

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

Judgment Reserved On: May 20, 2014
% *Judgment Delivered on: May 26, 2014*

+ **WP(C) 3932/2000**

ROHTASH SINGH Petitioner
Represented by: Mr.Jasbir Singh Malik, Advocate

versus

UOI & ANR. 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. Writ petitioner challenges the order dated July 30, 1999 holding the petitioner guilty of two of the three charges framed against him and inflicting punishment of dismissal from service. The statutory appeal preferred by the petitioner was rejected vide order dated December 11, 1999. Though the same has not been challenged we treat the same to be challenged in present writ petition.
2. The petitioner was enrolled as a Constable in the BSF and was attached to the 18th Battalion which was, inter-alia, responsible to guard the Border Outpost (BOP) P.J.Nagar at the Indo-Bangladesh border.
3. An offence report was put up before the Commandant on February 17, 1999 listing three allegations against the petitioner viz. (i) manhandling two BSF personnel of the same Coy on February 10, 1999; (ii) being found in a state of intoxication on February 10, 1999, and (iii) of unauthorizedly

possessing four rounds of ammunition on February 10, 1999. After hearing the petitioner with respect to the offence report the Commandant directed preparation of the Record of Evidence.

4. At the Record of Evidence, eight witnesses were examined by the prosecution viz. Sub.Mange Lal PW-1, HC Satpal Singh PW-2, Ct.Ramesh Chand PW-3, Ct.Surender Kumar PW-4, Asst.Comdt.Sriram Singh PW-5, HC Ashokan B. P6, Ct./Dvr.Suresh Kumar PW-7 and Ct.Anil Kumar PW-8.

5. Sub.Mange Lal PW-1 deposed that on the day of the incident at around 21:00 hours Ct.Ramesh Chand and Ct.Surender Kumar reported to him that the petitioner had verbally abused them and pointed his rifle at them. He questioned the petitioner who told him that the two Constables had abused him and had broken his teeth. They even threatened to kill him.

6. HC Satpal Singh PW-2 deposed that on the day of the incident the petitioner abused Ct.Ramesh Chand and pointed his rifle at him. He disarmed the petitioner and seized the ten rounds of ammunition in his possession. Soon thereafter he heard the sound of cocking of rifle twice. At that he ran inside the barrack and disarmed the petitioner who seemed intoxicated. He found two rounds of ammunition on the ground and two in the magazine of the rifle of the petitioner.

7. Ct.Ramesh Chand PW-3 deposed that at around 18:30 hours on the day of the incident the petitioner abused him and pointed his rifle at him. HC Satpal Singh intervened and sent the petitioner away after seizing the magazine of his rifle. After sometime the petitioner returned in an intoxicated condition and cocked his rifle at him. HC Satpal Singh reached the spot and snatched the rifle from the petitioner. Two rounds of ammunition were picked up from the ground and another two were found in the magazine of the rifle of the petitioner.

8. Ct.Surender Kumar PW-4 deposed in sync with Ct.Ramesh Chand and HC Satpal Singh.
9. Asst.Comdt.Sriram Singh PW-5 deposed in sync with Sub.Mange Lal and additionally stated that the petitioner informed him that Ct.Ramesh Chand and Ct.Surender Kumar used to indulge in smuggling and were in possession of smuggled goods. Therefore he directed a search of their belongings but nothing objectionable was found.
10. HC Ashokan B. PW-6 deposed that on the day of the incident at around 21:45 hours, HC Satpal Singh apprised him about the incident.
11. Ct./Dvr.Suresh Kumar PW-7 deposed that on the day of the incident at around 20:00 hours he drove HC Ashokan B. to BOP P.J.Nagar where HC Satpal Singh handed him four rounds of ammunition.
12. Ct. Anil Kumar PW-8 deposed in sync with Ct.Ramesh Chand and HC Satpal Singh.
13. Record would evidence that the petitioner made a statement of defence during the Record of Evidence proceedings. Petitioner stated that on the day of the incident when he returned from the Outpost to the barrack at 18:30 hours, Ct.Ramesh Chand and Ct.Surender Kumar abused him and accused him of cattle smuggling. When he denied indulging in any kind of smuggling they thrashed him and he lost a tooth in the scuffle. HC Satpal Singh intervened and asked him for his rifle and ordered him to proceed for naka duty. He proceeded towards the naka point but returned to the barrack on realizing that he had forgotten his *bidi*. He was attacked again by Ct.Ramesh Chand and Ct.Surender. HC Satpal Singh intervened and stopped the scuffle. HC Satpal Singh found two rounds of ammunition on the ground. Ct.Ramesh Chand and Ct.Surender Kumar told HC Satpal Singh that the rounds belonged to the petitioner. HC Satpal Singh and Ct.Anil Kumar

threatened to make adverse statements against him and cancel his leave if he reported regarding the incident to the senior force personnel.

14. Considering the Record of Evidence the Commandant opined that the petitioner should be tried at a Summary Security Force Court and for which he drew up a charge-sheet on July 03, 1999 which comprised of three charges as under:-

“BSF FIRST CHARGE
ACT 1968 AN ACT PREJUDICIAL TO GOOD ORDER AND
SEC 48 DISCIPLINE OF THE FORCE

*In that he,
at BOP P J Nagar on 10.2.99 at about 20:45 hrs.
Manhandled No 98188249 CT Surrender Kumar
and No.98755067 CT Ramesh Chander of the same
Coy.*

BSF ACT SECOND CHARGE
1968 INTOXICATION
SEC 26

*In that he,
at BOP P J Nagar on 10.2.9 at about 20:45 hrs was
found in a state of intoxication.*

BSF ACT THIRD CHARGE
1969 AN ACT PREJUDICIAL TO GOOD ORDER AND
SEC 48 DISCIPLINE OF THE FORCE

*In that he,
at BOP P J Nagar on 10.2.99 at about 20:45 hrs
was found in unauthorized possession of 4 (four)
rounds. (1/7.62 BDR's 88 3/7.62 BDR'94. Total 4
(four) rounds.”*

15. Record would evidence that at the arraignment petitioner pleaded ‘Not Guilty’ to the three charges.

16. Nine witnesses were examined at the trial which including the eight witnesses examined during Record of Evidence proceedings. The order of the

witnesses examined by the prosecution at the trial is as follows:- HC Satpal Singh PW-1, Ct.Ramesh Chand PW-2, Ct.Surender Kumar PW-3, Asst.Comdt.Sriram Singh PW-4, HC Ashokan B. PW-5, Ct.Anil Kumar PW-6, Sub.Mange Lal PW-7, Sub.T.P.Singh PW-8, Ct./Dvr.Suresh Kumar PW-9.

17. HC Satpal Singh PW-1 deposed that at around 19:15 hours on the day of the incident Ct.Ramesh Chand and Ct.Surender Kumar met him after completing their shifts and reported that the petitioner had been abusing them without any provocation. He asked the petitioner why he did so. At that the petitioner got agitated and pointed his rifle towards the two constables. He immediately disarmed the petitioner and seized the ten rounds of ammunition in his possession. He tried to placate the petitioner and requested him to proceed for naka duty. At the petitioner's insistence he returned the rifle but retained the ammunition telling the petitioner that he would visit the naka point after some time and give the ten rounds of ammunition to him. After a lapse of around 15 minutes when he was in the mess adjoining the barrack he heard the petitioner's voice. The petitioner was screaming and abusing Ct.Ramesh Chand and Ct.Surender Kumar. He heard the sound of cocking of rifle at which he rushed to the barrack and saw the petitioner grappling with Ct.Ramesh Chand and Ct.Surender Kumar. He disarmed the petitioner and collected two rounds of ammunition which he saw lying on the ground. The magazine of the rifle of the petitioner contained another two rounds. He reported the incident to the Coy Commander who took the petitioner to the Coy Headquarters.

18. Ct.Ramesh Chand PW-2 deposed that at around 18:30 hours on the day of the incident when he was resting in the barracks the petitioner entered the barrack and on seeing him and Ct.Surender Singh (PW-2) started abusing them and asked who indulges in cattle smuggling. He reported the same to

HC Satpal Singh (PW-1) who was present in the same barrack. When HC Satpal Singh asked the petitioner why did he do so the petitioner pointed his rifle towards Ct.Ramesh Chand and threatened to shoot him. HC Satpal Singh disarmed the petitioner and tried to placate him requesting him to proceed for naka duty. At petitioner's insistence HC Satpal Singh handed over the rifle to the petitioner but did not hand over the ammunition saying that the ammunition would be handed over to the petitioner at the naka point. Thereafter the petitioner and HC Satpal Singh left. The petitioner returned after 15 minutes and once again started abusing him. The petitioner screamed saying that it did not matter that ten rounds of ammunition were seized stating that he still had four rounds with him. The petitioner cocked his rifle and pointed it at him. Ct.Surender Singh and he grappled with the petitioner and tried to snatch the rifle. HC Satpal Singh reached the spot and disarmed the petitioner. Thereafter HC Satpal Singh apprised the Coy Headquarters about the incident and left for the Coy Headquarters with Ct.Surender Singh where they reported the incident to the Coy Commander.

19. On being cross-examined by the petitioner he stated that he did not run away when petitioner pointed the rifle at him because he felt that it was better to fight than run away as he could get shot in either case.

20. Ct.Surender Kumar PW-3 deposed in sync with Ct.Ramesh Chand (PW-2) and additionally stated that the petitioner bit the index finger of his right hand when he tried to snatch the rifle from the petitioner.

21. Asst.Comdt.Sriram Singh PW-4 deposed that on the day of the incident he was informed by the Officiating Coy Commander, Sub.Mange Lal about the scuffle. He directed Sub.Mange Lal to visit BOP P.J.Nagar and ascertain the true facts. Thereafter he summoned the petitioner to the Coy Headquarters at Bhitari. Petitioner stated that Ct.Ramesh Chand (PW-2) and

Ct.Surender Kumar (PW-3) had beaten him and he had lost a tooth. He had applied liquor on his gum to treat the tooth injury. The petitioner stated that Ct.Ramesh Chand and Ct.Surender Kumar were acting in connivance with smugglers and were in possession of smuggled goods. At this, he directed Sub.Mange Lal (PW-7) and Sub.T.P.Singh (PW-8) to search the kit boxes of Ct.Ramesh Chand and Ct.Surender Kumar but they did not find anything objectionable. Thereafter, he ordered Sub.T.P.Singh to find out about the four rounds of ammunition in the issue ledger. The four rounds could be traced only two days later, i.e. on February 12, 1999 and were recovered from Ct/Dvr Suresh Kumar.

22. HC Ashokan B. PW-5 deposed that on the day of the incident he visited BOP P.J.Nagar as per the directions of Sub.Mange Lal. He met HC Satpal Singh (PW-1) who told him about the scuffle wherein petitioner pointed his rifle at Ct.Ramesh Chand (PW-2) and Ct.Surender Kumar (PW-3) and was found in unauthorized possession of four rounds of ammunition. Thereafter, he met the petitioner who stated that he was beaten by Ct.Ramesh Chand and Ct.Surender Kumar and showed him a broken tooth. He returned to the Coy headquarters and briefed Sub.Mange Lal (PW-7) about the incident who visited BOP P.J.Nagar to verify the information.

23. Petitioner refused to cross-examine the witness despite opportunity being granted.

24. Ct.Anil Kumar PW-6 deposed that after placating the petitioner, HC Satpal Singh (PW-1) seized ten rounds of ammunition from the petitioner before directing him to proceed for the naka point. When the petitioner returned and started a scuffle he was once again disarmed by HC Satpal Singh who found two rounds of ammunition from the ground and another two rounds in the magazine of the rifle of the petitioner.

25. On being cross-examined by the petitioner he stated that HC Satpal Singh did not deposit the four rounds of ammunition in the *kote* and he kept them with him.

26. Sub.Mange Lal PW-7 deposed in sync with Asst.Comdt.Sriram Singh (PW-4) and HC Ashokan B. (PW-5).

27. Sub.T.P.Singh PW-8 deposed that a day after the incident i.e. on February 11, 1999 he conducted a search in the Outpost to ascertain and locate the surplus or deficiency in ammunition but he could not find anything. The next day he was told by HC Ashokan B. (PW-5) that the four rounds of ammunition he was looking for were with Ct./Dvr.Suresh Kumar (PW-9). He met Ct./Dvr.Suresh Kumar and collected the four rounds of ammunition. Ct./Dvr.Suresh Kumar told him that he the four rounds of ammunition were given to him when he visited BOP P.J.Nagar with HC Ashokan B.

28. Petitioner refused to cross-examine the witness despite opportunity being granted.

29. Ct./Dvr.Suresh Kumar PW-9 deposed that on the day of the incident he drove HC Ashokan B.(PW-5) and one Ct.Madhusudan to BOP P.J.Nagar. At the Outpost, HC Satpal Singh (PW-1) handed over four rounds of ammunition to him which were tied in a handkerchief. HC Satpal Singh told him that he would report about the rounds to the Coy Commander on his arrival. The next day he handed over the four rounds to Sub.T.P.Singh (PW-8) who was the Officiating Coy Commander that day.

30. On being questioned by the Commandant he stated that he could not report about receiving the four rounds of ammunition during the search as he had to leave for duty before the search commenced.

31. Petitioner refused to call upon any witnesses in his defence despite opportunity being granted.

32. As noted above the petitioner was held guilty of the first and the third charge levelled and punished with dismissal from service.

33. Laying a challenge to the punishment inflicted the contentions urged during hearing of the writ petition were:-

(a) The petitioner was denied a fair trial inasmuch as his statement recorded during the Record of Evidence proceedings was not supplied to him thereby disabling him in filing an appeal.

(b) He was not heard with respect to the charges before Record of Evidence was ordered to be drawn up.

(c) He was denied adequate time to prepare his defence and was not assigned a suitable '*friend*' to assist him during the trial.

(d) The finding at the SSFC was perverse because it was based on no evidence. The evidence pointed the guilt at Ct.Ramesh Chand and Ct.Surender Kumar because the petitioner was the one who was assaulted evidenced by the petitioner losing a tooth.

(e) There was no evidence to establish that the four rounds of ammunition seized by HC Satpal belonged to the petitioner. The four rounds were not sent for fingerprint analysis.

(f) The punishment inflicted is harsh and disproportionate. The alleged offences do not entail any moral turpitude. Petitioner was only 31 years of age on the day of the incident and had rendered 12 years' service during which he had earned 4 cash rewards.

34. The first contention urged overlooks the fact that assuming that the petitioner's statement recorded during the Record of Evidence proceedings was not supplied to him, the same could not vitiate the trial for the reason at

the SSFC Trial, after evidence was led the proceedings of the Record of Evidence were read out and annexed as a part of the trial. Since the petitioner was held guilty at the trial he was entitled to the entire record of the proceedings at the trial, which would include the proceedings recorded concerning the Record of Evidence. Thus, assuming that after the trial and the sentence was inflicted, while supplying the record of the proceedings of the trial to the petitioner his statement recorded during Record of Evidence proceedings was not supplied, the trial could never be vitiated. At best, the petitioner would be handicapped in filing the statutory appeal. Besides, before filing the appeal the petitioner could have drawn the attention of the authorities to the alleged omission as claimed by the petitioner. Further, the petitioner has not brought out as to in what manner he was prejudiced when his statement recorded during Record of Evidence was not supplied to him after the trial.

35. The second contention is factually incorrect in view of the record produced before us. The record would evidence that the proceedings under Rule 45 of the BSF Rules, 1969 were conducted by the Commandant on February 17, 1999. The three charges as per the offence report were put to the petitioner. He pleaded guilty to the first but not guilty to the other two, a fact recorded in the proceedings drawn up concerning the offence report. It was thereafter directed that the Record of Evidence shall be prepared by Dy.Cmdt.Anil Thakur.

36. The third contention is again without any substance inasmuch as, at the trial Asst.Cmdt.Janardan Prasad acted as the friend of the accused and the record would evidence that the petitioner did not raise any objection to Asst.Cmdt.Janardan Prasad acting as his friend. As regards inadequate time to prepare the defence, the record would evidence that the charge sheet

concerning the trial was drawn up on July 03, 1999. The record does not indicate the time or the date when the charge was served upon the petitioner. But the proceedings at the trial, which commenced with the arraignment on July 05, 1999, would evidence that while pleading not guilty to the three charges which were read out at the arraignment, the petitioner did not raise any objection that he was not granted adequate time to prepare his defence. In this regards we need to highlight that as per Rule 63(6) of the BSF Rules, 1969 the requirement of the law is to serve the charge sheet 24 hours before the trial.

37. As regards the fourth contention, from the testimony of the witnesses recorded at the trial, which we had briefly pen profiled in paragraphs 17 to 30 above, it is apparent that the witnesses of the prosecution have consistently deposed that, having some issue with Ct.Ramesh Chand and Ct.Surender Kumar, before the petitioner was to proceed for naka duty and when Ct.Ramesh Chand and Ct.Surender Kumar, after completing their duties, were resting in the barracks, the petitioner abused them. He cocked his rifle and pointed his rifle at them. The petitioner was disarmed by HC Satpal Singh who removed the ten rounds of ammunition which were issued to the petitioner from the magazine of the rifle and handed back the empty rifle to the petitioner requesting him to proceed to the naka point. HC Satpal Singh told the petitioner that he would hand over the ammunition at the naka point to the petitioner. After about 15 minutes the petitioner had a scuffle with Ct.Ramesh Chand and Ct.Surender Kumar during which two rounds of ammunition fell on the ground. HC Satpal Singh once again disarmed the petitioner and found two rounds of ammunition in the magazine of the rifle issued to the petitioner. The four rounds were seized but not immediately deposited in the *kote*. They were deposited two days later in the *kote*.

Ct./Dvr.Suresh Kumar PW-9 to whom HC Satpal Singh had handed over four rounds of ammunition kept the same with him and handed over the same to Sub.T.P.Singh who was the officiating Coy Commander. There may be a lapse in not immediately deposition the four rounds in the *kote*, but that would not mean that the testimony of the eye witnesses is tainted. It is trite that procedural lapses do not vitiate trials and if there is otherwise clinching evidence of a good quality, convictions can be sustained thereon.

38. It may be true that there is evidence that even the petitioner had lost a tooth, but that would not mean that the charge is not proved. From the evidence it is apparent that the petitioner was cocking his rifle repeatedly; was found to be in possession of four rounds which he could not account for. With such threatening postures adopted by the petitioner if three people disarmed the petitioner and the petitioner retaliated, there is bound to be some fist blows being inflicted.

39. The next contention is neither here nor there in view of the testimony of the eye witnesses to which we have adverted to hereinabove. We first have the testimony of Ct.Ramesh Chand that after he was disarmed and ten rounds were seized by HC Satpal Singh and the rifle was handed back to the petitioner, the petitioner returned after some time and boasted that it did not matter that ten round of ammunition were seized because he had with him four more rounds. The other eye witnesses have deposed having seen petitioner cock his rifle and point the same at Ct.Surender Singh who grappled to disarm the petitioner. HC Satpal Singh had to intervene once again. Two rounds were seen lying on the ground and two were recovered from the magazine of the rifle of the petitioner.

40. Nothing turns on the fact that the four rounds were not sent for fingerprint analysis. In the teeth of ocular evidence which is of a high

quality it has to be held that the prosecution successfully proved that the petitioner was possession four rounds of ammunition which he could not account for.

41. The last plea that the sentence is disproportionate to the wrong and the past service record was without a blemish is noted and rejected for the reason the petitioner was a constable in the Border Security Force and during discharge of his duties was armed with a firearm issued. He was issued ammunition. The petitioner knew the importance of firearms and ammunition. He knew that he was not to possess any ammunition which was unauthorized. The fact that the petitioner was having with him four rounds of ammunition which were illegally acquired and illegally retained is a grave misconduct. Further, the petitioner being disarmed once and official ammunition issued to him being confiscated, having returned with four rounds of ammunition which were illegally acquired and were placed inside the magazine of the rifle issued to him; he having cocked the rifle i.e. brought it into a firing position and pointing the same thereafter at two fellow constables is another grave facet of the wrong done. It is plain luck that the petitioner was disarmed without any serious consequences of his acts ensuing. The misconduct of the petitioner is grave and we do not find the penalty levied to be disproportionate to the gravity of the wrong.

42. The writ petition is dismissed but without any orders as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(JAYANT NATH)
JUDGE

MAY 26, 2014

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