

(2005) 12 DEL CK 0164

In the Delhi High Court

Case No : Writ Petition (C) 23820 of 2005

Ex. Sub. Inspector Csf Kewal Kumar Gogia

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-12-2005

Acts Referred:

Central Industrial Security Force Rules, 2001 — Rule 32, 34, 36, 37, 38
Constitution of India, 1950 — Article 226, 311

Citation : (2006) 126 DLT 595

Hon'ble Judges : Mukul Mudgal, J;H.R. Malhotra, J

Bench : Division Bench

Advocate : O.P. Agarwal, for the Appellant; Barkha Babbar, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—Rule DB. With the consent of the learned counsel for the parties, the writ petition is taken up for final hearing.

2. This writ petition challenges the order dated 22nd November, 2003 dismissing the petitioner from service under Rule 32(i) read with Rule 34 and 39(ii) of Central Industrial Security Force Rules, 2001(hereinafter referred to as `CISF Rules") read with Clause (b) of the second proviso to Clause 2 of Article 311 of the Constitution of India.

3. Rule 39(ii) of the CISF Rules reads as follows:-

39. Special procedure in certain cases._ Notwithstanding anything contained in Rules 36 to 38 (ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or

4. In September, 2003 the petitioner was deployed on SPG duty in Switzerland. During the Prime Minister's visit to Zurich, an incident occasioned where an allegation was made against the petitioner of the molestation of a Swiss lady

employee of the Hotel Baur-Au-Lac at Zurich. Subsequent to his interrogation by his superior officers, the petitioner confessed his guilt in writing. It is also stated that for this disgraceful act of the petitioner, the DIG, SPG had to personally apologize to the Swiss authorities on behalf of the SPG.

5. The impugned order dated 22nd November, 2003 dispensing with the enquiry, has been passed by the Commandant, CISF, 2nd Res. Battalion, Delhi and the following reasons have been indicated in the said order:- And whereas I, the undersigned is fully satisfied that it is not reasonably practicable to hold a regular departmental enquiry under Rule-36 of CISF Rules, 2001 for the reasons that, I) it would be highly prejudicial to the general interest and discipline of the Force, ii) the incident had since taken place at Zurich, Switzerland, Ms. Staehlin the victim of the incident and other witnesses who belong to Switzerland, are not likely to come to India to tender evidence in the regular departmental enquiry iii) it is also apprehended that the said member of the Force would terrorize the witnesses and create unpleasantness besides causing impediments in holding of enquiry iv) it would constitute as an irritant and reminder of the unpleasant event to all those who were on duty and the victim herself v) it would attract world wide media attention; and vi) during the course of preliminary enquiry, SI/ Exe Kewal Kumar Gogia had admitted his guilt in writing and, as such, nothing else is left for further enquiry in the matter.

6. We are satisfied after considering this serious and sensitive nature of the petitioner's duty and the fact that the incident took place on foreign soil that the reasons given are germane to the provisions of Rule 39(ii) of the CISF Rules as extracted hereinabove. It is not possible for a foreign national to travel to India merely for a departmental enquiry. The aforesaid reasons fully satisfy the mandate of Section 39 (ii) of the CISF Rules. The allegation against the petitioner, a SPG personnel shows that the incident complained of is not only highly prejudicial to the general interest and the discipline of the Force but it had the potential of tarnishing the good name of the country. In case an enquiry with international ramifications is held, it would attract widespread media attention is also a relevant ground for dispensation with the enquiry. We are satisfied that those reasons are sufficient to uphold the dispensation of the enquiry. The reasons given for dispensation of enquiry are relevant and rational and no cause for interference in the writ petition under Article 226 of the Constitution of India has been made out.

5. Consequently the writ petition is dismissed and stands disposed of accordingly.