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

% *Date of decision: 08.10.2024*

+ W.P.(C) 4703/2015

SATISH KUMAR Petitioner

Through: Mr. Himanshu Bajaj, Adv.

Versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Ripu Daman Bhardwaj,
CGSC with Kushagra Kumar,
Abhinav Bhardwaj, Advs and
Shri V.K. Toppo AC and SI
Atul Sen, CISF.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T


SHALINDER KAUR, J (ORAL)

1. By way of the present petition under Article 226 of the Constitution of India, the petitioner, who was serving as a Sub-Inspector (SI) with the Central Industrial Security Force (CISF) till his dismissal from service, has approached this Court seeking the following reliefs:

"i. Quash the dismissal order of the Petitioner dated 24.11.2010 No. V-15014/ CISF/GBS/Disc/Maj (Satish Kumar) / 2010-879 dated 24.11.2010 by commandant CISF;

ii. Direct the Respondent to reinstate the Petitioner and restore all benefits that would have accrued to him in the absence of the impugned order of dismissal;

iii. To award cost of proceedings and punitive damages against the Respondent for harassing the Petitioner illegally and maliciously."



2. The brief factual matrix of the petitioner's case, as emerging from the record, is that petitioner joined the CISF on 19.09.1999 and thereafter served in the Force without any blemish on his career. The controversy in the present petition emanates from the incident in September, 2006, when the Ex-Assistant Commandant (AC) C.L. Ganjir had allegedly, with malafide intention, sent the husband of lady Constable Sarita Das (SD), Constable P.C. Das on a temporary duty to Gauhati and on the intervening night of 22/23.09.2006, the Ex-AC had allegedly trespassed the quarters of lady Constable SD and attempted to commit sexual assault/rape on her, in absence of her husband. The petitioner claimed that upon hearing a cry for help, the other CISF personnel including him, SI Exe D.K. Gautam and SI/Fire R.K. Dev and civilians nearby reached the spot. Thereon, the police arrived and recorded the statements of Ex-AC and SD's neighbor Kalita. At 4 AM, the police took the Ex-AC into the custody. Though he was not immediately medically examined, the lady Constable SD was medically examined and the results confirmed that there was an attempt to rape and an FIR was accordingly registered in this regard.

3. Incidental to this, the petitioner, on the orders of the then Inspector General/APS Mr. M.S. Balli, took over the charge of Coy. Commandant, being the senior most SI in the Unit. On 24.09.2006, the Ex-AC C.L. Ganjir was suspended and as a counterblast, he got himself medically examined on the next date and lodged a complaint, which was registered as G.R. Case No. 1127/2006 under Sections 342, 323 and 34 of the Indian Penal Code, 1860 (IPC), against lady



Constable SD, Mr. Chanakya Kalita and the petitioner. Aggrieved by the injustice and the undue pressure from the Ex-AC as well as Deputy Inspector General (DIG) S.L. Parsad to hush up the matter, she wrote a letter to the Director General (DG), CISF, who upon receipt thereof, ordered for inquiry proceedings against the Ex-AC CL Ganjir, wherein the SI/Fire R.K. Dev and lady Constable SD were prosecution witnesses amongst others. The inquiry proceedings concluded that a *prima facie* case of attempt to molest the lady constable partially exists against the Ex-AC and accordingly, he was awarded the punishment of compulsory retirement.


4. Upon the respondents issuing a written communication dated 18.05.2009, it was directed that suitable action against the petitioner and other staff members, for hatching a conspiracy against their Unit Commandant i.e. the Ex-AC C.L. Ganjir, be initiated. Thereupon, the respondents issued a charge sheet to Lady Constable SD, R.K. Dev and the petitioner in this regard and inquiry proceedings against them were then conducted, wherein, all of them were held guilty and were awarded penalty of dismissal from service except SI/Fire R.K. Dev, who was brought on minimum salary of his initial appointment by deducting 9 increments. The petitioner was dismissed from service vide order dated 24.11.2010,

5. The petitioner being unsettled by this, preferred an appeal to the DIG/GBS, CISF on 07.01.2011 as well as a revision petition to the IG/APS, CISF on 21.06.2011, both of which came to be rejected on 30.04.2011 and 29.05.2012, respectively. A mercy petition was also



moved by the petitioner to the DG, CISF on 04.02.2013, however, it also met the same fate as the previous appeals and was rejected on 09.04.2013. Lady Constable SD, aggrieved by her dismissal, preferred a writ petition being W.P.(C) No. 6403/2011 before the Gauhati High Court and vide its order dated 03.04.2014, she was reinstated in service with all consequential benefits. Further, in the complaint lodged by the C.L. Ganjir against the petitioner, lady Constable SD and another, an FIR for the offences punishable under Sections 342, 323 and 34 of IPC for wrongful confinement and voluntarily causing hurt, was registered in the Police Station North Lakhimpur. After a trial was held with respect to the aforementioned charges, all of them were acquitted by the learned Judicial Magistrate First Class, Lakhimpur, North, Assam (Trial Court) vide order dated 22.05.2014 passed in G.R. Case No. 1127/2006. Dissatisfied of the predicament that the petitioner still remains dismissed from service, he has approached this Court through the present petition.

6. Mr. Himanshu Bajaj, learned counsel for the petitioner submits that the impugned order of dismissal as also the orders rejecting the petitioner's appeal, revision and mercy petition are liable to be set aside as he has been penalised only for coming to the aid of a lady Constable SD who had made serious allegations of sexual harassment against the AC C.L Ganjir. Taking into account the influential position which AC C.L Ganjir was commanding in the Unit, the respondents not only dismissed the lady Constable SD from service but also simultaneously dismissed the petitioner from service. He submits that



the petitioner was charged of having conspired with the lady Constable SD in falsely implicating AC C.L. Ganjir in a case of sexual harassment and of having manhandled him in the Unit at her behest due to the complaint made by her; both these charges, he contends were absolutely false.

7. He submits that even though the aforesaid lady Constable SD already stands reinstated in service pursuant to an order passed by the Gauhati High Court on 03.04.2014 in W.P.(C) 6403/2011, the petitioner is still without any source of income on account of the impugned dismissal order. He contends that after it was found that there was merit in the allegations leveled by the lady Constable SD against the AC C.L Ganjir, he has been compulsorily retired from service, however, no action has been taken to reinstate the petitioner. He, therefore, prays that the petition be allowed and the respondents be directed to reinstate the petitioner with all consequential benefits.

8. On the other hand, Mr. Ripu Daman Bhardwaj, learned counsel for the respondents supports the impugned order and submits that even if on account of the order passed by the Gauhati High Court, the first charge against the petitioner of having conspired with the lady Constable SD were to be treated as unmerited, the fact he had manhandled AC C.L Ganjir cannot be overlooked. He submits that this charge against the petitioner was proved by independent witnesses who had deposed in the departmental inquiry held against the petitioner. In support of his plea, he draws our attention to the




statements of PW-9, Shri Chanakya Kalita, the next-door neighbour of the lady Constable SD and of PW-11, Constable Subhash Chandra.

9. Having heard the submissions of the parties and perused the record, we are conscious that the Courts should generally not re-appreciate the evidence led in a departmental inquiry, however, in the peculiar facts of the present case, when it emerges that the main charge against the petitioner was of manhandling his Unit Commandant AC C.L. Ganjir who himself suffered penalty of dismissal from service and was eventually compulsorily retired for attempt of sexual harassment with Lady Constable SD.

10. The petitioner could not have been penalized for coming to the aid of a Lady Constable SD at the hands of a superior officer, namely, AC C.L. Ganjir. Further, we find that the Lady Constable SD was like the petitioner, dismissed from service on account of false complaint/representation made by AC C.L. Ganjir and has thereafter been reinstated way back in 2014, under the order of Gauhati High Court, wherein, it was found that her plea that she was sexually harassed by AC C.L. Ganjir was correct.

11. It is further relevant to note that the Gauhati High Court vide order dated 03.04.2014 passed in W.P.(C) 6403/2011, after considering the entire record with respect to departmental proceedings conducted against the Lady Constable and the findings of the Sexual Harassment Committee, quashed the order of dismissal dated 29.10.2010 as affirmed by the appellate authority as well as revisional authority against the lady Constable SD. The order also directed the




department to reinstate her in the service with all consequential benefits, including payment of full arrears of salary with increments, if any. The Court further imposed cost of Rs.50,000/- on the department to be paid to her.

12. Even though, the respondents have not produced the copies of the statements of the witnesses examined in the departmental inquiry against the petitioner, we find that the gist of all the prosecution witnesses is mentioned in the inquiry report dated 24.11.2010 itself. We have perused the same and find that apart from AC C.L. Ganjir examined as PW1, it is only the PW-9 and PW-11 who are stated to have deposed for the purpose of charges leveled against the petitioner.

13. It would be relevant to note the statements of PW-9 and PW-11, which are as under:


“PW-9: It is evident from the statement of Shri Chanakya Kalita (Metrology Dept.) Gauhati Airport (Assam) that he stayed in the side quarter of lady Const. Sarita Das. During the night of 22/23.09.2006 at 0100 hrs lady Const informed him that A.C. Shri C.L. Ganjir had forcibly entered her house. Thereupon the witness went to the room of lady Const. Sarita Das and saw that A.C. C.L. Ganjir in uniform was sitting in the outer room on the boxed bed and S.I. Satish Kumar was standing and speaking something. When the witness asked A.C. Ganjir as to why he had come there at 0100 hr in the night, the Assistant Commandant told him that at about 22 30 hr, lady Const. Sarita Das had asked him over phone to come to see her ailing child. Thereupon the witness asked him as to why had come so late, their Assistant Commandant told him that it was his checking and at the same time he had planned to visit the quarter of lady Const. Sarita Das. On this vision of Assistant Commandant Ganjir, witness became angry and her brought skipping rope from his house. Witness asked S.I. Satish Kumar to catch told



the hands of A.C. C.L. Ganjir. On seeing the accused reluctant, the witness asked accused loudly to catch hold the hands of Ganjir Saheb. Thereupon, the accused asked Assistant Commandant to surrender and both of them together tied the hands of Assistant Commandant C.L. Ganjir and went outside to inform about the incident. When he returned, a large number of persons from CISF and Airport Authority had gathered there. The witness had further clarified that on the day of incident, he reached the place of occurrence after the accused. The witness also clarified that two there days after the incident. Assistant Commandant Ganjir showed him the injury marks in his hand.

PW-11: It is evident from the statement of Force No.004510064 Const. Subhash Chandra 161, Airport that he was posted on quarter guard duty on 22/9/2006 from 7:00 AM to 23/9/2006 till 7:00 AM. He went to the residence of lady Const. Sarita Das alongwith other force members and when he wanted to know the reasons for crying outside the quarter of lady Const. Sarita Das, he was told to go inside and see. Seeing inside he learnt that Assistant Commandant Ganjir was sitting on a bed made of box, and the employees of CISF and Airport were also present. Thereafter, since he was in uniform, company commander put him on duty alongwith Constable A.V. Sawant outside the house of lady Const. Sarita Das. The witness further clarified that when he reached at the place of occurrence, the hands of Assistant Commandant were tied, which were untied by S.I. D.K. Gautam. Assistant Commandant told him that his hands were tied by the accused and Shri Kalita. The witness has also admitted that his mobile and Sim No.9954395436 was with lady-lady Const. Sarita Das during the incident, which he had given to Const. P.C. Das before proceeding on leave.”

14. From a bare perusal of the aforesaid relevant extracts, we find that these witnesses do not claim to have witnessed any misdemeanor on part of the petitioner. Even though, the petitioner was present in the



house of Lady Constable SD, he did not attempt to manhandle the AC C.L. Ganjir. In fact, what emerges from the statement of PW-9 is that though PW9 was insisting upon the petitioner that the AC be tied with a skipping rope, the petitioner was reluctant to do so. Only when the PW9 exhorted the petitioner, thereupon, the petitioner asked the AC Ganjir to surrender, then the PW9 and the petitioner had tied his hands. They both, thereafter, reported the incident to the others. From the testimony of PW11, there is nothing stated therein to show anything incriminating about the petitioner. We, therefore, find that in the departmental inquiry, except for the self-serving statement of AC C.L Ganjir, who stands compulsorily retired, there was absolutely no evidence to show that the petitioner had manhandled him. Moreover, the petitioner, including others, in the complaint filed by the Ex-AC C.L. Ganjir had been acquitted for the offences under Section 342, 323 and 34 of IPC, by the learned Trial Court vide the order dated 22.05.2014.

15. At this stage, we may also note decision of Gauhati High Court in W.P.(C) 6403/2011, the relevant extracts of which read as under:

“38. Thus, it was a clear case of sexual harassment. But having found so, the Complaint Committee took up cudgels on behalf of the perpetrator of sexual harassment by recording a finding that four CISF personnel, namely, Satish Kumar, D.K. Gautam, R.K. Dev and Hemlata Gautam had hatched a conspiracy against the Assistant Commandant and that the petitioner also became a party to the conspiracy and allowed herself to be used as a bait probably because she was fed up of the unwarranted remarks of the Assistant Commandant. In spite of that, because of the glaring facts which were staring at the face, the Complaint Committee, it appears, had no other option, but to record a finding that a prima facie case of an attempt to molest the petitioner partially exists against Sri C.L. Ganjir, the Assistant Commandant.

46. It is a settled law that to sustain a disciplinary proceeding the charges framed against the employee must be clear, specific and unambiguous. The charges cannot be changed in the course of the proceeding to suit the interest of the employer.


47. In the light of the above discussion, this court is of the considered view that the charges framed against the petitioner cannot be sustained in the face of the findings recorded by the Complaint Committee accepting sexual harassment of the petitioner by her superior Assistant Commandant. Consequently, the disciplinary proceeding drawn up against the petitioner leading to imposition of penalty on her based on the charges framed cannot also be sustained. Since this court has held that the charges are wholly untenable and, therefore, the departmental proceeding against the petitioner has to necessarily fail, it is considered not necessary to delve into the other grounds raised by the learned counsel for the petitioner.

48. Petitioner was a victim of sexual harassment. From the long inquiry report and the manner in which the departmental proceeding against the petitioner was conducted unmistakably points out to an attempt to undo the report of the Complaint Committee which itself left much to be desired. It appears that the Complaint Committee as well as the Inquiry Officer had embarked upon a search mission to find out contradictions and loopholes in the case of the petitioner, as if with a magnifying glass, so as to portray the sexual offender himself as a victim of conspiracy. Here was a lowly ranked lady constable who had the courage to lodge a complaint of sexual harassment against her superior officer, an Assistant Commandant, before the highest authority of CISF, i.e., the Director General. In a tradition bound conservative society such as ours, ordinarily, a woman or a girl would not make a false complaint against her superior officer about having raped her or making an attempt to rape her, that too, before the Director General, knowing fully well that her honour, dignity and job were at stake. The court cannot overlook this aspect. In *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384, the Apex Court questioned—

“Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion?”

and then held as under:

“it must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of



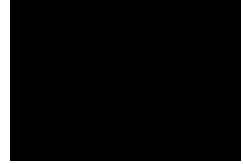
another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice.”

It is a clear case of victimization of the victim against which the Hon'ble Supreme Court had cautioned in Vishaka and Medha Kotwal Lele. The higher authorities of CISF i.e., the appellate authority and the revisional authority failed to rise to the occasion and, thus wittingly or unwittingly became a party to the victimization of the petitioner who was a victim of sexual harassment at the hands of her Supervisory Officer.

49. There is no doubt in the mind of the court that grave injustice has been done to the petitioner and the situation needs to be remedied. Thus petitioner needs to be rehabilitated which may restore her dignity and honour to a certain extent.”

16. What, thus, emerges from the aforesaid decision is that the Gauhati High Court has held that the charges against Lady Constable SD are wholly untenable on the basis of the findings recorded by the complaint committee, accepting her allegations of sexual harassment by her superior i.e. AC C.L. Ganjir. Once it is found that the representation made by AC C.L. Ganjir alleging his false involvement in a case of attempt to outrage the modesty of the Lady Constable SD was absolutely false as it was she who was being sexually harassed by him, there is merit in petitioner's plea that only because he stood by the side of the said Lady Constable, AC C.L. Ganjir had sought to falsely implicate him as well.

17. We are, therefore, of the view that the petitioner's prayer for setting aside of the impugned order dated 24.11.2010 deserves to be accepted, directing his reinstatement with all consequential benefits. That being said, the question that still survives for our consideration is regarding the quantum of back wages to be paid to the petitioner. The



petitioner has urged that following the directions of Gauhati High Court that upon reinstatement, the Lady Constable has been awarded 100% back wages, likewise, the petitioner is also entitled for 100% back wages upon his reinstatement into the service. The said plea is vehemently opposed on behalf of the respondents. However, taking into account that petitioner has not rendered any service for the past many years, interest of justice will be met with by directing that the petitioner be reinstated in service with all consequential benefits including notional seniority and promotion, if any, at par with his batchmates and the back wages, will, however, be restricted to 75%.

18. In the light of the aforesaid, the writ petition is allowed by directing that the petitioner be reinstated in service with all consequential benefits and retrospective seniority as well as promotion, if any, at par with his batchmates, along with 75% back wages. This exercise shall be completed within a period of six weeks.

19. The writ petition is disposed of in the aforesaid terms.

(SHALINDER KAUR)
JUDGE

(REKHA PALLI)
JUDGE

OCTOBER 08, 2024
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