report the loss immediately, leads the Court to hold that his defence before the Force Court was unworthy of

credence.

11. It had been urged during the submissions that the punishment of removal was, in the circumstances, disproportionate and discriminatory. Counsel had urged that the petitioner should have not been visited with the severest penalty, considering that he was not involved in any offence that concerned his probity or impinged upon his integrity. It was also contended that the other member of the force, i.e. Constable Mohinder Singh was let off lightly, by imposition of 62 days quarter guard detention. This court holds that such arguments are insubstantial. Penalties in such circumstances cannot be lightly interfered with; such an unusual step is possible only if the Court feels that the penalty or punishment is shockingly disproportionate a finding which has to be rendered with circumspection and rarely. The court cannot ordinarily substitute its notions of fairness in penalty imposition, and should defer to the decisions of departmental authorities sans a conclusion of unfairness i.e. the punishment being shockingly disproportionate. Likewise, that Constable Mohinder Singh was awarded a relatively lighter penalty is hardly a consideration to judicially review the petitioners WP (C) No.6183/2002 Page 8 punishment. That individual, i.e. Mohinder Singh was not charged with the offence under Section 35.

12. For the above reasons, the Court is of opinion that the petition is devoid of merit. It has to fail, and is accordingly dismissed without any order as to costs. S.RAVINDRA BHAT, J VALMIKI J.

MEHTA, J.

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