
(2016) 04 JH CK 0222
In the Jharkhand High Court
Case No : W.P.(S) No. 1801 of 2009

Chetan Lal Ganjir

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 18-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 AIRJharR 378 : (2016) 3 JBCJ 166 : (2016) 3 JCR 317 :
(2016) 3 JLJR 373

Hon'ble Judges : Pramath Patnaik, J.

Bench : Single Bench

Advocate : Mr. Saurabh Sekhar, Advocate, for the Appellant; Mr. Binod Singh, C.G.C, for the Respondent

Final Decision : Disposed Off

Judgement

Pramath Patnaik, J.—In the instant writ application, the petitioner has inter alia prayed for quashing or order dated 31.03.2009 pertaining to award of penalty of compulsory retirement and for reinstatement in services with all consequential benefits.

2. Sans details, the facts as disclosed in the writ application is that the petitioner was initially joined in services in the year 1971 as constable and by virtue of his merit and sincerity, he was promoted to the post of Assistant Commandant in the year 2005. The petitioner while posted as Assistant Commandant as the head of the Unit in Lilabari Airport, North Lakhimpur in the State of Assam, a complaint was lodged by one lady constable, namely, Sarita Das alleging molestation committed by the petitioner upon her. After receipt of said complaint, an explanation was called for from the petitioner, to which, petitioner replied denying the allegation levelled against him. It has been submitted that thereafter, the disciplinary authority decided to initiate departmental proceeding against the petitioner. It has been submitted that the petitioner was asked to appear before the enquiry committee without serving memo of charge but with

demur the petitioner appeared before the enquiry committee, where imputation of charge was read out, to which, the petitioner denied. In the enquiry several witnesses were examined on behalf of prosecution as well as on behalf of defence. Thereafter, the enquiry committee submitted its report, which was served upon the petitioner, to submit his representation, to which the petitioner replied. But, all of a sudden, vide order dated 31.03.2009, the petitioner was imposed with the punishment of compulsory retirement basing on the opinion of the U.P.S.C.

3. Learned counsel for the petitioner has strenuously urged that the findings of the enquiry officer runs contrary to point no. 13 of the enquiry report, therefore, there is no grain of truth on the allegation levelled against the petitioner and the petitioner became the victim of conspiracy being hatched by disgruntled employees. Learned counsel for the petitioner further submitted that it is brought on record that the petitioner has received a call from the complainant at night and out of compassion and magnanimity, the petitioner went to the house of the complainant though at the dead of the night but with a view to see her ailing son. Learned counsel for the petitioner further submitted that medical report also suggests that no act of molestation has been committed upon the petitioner as alleged by complainant, which also finds mention in the enquiry report. Learned counsel for the petitioner further submitted that U.P.S.C has got no jurisdiction to advise for imposing any punishment upon the petitioner but in a highly arbitrary manner, the disciplinary authority has applied its mind with respect to quantum of punishment. Learned counsel for the petitioner further submitted that admittedly no memo of charge was served upon the petitioner, which is against the dictum of the petitioner as held in the case of *Vishaka & Ors v. State of Rajasthan & Ors* as reported in AIR 1997 SC 3011.

4. Learned counsel for the petitioner during course of argument referred to the decision rendered in the case of *Sandeep Khurana v. Delhi Transco. Ltd. & Ors* in W.P. (Civil) No. 7849 of 2006, in which, the Hon'ble Court has dealt in detail with the facts that procedure has to be appropriated and step-by-step followed in the case of departmental proceeding, a memorandum delineating the charges framed along with list of documents are to be provided to the delinquent or else it would be considered that the entire proceeding had never been started. Learned counsel further submitted that petitioner being a central Government employee, it was necessary for the disciplinary authority to send the matter to UPSC to get its recommendation on the issue and also on the quantum of punishment, accordingly such a copy of the opinion given by the UPSC had to be delivered to the petitioner being delinquent in the instant case so that he could have availed appropriate opportunity before punishment order was passed. But the respondents-authorities chose to handover the copy of the opinion supplied by UPSC to the petitioner only with the punishment order, which clearly establishes the fact that there has been violation of principles of natural justice and the said principle has been clearly upheld by Hon'ble Apex Court in the case of *Union of India & Ors v. S.K. Kapoor* in Civil Appeal No. 5341 of 2006. Learned counsel for

the petitioner further submitted that harassment by the petitioner towards lady constable was also confided to the lady SI Hemlata Goutam, but the board could not record her statement due to her long leave and her inability to come for the enquiry. Therefore, in absence of examination of material witness, the allegation of sexual harassment or molestation against petitioner has not been proved to the hilt.

5. Learned counsel for the petitioner further submitted that in the criminal case lodged against the petitioner, the matter was investigated by the police, who submitted its final report and found nothing against the petitioner, which has well communicated by the office of Superintendent of Police to the Deputy Inspector General, C.I.S.F vide letter dated 27.4.2007 (Annexure 4/1). Learned counsel for the petitioner further submitted that though in the enquiry none of the charges levelled against the petitioner has been proved, but finding that charge of sexual harassment was partially proved, major punishment of compulsory retirement was imposed vide order dated 31.03.2009, which is on higher side. Learned counsel for the petitioner further submitted that the respondents-authorities had also proceeded departmentally against the complainant-Sarita Das and memo of charge was also served upon her stating therein that by making a telephone call to the petitioner on the pretext of her son's illness, she made a conspiracy along with other persons and trapped the petitioner and made false allegation of an extremely heinous crime like attempt to rape and finally vide order dated 29.10.2010 she was dismissed from services. Hence, when the very basis of complaint was found to be false, the impugned punishment ought to be quashed and set aside.

6. Per contra, counter affidavit has been filed by the respondents-Union of India controverting the assertions made in the writ application. In the counter affidavit, it has been stated that the petitioner while functioning as Unit Commander of CISF Unit at Lilabari Airport, entered in the residence of lady constable Sarita Das at about 1.00 a.m. in the intervening night of 22/23.09.2006 and tried to molest her while her husband was away on temporary duty to Guwahati. He was confined in her house and was taken in police custody and consequently a criminal case was under Section 354 and 358 of the Indian Penal Code was registered against him and he was placed under suspension. Besides the police case, a complaint was also lodged by said lady constable-Sarita Das before Director General, CISF, which was enquired into, in which, the allegation of sexual harassment was partially proved. It has been submitted that copy of the findings of the complaints committee was served upon the petitioner to enable him to submit his representation. Thereafter, advice of the UPSC was sought for as per the requirement of consultation as laid down under Article 320 (3) (c) of the Constitution of India read with regulation 5(1) of the UPSC (Exemption from Consultation) Regulations, 1958. It has been submitted that after taking into account all aspects of the matter, the UPSC advised that the ends of justice would be met, if penalty of compulsory retirement from services is imposed. After careful consideration of the records of

the enquiry, the advice tendered by the UPSC and the facts and circumstances of the case, the disciplinary authority awarded punishment of compulsory retirement. Therefore, there is absolutely no infirmity in the order passed by the disciplinary authority nor the punishment imposed upon the petitioner appears to be shockingly disproportionate to the gravity of charge so as to prick the conscience of this Court to warrant interference on the quantum of punishment. It has been submitted that even though the complainant has been imposed with the punishment of dismissal from services, the fact remains that the charge of molestation has partially been proved.

7. Having heard learned counsel appearing for the parties at length and on close and objective scrutiny of the documents on record, I am of the considered view that the petitioner has been able to make out a case for interference due to following facts and reasons:

(i). In the case at hand, the petitioner while posted as Assistant Commandant in the State of Assam was implicated in a case of molestation on the basis of which a complaint was made by one lady constable-Sarita Das. Pursuant thereto a criminal case was also instituted under Section 354 and 358 of the Indian Penal Code. Admittedly, in the criminal case, final report was submitted, in which, nothing was found against the petitioner. In the departmental proceeding, a detailed enquiry was done and in the finding it has specially been stated that the Board has no doubt that some disgruntled Sub-Inspectors have hatched a conspiracy against the petitioner, which has been conclusively proved. Besides that the medical report says that no act of molestation was committed to lady constable Sarita Das. In the enquiry report, it has further come to the surface that so far as attempt of molestation by petitioner is concerned, it could not be established. But basing on an solitary ingredient that since he visited the complainant in the midnight without informing anybody in the Unit raises an element of doubt about his intention, punishment of compulsory retirement has been imposed upon the petitioner.

(ii). Even otherwise, the respondents-authorities had also proceeded departmentally against the complainant-Sarita Das and memo of charge was served upon her stating therein that by making a telephonic call to the petitioner on the pretext of her son's illness, she made a conspiracy along with other disgruntled employees and trapped the petitioner and made false allegation of an extremely heinous crime like attempt to rape and the said charge have been proved, hence, the respondents-authorities finally vide order dated 29.10.2010 dismissed her from services. Hence, when the very basis of complaint is found to be false, the impugned punishment has no leg to stand.

(iii). Further, it appears that prior to infliction of punishment, copy of opinion of UPSC has not been served upon the petitioner, which is a statutory requirement but the said copy of the opinion of the Commission has been served upon the petitioner along with the impugned order, therefore there has been violation of non-supply of opinion of UPSC prior to infliction of punishment. Furthermore, the

fact that lady constable has been dismissed from services for the reasons as mentioned in the foregoing paragraph was not on the table of UPSC. In that view of the matter for the ends of justice the matter need re-consideration by the disciplinary authority.

8. In view of the reasons stated in the foregoing paragraphs, the impugned order dated 31.03.2009 pertaining to award of penalty of compulsory retirement is hereby quashed and set aside and the matter is remitted to the disciplinary authority to take a decision afresh in accordance with law and taking into account the observations made by this Court.

9. With the aforesaid observations and directions, the writ petition stands disposed of.