
(2014) 07 MAD CK 0048
In the Madras High Court
Case No : Writ Petition No. 26794 of 2010

B.M. Sanjeeva

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 03-07-2014

Acts Referred:

Central Industrial Security Force Act, 1968 — Section 22
Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal)
Act, 2013 — Section 19(1), 28

Citation : (2014) LabIC 3518

Hon'ble Judges : N. Paul Vasantha Kumar, J; Meenakshi Sundaram
Sathyanarayanan, J

Bench : Division Bench

Judgement

N. Paul Vasanthakumar, J.—This writ petition is filed to quash the order of dismissal of the petitioner from the post of Constable/GD by order of the 5th respondent dated 3.12.2009 imposing punishment of reduction of salary to lower stage, which was enhanced by the 4th respondent by order dated 27.1.2010, which was confirmed by the 3rd and 2nd respondents by their orders dated 26.4.2010 and 28.9.2010 respectively.

2. As the issue involved in this writ petition involves modesty of a girl child, except the name of the Delinquent/Petitioner herein, all others' names are not mentioned in this order, instead, they are referred by alphabets "A" to "F".

3. The brief facts necessary for disposal of this writ petition are as follows:

(a) Petitioner B.M. Sanjeeva joined as Constable in the service of Central Industrial Security Force (CISF) on 14.5.1999 at Mysore. While he was serving at CISF Unit Nalco Angul under the 5th respondent, a charge memo was issued under Rule 36 of the CISF Rules stating that on 20.6.2009 at about 16.00 hours he teased a minor girl viz., "A", daughter of HC/GD "B" by touching her private parts in the stair-case of quarters No. CCB-28 of HC/GD "C" at CISF Complex, while she was going for tuition with her six years old brother to the quarters of

HC/GD "C".

(b) Petitioner submitted his written statement of defence against the article of charge, to the Disciplinary Authority on 13.7.2009 and denied the allegation. According to the petitioner, he went to the quarters of "C" in search of a Carpenter for his personal work and while going towards stair-case of the quarters, where the carpenter was working on the upstairs, he saw two little children standing in front of the doors of the quarters of "C" and asked them as to why they were standing there and the children replied that they are waiting for opening of the door for attending tuition classes. According to the petitioner, in the upstairs the carpenter was not found. Therefore he got down through the stairs and at that time also he found the two children were standing in front of the door of "C"s quarters. According to the petitioner, the children being very young, he touched the cheeks of both children and he had not misbehaved with them.

(c) The said reply having been found not satisfactory, the Disciplinary Authority appointed an Enquiry Officer as well as the Presenting Officer to present the prosecution case. The Enquiry Officer conducted enquiry by issuing notice on 3.8.2009 to the petitioner and directed him to appear before him on 8.8.2009. On 8.8.2009 the petitioner appeared and during the course of preliminary hearing the petitioner requested the Enquiry Officer to record the enquiry proceedings in English as he is not well-versed in Hindi language. According to the petitioner, the Enquiry Officer did not bother about the request and recorded the enquiry proceedings in Hindi language. Again notices of enquiry were issued to the petitioner directing him to appear on 11.8.2009, 12.8.2009 and 17.8.2009. Petitioner appeared before the Enquiry Officer on 17.8.2009 to record the statement of listed witnesses.

(d) PW-1 "D" (wife of "C") appeared before the Enquiry Officer and deposed in support of the prosecution stating that she is the wife of HC/GD "C" and residing in Quarters No. CCB-54 of CISF Colony, Nalco Angul; that her daughter "A" was 11 years old and son "E" was 6 years old and they were used to take tuition from the daughter of "C"; that on 20.6.2009 at about 16.00 hrs, she dropped her children near the quarters of "F"; that after taking tuition, children came back and her daughter neither took meal nor did home work; that on asking she told that she was feeling vomiting and fever; that on 21.6.2009 she did her home work and sat down in sofa quietly; and that, on further query, she started weeping and disclosed that Sanjeeva, petitioner herein, misbehaved with her on 20.6.2009 in the stair-case leading to the quarters of "C" while she was waiting at the doors of the house with her brother by caught holding and pressing her breast, pinching on her cheeks and his brother. PW-1 further deposed that after knowing about the said incident, she and her husband went to the quarters of the petitioner to ascertain the misbehaviour and petitioner denied the incident.

(e) According to the petitioner, PW-1, who is mother of the victim girl was not present in the scene of occurrence and not produced any documentary evidence

in support of her statements.

(f) Daughter of "C" was examined as PW-2, who also deposed in support of the Article of charge. Similarly PWs. 3 to 8 were examined and after completion of examination of the prosecution witnesses and after hearing the defence of the petitioner, the Enquiry Officer submitted his report and held that the charge levelled against the petitioner stands proved. The Disciplinary Authority accepted the findings of the Enquiry Officer's report and directed the petitioner to submit his explanation with regard to the findings given by the Enquiry Officer. Petitioner gave his remarks.

(g) The Disciplinary Authority, after considering the findings as well as the remarks, imposed the punishment of reduction to minimum stage of pay from Rs. 8210/-+ Rs. 2,400/- to Rs. 7620/-+ Rs. 2400/- in pay band of PB-1 of Rs. 5200-20200/- for a period of five years with immediate effect with further direction that the petitioner will not earn increments of pay during the period of reduction of pay and that on expiry of this period the reduction will have the effect of postponing his future increments of pay, and the period of suspension from 22.6.2009 to 2.12.2009 be treated as non-duty period for all purposes and he will not be paid any more pay and allowance, except subsistence allowance which has already been paid during the suspension period.

(h) Aggrieved by the said punishment, petitioner preferred appeal before the Appellate Authority under Rule 46 of the Central Industrial Security Force Rules, 2001 (CISF Rules). The Appellate Authority having found that the punishment imposed is disproportionate to the gravity of charge, issued show cause notice to the petitioner on 6.1.2010 stating that the act of misconduct is very serious and proposed the punishment of dismissal from service and called upon the petitioner to show cause as to why the punishment cannot be enhanced. Petitioner submitted his reply on 16.1.2010 and after considering the same, the proposal to dismiss the petitioner from service was confirmed.

(i) Against the said order of the Appellate Authority, petitioner filed revision before the Director General of CISF, which was rejected on 28.9.2010. Hence the petitioner challenged the said orders in this writ petition with a prayer to set aside the said orders and order reinstatement with all monetary and consequential benefits.

4. The said prayer was opposed by the respondents by filing counter affidavit contending that based on the charge framed enquiry was conducted; PWs-1 to 8 deposed against the petitioner and all the witnesses narrated the fact about the incident that the petitioner went to the staircase of quarters No. CCB-28 of HC/GD "C" on 20.6.2009; and as there was an incident of misbehaving with the girl child, the Enquiry Officer submitted his findings. The Disciplinary Authority after considering the defence statement and Enquiry Officer's report, imposed the punishment of reduction of pay to minimum stage i.e., from Rs. 8210/-+ Rs. 2,400/- to Rs. 7620/-+ Rs. 2400/- in pay band of PB-1 of Rs. 5200-20200/- for a

period of five years with immediate effect and in the appeal filed by the petitioner, the Appellate Authority having noticed the seriousness of the charge and the lenient punishment imposed, the same was found disproportionate and issued a show cause notice for enhancement of punishment and after considering the objection/reply of the petitioner, imposed the punishment of dismissal which was also affirmed by the Revisional Authority, and there is no illegality in the order of punishment as the charge levelled against the petitioner is serious, particularly outraging the modesty of the girl child.

5. Mr. Mohammed Ibrahim Ali, learned counsel appearing on behalf of Mr. A.S. Mujibur Rahman, learned counsel for the petitioner argued that since the allegation of sexual harassment is made, the Disciplinary Authority has no jurisdiction to enquire into the matter and the said allegation should have been ordered to be enquired by the Complaints Committee. On merits the learned counsel submitted that the petitioner has not misbehaved with the girl and due to the fondness, he put his hand on the chin of the children, without any intention. The learned counsel also submitted that even though the said incident alleged to have happened on 20.6.2009 at 16.00 hours, the complaint was given before the Officer only on 21.6.2009 at about 12.30 hours. Thus, there is a delay, which creates serious doubt about the alleged incident. The learned counsel further submitted that even assuming that the charge alleged is treated to be proved, the punishment imposed by the Disciplinary Authority will serve the purpose, and the enhancement of punishment ordered by the Appellate Authority confirmed by the Revisional Authority requires interference by applying the principle of proportionality of punishment.

6. Mr. D.S. Ravikumar, learned Central Government Standing Counsel appearing for the respondents justified the punishment considering the gravity of the charge and submitted that the petitioner being a service personnel of the disciplined force, ought not to have indulged in such activity and therefore the punishment imposed is just and proper. The learned counsel further submitted that unlike criminal case, the delay in lodging the complaint will not vitiate the proceedings initiated and the girl aged 11 years as well as her mother may not be in a position to utter falsehood, which also affects the reputation of the girl child and her family. The learned counsel further submitted that the brother of the victim girl aged 5 years has clearly deposed about the incident, which is more trust worthy than any other witness, who was present at the place of incident even according to the petitioner and ultimately prayed for dismissal of the writ petition.

7. We have considered the rival submissions of the learned counsel for the petitioner as well as the learned Central Government Standing Counsel for the respondents.

8. The charge levelled against the petitioner reads as follows:

ARTICLE-I

An act of gross misconduct, indiscipline and an unbecoming act on the part of No. 974500887 Constable B.M. Sanjeeva of CISF Unit Nalco Angul in that on 20.6.2009 at about 1600 hrs he teased a minor girl namely "A", Daughter of HC/GD "B" by touching her private parts at the stair-case of Qtr. No. CCB-28 of HC/GD "C" at CISF Complex, while she was going for tuition with her 06 years old brother to the qtr of HC/GD "C". The above act on the part of No. 974500887 Constable B.M. Sanjeeva of CISF Unit Nalco Angul amounts to gross misconduct and indiscipline and an unbecoming act being a member of Armed Force of the Union. Hence the charge. The complaint for the said incident, which had happened on 20.6.2009 at 16.00 hours, even though was lodged before the Department on the next day, the same cannot be treated as delay as the victim girl was put to mental trauma and she narrated the incident to her parents and the parents should have thought over the matter as the reputation of the girl child and their family is also involved. Thus, the delay alleged by the petitioner to challenge the action initiated as well as the order passed is unsustainable.

9. Insofar as the proof regarding the incident, PWs-1 to 8 narrated the incident and the mother of the victim girl/PW-1 clearly stated that he and her sister went for tuition to the quarters of "C" at about 16.00 hours on 20.6.2009 and expressed about the misbehaviour done by the petitioner and his testimony could not be discredited by the petitioner in the cross-examination to secure lenient punishment. The deposition of witness viz., PW-4, who was aged 5/6 years, having narrated the incident, who was also subjected to cross-examination, his statements are to be given due importance, as it is the well accepted principle of law that the deposition of child witness will have more evidentiary value even in criminal cases. The action of the petitioner, which was narrated by the witnesses, is a serious delinquency and the petitioner has not established any enmity between the two families to treat the allegation as false complaint. Hence the punishment imposed by the Disciplinary Authority is definitely not in proportionate to the gravity of the proved charge. The Appellate Authority in terms of the powers vested with him under Rule 52 of the CISF Rules, 2001, rightly appreciated the said seriousness in the incident and proposed to enhance the punishment and after issuing show cause notice and considering the explanation/reply of the petitioner, enhanced the punishment to that of dismissal. The Appellate Authority under Rule 52(2) is bound to consider the above mentioned particulars, especially about the adequacy of punishment and if he choose to do so, must give a reasonable opportunity and after considering the explanation of the Delinquent Officer, may enhance the punishment. Thus, there is no procedural violation. The Revisional Authority also considered the revision filed under Rule 54 of CISF Rules, 2001 and confirmed the order of the Appellate Authority.

10. Thus, we are not persuaded to accept the argument of the learned counsel for the petitioner that the punishment imposed against the petitioner is disproportionate. Petitioner being a member of the disciplined force, should maintain higher degree of morality and the action of the petitioner in

misbehaving with the 11 year old girl cannot be treated as flimsy charge for imposing lenient punishment. The Honourable Supreme Court in the decision reported in Deputy Commissioner, KVS and Others Vs. J. Hussain, held that once charge or charges are proved, the Disciplinary Authority/Appellate Authority is entitled to impose punishment and unless the punishment imposed is shocking the conscience of the Court, the Court should not interfere on the ground of misplaced sympathy. Thus, the submission made by the learned counsel for the petitioner as far as proportionality of punishment is liable to be rejected and accordingly rejected.

11. Insofar as the contention that the complaint of sexual harassment having been made by the mother of the victim girl, the matter should have been referred to the Complaints Committee and without referring the complaint to the Committee, conducting departmental enquiry is not proper, cannot be held good as the Complaints Committee constituted are only fact finding committee, which is bound to give its report before the Disciplinary Authority only and it has no power to impose punishment. Similar issue was considered by the Division Bench of this Court of which one of us (NPVJ) was a party, in the decision reported in K. Shameem Rani Vs. Dr. I. Ismail and The Secretary and Correspondent, M.S.S. Wakf Board College, and similar submission made was rejected. It was informed that the SLP filed against the said judgment was dismissed by the Honourable Supreme Court.

12. Further, the petitioner has not raised any such plea before the Enquiry Officer, Disciplinary Authority as well as before the Revisional Authority. The petitioner fully participated in the enquiry and the Enquiry Officer gave his findings in respect of the charge as in the decision cited supra. It is relevant to note at this juncture that in terms of Section 19(1) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act 14 of 2013), which was enacted pursuant to the Judgment of the Hon'ble Supreme Court in Vishaka and others Vs. State of Rajasthan and Others, , the Internal Committee can only recommend to the employer and the employer alone shall take further action. It is also clear from Section 28 that the provisions of the said Act shall be in addition to and not in derogation of the provisions of any other Law for the time being in force. As already stated, the respondents had initiated disciplinary proceedings against the petitioner under Rule 34 of the CISF Rules, 2001 by following the procedures mentioned under Rule 36. The said Rules were framed by the Central Government in exercise of the powers conferred under Section 22 of the CISF Act, 1968 (Act 50 of 1968). Thus, the submission made by the learned counsel for the petitioner is liable to be rejected and accordingly rejected.

13. In fine, none of the ground raised by the petitioner is found acceptance by this Court. There is no illegality in the order passed by the Appellate Authority in enhancing the punishment to dismissal of petitioner from service, confirmed by the Revisional Authority. Consequently, the writ petition is dismissed. No costs.