



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

% Judgment delivered on: 28th February 2024

+ W.P. (C) No. 12228/2019

VASUDEV PANCHAL

..... Petitioner

versus

UNION OF INDIA & ORS.

..... Respondents

Advocates who appeared in this case:

For the Appellant: Ms. Aanchal Anand, Advocate

For the Respondents: Mr. Satya Ranjan Swain, Sr. Panel Counsel with Mr. Sahaj Garg, GP & Mr. Kautilya Birat, Advocate for UOI.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J.

1. Petitioner seeks quashing of order dated 17.10.2018 passed by the Respondents, whereby Petitioner had been dismissed from service by the Respondents. He also seeks quashing of other impugned orders dated 04.03.2019 and 23.08.2019, whereby his punishment of '*dismissal from service*' had been upheld by the Respondents, and mercy petition against such order had been rejected, respectively.

2. Petitioner joined Sashastra Seema Bal (hereinafter referred as



the 'SSB') on 04.05.2013 as a Constable. As per the Respondents, Petitioner whilst performing his duties as a Dog Handler had attempted to commit suicide by consuming liquid poison on 28.07.2017 around 2000 hrs.

3. On 30.08.2017, a Court of Inquiry was constituted, for the purpose of ascertaining the facts and circumstances, under which liquid poison had been consumed by Petitioner followed by hearing by the Commandant for preparing the Record of Evidence.

4. Based on the Court of Inquiry and record of evidence, Petitioner was found guilty of (i) leaving the Battalion Headquarters premises and going to the local market without the prior permission from his superiors thereby willfully absenting himself and (ii) in order to voluntarily render himself unfit for service had consumed roundup i.e. weed controller, in the dog kennel, which he had purchased from the local market.

5. For the said charges, he was awarded a sentence of *"imprisonment in force custody upto 89 days w.e.f. 18.01.2018 to 16.04.2018"*.

6. As per the medical history-sheet of the Petitioner, he had been suffering and diagnosed with bouts of depression. Petitioner had been undergoing psychiatric treatment and medication. He was also



downgraded to Lower Medical Category i.e., SHAPE-3 (S-3 T-23), and was recommended to work under supervision and not to carry any weapons.

7. As per the record, while Petitioner was serving his sentence of imprisonment of 89 days, he had also been undergoing psychiatric treatment for depression and was placed under supervision.

8. On 02.10.2018 at around 2100 hrs., Petitioner had been brought down by two SSB personnel from the top of a water supply tank in the SSB campus area. After being brought down, a search was conducted at his quarters. AS per the respondents a suicide note was recovered. He was taken into custody. As per the Petitioner, he was taken into custody, without any medical examination despite the fact that he was undergoing medical treatment for psychiatric illness.

9. The medical slip of the Border Security Force Hospital dated 05.09.2018 (a month prior to the alleged incident), shows that petitioner was put on anti-depressed/anxiety medication for depression.

10. With regard to the petitioner climbing onto the water supply tank, the Commandant conducted proceedings on 03.10.2018, against the Petitioner and directed preparation of Record of Evidence (ROE).



11. The following charges were framed against the Petitioner:

“Charge I under Section 43 of SSB Act, 2007:“Violation of Good order and Discipline”- *“In that he, on 02.10.2018 at about 2030 hours, climbed on the top of water supply tank in the campus area of Bn. Hqrs, 53 Bn SSB Simlabari-Falalata, being a restricted area to all.”*

Charge-II: Section 44(c) of SSB Act 2007; “Miscellaneous Offence” - *“In that he, on 02.10.2018 at about 2030 hours, climbed on the top of water supply tank in the campus area of Bn. Hqrs, 53 Bn SSB Simlabari-Falakata with the intention to commit suicide after uploading suicide note on his facebook account.”*

12. Statement of six witnesses was recorded over a period of three days i.e. 07.10.2018, 11.10.2018 and 12.10.2018. On 13.10.2018, statement of the Petitioner was recorded by the Commandant. Petitioner in his statement, that he had lost consciousness on 02.10.2018 and regained consciousness only on 04.10.2018, when he was woken up by a *Ustad* who informed him that he had been called by the Commandant.

13. The Commandant on 15.10.2018 ordered trial to be conducted by Summary Force Court (SFC).

14. Petitioner in his statement of defense before the SFC stated that he had lost consciousness at the time of the incident. As per the



Petitioner, the medical record of the psychiatric treatment of the Petitioner was not examined and taken on record. Petitioner was held guilty of the charges, and sentence of '*dismissal from service*' was passed.

15. Petitioner made a representation against the order of dismissal and was advised to prefer an appeal, which was filed by the Petitioner. However the appeal was dismissed by the impugned order dated 04.03.2019. Petitioner thereafter filed a mercy petition, which has also been dismissed by order dated 23.08.2019 (also impugned herein).

16. Learned counsel for the Petitioner contended that keeping in view the medical history of the petitioner and the fact that he was suffering from mental illness of depression, Respondents should have made efforts to provide treatment and care to the Petitioner. She submitted that instead of ensuring that Petitioner is rehabilitated and his condition is not worsened, he was sentenced to 89 days imprisonment for consuming poison and absence without leave.

17. Learned Counsel for the Petitioner further contended that the relevant medical record pertaining to mental health condition of the Petitioner viz. OPD cards, psychometric assessment/consultation, prescriptions etc., though in the custody of the Respondent were not been taken on record and taken into consideration during the SFC



Proceedings. Even the treating doctors were never summoned as witness. No psychiatric assessment of any kind was conducted on the Petitioner immediately after the said incident dated 02.10.2018.

18. Learned Counsel relied upon Section 115 of the Mental Healthcare Act, 2017 to contend that the very nature of the charge against the petitioner of allegedly attempting to commit suicide raised a presumption of severe stress and that petitioner cannot be saddled with the charge of attempting to commit suicide unless there was evidence to rebut the presumption that he was not in a fit mental state to even understand his actions.

19. *Per contra*, Learned Counsel for the Respondent contended that a fair opportunity was given to the Petitioner to defend himself and the charges having been proved, he was appropriately sentenced for having attempted to commit suicide.

20. He further submitted that on 28.08.2017, Petitioner consumed liquid poison and based on the proceedings of SFC he was found guilty of both the charges and awarded the sentence of imprisonment in force custody up to 89 days. He further submitted that Petitioner had uploaded a suicide note on his Facebook account on 02.10.2018, and mentioned therein that he was going to commit suicide and during search he was spotted at the overhead water tank in the Battalion Hqrs



campus.

21. As noticed above Petitioner was charged with (i) climbing on the top of water supply tank which was a restricted area to all and (ii) climbing on the top of water supply tank with intention to commit suicide after uploading suicide note on his Facebook account.

22. It is an admitted position that before the subject incident Petitioner had been suffering and diagnosed with bouts of depression. He was undergoing psychiatric treatment and medication. He was also downgraded to Lower Medical Category i.e., SHAPE-3 (S-3 T-23), and was recommended to work under supervision and not to carry any weapons. A few months before the subject incident he had consumed liquid poison and had been sentenced to undergo 89 days of incarceration.

23. Clearly when Petitioner was undergoing psychiatric treatment and medication; placed in low medical category and had consumed liquid poison, the commandant should have been more sympathetic. Instead of finding the root cause of the problem and trying to counsel the petitioner a drastic step was taken by sentencing him to 89 days of incarceration. This instead of resolving the problem would have compounded it further.

24. It is not in dispute that even when Petitioner was serving the



sentence of 89 days he was undergoing psychiatric treatment. The incarceration was till 16.04.2018 and the subject incident is of 02.10.2018 merely six months later.

25. Before the SFC, the Respondents produced six witnesses. (1) CT/GD Dharam Chand Nehra, (2) CT/GD Ratheep R, (3) ASI(GD) Sandeep Kumar, (4) ASI(GD) Partha Sarkar, CT(GD) Manoj Sharma and (6)CT/GD Nishal Pradhan.

26. Prosecution witness No. 1 CT/GD Dharam Chand Nehra deposed that he and the accused had been staying together for last three years. He stated that as far as he could recollect, the Petitioner behaved like a normal person and he had never noted any abnormal behavior on his part. He further deposed that on 02.10.2018, he was detailed for M.I. Room rear guard duty from 2200 to 2400 hrs. He had his dinner by 2020 hrs and tried to relax before proceeding for duty. As usual he took his mobile at 2040 hrs and surfed his facebook account. Among all posts, He saw one post from the Petitioner, wherein he had posted a suicide note which was handwritten on a diary and image of the same was posted on the facebook page. The suicide note was addressed to the Commandant 53 Bn SSB and stated that “*main apni marji se mar raha hoon, isme kisi ka koi role nahi hai. Mahoday main apni mansik sthiti se paresan hoon isliye mar raha hoon*”. He further deposed that he immediately informed the matter to



ASI(GD) Sandeep Kumar, who then asked the unit personnel to search for the Petitioner. He later learnt that the Petitioner had climbed the over head water tank and was brought down by unit personnel.

27. In the cross examination by the Petitioner, he admitted that the Petitioner had discussed with him regarding the problems at his home front. Petitioner had told him that the engagement of Petitioner's sister was called off for which Petitioner was being held responsible by his family members.

28. In the re-examination by the Court, he stated that almost 15 days back, he was continuously crying in his room. He seemed to be more upset on that day and he had reported about the same to BASI. He also took Petitioner to unit M.I. Room where he was admitted. He further deposed that Petitioner used to be a normal person but at times used to remain in pensive mood.

29. The second prosecution witness CT/GD Ratheep R stated that he was performing the duties of electrician/plumber and he used to operate the pump. On 02.10.2018, he got a call from CT/GD Nishal Pradhan as to whether he was climbing on top of over head water tank. He replied in the negative and sensing something wrong rushed to pump house. He further deposed that the BASI of 53Bn alongwith



one other person climbed up the stairs stealthily and ensured the element of surprise and brought down the person who had climbed the over head tank. He recognized the person as the Petitioner.

30. The Third witness examined by the Prosecution was ASI(GD) Sandeep Kumar who deposed that on 02.10.2018 at about 2045 hrs, he received a call from CT/GD Dharam Chand Nehra of QM Branch informing me that Petitioner had just posted a suicide note on his facebook account and he was nowhere to be seen in the residential area. He enquired about the Petitioner but was informed by the sentry of quarter guard duty that he had seen some light on top of the over head water tank.

31. He further deposed that they proceeded towards the pump house where they saw the pump operator also arriving from the residential quarter on his scooty. He confirmed that he had also received a call from the quarter guard sentry regarding some movement on top of the over head tank. He then deposed that he along with CT/GD Manoj Sharma stealthily climbed up the stairs. When we reached the top, they waited for a while and saw the Petitioner sitting on the platform with his back towards the water tank. There was a “Bididi” in his right hand and he was listening to something on his ear phone attached to his mobile. They rushed and immediately pinned him down. He further deposed that he inquired from him about the



suicide note posted on his facebook account and the Petitioner kept on repeating that *Mita* had left him and he could not live without her.

32. He further deposed that after staying there for 3 to 4 minutes, he along with CT/GD Manoj Sharma carefully brought the Petitioner down from the top of the over head tank. He stated that he was directed by the Officiating Commandant to immediately check the belongings of the Petitioner. On the corner of the veranda of the dog kennel, there was a table on which he saw a diary. When he opened it he found a hand written suicide note on the last page of the diary.

33. The fourth witness ASI(GD) Partha Sarkar did not state anything relevant about the incident.

34. The Fifth Witness CT/GD Manoj Sharma also stated what the other witnesses had deposed. He further stated that when they were about 10 feet away from the top they could see the Petitioner sitting on the narrow platform with his back towards the RCC tank. Petitioner had ear phones in his ear and “Biddi” in his right hand and he was trying to light the “Biddi” with lighter. He deposed that on sensing someone was there, Petitioner tried to get up. He was immediately pinned down by BASI who made him sit down. He asked the Petitioner “Tu yahan kya kar raha hai” on which the Petitioner replied that “Mita ne mujhe chhor diya hai”. He was thereafter



pacified by BASI by saying that “Kisi bhi samashya ka samadhan baat chit se hal ho sakta hai”.

35. The sixth witness confirmed the version of CT/GD Ratheep R.

36. From the testimony of the witness of the prosecution it is clear that the Petitioner was disturbed from the fact that his girlfriend had left him. His family was blaming him for the breaking of the marriage of his sister. The testimonies establish that he had left a suicide note and then climbed up to the Water Tank. However, the Testimonies further establish that he was merely sitting on the water tank and listening to a recording on his phone and lighting a “Biddi”. The Testimonies do not establish that he was attempting to jump or take any drastic step.

37. The evidence clearly establishes that he was mentally disturbed. He was suffering and diagnosed with bouts of depression and had been undergoing psychiatric treatment and medication Psychiatric treatment. He had been sentenced to undergo 89 days incarceration for an attempt to commit suicide by consuming poison.

38. In his statement of defense, before the SFC petitioner deposed as under:

“Of late I have been under tremendous stress due to my personal problems both at my home front and with



my Girl friend. In this regard, I had earlier attempted suicide by consuming poison at (Round up) in August-2017 for which I had already been awarded 89 (eighty nine) days RI. My marriage proposal with my girl friend did not materialize as this added to my ordeal. My mother regularly cursed me to have caused misfortune to the family as due to my conduct the marriage proposal of my sister was also refused by the groom's family.

Since, 30thSeptember-2018, I had been constantly listening to previously recorded call recording between me and my girl friend continuously for three days which is saved in my mobile. Meanwhile on 1stOctober-2018, my mother also scolded me on the above issue. On 2nd October-2018 'after doing my routine duty, I continued listening to the call records during free time and also during routine chores. In the evening after attending dog "Flash" and kennel in at about 1830 hrs, I came to my room at about 1900 hrs. Then I went for dinner in ORs Mess. After returning to my room I picked up half empty bottle of 'RUM' and consumed it completely. Then I picked up a packet of "Bididi" and lighter and went to the Dog Kennel. I sat near the Dog "Flash" and talked to him and kept on crying saying that my girl friend is no longer with me. This action brings some relief to my ordeal.

Meanwhile, I felt thirsty and came out the dog kennel but slipped on the steps and hurt my knee. I was drunk and not able to walk freely. Then I went out of dog kennel towards the pump house where drinking water is available. When I drank water, I sat down on the floor as I was not able to stand up. I felt so weak that I don't remember what happened next. I regained my



consciousness only on 4th October-2018 when I was woken up by a ustad by who told me that Commandant had called me.

The period in which I lost my consciousness and may have committed any offence, may please be overlooked keeping in view my commitment towards my family.”

39. In his testimony he had deposed that he had been under tremendous stress due to his personal problems both at his home front and with his girlfriend. He had earlier attempted suicide by consuming poison for which he had already been awarded 89 days Rigorous Imprisonment. His marriage proposal with his girlfriend did not materialize and this added to his ordeal. His mother regularly cursed him to have caused misfortune to the family as due to his conduct the marriage proposal of his sister was also refused by the groom's family. He further deposed that for three days he had been constantly listening to previously recorded call recording between him and his girlfriend which was saved in his mobile. Meanwhile, his mother also scolded him on the above issue.

40. He however denies any knowledge of the subject incident and stated that after dinner in ORs Mess, while returning he picked up half empty bottle of `RUM' and consumed it completely and went to the Dog Kernel. He sat near the Dog "Flash" and talked to him and kept



on crying saying that his girlfriend was no longer with him. This action brought some relief to his ordeal. He further stated that he was drunk and not able to walk freely. Then he went out of dog kennel towards the pump house where drinking water was available. When he drank water, he sat down on the floor and was not able to stand up. He felt so weak that he did not know what happened next. He regained consciousness only on 4th October 2018.

41. In the cross examination conducted of ASI(GD) Sandeep Kumar during the preparation of Record of Evidence, to the question as to what was the Petitioner's condition when he first saw the Petitioner on the top of the overhead tank, Sandeep Kumar replied that he was sitting with his back to the tank with ear phones plugged to his ears and "biddi" in his right hand and he was staring up toward the sky.

42. Further, to the question as to when he was counseling the petitioner was he in conscious condition or not, Sandeep Kumar replied that he could not comment on this.

43. It may be noted that Petitioner, who was suffering from bouts of depression and was undergoing psychiatric treatment and medication, was clearly under a lot of stress. Despite his medical condition he was sentenced to undergo 89 days of rigorous



imprisonment for an attempt to commit suicide.

44. We are conscious of the fact that in exercise of powers under Article 226 of the Constitution of India, the High Court does not sit as an Appellate Court and re appreciate the evidence. However in the present case, we have referred to the evidence to show that it is a case of no evidence and complete miscarriage of justice in as much as the Competent Authority has been totally oblivious of the mental health of the Petitioner and has treated him as an ordinary offender.

45. Reference may be had to Section 115 of the Mental Healthcare Act, 2017 which reads as under:

“115. Presumption of severe stress in case of attempt to commit suicide.—(1) Notwithstanding anything contained in section 309 of the Indian Penal Code (45 of 1860) any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said Code.

(2) The appropriate Government shall have a duty to provide care, treatment and rehabilitation to a person, having severe stress and who attempted to commit suicide, to reduce the risk of recurrence of attempt to commit suicide.”

46. Section 115 of the Mental Healthcare Act raises a statutory presumption that any person who attempts to commit suicide shall be presumed to have severe stress and shall not be tried and punished



under the Indian Penal Code. It further casts a duty upon the appropriate Government to provide care, treatment and rehabilitation to a person, having stress and who attempted to commit suicide to reduce the risk of recurrence of attempt to commit suicide.

47. In the instant case, instead of showing any empathy with the Petitioner, when he first attempted to commit suicide, the commanding officer sentenced him to 89 days Rigorous Imprisonment particularly when he was already undergoing psychiatric treatment.

48. The medical records pertaining to mental health condition of the Petitioner inter alia the OPD cards, psychometric assessment, consultation, prescriptions etc., were not even examined by the SFC or taken on record. Even when the medical condition was brought to the notice of the Appellate Authority, it was also not taken into account. Even the doctors under whom the petitioner was receiving treatment were not examined to evaluate the mental health of the Petitioner and to consider the proportionality of punishment.

49. It has also been established in evidence that Petitioner was admittedly in a state of severe mental distress and despite that no psychological evaluation whatsoever was done of the petitioner immediately after the incident of 02.10.2018. Neither was petitioner's mental state reviewed nor any psychiatric treatment given to the



petitioner immediately after the incident to assess whether he was in a fit condition to face the trial. The witnesses had even deposed that Petitioner was in severe depression and they had tried to counsel.

50. Reference may be had to the decision of the Supreme Court in *Ravinder Kumar Dhariwal v. Union of India*, (2023) 2 SCC 209 wherein the Supreme Court has held that “*The duty of providing reasonable accommodation to persons with disabilities is sacrosanct. All possible alternatives must be considered before ordering dismissal from service.*”

51. The Supreme Court in *Ravinder Kumar Dhariwal (supra)* further held that “*an issue that remains contentious is the examination of misconduct charges against persons with mental health disorders. There are two strands of argument. One argument is that mental disability often manifests as atypical behaviour that may fall within the ambit of misconduct. If such conduct is causally connected to the disability, then dismissal on grounds of misconduct is discrimination based on disability.*”The Supreme Court referred to the minority opinion in *Stewart [Stewart v. Elk Valley Coal Corpn., 2017 SCC OnLine Can SC 72 : (2017) 1 SCR 591]*, wherein it was observed that *making a distinction between the disability and the disability-related conduct is akin to making a distinction between a protected ground and conduct that is intertwined with the protected ground. On the*



other hand, it was argued that while mental health disorders may diminish the control a person has over their actions, it does not necessitate that the persons have completely lost their ability to comply with acceptable standards of workplace conduct.

52. It is common knowledge that members of the forces work under tremendous stress and strain attached to their duties. If the stress is compounded by external factors from the home front there are possibilities of members of the force taking extreme steps.

53. In the case of the Petitioner, he was also under medical treatment and was placed in low medical category. He attempted suicide and was sentenced to Rigorous Imprisonment for 89 days. Then he was having trouble at his home front. His colleagues were also counseling him. The Commandant instead of taking into account his mental condition and an empathetic view of the fact that he had attempted to take a drastic step of taking his own life, awarded him the harshest of punishment *“be Dismissed from service”*.

54. We find merit in the submission of learned counsel for the Petitioner that Respondents were treating mental illness, like depression, as a *‘bad conduct’* and Petitioner was being called a *‘habitual offender’* as if he had a choice of mental illness or deliberately self-inflicted depression upon himself.



55. Record also does not reflect that Petitioner was violent or aggressive or a threat to others. He was highly depressed and had only attempted to cause harm to himself. Petitioner along with his appeal the Discharge Card of the Department of Psychiatry which recorded that *“after admission, Risk assessment and safety plan was applied. Risk of harm to self was high at the time of admission, so high risk management was done. Patient was started on Tab During Yoga, OT, activity scheduling was done. During the hospital stay, risk of harm to self became low, there was improvement in low mood, anhedonia, sleep, appetite had improved engaging ADLs adequately”*. The Final Psychiatric Diagnosis & ICD Code was reported as *“Single episode depressive disorder, moderate without psychotic symptoms”*.

56. The Appellate authority has also erred in not appreciating the mental medical condition of the Petitioner before, during and after the incident. We are also of the view that the punishment of dismissal from service is also highly disproportionate to his alleged conduct.

57. Normally, while holding the punishment disproportionate, this court would have remitted the matter to the authority to pass an appropriate order of punishment, however in the present case, we are not following the said course as we are of the view that petitioner has been out of service for over five years and has already suffered



enough.

58. In view of the above discussion, the impugned order dated 17.10.2018 dismissing the Petitioner from service and the orders dated 04.03.2019 and 23.08.2019 upholding the punishment and dismissing the appeal are set aside. Petitioner is directed to be reinstated in service forthwith with all consequential benefits.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

FEBRUARY 28, 2024

HJ