

(2011) 05 DEL CK 0435

Delhi High Court

Case No: Writ Petition (C) 4906 of 1997

Satya Prakash Shukla

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: May 18, 2011

Hon'ble Judges: Suresh Kait, J; Pradeep Nandrajog, J

Bench: Division Bench

Advocate: S.K. Gupta, for the Appellant; Kumar Rajesh Singh, for the Respondent

Final Decision: Dismissed

Judgement

Pradeep Nandrajog, J.

The Petitioner was employed as a Constable with the Railway Protection Force and was admittedly on duty along with Naik Laxmi Narain and Ct. Harbans Singh on the intervening night of 18th and 19th January 1996 from 1800 hours i.e. 6:00 PM of 18.1.1996 till 0600 hours of 19.1.1996. The Petitioner admits so.

2. Naik Laxmi Narain had to ring up the Control Room inasmuch as he found Petitioner having left place of duty. ASI Ramjit posted as Night Shift Officer responded and went to the place where Petitioner, Naik Laxmi Narain and Ct. Harbans Singh were on duty and went to locate the Petitioner he learnt from the gateman of age No. 413, namely Sh. Devinder Singh, that the Petitioner had gone towards a liquor vend. The Petitioner was found in a state of high intoxication and when ASI Ramjit was recording the statements of the gateman the Petitioner ran away.

3. The Petitioner was charge-sheeted as under:

Statement of article of charge framed against Constable Satya Prakash Shukla, RPF, Coy. No. 25/Moradabad. Article-I He is charged for gross neglect and serious misconduct in that on 18/19.1.96 while detailed to perform safety duty of ACSR wire from 18:00 to 06:00 hours, between Katghar to Bholagarh section with Arms Ammunition along with Naik Laxmi Narain and Const. Harbans Singh he left his duty

beat on 1830 hours and returned at 20:45 hours in drunken condition with Arms Ammunition.

4. The statement of imputation in support of the Article of Charge reads as under:

Statement of imputation of charge framed against Const. Satya Prakash Shukla RPF/Coy No. 25/MB. On 18/19.1.96 while detailed to perform safety duty of ACSR wire from 18:00 hours to 06:00 hours between Katgarh to Bholagarh section along with Naik Laxmi Narain and Constable Harbans Singh he left his duty beat at 1830 hours. Since whereabouts of Const. were not known as such a control message was conveyed to Security Control Room by Naik Laxmi Narain for information. On receipt of message ASI Ramjeet along with Nk. Joginder Singh, Const. Virpal Singh, Const. Jai Pal Singh and Const. Virender Singh by Allwyn Nissan visited the site and found Const. Satya Prakash Shukla in drunken condition and unfit for duty. His Arms Ammunition were in the custody of Naik Laxmi Narain.

5. Being a little unconventional, to save on paper, we reproduce the statements made by the Petitioner in writing before the Inquiry Officer after the evidence was led and the Petitioner was required to give his version by way of his statement if he so desired. The Petitioner has himself filed the translated version of his statement, inasmuch as we find that Petitioner's written statement before the Inquiry Officer is in vernacular, thus we reproduce the translated version given by the Petitioner himself, being Annexure P-5 to the writ petition. It reads as under:

I, Constable Satya Prakash Shukla state that on 18/1/96 between 18 hours to 6 hours, I was posted along with Naik Laxmi Narain and Constable Harbans Singh in between Katgarh to Molagarh at PTL cutting security. I reached there along with them at right time along with arms and ammunition. At around 19/30 hours, Naik Laxmi Narain and Constable Harbans Singh started taking dinner and I went there after arms and ammunition to Naik Laxmi Narain. After informing him that I am going to take tea and I started taking tea in the just adjacent shop and after tea I felt pain in my stomach and I went to the toilet to ease myself and thereafter I washed my hands and my mouth and after some time feeling pain in my stomach I sat there and after some time after taking rest I came on the beat. Then I found that ASI Ramjit is present there along with his staff and they asked about where I had gone. Then I told the entire story. Then ASI told for coming along with them at Coy. Office and I abide by that order and I came in Coy. Office. Then he deposited my arms and ammunition in Coy. No. 30 and asked for tendering my statement. He spoke the statement and I wrote the statement and the statement was given to him. Thereafter, he told that I had taken wine, that is why I am sending you back. On that stated that I have not taken wine and also I do not take wine while on duty. If I had taken wine then firstly from Coy. No. 25 I had not been given my departure report and from Coy. No. 30 I could not have got arms and ammunition and my commander could not have taken along with me on duty and if I had taken the wine on duty then I should have been sent for medical examination. The applicant, if he

had taken the wine and under the unconscious state of mind as stated by ASI in his report then how can I ran away from the office. Whether a person who has taken the wine and is unconscious can run away. That is why the allegation which has been leveled on the applicant is baseless. This is the statement of the applicant.

6. Suffice would it be to state that explaining his not being at the place of work, Petitioner claims having left with the permission of Naik Laxmi Narain to take tea and claims that while he was taking tea, he had a stomach ache and went to the toilet to ease himself and since the pain continued he started taking rest when ASI Ramjit along with other Force personnel came to the place where he had gone. Claiming not to have consumed alcohol, Petitioner stated that if he had consumed alcohol he would not have been given departure report to proceed on duty and as regards his consuming alcohol on duty he stated that if this was so, why was he not sent for medical examination and with respect to the evidence that he was found in an unconscious state by ASI Ramjit, Petitioner stated that how can he run away if he was unconscious.

7. Let us now note the evidence which surfaced at the inquiry against the Petitioner.

8. ASI Ramjit who appeared as PW-1, deposed that on 18.1.1996 he was posted at Coy No. 25 as Night Officer from 16:00 to 24:00 hours and around 20:30 hours was informed from HCNL room by ASI Ram Mehar that Naik Laxmi Narain had informed of Petitioner having left duty after handing over rifle to Naik Laxmi Narain. Informing the Post Commander he requisitioned a vehicle Allwyn Nissan and left along with Naik Joginder Singh and Ct. Veerpal at 21:35 hours and reached Katgarh gate when Naik Laxmi Narain told him that all 3 i.e. Naik Laxmi Narain, Ct. Harbans Singh and the Petitioner started taking dinner when Petitioner left towards Gate No. 413. They tried to stop him but the Petitioner did not stop. After dinner they tried to locate him and Gateman Devinder Singh at Gate No. 413 told them that one Sepoy, enquiring from him about the wine shop, had proceeded in said direction. Soon thereafter he saw Petitioner walking towards the gate under influence of alcohol and being unfit for duty he took into possession the arms and ammunition issued to the Petitioner and informed the HCNL room.

As he was recording the statement of Gateman Devinder Singh, the Petitioner ran away and thus he could not get Petitioner medically examined.

9. It be highlighted that with reference to the level at which Petitioner was intoxicated, ASI Ramjit has used the expression that the Petitioner was unconscious.

10. We find that the Inquiry Officer has put 5 questions to ASI Ramjit. The 5 questions are as under:

Q.1: When you reached at Katghar gate then what did you find?

Q.2: When you came to know that Const. Satya Prakash Shukla is under the influence of wine and unconscious and there was a smell coming from his mouth

then what steps you have taken for his medical examination?

Q.3: When you were aware that he was under the influence of wine and it is necessary for sending him to medical examination they why did you not kept him under supervision of somebody else?

Q.4: Can it be not termed as that because of your negligence the above constable could not be medically examined?

Q.5: Did you reported this matter in the rosnamcha regarding the running away of the Constable or did you reported the matter to the Post Commander? If yes, then what action was taken if not, then why not.?

11. Devinder Singh, the person referred to by ASI Ramjit in his statement, being the Gateman on duty at Gate No. 413, deposed in harmony with the statement of ASI Ramjit to the extent said statement stated facts pertaining to the information given by Devinder Singh to ASI Ramjit of his seeing a jawan enquiring from him about a wine shop when he i.e. Devinder Singh was on duty at Gate No. 413 and 2 RPF personnel coming after some time to enquire about a constable and he telling them that the constable had walked towards a wine shop and after some time an officer of RPF with some RPF personnel reaching the gate and taking away the constable there from.

12. 5 questions were put to PW-2 by the Inquiry Officer as under:

Q.1: What was the distance between Gate No. 413A and Katghar Cabin?

Q.2: As per your statement he came on the gate alone and he returned back alone and in your statement you have stated that he went along with one boy from where he found that boy?

Q.3: You have stated that when the Charged Officer came he was under the influence of liquor. On what basis you have told?

Q.4: When the above charged sepoy reached on the gate and asked about wine shop whether he was having with rifle?

Q.5: When you have tendered your statement to the officer of RPF then had the above sepoy misbehaved with you?

13. Ct. Harbans Singh and Naik Laxmi Narain, the 2 Force personnel who constituted the team on duty along with Petitioner appeared as PW-3 and PW-4 and deposed facts in harmony with the testimony of PW-1 and we note that 5 questions were put by the Inquiry Officer to Ct. Harbans Singh and 6 to Naik Laxmi Narain.

14. In view of the testimony of the witnesses afore-noted, the Inquiry Officer submitted a report indicting the Petitioner and supplying the report to the Petitioner for his response and considering the same, the Disciplinary Authority levied the penalty of dismissal from service against which appeal filed stands rejected and

hence the instant writ petition.

15. With respect to the charge framed against the Petitioner it be highlighted that as per the charge the Petitioner along with 2 other Force personnel was detailed to perform safety duty of ACS wire between Katghar to Gholaghar section.

16. ASC wires safety duty means that the communication wires which are essential to maintain communication between cabin to cabin on the railway line require to be patrolled during night for the reason these wires are expensive and people tend to steal them. Katghar to Gholaghar section covers a distance of 5 km and this line segment of the railway line had to be kept safe.

17. Thus, any Force personnel found wanting in such duty would be committing a serious misconduct inasmuch as if some miscreant or a thief would either cut or steal the wires the communication could have snapped and God knows anything could have happened.

18. That nothing happened is a different matter but something could have happened has to be kept in mind.

19. The reasonably foreseeable consequence of an action or inaction of the person concerned are relevant for purposes of fathoming the gravity of the misconduct.

20. The testimony of the 4 witnesses brings out that the Petitioner left the company of his 2 colleagues. He walked away towards a wine shop. He was seen returning highly drunk and he was so intoxicated that one could say that he was virtually unconscious. But he knew what was happening, evidenced by the fact that when ASI Ramjit was recording the statement of the Gateman Devinder Singh, Petitioner ran away. It shows that he was conscious of the fact that he was caught doing a serious wrong and thus he fled. He forgot that as a result of his fleeing he had not completed the formality of depositing his arms and ammunitions at the store-room and make an entry in the register. He forgot that he was creating evidence against himself.

21. Now, we deal with the submissions urged for the reason it is plain clear that there is sufficient material wherefrom the charge stands established; and indeed they were all technical.

22. It was firstly urged that there is no evidence of the Petitioner being drunk for the reason if the Petitioner was drunk his medical examination was necessary. Realizing that the witnesses have clearly deposed that when ASI Ramjit was in the process of recording the statement of Gateman Devinder Singh the Petitioner fled and this was the justification given by ASI Ramjit to not being able to get the Petitioner medically examined, counsel for the Petitioner pounced upon the expression used by ASI Ramjit while deposing that when he saw the Petitioner return in a drunk condition, the Petitioner was unconscious. Argument advanced was that if the Petitioner was unconscious, how could he run away.

23. The argument does not need much reasoning to be demolished.

24. All witnesses of the prosecution have clearly stated that they saw the Petitioner returning from the wine shop in a drunken condition. It is obvious that the Petitioner was walking. It is not the case of the Petitioner that he does sleep walking or he is capable of walking when he is unconscious.

25. It is apparent that ASI Ramjit has used an inappropriate expression while deposing. Since his deposition is in Hindi we may note that the expression used by him is "behoshi" and probably he wanted to use the expression "madhoshi" i.e. in a drunken condition.

26. Meaningfully read, ASI Ramjit has stated that so highly intoxicated was the Petitioner that he was near a state of unconscious and not that he was actually unconscious.

27. Thus, the first contention urged that there is no evidence to establish the Petitioner being intoxicated is rejected.

28. The second contention urged was that the Inquiry Officer has acted as the prosecutor evidenced from the fact that he has cross-examined the 4 witnesses of the prosecution.

29. We have noted herein above the questions put by the Inquiry Officer to PW-1 and PW-2 and we note that similar questions were put to PW-3 and PW-4.

30. Suffice would it be to state that the questions are clarificatory in nature and by no means amounts to cross-examine and thereby fill up the gaps in the deposition of the witnesses

31. It is settled law that at an inquiry the Inquiry Officer can ask clarificatory questions so as to clarify on statement of facts made by witnesses which are slightly ambiguous.

32. A feeble attempt was made to urge that the inquiry is vitiated for the reason Petitioner was denied a Defence Assistant.

33. Learned Counsel did raise the plea but could not make it go much further and we find that it has not even been pleaded in the writ petition that services of a Defence Assistant was denied. However, we may note that in the appeal filed, the Petitioner has raised the said point. But, the record categorically disproves the said fact and so does the report of the Inquiry Officer where the Inquiry Officer has clearly recorded in the report that when the Petitioner appeared before him on the first date he asked him whether he had received the charge-sheet, list of witnesses and list of documents and that the Petitioner affirmed the same. He asked the Petitioner whether he pleads guilty to which the Petitioner said that he pleads not guilty. When he asked the Petitioner whether he desires a Defence Assistant, the Petitioner stated that let the inquiry go on.

34. We find that while responding to the report of the Inquiry Officer the Petitioner never stated that this factual aspect recorded in the inquiry report is incorrect.

35. Lastly urged was that the penalty imposed is disproportionate to the gravity of the offences. Counsel stated that being drunk on duty should not invite retribution of a person being dismissed from service.

36. Argument ignores the fact that the Petitioner was on security duty. The duty was to secure the ASC wires section between Katghar and Bholaghar. We have noted herein above that the ASC wires are the line of communication. It certainly would be a very serious misdemeanour for a jawan to have left such a place of duty and consume alcohol. We have already held hereinabove that the reasonably foreseeable consequences of an action or inaction would determine the gravity of offences. The consequences of dereliction of duty by the Petitioner could well be some miscreant cutting or some thief cutting and removing the ASC wire and this would have meant the breakdown of communication. A railway accident would certainly be a reasonably foreseeable consequence of the said act of mischief by a miscreant or theft by a thief.

37. We do not find the penalty disproportionate to the gravity of the offence and thus we dismiss the writ petition but since the Petitioner is out of job we refrain from imposing any costs.