

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

% *Judgment Reserved on: February 04, 2014*
Judgment Delivered on: February 25, 2014

+ **W.P.(C) 2727/2002**

CONST.SUBHASH BABU Petitioner
Represented by: Mr.Sanjoy Ghose, Advocate
with Mr.Somnath Banerjee,
Advocate.
versus

UNION OF INDIA & ORS. Respondents
Represented by: Ms.Richa Kapoor, Advocate
with Ms.Saahila Lamba,
Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE JAYANT NATH

PRADEEP NANDRAJOG, J.

1. The writ petitioner challenges the order dated June 15, 2001 dismissing the statutory petition filed by the petitioner against the order dated August 24, 2000 wherein the Summary Security Force Court held the petitioner guilty of the charges framed against him and sentenced him to undergo rigorous imprisonment for a period of one year and dismissed him from service.
2. The factual backdrop leading to the filing of the present petition is that after taking cognizance of the offence report under Rule 43 and hearing the charge against the petitioner as per Rule 45 of the BSF Rules, 1969 and thereafter considering the Record of Evidence, the Commandant of the 162nd Battalion to which the petitioner was attached, took a decision that case was

made out to frame a charge and try the petitioner at a Summary Security Force Court trial. Accordingly on August 20, 2000 a charge-sheet was framed and served upon the petitioner who was posted at the Border Out-Post Parlihat when the alleged incident constituting the offence took place, listing two distinct offences committed by the petitioner; namely for assaulting his superior officer, and for unauthorised absenteeism. The charges read as under:-

<u>CHARGE-I</u> <u>BSF ACT-1968</u> <u>SEC-20(a)</u>	<u>“CHARGE SHEET</u> <u>USING CRIMINAL FORCE TO HIS</u> <u>SUPERIOR OFFICER</u> <i>In that he,</i> <i>at about 22:00 hrs on 30.07.2K,</i> <i>struck with his fist on face and back of</i> <i>No.86005703 HC Rattan Singh of</i> <i>‘C’Coy 162 BN</i>
<u>CHARGE-II</u> <u>BSF ACT-1968</u> <u>SEC-19(a)</u>	<u>ABSENTING HIMSELF WITHOUT</u> <u>LEAVE</u> <i>In that he,</i> <i>at about 21:00 hrs on 30.07.2K,</i> <i>absented himself without leave from</i> <i>the BOP Parilahat and joined at his</i> <i>own at about 21:55 hrs.”</i>

3. The record of the trial would reveal that the petitioner pleaded ‘Not Guilty’ to both charges and thus the prosecution examined six witnesses to substantiate the charges levelled.

4. HC Rattan Singh PW-1 deposed that on the day of the incident, i.e. July 30, 2000, at around 19:30 hours CHM Balam Ram (PW-5) before proceeding for patrolling duty directed him to look after the BOP and asked

him to ensure that no personnel leaves the out-post at night. At around 21:00 hours, he inquired from Ct.Bhia Ram (PW-2), the sentry on duty, whether any personnel had left the out-post and Ct.Bhia Ram informed him that the petitioner had left the BOP. Therefore he went to Parilahat village along with W/M G.P.Paranthaman (PW-3) to look for the petitioner. He found the petitioner sitting in a house with his hands on the shoulder of a woman. Using his torch, he signalled the petitioner and asked him to return to the BOP. Thereafter, he returned to the BOP. The petitioner did not return during the next 15-20 minutes and therefore he re-visited the house at Parilahat village to fetch the petitioner. Finding the house empty he returned to the out-post. When he return he was informed by Ct.Bhia Ram that the petitioner had returned. At around 22:00 hours, he saw the petitioner near the sentry gate and asked him why he had left the out-post and why did he not return at the earliest. At that, the petitioner stood up and started using abusive language. The petitioner snatched his torch and tried to hit him. Ct.Upender Singh intervened to protect him. The Guard Comdr.HC Chaman Lal (PW-4) reached the spot and asked the petitioner to behave himself. At this, the petitioner again used abusive language and shouted at him, asking him what authority he had to question the petitioner. HC Chamal Lal replied that the matter would be reported to the superior officers the next morning. After he retired to his barrack, the petitioner came near his cot and started slapping him repeatedly. He tried to save his face and screamed. On hearing his screams, HC Chaman Lal intervened and saved him from the petitioner. On the next day, i.e. July 31, 2000 he reported the incident to his superior officers including CHM Balam Ram and Sub N.T.Lepcha, Officiating Coy Comdr. On being cross-examined by the petitioner, he stated that Ct.Bhia

Ram never told him that the petitioner had left the out-post to attend the call of nature. He did not know the lady who was with the petitioner in the house. He stated that he could not report the matter to the CHM on the same day because the CHM was on patrolling duty. He was unaware of the presence of the Off.Coy Comdr. at the out-post, and thus, he did not report the incident to him. He did not speak to any other superior officer because he felt humiliated and helpless after the incident.

5. Ct.Bhia Ram PW-2 deposed that on the day of the incident he was on sentry duty at BOP Parilahat. At around 21:15 hours, he saw the petitioner leave the BOP. He asked the petitioner where he was going and the petitioner replied that he was going to attend the call of nature. After sometime, HC Rattan Singh (PW-1) arrived at the main gate, and he informed HC Rattan Singh that the petitioner had left the BOP. HC Rattan Singh left the BOP along with W/M G.Paranthaman (PW-3) to look for the petitioner and returned after 5-7 minutes. The petitioner returned at around 21:45 hours. Later, at around 22:00 hours he heard noise coming from the barrack. On being cross-examined by the petitioner, he stated that the petitioner had informed him that he was going to attend the call of nature.

6. Relevant would it be to note that during the preparation of Record of Evidence, Ct.Bhia Ram had not stated that the petitioner had told him that the reason why he was leaving the BOP was to relieve himself. On being questioned by the Court he stated that the petitioner had in fact told him that he was leaving the BOP to relieve himself and admitted that he had not stated the same earlier when the Record of Evidence was prepared.

7. W/M G.Paranthaman PW-3 deposed that on the day of the incident at around 21:00 hours, he along with HC Rattan Singh (PW-1) left the outpost

and went to Parilahat village to look for the petitioner. HC Rattan Singh found the petitioner in the second civilian house searched by them. On being asked by HC Rattan Singh to go inside the house with him and arrest the petitioner, he refused to do so because he did not want to enter a civilian house at night. Thereafter, they returned to the BOP. He went to the Parilahat village again with HC Rattan Singh to look for the petitioner but by then there no body in the house and they returned to BOP. On being cross-examined by the petitioner, he stated that he did not see the petitioner in the house of any civilian. It was only HC Rattan Singh who had seen the petitioner inside the second house.

8. HC Chaman Lal PW-4, deposed that on the day of the incident he was deployed as the Guard Comdr. of BOP Parilahat. At around 22:15 hours he saw the petitioner quarrelling with HC Rattan Singh (PW-1) for having questioned him about leaving the BOP. He intervened and separated them. HC Rattan Singh told him that he had been asked by the CHM not to allow any personnel to leave the BOP. He asked HC Rattan Singh to return to the barracks. Ct.Upender Singh informed him that the petitioner had left the BOP without prior permission and on being questioned by HC Rattan Singh, started quarrelling with him. While he was speaking with Ct.Upender Singh, he heard the sound of fight from the barrack. He reached the barrack and saw the petitioner about to strike HC Rattan Singh with his fist. He caught hold of the hand of the petitioner and took him outside the BOP, and handed him over to the sentry on duty. HC Rattan Singh informed him that the petitioner used criminal force against him. He directed HC Rattan Singh to sleep in the other corner of the barrack and subsequently directed the petitioner to sleep in his cot. He reported the incident to CHM Balam Ram

after he returned from patrolling duty at 24:00 hours. The next morning, i.e. on July 31, 2000 at around 05:30 hours he saw HC Rattan Singh and observed that he had a swollen face with blackish signs below his left eye. On being cross-examined by the petitioner he stated that HC Rattan Singh was not in a state of intoxication during the incident in question.

9. CHM Balam Ram PW-5, deposed that on the day of the incident at about 07:30 PM while leaving for patrolling duty he told HC Rattan Singh that no person was allowed to leave the precincts of the BOP Outpost during night time. When he returned from patrolling at 12:00 AM, HC Chaman Lal informed him about the incident. The next day, i.e. on July 31, 2000 he noted that the HC rattan Singh's face was swollen and his left eye was red and bruised. On being cross-examined by the petitioner, he stated that did not make any GD Entry about the incident, nor he got HC Rattan Singh medically examined. On being cross-examined by the Court, he stated that HC Rattan Singh did not have any injury on his face when he left for patrolling duty on the day of the incident at 19:30hours. He did not make any GD Entry because he thought that the matter had been settled since both, the petitioner and HC Rattan Singh had left for duty.

10. Sub.N.T.Lepcha PW-6 deposed that on July 31, 2000, at around 08:00 hours he was informed by CHM Balam Ram (PW-5) that the petitioner had used criminal force against HC Rattan Singh PW-1. CHM Balam Ram also informed him that on the day of the incident the petitioner had left the BOP without prior permission. He asked the petitioner why he attacked HC Rattan Singh. The petitioner admitted using criminal force against HC Rattan Singh and stated that he had made a mistake. When he met HC Rattan Singh on August 01, 2000 he saw that HC Rattan Singh had

a swollen face with black marks under his left eye. On being cross-examined by the petitioner he stated that the petitioner had admitted to his guilt on being questioned by him.

11. The petitioner declined to call any witness in his defence in spite of opportunity afforded.

12. In his defence statement, the petitioner stated that on July 30, 2000, he completed his shift at 18:00 hours and returned to Coy HQ Parilahat at around 19:15-19:30 hours. After submitting 'O.K. Report' he went out to relieve himself. He took dinner at 20:00 hours and retired in his cot. He denied having left the BOP without prior permission, or having used criminal force against the petitioner.

13. Now, we have sufficient evidence on record through the testimony of HC Rattan Singh and HC Chaman Lal that the petitioner has assaulted HC Rattan Singh. We have testimony of CHM Balram that before proceeding for patrolling duty he had directed HC Rattan Singh to ensure that no personnel leave the out-post at night. We have the testimony Ct.Bhia Ram that petitioner went outside the BOP, a fact admitted by the petitioner but with an explanation that he did so to answer the call of the nature.

14. Though Ct.Bhia Ram deposed that the petitioner had told him so when he left the BOP, but we find that Ct.Bhia Ram has so stated for the first time at the trial. He never said so when Record of Evidence was prepared. It is apparent that he did so to try and help the petitioner. If we carefully sieve the testimony of Ct.Bhia Ram we would find he stating that the petitioner left the BOP at 21:15 hrs.and after some time HC Rattan Singh arrived at the main gate and asked him whether anybody had left the BOP to which he informed HC Rattan Singh that the petitioner had left the BOP. We also find

he corroborating HC Rattan Singh and W/MG Paranthaman that the two left to look for the petitioner. If Ct.Bhia Ram was deposing the truth at the trial it would be natural that he would tell HC Rattan Singh that the petitioner had strolled out of the BOP to answer the call of the nature. The time was 21:45 hrs. and if petitioner in the night went out of the BOP to answer the call of nature he would presumably be at a hearing distance from the main gate and the normal conduct of HC Rattan Singh and Ct.Bhia Ram would be to call the name of the petitioner requesting him to return quickly and the petitioner would respond that he would do so. We further have the testimony of Ct.Bhia Ram that HC Rattan Singh and W/MG Paranthaman returned after looking for the petitioner after about 5-7 minutes and that the petitioner returned thereafter. Now, this 5-7 minutes is an approximation of Ct.Bhia Ram. Thus, the petitioner cannot advance any meaningful argument with respect to his defence on the testimony of Ct.Bhia Ram. That apart, W/MG Paranthaman has corroborated HC Rattan Singh that the two went to where the civilians had their houses. He has corroborated the fact that HC Rattan Singh saw the petitioner in the second house and he requested him to go inside the house and arrest the petitioner. As per W/MG Paranthaman he did not do so because he did not want to enter the house of a civilian at night.

15. The testimony of HC Rattan Singh and W/MG Paranthaman inspire confidence.

16. That apart, from the fact that the petitioner assaulted HC Rattan Singh is proof that he had a cause i.e. a motive. What else could be the motive other than he being aware that HC Rattan Singh had found him outside the BOP in a house in the company of woman and would be reporting the incident to the superior officers. He was obviously taking retribution.

17. We concur that the two charges were fully established.

18. Learned counsel for the petitioner urged that the penalty of dismissal from service was disproportionate to the gravity of the offence and cited the decisions reported as 2013 (7) SCALE 417 S.R.Tiwari vs.UOI & Ors., a decision dated April 04, 2011 in WP(C) 5991/2010 Kishore Kumar vs.UOI & Ors. and a decision dated May 18, 2011 in WP(C) 7244/2010 Indu Singh vs.UOI & Ors..

19. Whether a penalty is disproportionate to the gravity of the wrong would be a matter of reasoning based on a fact i.e the acts constituting the wrong. Thus, no authority could be a precedent on facts. Of course, a facet of reasonableness and non-arbitrariness would be a penalty not being disproportionate to the gravity of the wrong i.e. the offence.

20. In the instant case the wrong committed by the petitioner is to go outside the precincts of the BOP in spite of orders being that no force personnel would leave the BOP without permission. The further wrong committed is to go to the house of a civilian and access a woman, obviously to satisfy the lust. The next wrong is to assault a superior officer who came looking for the petitioner.

21. It needs hardly any emphasis that jawans of Central Para-Military Forces getting themselves involved with women in villages nearby Border Out-Post and the situation turning ugly is reported in the press with frequency. Such kind of conduct has to be condemned with a heavy hand. Besides, when jawans of Para-Military Forces befriend women of ill-repute in the area where the Border Out-Post is situated they compromise the security of the State because they become susceptible to being blackmailed.

22. It is trite that only such penalty which shocks the conscience of the Court can be called as disproportionate to the gravity of the wrong.

23. We dismiss the writ petition but without their being any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(JAYANT NATH)
JUDGE

FEBRUARY 25, 2014
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