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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : October 22, 2009*

+ **W.P.(C) 359/2009**

L/NK HARPAL SINGH Petitioner
Through: Mr.Vineet Bhagat, Advocate.

versus

UOI & ORS. Respondent
Through: Mr.Yadunath Singh, Dy. Commandant,
B.S.F.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

PRADEEP NANDRAJOG, J. (Oral)

1. Rule DB.
2. Heard for final disposal.
3. The petitioner and co-accused Const.Ravi Chander were charge-sheeted as under:-

“The accused No.86003672 L/NK Harpal Singh (Accused No.1) and No.89001320 Const.Ravi Chander Singh (Accused No.2) of 195 BN BSF are charged with:-

(First Charge)

BSF ACT Section 40 : AN OMISSION PREJUDICIAL TO GOOD ORDER AND DISCIPLINE OF THE FORCE.

In that they, together at the area of Naka No.01 of BOP Sahapur on night intervening 30/31 Dec' 2003 at about 1815 hours while doing Patrolling cum Ambush duty improperly omitted to exercise due care and caution over their area of responsibility as a result smugglers smuggle 04 Bags of Garlic from Bangladesh to India.

(Second Charge)

BSF ACT

Section 40 : AN ACT PREJUDICIAL TO GOOD ORDER AND DISCIPLINE OF THE FORCE:

In that they, together at Naka No.01 of BOP Sahapur on 30.12.2003 at about 2120 hrs manhandled one civilian namely Jhantu Mondal S/o Jhorukant Mondal R/o Village Sahapur.

(Third charge)

BSF ACT

Section 26 : INTOXICATION:

In that they, together at Naka No.01 of BOP Sahapur on night intervening 30/31 Dec' 2003 at about 2145 hrs' found in state of intoxication.

(Fourth Charge)

(Accused No.01 only)

BSF ACT

Section 40: AN ACT PREJUDICIAL TO GOOD ORDER AND DISCIPLINE OF THE FORCE:

In that he, at BOP Sahapur between 30/31 Dec'2003 and 5/6 Jan'2004 omitted to report about breaching of cocking handle of SLR Butt No.47 body No.EC-2839 issued to him, which was detected during quarterly inspection by Unit Armourer on 5/6 Jan'2004.

(Fifth Charge)

(Accused No.02 only)

BSF ACT

Section 40: AN ACT PREJUDICIAL TO GOOD ORDER AND DISCIPLINE OF THE FORCE:

In that he, at BOP Sahapur on 30th Dec'2003 at about 2130 hrs. improperly and without authority fired 2

rds. from SLR of No.86003672 L/NK Harpal Singh Butt No.47, body No.EC-2839”

4. It is apparent that charge No.1 to charge No.3 was common against the petitioner and the co-accused. Charge No.4 was framed only against the petitioner. Charge No.5 was only against the co-accused.

5. Evidence was recorded, in which opportunity of cross-examination of witnesses was given to both the accused. The final verdict delivered at the Summary Security Force Court Proceedings is of guilt. A resultant order of dismissal from service has been passed against the petitioner.

6. It is urged by learned counsel for the petitioner that the findings returned at the Summary Security Force Court Proceedings are vitiated, in that, the finding is based on no evidence. The second contention urged is that the finding of guilt is by a non-speaking order. Last grievance made is that the rejection of the statutory petition, vide order dated 20.2.2007, on ground of delay, is vitiated in law, for the reason, the petitioner was prevented from taking resort to the statutory petition within time because all documents were not supplied to him within the time prescribed.

7. Pertaining to the first plea urged i.e. that the finding of guilt is returned on no evidence, suffice would it be for us to

record that the testimony of PW-1 SI Gnana Dass, who was performing the duties of Officiating Company Commander on 30.12.2003, establishes charge No.1 and charge No.4.

8. We have perused the testimony of PW-1 in which he has clearly established the fact that an ambush took place at a spot 15 yards from the culvert near Indo-Bangladesh Border. We note that this distance has been extracted in the cross-examination of the witness by the petitioner. The testimony of the witness clearly brings out the fact that the place where the ambush took place was near the place where the petitioner and the co-accused were stationed for duty to guard the border. The testimony of this witness also establishes the smuggling of garlic from Bangladesh to India. His testimony also establishes that after the ambush, when he conducted spot proceedings to verify as to how the intruders could enter the territory of India, he found, on checking, that the 7.62 mm SLR of the petitioner had the cocking handle assembly of the rifle missing which was never reported.

9. That the petitioner and his co-accused were drunk on the date and at the place has been established from the testimony of PW-5 and PW-6 who have clearly deposed that the petitioner and his co-accused were busy troubling one Jantu Mondal and under threat of the strength of they

being armed, compelled him to purchase liquor and cigarettes. Both of them sat outside the hut of the two witnesses and started consuming liquor. Not only that, in an act of perversion, both of them made PW-6 sit naked in front of them while they were consuming liquor.

10. It is apparent that the testimony of the said two witnesses establishes charge No.2 and 3.

11. The contention of learned counsel for the petitioner that no test was conducted to determine whether there was alcohol in the blood of the petitioner is neither here nor there in view of the eye-witness account given by PW-5 and PW-6.

12. An attempt has been made to make us go through the testimony of PW-2 and PW-3 to point out what learned counsel for the petitioner urges to be major contradictions.

13. It is settled law that in a judicial review proceedings, the Court cannot re-appreciate evidence as is done in a Court of Appeal. As long as there is some evidence, adequacy thereof would not be gone into in writ jurisdiction.

14. Having perused the record we are satisfied that there is sufficient evidence on record wherefrom the guilt of the petitioner can be inferred.

15. No Rule of Law has been cited before us requiring the verdict at a Summary Security Court Proceedings to be

akin to a decision at a criminal trial.

16. The plea that some of the documents were supplied late and hence the statutory petition was filed belatedly and hence could not be dismissed on account of being time barred, has to be rejected for the reason, the authority deciding the statutory petition has dealt with the merits of the pleas urged in the statutory petition and after rejecting the same has, by way of a footnote, added further that even otherwise the petition filed after one year and ten months was grossly belated.

17. As regards the order of dismissal from service, we may note that not only are the four charges which were proved against the petitioner serious enough warranting a dismissal from service, but even previous service record of the petitioner is not very bright.

18. Preceding the instant indictment the petitioner has five red ink entries pertaining to various acts of omission and commission in which penalties as below-noted were inducted.

The same are:-

“(i) Awarded severely reprimand on 16.1.98 by Comdt. 195 Bn BSF under Section 25 of BSF Act for using Criminal Force for quarrel and beating a constable.

(ii) Awarded reprimand on 3.12.2000 by Comdt. 195 Bn BSF under Section 19(b) of BSF Act for overstaying from leave.

(iii) Awarded severely reprimand on 28.12.02 by Comdt. 195 Bn BSF under Section 19(a) of BSF Act for absenting himself without leave.

(iv) Awarded severely reprimand on 25.3.2003 by Comdt. 195 Bn BSF under Section 19(g) of BSF Act for absenting himself from post without permission of superior and consumed country liquor.

(v) Awarded Dies non on 25.3.2003 by Comdt. 195 Bn BSF under Section 19(a) of BSF Act for absenting himself without leave.”

19. We find no infirmity in the action of the respondents and hence dismiss the writ petition, but without any order as to costs.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

OCTOBER 22, 2009
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