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

% *Judgment Reserved on: January 21, 2014*
Judgment Pronounced on: January 24, 2014

\+ **W.P.(C) 6418/2001**

OMKAR SINGH (SINCE DECEASED)
THRU LRS .....Petitioner
Represented by: Mr.H.S.Dahiya, Advocate

versus

UNION OF INDIA & ORS. ..... Respondents
Represented by: Ms.Vaneessa Singh, Advocate
with Ms.Sadhvi Shashi, Advocate

W.P.(C) 6419/2001

BRAHAM PRAKASH SINGH .....Petitioner
Represented by: Mr.H.S.Dahiya, Advocate

versus

UNION OF INDIA & ORS. ..... Respondents
Represented by: Mr.Sachin Datta, Advocate with
Mr.Vineet Tayal, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR.JUSTICE JAYANT NATH

PRADEEP NANDRAJOG, J.

1. Since common questions of law and fact arise for consideration in the two above captioned writ petitions, they were heard together and hence are being decided by a singular order. Albeit pursuant to two separate charge sheets issued to them and inquiry proceedings being

separate, the indictment against the petitioners and six other persons who were like wise issued individual and separate charge sheets and separate inquiries were held, we find that pursuant to two different orders passed by the Disciplinary Authority on December 31, 1999, the petitioners were compulsorily retired from service since the Disciplinary Authority held that the charge of showing cowardice, carelessness and acting against the spirit of the force was established. Writ Petitioner Braham Prakash's appeal was rejected on December 31, 1999 and so was the revision on December 05, 2000. Writ Petitioner Omkar Singh's appeal was rejected likewise on December 31, 1999 and the Revision Petition was rejected on January 02, 2001.

2. It is not in dispute that at 23:30 hours on April 23, 1999, the petitioners as also six other force jawans and Ct.E.Yohannan were sleeping in the barrack allotted to them when Ct.E.Yohannan was fatally assaulted by Ct.Pawant Kumar Pancholi who used a sharp edged weapon and three injuries were inflicted on his person : (i) On the thigh, (ii) Besides the naval, and (iii) On the belly. The assailant ran away. The eight force personnel, which included the petitioners were charged for not defending Ct.E.Yohannan when he was fatally stabbed thereby showing gross cowardice and carelessness. The act of omission was alleged to be against the spirit of unity of the force.

3. It is the common case of the parties that Ct.Pawan Kumar Pancholi, living in the same barrack, later on confessed to have assaulted Ct.E.Yohannan.

4. Same set of witnesses were examined before the eight inquiry officers. Since relevant record pertaining to the petitioners was produced before us we note that 5 witnesses were examined at the two different and

separate inquiries concerning the petitioners; being Insp.M.N.Chouhan, Insp.M.R.Tyagi, Ct.H.R.Yadav, Ct.M.Rajarao and Ct.P.Satyanathan. Whereas Insp.M.N.Chouhan and Insp.M.R.Tyagi were examined as PW-1 and PW-2 respectively in the two inquiries, in the inquiry concerning Braham Prakash, Ct.H.R.Yadav, Ct.M.Rajarao and Ct.P.Satyanathan were examined as PW-3, PW-4 and PW-5 respectively. In the inquiry concerning Omkar Singh they were examined as PW-5, PW-3 and PW-4 respectively.

5. Though worded differently, the testimony of the five witnesses is the same to the effect that the petitioners, six other persons who were charge sheeted, Ct.E.Yohannan and Ct.P.K.Pancholi were allotted the same barrack where they used to sleep and on the day of the incident at 11:30 P.M. cries of Ct.E.Yohannan attracted force personnel in the vicinity. The petitioners and six other charge sheeted personnel were present in the barrack, doing nothing to help Ct.E.Yohannan who was profusely bleeding having received three stab wounds on his person. He disclosed that Ct.P.K.Pancholi had stabbed him and fled. Ct.E.Yohannan was removed to the hospital where he died due to the injuries suffered by him. A fall-in was ordered immediately after the incident, requiring all jawans to assemble in the parade ground and fall-in line so that a head count could be made and at that time Ct.P.K.Pancholi voluntarily came forward to admit his guilt.

6. The petitioners did not deny being present in the barrack when Ct.E.Yohannan was stabbed. They did not dispute that they did not intervene when Ct.E.Yohannan was stabbed. As per them, after performing strenuous 12 hour duty from 06:00 hours to 18:00 hours they and the other six personnel retired to the barrack after dinner between

21:30 hours to 22:30 hours. Being tired, all dozed off; as they hit the pillow. They were in deep slumber at 23:30 hours when the assault took place. They hardly had any opportunity to intervene and by the time they heard the moans and shrieks of Ct.E.Yohannan, other force personnel around had already entered the barrack and started rendering help to Ct.E.Yohannan.

7. From the fact that the petitioners were present in the barrack and so were six others and that they did not react to help Ct.E.Yohannan when he was assaulted and did not take any steps to render any help to Ct.E.Yohannan, the Inquiry Officer concluded by forming an opinion that the petitioners as also the six others acted with cowardice, were careless and remiss and that their actions were against the spirit of unity of the force. Agreeing with the view taken by the Inquiry Officer the Disciplinary Authority ordered penalty of compulsory retirement to be inflicted on all eight force personnel, albeit under different orders against which appeals and revisions filed by the eight force personnel were rejected.

8. The incident not being in dispute and that the petitioners rendering no help to Ct.E.Yohannan also not being in dispute, the question would arise whether a reasonable prudent person taking a reasonable view of the evidence would come to a reasonable conclusion that the indictment stood proved.

9. Conscious of the fact that exercising judicial review power this Court cannot re-appreciate evidence, we would only state that exercising judicial review power a superior Court would be obliged to ensure proper procedural compliance by the decision making authority in the decision making process, which would include the obligation of the decision

making authority to properly attract its attention to all relevant facts and circumstances properly brought before it and having a bearing on the decision to be taken.

10. Now, evidence establishes that the eight force personnel who were indicted, Ct.E.Yohannan and Ct.P.K.Pancholi were the residents of the same barrack since it was allotted to them. They used to sleep inside the barrack. Having performed strenuous 12 hours duty from 06:00 hours to 18:00 hours on April 23, 1998 and having taken supper, the petitioners and six other indicted jawans retired to the barrack between 21:30 hours to 22:30 hours and dozed off on hitting the pillow. Their claim that they were in deep slumber at 23:30 hours when the assault took place is supported by enough evidence. That everybody was fast asleep would mean that the light within the barrack was switched off for the reason normal human beings switch off the light in the room in which they sleep in the night. The three stab wounds on the person of Ct.E.Yohannan are all directed towards the stomach; two caused injury in the stomach and one got misdirected towards the thigh. Now, an assailant who predates and stabs with the intention to cause fatal injuries would strike like a cat i.e. stealthily. The three injuries would be caused in a fleeting moment of time : may be between 3 to 5 seconds. The person who was stabbed was in deep slumber. The first stab wound would cause excruciating pain and a simultaneous involuntary cry of anguish. The first stab wound itself would have thus disturbed the sleep of those who were around because any reasonable person would reasonably act on the premise that Ct.E.Yohannan instantly shrieked involuntarily. The next two stab wounds followed, one after the other, and by the time the slumber, nay deep slumber, of those around was broken, the job of the assailant was

over. The assailant fled. Everything happened in the dark. Eight fellow buddies sleeping on their beds in the barrack got roused from their deep slumber. Their action and reaction is bound to be muddled. Any person rousing from deep slumber all of a sudden is bound to be, if we may use the colloquial expression, a zombie for the next few fleeting seconds, could be up to 5 or 6 seconds.

11. It is difficult to trace the delicate gradations and hence it is impossible to lay down any positive rule with respect to evidence necessary to prove an intention or an omission. Undue stress cannot be laid upon any single fact, however impressive it may appear. Every fact has to be viewed in its context, for its importance as a determining factor may well be minimized when considered in the light of other qualifying events.

12. It is not uncommon that sudden unexpected events confound even the most determined. Overcome by the event, they take a moment or two to regain their composure and muster their rational thinking and then react as any other reasonable person, given the circumstance in which he finds himself, would do.

13. The report submitted by the Inquiry Officer as also the impugned orders passed do not evidence that the authorities kept in mind the aforesaid factors which influence the reaction of reasonable persons.

14. The decisions are thus liable to be struck down for the reason they do not take into account : (i) That the petitioner and the six other fellow jawans had performed strenuous 12 hours duty the same day from 06:00 A.M. to 06:00 P.M. and having taken dinner had retired to the barrack between 09:30 P.M. to 10:30 P.M. (ii) Everybody, including Ct.E.Yohannan was fast asleep. (iii) There is no evidence that the light

inside the barrack was switched on or that the barrack was sufficiently lit due to outside light filtering in and thus one have to proceed on the assumption that it was dark. (iv) The three stab wounds would take between 3 to 5 seconds to be inflicted and the assailant absconding. (v) A person in deep slumber would take between 3 to 5 seconds to come to grips with himself and thereafter with the situation. (vi) By that time the first shriek of the injured would have acted as the summons to rescue attracting a visit by the nearest person, the one who was not sleeping and thus simultaneous reacting to render aid to the victim; followed by one or more of those who were sleeping in the barrack. (vii) The assailant Ct.P.K.Pancholi was also an occupant of the barrack and that it was not an outsider who entered and committed the act. Meaning thereby, the entry of the assailant was silent and could not have been noticed, much less disturb the sleep of those who were fast asleep.

15. Merely because the petitioners and six other jawans were sleeping in the barrack when Ct.E.Yohannan was injured and they did not react when the assault took place is insufficient evidence wherefrom any reasonable person would conclude that the petitioners and the six other persons were remiss, were negligent, showed cowardice and did not act in the spirit of the force. Factoring in the other circumstances and the facts which we have noted hereinabove, any reasonable person would form the opinion that the petitioners and the six other persons did not have any reaction time and that everything happened in the flash of the moment.

16. The writ petitions are allowed. The penalty of compulsorily retirement levied upon the petitioners which have been affirmed by the Appellate and the Revisional Authorities are set aside.

17. Petitioner Braham Prakash is directed to be reinstated in service and he would be entitled to all consequential benefits except that we restrict back wages to 50%. He would earn his annual increments. The entire period would be treated as spent on duty.

18. Petitioner Omkar Singh died on September 25, 2005 and thus we cannot direct his reinstatement in service as a matter of fact, but we declare in his favour that he would be treated in service till he died i.e. September 25, 2005 and would be entitled to all benefits including increments, except that back wages are restricted to 50%. With reference to the date of his death, his heirs, who we note are his wife and son, would be entitled to all benefits available to a force personnel who dies while in service as also family pension.

19. W.P.(C) No.6419/2001 filed by Braham Prakash is allowed in terms of paragraph 17 above. W.P.(C) No.6418/2001 filed by Omkar Singh is disposed of in terms of paragraph 18 above.

20. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(JAYANT NATH)
JUDGE

JANUARY 24, 2014
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