

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

% *Judgment Reserved on: March 04, 2011*
Judgment Delivered on: March 09, 2011

+ **WP(C) 6918/2009**

KRISHAN PAL Petitioner
Through: Mr.H.S.Dahiya, Advocate and
Ms.Anita Sharma, Advocate.

versus

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

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.

1. In the year 2002 the Petitioner Krishna Pal Singh was deployed as Constable with CISF Unit IOC, Panipat. Admittedly, an incident took place on 16.12.2002 involving the petitioner and SI R.L.Pandit who was the shift in-charge of the

CISF Unit IOC, Panipat. The petitioner and SI R.L.Pandit gave their rival versions as to what actually happened. Admittedly, the two had a spat; abusive language was exchanged. Whereas petitioner alleged that SI R.L.Pandit triggered off the spat and slapped him, SI R.L.Pandit alleged to the contrary by stating that it was petitioner who abused him and assaulted him. A Preliminary Inquiry was conducted and the petitioner was suspended with immediate effect from 17.12.2002. A charge memorandum was issued to the petitioner on 08.01.2003. Charges levied upon him read as under:-

“Article of Charge-I

That while detailed for duty at Administrative Building on 16.12.2002 from 13:00 to 21:00 hrs No.873170257 Constable Krishan Pal of CISF Unit, IOC Panipat, after completion of duty, left the duty post at about 21:10 hrs without prior permission or intimation of the competent authority and even without waiting for the reliever. Thus, the act on the part of Constable Krishan Pal is gross indiscipline, misconduct, violation of lawful order and dereliction towards duty. Hence, the charge.

Article of Charge-II

That, No.873170257 Constable Krishan Pal of CISF Unit, IOC Panipat, used filthy language towards and abused to SI/Exe R.L.Pandit, Shift In charge of ‘C’ Shift on 16.12.2002 at about 21:17 hrs at Main Gate of IOC Panipat. Thus, the act on the part of Constable Krishan Pal is gross indiscipline, misconduct, misbehaviour and an act of unbecoming the member of a Disciplined Armed Force. Hence, the charge.

Article of Charge-III

That, No.873170257 Constable Krishan Pal of CISF Unit, IOC Panipat, manhandle the SI/Exe R.L.Pandit,

Shift In charge of 'C' Shift on 16.12.2002 at about 21:20 hrs at Main Gate of IOC Panipat. Thus, the act on the part of Constable Krishan Pal is gross indiscipline, misconduct, misbehaviour and an act unbecoming of the member of a Disciplined Armed Force. Hence, the charge."

2. Needless to state, the petitioner refuted the charges and the Disciplinary Authority appointed T.S.Kohli Assistant Commandant as the Inquiry Officer to record evidence and submit a report.

3. The case of the department was that on 16.12.2002, the petitioner was on duty in the Administrative Bhavan of IOC till 21:00 hours. At 21:05 hours he telephoned SI R.L.Pandit, who was the shift in-charge detailed at gate no.1 and questioned him as to why the person who was to relieve him had not yet arrived, to which SI R.L.Pandit told the petitioner that he would be sending Ct.Narender Kumar as his reliever. That without waiting for his reliever the petitioner went to gate no.1, where SI R.L.Pandit was detailed, and started hurling abuses at him and manhandled him.

4. 6 prosecution witnesses were examined to prove the charge.

5. Since it would help us in noting briefly the relevant evidence, it would be useful to highlight the statement made by the petitioner in his defence after the prosecution evidence was led. The petitioner stated that on 16.12.2002 he was not feeling well and when his duty was over at 21:00 hours and his reliever did not arrive he contacted SI R.L.Pandit over the telephone line and wanted to know why the reliever had not come. He was told by SI R.L.Pandit that he i.e. SI R.L.Pandit

had requested HC Davender Kumar to look after his i.e. the petitioner's post till a reliever was sent. Accordingly he left the duty place when HC Davender Kumar came and went to gate No.1 where SI R.L.Pandit abused him by swearing in the name of his mother and said 'MADARCHOD', you are always buttering the officers and do not know how to do your duty. At that he requested SI R.L.Pandit to mind his language at which SI R.L.Pandit pushed him i.e. the petitioner, but whereas the petitioner was able to control his fall, during the act of pushing SI R.L.Pandit fell down.

6. Ct.Narender Kumar who appeared as PW-2 deposed that on 16.12.2002, he had night shift from 21:00 hours in the training bhavan. While he was going towards his duty post he was directed by SI R.L.Pandit to relieve the sentry of administrative bhavan (the petitioner) stating that he was so directing because the reliever of the petitioner had not arrived. He i.e. Ct.Narender Kumar immediately went towards administrative bhavan to relieve the petitioner and on his way he met the petitioner who did not speak to him and left without handing over the charge.

7. Relevant would it be to note that during cross-examination when asked who met him at the petitioner's duty post, Ct.Narender Kumar answered that HC Davender Kumar was present at the duty post of the petitioner.

8. We may note that no witness of the prosecution has deposed that HC Davender Kumar was not found at petitioner's duty post and thus it is apparent that a part of the defence that on the asking of SI R.L.Pandit, the petitioner left

his duty post by entrusting the same to HC Davender Kumar stands established.

9. Ct.Chandi Ram PW-1 and SI R.L.Pandit PW-6 have deposed unanimously with regard to how the events occurred on that day and have supported the indictment. SI R.L.Pandit PW-6 deposed that on 16.12.2002 he was detailed at gate no.1 and at around 21:05 hours petitioner Krishna Pal Singh telephoned him and asked him as to why his reliever has not arrived at which he told the petitioner that he had detailed Ct. Narender Kumar as his reliever and upon said dialogues being exchanged over the telephone, the petitioner put the receiver down. He deposed that without handing over charge to the reliever, abandoning the duty post, the petitioner came at gate No.1 and shouted 'MADARCHOD' 'BEHANCHOD' and said such persons had become officers. When he questioned the petitioner as to what had happened, the petitioner replied 'I will tell you what has happened' and saying so the petitioner entered the control room and slapped him hurling abuses and punched him. That Ct.Chandi Ram was present in the control room and he tried to rescue him i.e. SI R.L.Pandit, but in vain. Thereafter HC Mohd.Rashid, Ct.Harnam Singh and Ct.S.C.Yadav who were on duty at gate No.1 rescued him. That when he was rescued, petitioner still threatened saying that he will bury him i.e. SI R.L.Pandit in the earth.

10. Ct.Chandi Ram PW-1 deposed in sync with the testimony of SI R.L.Pandit.

11. The three persons named in his deposition by SI R.L.Pandit; namely HC Mohd.Rashid, Ct.Harnam Singh and

Ct.S.C.Yadav to whom the role of a saviour was assigned by SI R.L.Pandit deposed as PW-5, PW-3 and PW-4 respectively.

12. Whereas Ct.S.C.Yadav deposed that he heard no abuses being hurled by either the petitioner or SI R.L.Pandit, stated that he knew nothing of the fight between SI R.L.Pandit and the petitioner. He admitted his presence at gate No.1 and said that when petitioner reached gate No.1, SI R.L.Pandit said to the petitioner that he knows nothing but to do buttering.

13. HC Mohd.Rashid deposed that when petitioner telephone SI R.L.Pandit and asked for a reliever to be sent, SI R.L.Pandit told petitioner to give temporary charge to HC Davender Kumar and come to gate No.1 and that Ct.Narender Kumar had been deputed as a reliever. When petitioner arrived at gate No.1 SI R.L.Pandit abused him saying 'MADARCHOD' you know only how to butter and know nothing about your duty. At that jostling and pushing started between the two and SI R.L.Pandit fell down and he along with the petitioner helped him get up. Ct.Harnam Singh deposed that he saw and heard SI R.L.Pandit abuse the petitioner when the petitioner came to gate No.1 and that thereafter even petitioner abused SI R.L.Pandit and that it was followed by a scuffle between the two.

14. The Inquiry Officer gave a report against the petitioner holding that the 3 articles of charge were proved. With respect to the testimony of HC Mohd.Rashid, Ct.Harnam Singh and Ct.S.C.Yadav it was opined that the three had been probably won over as their deposition before the Inquiry Officer was contrary to their statements recorded during preliminary inquiry.

15. Supplying the report of the Inquiry Officer to the petitioner and apparently considering the response, vide order dated 19.7.2003 the Commandant inflicted the penalty of compulsory retirement with full pensionary benefits upon the petitioner. Appeal filed by the petitioner was disposed of vide order dated 18.12.2003, maintaining the penalty, but absolving the petitioner of the offence as per Article I of the Charge. Revision filed by the petitioner was rejected cryptically by an order dated 5.7.2004.

16. Petitioner filed a writ petition numbered as W.P.(C) No.2051/2007 challenging the aforementioned 3 orders which was disposed of on 21.3.2007 requiring the revision petition to be decided afresh. Vide order dated 5.6.2007 the Revision Petition was dismissed and the result is the instant writ petition before us for fresh adjudication.

17. We need not bother about Article No.I of the Charge for the reason, as noted hereinabove, the Appellate Authority, vide order dated 18.12.2003 has held that charge No.I was not established. Indeed, in view of the testimony of Ct.Narender Kumar and HC Mohd.Rashid, the question of said charge being held established did not arise.

18. Qua Article No.II and III of the Charge, the issue would be whether it stands established that the petitioner used filthy language and abused SI R.L.Pandit and manhandled him.

19. As noted hereinabove, 2 witnesses i.e. SI R.L.Pandit and Ct.Chandi Ram have supported the indictment and we only highlight that SI R.L.Pandit would be an interested witness. 2 witnesses i.e. HC Mohd.Rashid and Ct.Harnam

Singh have deposed facts in support of the version of the petitioner and to a large extent the testimony of Ct.S.C.Yadav is also favourable to the petitioner.

20. The Inquiry Officer has disbelieved the testimony of the 3 witnesses who deposed favourably to the petitioner on the reasoning that their deposition was contrary to their statements made during preliminary inquiry. It is apparent that as per the Inquiry Officer, the 3 witnesses had been won over. But, it could also be possible that what was put in the mouth of the 3 witnesses as their statements during preliminary inquiry could be wrong. It assumes importance that neither of the 3 witnesses were cross examined by the prosecution with reference to their stated statements recorded during the preliminary inquiry. Thus, we find the opinion of the Inquiry Officer as purely surmises and conjectures.

21. Let us analyze the circumstance under which the altercation took place. As per SI R.L.Pandit he was the shift in-charge and was at gate No.1 when he received a call from the petitioner who wanted to know why his reliever had not reached. He claims to have told the petitioner that he would be sending Ct.Narender Kumar as a reliever. SI R.L.Pandit has deliberately withheld telling the truth of telling the petitioner that he could leave the duty post as he had requested HC Davender Kumar to look after the duty post till the reliever was sent, a fact established through the testimony of Ct.Narender Kumar who found HC Davender Kumar at the duty post of the petitioner. Even HC Mohd.Rashid has deposed to said fact. It is apparent that SI R.L.Pandit has suppressed the truth. Now, the petitioner claims to have left his duty post by

entrusting the same to HC Davender Kumar. The question would arise that where was the occasion for the petitioner to abuse SI R.L.Pandit, who had obliged the petitioner with respect to the request made by the petitioner. A contra question may also arise as to why would SI R.L.Pandit, who had obliged the petitioner, would abuse the petitioner.

22. The answer to both the questions would be that there was neither an occasion for the petitioner to abuse SI R.L.Pandit nor was there any occasion for SI R.L.Pandit to abuse the petitioner.

23. But, a spat admittedly took place and there is conflicting evidence of who initiated the same.

24. Experience of life resolves more than the logic of the law. Our experience guides us that the jawans do speak street language while communicating with each other and liberally spice queries with abuses. These abuses are in the form of words 'MADARCHOD' 'BEHANCHOD'. Quizzing a jawan as to where was he going, it is not uncommon to hear a jawan say 'BEHANCHOD KAHAN JA RAHA HAI' or when a jawan returns, the other saying 'BEHANCHOD AA GAYA'.

25. In the backdrop of the facts noted by us which has preceded the spat, the greater probability rests in the probably fact that when petitioner reported at gate No.1, SI R.L.Pandit, with the usual pleasantry uttered 'BEHANCHOD AA GAYA'. Being unwell, the petitioner was in a little foul mood and did not accept the dialogue as the usual customary exchange of pleasantries and this triggered off the spat followed by jostling.

26. We find that neither the Disciplinary Authority, nor the Appellate Authority nor the Revisional Authority having analyzed the facts keeping in view the backdrop circumstances and the fact that at least qua Article Charge No.I, SI R.L.Pandit had deposed incorrect facts and so had Ct.Chandi Ram. This misstatement of the correct facts by the two witnesses should have raised the eyebrows of the said three authorities. The reasoning to give a go bye to the testimony of the three prosecution witnesses who have supported the petitioner have already been found to be wanting by us. Thus, we return a finding that the indictment against the petitioner as laid qua Article II and Article III of the Charge is not established. Evidence suggests a mutual fight between SI R.L.Pandit and the petitioner which was triggered at the instance of SI R.L.Pandit.

27. The penalty levied upon the petitioner has to be set aside and the question would be as to what should be the penalty levied for the petitioner to indulge in a mutual fight with SI R.L.Pandit.

28. Noting that SI R.L.Pandit has been let off and that the petitioner is without a job since 19.7.2003, but has been receiving pension, ends of justice would be met quashing the penalty order dated 19.7.2003, the Appellate Order dated 18.12.2003 and the Revisional Order dated 5.6.2007 and directing petitioner to be reinstated in service with all consequential benefits save and except actual wages clarifying further that the pension received by the petitioner would be treated as compensation paid for the period post 19.7.2003 till today i.e. 9.3.2011. The petitioner would be

reinstated in service forthwith and would be entitled to full wages effective from 10.3.2011.

29. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

MARCH 09, 2011
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