

(2017) 09 DEL CK 0042

In the Delhi High Court

Case No : Civil Writ Petition No. 11182 Of 2015

Jahid Ali

APPELLANT

Vs

Jahid Ali

RESPONDENT

Date of Decision : 27-09-2017

Acts Referred:

Constitution Of India, 1950 — Article 226
Sashastra Seema Bal Rules, 2009 — Rule 46, 172
Sashastra Seema Bal Act, 2007 — Section 43
Sexual Harassment Of Women At Workplace (Prevention, Prohibition And Redressal)
Act, 2013 — Section 2(n)

Citation : (2017) 09 DEL CK 0042

Hon'ble Judges : Sanjiv Khanna, J;Navin Chawla, J

Bench : Division Bench

Advocate : Chandra Shekhar, Saad Anwar, Dev P. Bharwaj

Final Decision : Dismissed

Judgement

Navin Chawla, J

1. By this writ petition under Article 226 of the Constitution of India, the petitioner impugns the order dated 24.12.2014 passed by the Commandant

(Medical), MTC, Sashastra Seema Bal, Shimla dismissing the petitioner from service having found him guilty of an offence under section 43 of

Sashastra Seema Bal Act, 2007. The petitioner further challenges the order dated 08.09.2015 vide which his appeal against the same was dismissed

by Inspector General (Personnel).

2. The petitioner aged about 29 years was appointed as Constable (Nursing Orderly) in Sashastra Seema Bal (hereinafter referred to as SSB) at 14th

Bn SSB Jayanagar on 09.07.2012. Thereafter, he was detailed for 06th Basic Medics Course held at MTC, SSB, Shimla w.e.f 30.06.2014 to

01.01.2015.

3. While undergoing 06th Basic Medics Course at MTC Shimla, petitioner sent Short Message Service (SMS) to Dr. X (name is being withheld) on

18.08.2014 at 1252 hrs. The same is quoted herein below:

â??I most like you. But I have little experience and donâ??t know how to express the feelings. You really fairy @ 12.â??

4. A series of SMS were thereafter exchanged between Dr.X and the petitioner on the same day, which were quoted by her in the complaint dated

21.08.2014 to the Commandant, 25th Bn, and are reproduced herein below:

â??I, Dr.X received some messages from a no. not known to me on 18th August 2014 at 12:52 from the number was +91-9805581971, the

conversation was as under:- Â

Mon, 18-8-14

12:52 PM

Myself 18/8/2014

12:52 PM â??Who are you?â??

(By this time I know that is someone related to MT SSB as he dropped in 2 clue 1 @ 12.2 ali)

Sender 13:17

18/8/2014 â??aliâ??

Me 13:19

18/8/2014 â??What???â??

Me 13:24 â??Kameene phn utha.....!Â Hai kaun tu??

Stop sending such messages!â??

Me 18/8/2014 20:39 â??Tum jo koi bhi ho chup chap mujhe bata do apna naam etc. I wont make it big issue..... agar nahin bataya then,

U WILL SEE.....â??

Sender

22:16

18//14 â??Jahid Ali aap mujhe punishment de dena please! Kisi se kehna nahi class me @ good nightâ??

Hence I came to know by this conversation that it is some person in MTCâ??s

Basic Medic Course under training.

The next day i.e. 19/8/2014 I called the person asked â??ye messages tumne Bheje mujheâ??. he replied â??Ji, Maine Bhejeâ??.

He accepted the fact that he took my phone number from the M.I room and sent those messages.â??

Sir,

If a person can send a superior Lady Officer such immoral messages in presence of so many people at MTC then he can do any immoral act

when in a solitary condition to any lady.

Even after accepting the fact that he sent me messages this person did not apologies for this at.

It was only after scolding him he apologized with no shame at all. I scolded him in presence of Kusum Ji (My peon)

I therefore request you sir, please take strict action against the constable Jahid Ali, 14th Bn, Jaynagarâ??.

5. On basis of the complaint, a Court of Inquiry under Rule 172 of SSB Rules, 2009 was initiated against the petitioner vide order dated 20.08.2014,

passed by Commandant, 25th Bn, SSB, Ghitorni. On the basis of the Court of Inquiry Report, hearing under Rule 46 of SSB Rules, 2009 was held on

charge under Section 43 of the SSB Act, 2007. As the offence committed by the petitioner was considered serious in nature and against a woman at

workplace. A plea of â??Not guiltyâ?? was recorded and case was recommended for preparation of Record of Evidence.

6. The statement of the petitioner recorded in the Record of Evidence is of some relevance and is quoted below:

â??I think and feel that she used to care for me more than others because I was good in studies and she had also enquired about Ed and

who all are going for Namaaz etc. She is cultured, simple and not fashionable. When Dr. did not come to our class on 16th August 2014,

I thought that I might have done something wrong due to which Dr.. did not come to our class. This thought process was in my mind on 16th

& 17th August 2014, but since Monday i.e. 18th Augâ??2014 was a holiday, I was in my hostel room at about 1300 hrs., when I thought

that if I send a SMS to Dr.. she will not feel good â??yaani unko buraa lagega aur mujhe daant degi yaa fatkaar degi aur meri tauheen

par shayad who class main aaenâ??â?? After this about after 10 minutes or so Dr. Mam sent the reply of the SMS â??Who are youâ??

And after this I responded as â??Aliâ? and thereafter a few messages were shared as already narrated, in between a few calls came from

Dr. Mam, which I didnâ??t pick up. This all happened on 18th August 2014 in between 1300 hrs. to 1330 hrs. approximately. There was a

gap and no SMS or phone came or sent by me but then on the evening of 18th August 2014 at about 1930 hrs or 2000 hrs not exactly

known, Dr. Mam called on my phone but I didnâ??t pick it up. Then she sent a SMS â??Agar apna name etc. bata doge, I wonâ??t make

it big issue, otherwise then you will see.â? Then at about 2200 hrs after taking my dinner I sent an SMS â??JAHID ALI AAP MUJHE

PUNISHMENT DE DENA, PLEASE KEHNA NAHI KISI SE CLASS MAINâ? Then no SMS were either received or sent by me. I had taken the

mobile no. of Dr. Mam from M I Room MTC Shimla and saved it on my mobile by mentioned the name as â??VIZASâ? since Vizas was the

company I used to work for, before joining SSB and I never wanted that if I save the correct name of Dr. Mam and if someone sees it, will

not feel correct or will not feel good. My feeling or intention was not bad towards Dr. Mam. I used to feel that she is good, teaches well,

cultured and had no bad intention. I had sent the messages intentionally and had sent them personally.â??

7. On the basis of Record of Evidence, a Summary Force Court was held against the petitioner and vide impugned order dated 24.12.2014, the

petitioner was dismissed from service. His appeal against the said order was also dismissed vide order dated 08.09.2015, impugned before us.

8. The petitioner, during the course of hearing has raised two contentions:

(i) In terms of the Rule 46 of SSB Rules, 2009, the Commanding Officer was under an obligation to consider the previous character of the accused

before awarding the punishment of dismissal to the petitioner. It is submitted that in the Record of Evidence, witness no.1, Sri Laxman Singh, DFO

(M), MTC, Shimla had stated that the general discipline of the petitioner was satisfactory during the course. Even witness no.3, Rajinder Singh, ASI

(GD),MTC, Shimla had stated that there was no indiscipline report against the petitioner barring the present complaint. This, according to the

petitioner, should have persuaded the Commanding Officer to dismiss the charge against the petitioner in view of the Proviso (b) to Rule 46 of the SSB Rules, 2009.

(ii) As the petitioner had immediately accepted the fact of his sending the SMS in question, a lenient view should have been taken and the punishment of dismissal from service is totally disproportionate to the misdemeanour in question.

9. We have considered the submissions of the petitioner, but find no merit in the same.

10. It is to be noted that the petitioner had been detailed for the 6th Basic Medics Course held at MTC, SSB, Shimla. Dr.X was not only a superior officer but was also an instructor at the Training Centre and the petitioner and other officers were taking training from her.

11. Sexual harassment at a work place is considered a violation of women's right to equality, life and liberty. Sexual Harassment of Women at

Workplace (Prevention, Prohibition and Redressal) Act, 2013 has been promulgated to provide protection against sexual harassment of women at

workplace. Section 2(n) of the Act defines "sexual harassment" as under:

"sexual harassment" includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:

(i) Physical contact and advance; or

(ii) A demand or request for sexual favour; or

(iii) Making sexually coloured remark; or

(iv) Showing pornography; or

(v) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature."

12. This Court in the case of U.S. Verma v. National Commission for Women and Ors. 163 (2009) DLT 557 relying upon the judgment given by

United States Court of Appeals in Ellison v Brady (1991) 9th Circuit, 924 F.2d, 872, had held that the standard to be applied in such cases is not of a

"reasonable man" but of a "reasonable woman".

13. The SMS sent by the petitioner certainly had sexual overtones and violated the decency, respect and dignity Dr.X deserved. Dr.X must be dealing

with hundred of officers in performance of her duties as an instructor. She cannot

be left exposed to such harassment by stating that it was an innocent flirtation or mistake.

14. Another important consideration, as noted above, is that Dr.X was the instructor of the petitioner. She therefore held the status of a teacher. The relationship between a teacher and the student is one of parent and a child. Such relationship has to be respected. The petitioner had not only exceeded the boundary but had without compunction sent offending messages seeking relationship and proximity.

15. Furthermore, we are dealing with the armed forces where discipline is of paramount importance and most important attribute required in any officer. Dr.X was a superior officer of the petitioner and deserved all respect. Petitioner's conduct, especially in context of

16. The conduct of the petitioner was therefore clearly prejudicial to good order and the discipline of the force. Even if there were no previous complaints against the petitioner, this incident, in our opinion, was of a nature that rightly could not go unpunished.

17. On the second ground of punishment being disproportionate, it is well settled that the Court while exercising its jurisdiction under Article 226 of the Constitution of India, is not hearing the appeal against the decision of the Disciplinary Authority imposing punishment upon the delinquent employee.

Unless the Court comes to the conclusion that the penalty imposed by the Disciplinary Authority is shockingly disproportionate to the misconduct committed by the delinquent employee, the Court has to be slow in interfering with the order of punishment which is imposed on the delinquent

employee. In *Union of India v. Diler Singh*, (2016) 13 SCC 71, Supreme Court further held that as a member of a discipline force, deviation from the discipline and failure to follow the rules would not normally warrant any leniency.

18. In the present case and as discussed above, we do not find the punishment imposed on the petitioner to be shockingly disproportionate to his misconduct, specially in the light of peculiar position of the petitioner qua Dr.X and the nature of his misconduct.

We, therefore, find no merit in the petition and the same is dismissed with no order as to cost.