

(2012) 08 DEL CK 0124

Delhi High Court

Case No: WP (C) 6385 of 1999

Raghubir Singh

APPELLANT

Vs

Director General of Police and
Another

RESPONDENT

Date of Decision: Aug. 31, 2012

Acts Referred:

- Penal Code, 1860 (IPC) - Section 309

Hon'ble Judges: Pradeep Nandrajog, J; Manmohan Singh, J

Bench: Division Bench

Advocate: Vikram Rawal, for the Appellant; Barkha Babbar, for the Respondent

Final Decision: Dismissed

Judgement

Pradeep Nandrajog, J.

Having joined CRPF as a Constable in the year 1994, the petitioner was attached to the 55th Battalion of CRPF as on June 17, 1997, and was a part of Platoon No.8 of the Battalion, which was posted at Gorisagar Police Station for election duty. It is not in dispute that on June 17, 1997, the petitioner was assigned sentry duty at the back gate of Gorisagar Police Station. At around 19:40 hours, the sound of two gunshots were heard, accompanied almost immediately by cries for help from the petitioner, who was at the rear of the police station. On hearing the shots being fired, the entire platoon was alerted and HC Shiv Janam Singh was the first to arrive at the spot where the petitioner was found lying injured. Same was witnessed thereafter by Ct.G.Narasimhlu. The petitioner was found to be unconscious, in a wounded condition, with blood oozing from his chest. He was immediately administered first aid, following which, he was taken by some Unit Platoon Members to the Medical College Hospital, Dibrugarh for treatment. SLR 7.62 mm bearing distinctive Butt No. 215, Body No.CX-9922 issued to the petitioner for duty were taken into possession from the spot as also 3 magazines having 58 live rounds and 2 fired cartridges. The fired cartridges pertained to the two bullets which were fired from one of the three

magazines issued to the petitioner from the SLR in question. FIR No.44/97 was lodged at PS Gorisagar for an offence punishable u/s 309 IPC because prima-facie facts supported the inference that the petitioner had fired at himself i.e. had attempted to commit suicide.

2. The petitioner remained as an in patient at the Medical College Hospital Dibrugarh till July 22, 1997, when he was discharged from the hospital.

3. Petitioner's version of the incident was that when he was performing duty at the back gate, at around 19:40 hours he was overcome by some mental pressure and felt as if somebody was exerting pressure upon his body. It was in this state that he cried out for help, and asserted that he had no knowledge as regards to whether the gun was fired or not, or who took his rifle, and who took him to the hospital for treatment. Thus, as per the petitioner he never attempted to commit suicide and that overcome by a mental pressure, and what happened thereafter was beyond his comprehension, he received two gunshot wounds on his chest from his service rifle.

4. On August 13, 1997 the Commandant of the Battalion issued a charge memorandum, alleging the following charge against the petitioner:

That the said No. 941195331 Constable Raghubir Singh of "C" Coy. 55th Bn. CRPF while functioning as Const.(GD) in his capacity as a member of the force u/s 11(1) of the CRPF Act, 1949 in that he fired two shots on himself in an attempt to commit suicide by misusing the weapon/ammunition issue to him for bona fide Government duty.

5. Dy. Comdt. M.P. Singh was appointed as the Inquiry Officer. During inquiry the department examined six witnesses; namely: Sub Inspector R.N.Dongre, HC Shiv Janam Singh, Ct.Shish Ram, Ct.Chain Singh, Ct. G. Narasimhlu and Ct. Sarwan Kangle.

6. None of the witnesses claimed to have witnessed the circumstance under which the petitioner received two gunshot wounds from his service rifle. The medical certificate, Ex.1, of the petitioner pertaining to the injuries sustained was proved as per which the petitioner had received gunshot wounds on the interior chest wall.

7. Called upon, whether he desired to make a statement in defence the petitioner stated as under:

Platoon No. 8 had returned to the Gorisagar Police Station from Shiv Sagar after election duty at 18:30 hours on June 17, 1997. All the jawans used to get their personal effects as well to the mess. I was deployed as sentry in back side Morcha and Ct.Sarwan Kangle as front side Morcha sentry for the period from 19:00 hours to 21:00 hours with arms and ammunition. All of a sudden what happened I did not know, and I found myself laying in the Morcha. I was suffering from pain, and I shouted "bachao bachao" when I saw the blood was flowing. After that I did not know as to where I was taken and by whom. I came to know on 18th July 1997 that I

was in Dibrugarh Hospital. When I was unconscious after taking treatment (glucose and bandage). I also asked all jawans who were present in the Company about the incident occurred. They told me that I had attempted to commit suicide while on sentry duty.

8. Vide inquiry report dated September 16, 1997, the Inquiry Officer returned a finding that the evidence suggested that the petitioner had attempted to commit suicide. Vide memorandum dated October 7, 1997 the disciplinary authority forwarded the report of the Inquiry Officer to the petitioner for his response and the petitioner responded vide response dated November 3, 1997. Considering the response and rejecting the same, the disciplinary authority, vide order dated January 31, 1998 imposed the penalty of dismissal from service upon the petitioner which was to be effective from January 31, 1998. Statutory appeal filed by the petitioner under Rule 28 of the CRPF Rules, 1955 to the DIG, CRPF was rejected via order dated August 28, 1998.

9. Exhausting the departmental statutory remedies, the instant writ petition has been filed.

10. It was urged at the hearing that the Departmental Enquiry conducted against the petitioner was a total farce. It was contended that during the enquiry proceedings, the petitioner was not supplied with the relevant documents namely Kote Register, FIR, Seizure Memo of SLR 7.62 Butt No. 215 Body No.9922. It was also asserted that the evidence was recorded by the Inquiry Officer behind the back of the petitioner, all pleas which have to be rejected for the reason at the first hearing held by the Inquiry Officer on September 02, 1997 it stands recorded that the petitioner admits having received all relied upon documents as per Annexure-III to the memorandum of charge, which documents include the extract from the Kote register, FIR, seizure memo pertaining to the SLR, empty cartridges and three magazines, duty register and eye-sketch. The record of the Inquiry Officer would reveal that witnesses were examined on various dates thereafter from September 04, 1997 till September 11, 1997. Each page of the testimony of the witnesses bears the signatures of the petitioner. It stands noted that in spite of opportunity granted the petitioner chose not to cross-examine the witnesses.

11. Indeed, what would the petitioner have cross-examined the witnesses when none of them is an eye-witness and none of them saw how the petitioner got shot from his service weapon. The petitioner has not disputed that he received two gunshot wounds from his service weapon, and as noted by us, during preliminary inquiry stated as if some supernatural force had overpowered him, but during inquiry simply stated that he does not know as to how he suffered the gunshot wounds from his service weapon.

12. It is apparent that since the petitioner had suffered two gunshot wounds from his service weapon, and he was alone at the time when he received the gunshot

wounds, it is he alone who knows what happened and it was for him to state the correct facts as to what happened when he fired at himself. If somebody else was the one who had shot at the petitioner, the petitioner had to state as to how the person concerned accessed the service weapon issued to the petitioner and fired at the petitioner.

13. To put it pithily, it is a case where the petitioner has to render an explanation pertaining to the incident and not for the prosecution to have proved anything. Once the petitioner admitted that arms and ammunition were issued to him and it was this ammunition and this arm which was the cause of the gunshot wounds suffered by him, the onus was on him to prove how he received the injuries.

14. In the absence of any credible explanation given by the petitioner and the attempt to cover up the incident by feigning ignorance, requires an inference to be drawn against the petitioner.

15. We concur with the view taken by the Inquiry Officer and accepted by the Disciplinary Authority, notwithstanding that there is lack of evidence on the subject as to what led the petitioner to attempt to commit suicide.

16. There may be various reasons for a person to commit suicide and one reason may be the result of the immediacy of a present sense of hopelessness and loss of future hope; the present bolting out the possibility of a future which presents itself as something black, infinite and unbearable. In the cloudy depths of a troubled mind, death becomes an escape, a release from the direness of one's situation. The relationship between life and death becomes reversed: Life seems to be the problem and Death seems like freedom from the cage. May be, the petitioner found himself in such a situation. What we intend to bring out is that the onus to prove a motive for an attempted suicide cannot be on the shoulders of the prosecution at a domestic inquiry.

17. It is unfortunate that within a short span of three years of having joined service, the petitioner landed up doing what he did and thereby preventing us from even considering whether we should direct compassionate allowance to be paid to the petitioner under Rule 41 of the CCS (Pension) Rules for the reason three years' service would entitle petitioner to hardly any compensation pension and compassionate allowance being not more than two-third of the compensation pension, would require virtually nothing to be paid to the petitioner by way of compassionate allowance. We dismiss the writ petition but refrain from imposing any costs.