

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

% *Judgment Reserved On: 12th January, 2011*
Judgment Delivered On: 31st January, 2011

+ **W.P.(C) 3618/2010**

RAMBIR SINGH Petitioner
Through: Mr.S.R.Kalkal, Advocate

versus

UNION OF INDIA Respondent
Through: Ms.Kimmi Brara Marwaha,
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.

1. On 15.3.2001 the petitioner joined as a constable under Central Industrial Security Force and after completing training was deputed in the State of Assam and thereafter in the State of Arunachal Pradesh. He claims to have received a message that his wife Suman Devi, an expectant mother, was unwell and the unborn child in her womb was likely to be aborted. Being disturbed and wanting to be with his wife, petitioner claims to have made a request to the Company Commander, Insp.A.K.Arya that he be sanctioned leave and since the authority to sanction leave was the Commandant, petitioner claims that Insp.A.K.Arya assured him that he would speak to the Commandant, but no leave was sanctioned.

2. By 16.7.2006, an unfortunate incident took place, in respect whereof a charge-sheet was issued to the petitioner.

3. Before noting the contents of the charge-sheet and what happened at the inquiry, it may be noted that along with the writ petition, the petitioner has placed documents evidencing that in mid June 2006, his pregnant wife was detected with a health problem and that ultimately she suffered a miscarriage in the second week of July 2006.

4. With respect to the incident which took place on 16.7.2006 at Tengapani (Arunachal Pradesh), the petitioner was charge-sheeted under Rule 36 of the CISF Rules 2001. 3 Articles of Charge were framed against him as under:-

“Article – 01: Force No.814501117 Constable Ramvir Singh (Under suspension) working in CISF DM Battalion, Mundli during his duty in Tengapani (Arunachal Pradesh) for internal security duty, from about 2100 Hours dated 16.07.2005 to 0115 Hours dated 17.07.2005 raised hue & cry under influence of wine. Being a member of a disciplined force, the said act of Force No.814501117 Constable Ramvir Singh (under suspension) shows grave indiscipline, arbitrariness and dereliction of duty. Therefore, charge is proposed.

Article – 02: Force No.814501117 Constable Ramvir Singh (Under suspension) working in CISF DM Battalion, Mundli during his duty in Tengapani (Arunachal Pradesh) for internal security duty, on 16.07.2005 at 2200 Hours under the influence of liquor indulged into abusing senior officials of CISF using unparliamentary language and extended threat to eliminate them. Being a member of a disciplined force, the said act of Force No.814501117 Constable Ramvir Singh (under suspension) shows grave indiscipline, arbitrariness and dereliction of duty. Therefore, charge is proposed.

Article – 03: During the service tenure of about 05 years Force No.814501117 Constable Ramvir Singh

(Under suspension) working in CISF DM Battalion, Mundli has already been punished by light sentence once for the allegation of remaining absent from the place of duty, extending threat, providing wrong information to senior officials, still he has been unsuccessful to improve his conduct. Therefore, charge is proposed.”

5. It is apparent that Article 01 and 02 of the charge are inter-related and Article 03 is simply a reference to the past conduct of the petitioner and would be relevant to the penalty to be imposed, if Article 01 and 02 of the charge or any one of them was established.

6. 10 prosecution witnesses were examined during the inquiry and their testimony shows that PW-1, PW-2, PW-3, PW-4, PW-5 PW-6, PW-7, PW-8 and PW-10 deposed to facts relatable to the first and second Article of Charge; and PW-9, with reference to the record proved an earlier incident where on being held absent from duty a penalty of pay being reduced by 2 stages for 2 years was levied upon the petitioner.

7. Insp.A.K.Arya PW-1 deposed that on 16.7.2006 the petitioner was on duty from 13:00 hours to 17:00 hours and on 17.7.2006 the petitioner was assigned duty from 01:00 hour to 05:00 hours. That on 16.7.2006 at about 21:30 hours i.e. after petitioner had completed his duties, he raised hue and cry inside the barrack and at about 22:00 hours the petitioner came to him. In a loud tone the petitioner threatened him that he would not spare him and Commandant AC/INT OIL Duliajan for not sanctioning leave to the petitioner. He tried to pacify the petitioner and assured him that he would accompany the petitioner to Duliajan on 17.07.2006 but the petitioner ignored his suggestion and continued abusing the higher officials. The petitioner was taken back to the barracks. After some time at

about 23:25 hours, on hearing the petitioner shout again, he went to investigate the matter and found that the petitioner had injured his head. The petitioner refused to take first aid and wanted to call police and media. He held the CISF officials responsible for his condition and stated that he would not spare them. He i.e. Insp.A.K.Arya approached officers of Shivani Company to assist him to take petitioner to the hospital and asked Ct.D.D.Sharma to accompany as a medical aid escort. The petitioner misbehaved with these officers and ran away outside the fence of the camp. Ct.D.D.Sharma and Ct.A.K.Yadav ran after the petitioner and stopped him outside the fence. That at about 01:15 hours he along with Ct.A.K.Yadav (i.e. PW-6), Ct.L.M.Sangma (i.e. PW-4), Ct.D.D.Sharma (i.e. PW-7), Ct.A.K.Yadav (i.e. PW-8) and the petitioner left for the hospital at Duliajan. On the way to the hospital, the petitioner continued abusing him and other higher officials. At the CRPF police check post the petitioner created a scene in drunken condition.

8. On being questioned by the Presiding Officer, PW-1 stated that from the movements and the smell in the breath of the petitioner it seemed that the petitioner had consumed an intoxicating substance.

9. PW-2 SI S.D.Singh corroborated PW-1 to the extent that on 16.07.2006 at about 22:00 he had seen petitioner abuse PW-1 and had threatened to kill DIG, Commandant and Company Commander for not sanctioning him leave. The petitioner was pacified and sent to his bed. After a while the petitioner again went outside the Coy. Commander's room and started hurling abuses at him. At this time petitioner's head was bleeding. PW-2 further deposed that the petitioner in

drunken condition said that he wanted to go to the hospital and started to go on his own. PW-2 and other officers tried to restrain him on which he held a pole and hit his head twice on the pole. He managed to free himself from the hold of the officers and ran outside the fence. After moving some distance from the fence he fell down and became unconscious. At about 23:45 hours he was taken to the hospital. PW-3 HC B.D. Ram deposed in sync with PW-1. PW-4 Ct.L.M.Sangma corroborated PW-1 and additionally stated that from about 18:30 hours the petitioner was complaining about his leave not being sanctioned and was adamant about meeting the Commandant there and then.

10. As per the testimony of PW-1, it is apparent that PW-5 Ct.Gautam Lal and PW-8 Ct.A.K.Yadav are witnesses to the events that took place after the petitioner sustained head injury. Both corroborated PW-1 to the extent that the petitioner refused to go to the hospital and ran outside the camp fence; he was then caught and taken to the hospital. PW-5 additionally stated that before running outside the fence, the petitioner raised hue and cry saying that he was sent to OIL Duliajan twice along with his belonging in relation to his leave but on being refused to sanction leave he had to return to the camp. PW-5 further deposed that from the behaviour of the petitioner it seemed as if he had consumed an intoxicating substance.

11. PW-6 Ct.Aftab Hussain deposed that the petitioner was requesting the Coy.Commander for sanction of leave since 19:00 hours on 16.07.2006 on account of his wife being seriously ill. He corroborated PW1 to the extent that the petitioner had run outside the fence of the camp and had to be

restrained and taken to the hospital. On being cross-examined PW-6 deposed that on the way to the hospital the petitioner did not abuse anybody nor did he smell of alcohol. He further deposed that the petitioner was talking nonsense, was crying and laughing and was behaving like a mad person. PW-7 Ct. D.D. Sharma corroborated PW-1 to the extent that the petitioner ran outside the fence and restrained and taken to the hospital in a jeep. In his cross-examination the witness rejected the suggestion that the petitioner was under the influence of intoxicating substance and that the petitioner had abused senior officers on his way to the hospital.

12. PW-9 Insp.K.K. Mallik deposed in relation to the third article of the charge. He produced detail of the punishment given to the petitioner for negligence towards his duty and for remaining absent from his duty.

13. PW-10 SI/Clerk G.Sahu produced the medical certificate issued in the name of the petitioner wherein it was mentioned that the petitioner was admitted in the hospital, OIL Duliajan at 04:30 hours on 17.07.2006.

14. Conceding that there was enough evidence to establish that the petitioner created a fairly ugly scene inside his barrack at 9:30 PM on 16.7.2006 and continued to be rowdy at the second stage after 1 hour, learned counsel for the petitioner argued that Articles 01 and 02 of the charge were vague and contained multiple accusations which could not be understood by the petitioner.

15. A perusal of the 2 Articles of Charge would show that the allegations are neither vague nor consist of multiple allegations. The 2 charges clearly bring out very plainly that the allegation against the petitioner was of raising hue and cry

in a state of intoxication on 16.7.2006 and of committing acts which amount to indiscipline by using unparliamentary language against senior officers and extending threat to eliminate them.

16. Except for submitting that the charges were vague and consisted of multiple accusations, learned counsel failed to elaborate as to why he was so urging.

17. The argument appears to have been urged for the sake of argument and thus we reject it.

18. Second contention urged was that for the 3rd Article of Charge, the petitioner had already been punished and thus it could not be a listed Article of Charge for the 2nd time.

19. We may note that the 3rd Article of Charge is only to bring home the point to the petitioner that the Disciplinary Authority would be considering the past service record while deciding the appropriate penalty to be levied, should Article 01 or Article 02 of the charge-sheet being established. The 3rd Article of Charge, as a matter of fact, has not been used to justify the indictment of the petitioner, as would be evident from further facts which we note hereinafter. It has been used to justify the severe penalty of dismissal from service levied by the Disciplinary Authority which has been upheld by the Appellate as well as the Revisional Authority.

20. The contention next urged, and which merits consideration is to the penalty levied upon the petitioner.

21. A perusal of the decision taken by the Disciplinary Authority, the Appellate Authority and the Revisional Authority would reveal that the utterances of the petitioner have been taken very severely because the petitioner was threatening to kill his superior officers. All 3 authorities have factored in the

previous penalty levied upon the petitioner.

22. We have briefly noted the testimony of the witnesses of the prosecution and the star witness is obviously Insp.A.K.Arya PW-1 who was the Company Commander and had witnessed the conduct of the petitioner and his utterances at 9:30 PM as also the conduct and the utterances of the petitioner after 1 hour. We would highlight that when he was cross-examined, whether petitioner named any senior officer while threatening to kill the senior officers, he categorically replied in the negative.

23. From the testimony of PW-1 it is apparent that the petitioner was highly agitated because leave was not being sanctioned to him in spite of his informing senior officers that his wife who was in the family way was unwell and there was a threat to the unborn child being aborted, an event which unfortunately did take place. A perusal of the testimony of PW-1 shows that the petitioner showed no aggression of action and only used aggressive words and threatened to kill the senior officers but the threat being contingent upon anything adverse happening to his wife and his unborn child. As per PW-1 the threatening utterances of the petitioner were that he would kill the superior officers who were not sanctioning leave to him if something happened to his wife and his child. It is apparent that the petitioner threatened to retaliate not in the presence of any superior officers, but in their absence. The only superior officer present was PW-1, who was the Company Commander and qua him the petitioner uttered that if something happened to his wife and unborn child even he i.e. PW-1 would be his target.

24. It may be true that the petitioner is a member of a

disciplined force, but that does not mean that he is not a human being and does not possess human emotions.

25. The petitioner was aged around 32 years when the unfortunate incident took place. The joy of parenthood, for the first time in his life, was under a cloud as his wife, who was an expectant mother, was unwell and news of the petitioner's unborn child not seeing the world of the living had been conveyed to the petitioner and obviously, as any other person would be, the petitioner was highly agitated. His contemporaneous conduct shows the extreme disturbed state of mind. The second incident in particular when cries of the petitioner with an injury on his head, resulting from a fall as told by him and as deposed to by PW-1, shows that when petitioner was pacified at 9:30 PM he went to sleep, but could not do so and when he went to the toilet, petitioner fell down and hurt his head and cried. When PW-1 and others tried to counsel him by requesting him to take medical treatment, his response to call the media shows that so aggrieved and overwhelmed by a sense of injustice was the petitioner, that it hardly mattered to him whether he was bleeding from his head. His further conduct of running helter-skelter and further injuring himself shows a delirious mind and obviously what had happened can be safely guessed by us. It was part intoxication and part mental disturbance and the twin resulted in a mixture of a potent cocktail.

26. We have been coming across a large number of matters pertaining to the jawans of para-military and auxiliary police services in which on account of leave not being sanctioned or leave being sanctioned for short duration and in spite of request being made the leave not being extended has

resulted in deviant behaviour by the jawans whose claim for leave being sanctioned or extended on account of extreme domestic problems was the cause of deviant behaviour.

27. As does the petitioner, all these jawans, whose cases were dealt with by us came from rural background. They had humble origins in a village.

28. We do concede that on the one hand it is important to maintain discipline in para-military and auxiliary police services in particular for the reason all of them carry arms, but at the same time they cannot be treated with iron fisted hand and without a human touch.

29. We are informed that the training of a jawan of a para-military force or an auxiliary police service costs the Nation around ₹3 lakhs. It would be dangerous to render unemployed these jawans as they are trained in firearms; the danger of them being induced by gangsters cannot be ruled out. Thus, the difficult job of maintaining discipline with compassion has to be performed.

30. We revert back to the facts of the instant case. The petitioner was disturbed on account of his wife being unwell and the threat of his unborn child being aborted was looming large. Unfortunately, the unborn baby was aborted. Not being sanctioned leave and he being deprived the opportunity to care for his expecting wife was troubling the mind of the petitioner. He took a peg or two more than his capacity. His first utterances were an expression of anguish and being from a rural background, having limited vocabulary, the expressions used by the petitioner were inappropriate. He never named, by name, any officer whom he threatened to kill. He only said that if something happened to his wife or his unborn child, he

would kill the senior officers. Even at the second stage he continued to say so.

31. Now, to abuse a senior in his face is one thing. To abuse a senior in absentia is altogether another.

32. Keeping in view the background which led to the deviant behaviour and the fact that the petitioner showed no physical aggression and coupled with the fact that he named none, further factoring in the petitioner's young age, rural background, lack of education and inadequate vocabulary at his command, we read and treat his utterances as an expression of extreme anguish and understood in the context it would be hard to accept that he who heard the petitioner would be threatened to be killed. That apart, the utterances of the petitioner were in the absence of senior officers. In Law an utterance which does not cause an alarm in the mind of the person to whom an utterance is directed, are treated as innocuous. Section 95 of the Indian Penal Code stipulates that nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

33. It is true that in the past a penalty was levied upon the petitioner, but we note that the same was on account of being absent from duty and not for any moral turpitude or a very serious misdemeanour.

34. Accordingly, we dispose of the writ petition setting aside the Revisional Order passed by the Inspector General and direct the Inspector General CISF to reconsider the matter pertaining to the penalty which needs to be levied upon the petitioner. The Inspector General CISF would keep in view the

observations made by this Court and if the Inspector General CISF is of the opinion that the penalty of dismissal from service is harsh, he would levy such other appropriate penalty as he deems fit and would pass consequential orders pertaining to the period post levy of penalty already levied and the one which he would levy. If the penalty is maintained, reasons would be given to justify the levy of the harshest penalty contemplated by law i.e. dismissal from service.

35. Necessary orders would be passed within a period of 8 weeks of receipt of copy of this judgment by the Inspector General CISF.

36. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

JANUARY 31, 2011
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