

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of Decision: 19th April, 2011*

+ WP(C) 503/2011

EX.CONST.YOGESH KUMAR Petitioner
Through: Mr.Bhopal Singh, Advocate

versus

UOI & ORS. Respondents
Through: Ms.Barkha Babbar, Advocate

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 Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J. (Oral)

1. Vide memorandum dated 13.11.2007 a charge sheet was served upon the petitioner alleging that on 21.10.2007 at about 13:30 hours, with a lathi in his hand, he threatened to kill SI Kavindra Rawat and using filthy language chased Insp.Kavindra Rawat at Saraswati barrack.

2. Amplifying the charge, as per the particulars of the charge annexed therewith it was stated that Insp.Vijay Gupta in-charge of sports of the NDRF Bn. had instructed SI Kavindra Rawat at 13:15 hours on 21.10.2007 to organize a cricket match between the NDRF Bn. Team and KRTC at 15:30 hours and had required SI Kavindra Rawat to inform Ct.Surender Sharma and when SI Kavindra Rawat entered Saraswati

barrack to inform Ct.Surender Sharma who was not present at the barrack, petitioner chased SI Kavindra Rawat by abusing him and with the intention to kill him and when SI Kavindra Rawat ran to Saraswati barrack to save himself, Ct.Sarju Pal armed with a khukri joined in chasing SI Kavindra Rawat who ran towards Yamuna barrack and ultimately managed to save himself.

3. Needless to state a separate charge sheet was served upon Ct.Sarju Pal and for unexplainable reasons we find that pertaining to the same incident two separate inquiries have been conducted against the two constables i.e. the petitioner and Ct.Sarju Pal.

4. Of the 6 prosecution witnesses examined at the inquiry against the petitioner we find that SI Kavindra Rawat deposed facts to corroborate the version in the charge against the petitioner and also claimed that Mali Arun Nayak had intervened to save him from the petitioner and Ct.Sarju Pal. Insp.Vijay Gupta, Insp.Rajiv Sharma, Insp.Rajender Singh, SI Sudhir Kumar and SI B.P.Yadav simply deposed that on the day in question i.e. 21.10.2007 at around 13:30 hours SI Kavindra Rawat had claimed in their presence of being assaulted by the petitioner and Ct.Sarju Pal.

5. Relevant would it be to note that Insp.Rajender Singh stated that at 13:15 hours on 21.10.2007 he was resting in his Yamuna barrack when petitioner claimed to be chased and assaulted.

6. It being undisputed during inquiry that Ct.D.S.Ram and Ct.Manoj Singh were on guard duty at Saraswati barrack and Ct.Devender Kumar was on guard duty at Yamuna

barrack, none of whom were examined as the witnesses of the prosecution, petitioner examined the three as DW-1, DW-2 and DW-3 all of whom claimed to be on duty; Ct.Devender Kumar stated that he was on duty at the Yamuna barrack and was performing duties on 21.10.2007 from 6:00 hours to 14:00 hours and that no such incident ever took place. So was the claim of Manoj Singh. Ct.D.S.Ram deposed that he was on duty at Saraswati barrack from 6:00 hours to 14:00 hours on 21.10.2007 and that no such incident took place.

7. The Inquiry Officer concluded in the report that the charge was not established and in so holding held that the 3 defence witnesses were admittedly on guard duty, 2 at Saraswati barrack and 1 at Yamuna barrack and the 3 having witnessed nothing of the sort alleged was relevant. Another reason given was that Insp.Rajender Singh, who as per his testimony was resting in the Yamuna barrack could not have heard nothing if something had happened as alleged by SI Kavindra Rawat. 11 reasons have been given favourable to the petitioner as under:-

“(i) If SI/Exe Kavindra Rawat would have come from Yamuna barrack to Saraswati barrack, then first of all he would have informed about cricket match to the guard employed in Yamuna barrack, Control I/C Line and ASI/Exe B.P. Yadav etc.

(ii) The guard of Yamuna barrack must have seen him.

(iii) The guards present in front and back side of Saraswati barrack must have seen him.

(iv) Charge Official was present on duty between 06:00 hours to 14:00 hours and there is no absent report about him.

(v) If, he would have made SI/Exe Kavindra Rawat to run, hit with stone or to abused, then both the guards present on duty and Line Control I/C must have seen him or listen.

(vi) If, he would have beaten SI/Exe Kavindra Rawat, attempt to kill him, throwing stones, then SI/Exe Kavindra Rawat must have sustained minor injuries or abrasion etc and would have been medically examined.

(vii) If, Const.Sarju Pal would have caught SI/Exe Kavindra Rawat through vest and Yogesh would have caught him from back side, then the vest of SI/Exe Kavindra Rawat must have torn off and the same should have been produced as a evidence.

(viii) If, SI/Exe Kavindra Rawat would have informed RI Rajeev Sharma, then RI Rajeev Sharma must have visited the spot of incident and would have enquired from the members of force.

(ix) If, Mali Arun Nayak would have been present at the spot, then he should have been produced as a prosecution witness.

(x) On 21-10-2007, he played a cricket match with DIG Sh.Nitin Agarwal at 1530 hrs in RTC (M) ground. If any unusual incident had taken place before two hours then he must have been questioned by the department, not to order to play the match.

(xi) If, Const.Sarju Pal would have attacked SI/Exe Kavindra Rawat with Khukhri, then said Khukhri should have been recovered and produced as a evidence."

8. The Disciplinary Authority penned a note of disagreement dated 15.11.2008 and suffice would it be to state that the reason given in the note of disagreement is the testimony of SI Kavindra Rawat (being ostensibly held to be good evidence against the petitioner) and the claim of the 4 other prosecution witnesses that around 13:30 hours SI Kavindra Rawat claimed to have been assaulted by the petitioner and Ct.Sarju Pal. The petitioner was called upon to file a reply to the note of disagreement, which he did, by highlighting that the note of disagreement did not justify any departure from the conclusions arrived at by the Inquiry Officer.

9. Rejecting the response to the note of disagreement and holding the charge to be proved, vide order dated 30.12.2008, the Disciplinary Authority inflicted the penalty of reducing petitioner's pay by one stage for a period of 2 years with a direction that the same would have the effect of postponing the future increments.

10. Petitioner preferred an appeal against the order dated 30.12.2008 and this resulted in the Appellate Authority issuing a show cause notice dated 3.3.2009 calling upon the petitioner to show cause as to why the penalty be not enhanced to one of dismissal from service, opining that the misdemeanour by the petitioner was severe. The petitioner filed a response to the said show cause notice and vide order dated 28.10.2009 not only was petitioner's appeal rejected but the penalty was enhanced to one of dismissal from service. Revision filed by the petitioner has been rejected vide order dated 29.11.2010.

11. What is the fate of Ct.Sarju Pal? On the same evidence, the Inquiry Officer who conducted the inquiry with respect to the charge sheet against Ct.Sarju Pal exonerated Sarju Pal and the Disciplinary Authority, vide order dated 20.11.2008, held that the incident was not proved. It may be noted that SI Kavindra Rawat, Insp.Vijay Gupta, Insp.Rajiv Sharma, Insp.Rajender Singh, SI Sudhir Kumar and SI B.P.Yadav were examined as PW-1 to PW-6 in the inquiry against Ct.Sarju Pal, who examined Ct.D.S.Ram as DW-1.

12. Learned counsel for the respondents is not able to justify that on the same set of evidence Ct.Sarju Pal stands exonerated while the petitioner has been indicted. What is cheese for Ct.Sarju Pal has to be cheese for the petitioner. On this ground alone the petition must succeed.

13. That apart, the Inquiry Officer conducting the inquiry against the petitioner has given good reasons after analyzing the evidence and the note of disagreement does not negate the reasoning of the Inquiry Officer. Merely because SI Kavindra Rawat claimed to have been chased, abused and assaulted by the petitioner and Ct.Sarju Pal and that he said the same to 5 persons would not mean that he has to be believed. The Inquiry Officer has given extremely cogent reasons to hold why SI Kavindra Rawat could not be believed.

14. Learned counsel for the respondents has not been able to show us anything in the evidence wherefrom the reasoning adopted by the Inquiry Officer can be negated. Indeed, Ct.D.S.Ram, Ct.Manoj Singh and Ct.Devender Kumar were on duty at Saraswati barrack and Yamuna barrack and their claim of having heard nothing and seen nothing, cannot

be lightly brushed aside. Further, the admission by Insp.Rajender Singh PW-4 that he was resting in Yamuna barrack cannot be ignored and even his neither hearing nor seeing any commotion cannot be lightly brushed aside.

15. We must highlight that SI Kavindra Rawat claim that while chasing, Ct.Sarju Pal managed to catch hold of his vest and before he could be injured with a khukri in the hand of Ct.Sarju Pal, the gardener Arun Nayak intervened to save him. If this be so it would be difficult to believe that the vest of SI Kavindra Rawat would not be torn, as rightly observed by the Inquiry Officer and nothing of the kind being noted has rightly been opined to be a circumstance to infer falsehood being spoken by SI Kavindra Rawat.

16. Now, we have only one direct evidence i.e. the testimony of SI Kavindra Rawat and the remainder is the testimony of 5 officers who claimed that they were told by SI Kavindra Rawat that the petitioner and Ct.Sarju Pal had not only chased him, abused him but had assaulted him. As against the solitary claim of SI Kavindra Rawat, 3 defence witnesses, who were on guard duty, have supported the defence and prosecution witness No.4 has also supported the defence inasmuch as being at Yamuna barrack it would just not be possible that Insp.Rajender Singh would not have heard any commotion. The Inquiry Officer drew the right conclusion and the note of disagreement has not even attempted to displace any.

17. The writ petition is allowed. Impugned orders dated 30.12.2008, 28.10.2009 and 29.11.2010 are quashed. Petitioner is directed to be reinstated in service with all

consequential benefits. Arrears to be paid within 6 weeks from today.

18. Cost awarded to the petitioner in sum of ₹5,000/-.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

APRIL 19, 2011
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