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**(2015) 05 JH CK 0065**

**In the Jharkhand High Court**

**Case No : Writ Petition (S) No. 4734 of 2012**

P.K. Chakraborty

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision : 22-05-2015**

**Acts Referred:**

**Citation : (2015) 05 JH CK 0065**

**Hon'ble Judges : Rongon Mukhopadhyay, J**

**Bench : Single Bench**

**Advocate : K.P. Deo, for the Appellant; Rajiv Sinha, A.S.G.I., Advocates for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

Rongon Mukhopadhyay, J.

1. In this application, the petitioner has prayed for quashing the order dated 18.06.2012 issued by respondent No. 3, whereby and whereunder a penalty of compulsory retirement has been inflicted upon the petitioner. It has further been prayed for a direction upon the respondents to desist/refrain from acting in furtherance of or in pursuance to the order dated 18.06.2012.

2. The facts which appear in the writ application are that the petitioner is in the rank of Assistant Commandant in Central Industrial Security Force and the service of the petitioner is governed by the Central Civil Services (Classification, Control and Appeal) Rules, 1965. A complaint was instituted on 28.09.2006 before the Director General, CISF by one lady constable namely Sarita Das of CISF Unit Lilabari Airport, wherein it was alleged that the Unit Commander of CISF Unit Lilabari Airport namely C.L. Ganjir had entered into her quarter in the night intervening 22/23.7.2006 and had tried to outrage her modesty. It was further alleged therein that the attempt made by the Unit Commander was foiled and on cry of alarm raised by the lady constable, persons in the locality gathered and thus the lady constable was saved from clutches of the Unit Commander. The

Unit Commander was suspended on such allegation of sexual harassment and a departmental proceeding was initiated, which culminated in inflicting of punishment of compulsory retirement against C.L. Ganjir. The issue further resurfaced on the complaint made by C.L. Ganjir dated 4.4.2009, in which aspersions were cast that the petitioner was involved in a conspiracy in getting removed C.L. Ganjir by involving him in the alleged misconduct. Taking cognizance of the complaint made by C.L. Ganjir, a preliminary inquiry was held by one S. Nayak DIG/AP(E&NE), CISF, Kolkata, who on conclusion of the same came to a finding that during the relevant period, the petitioner was the center of communication around whom all personnels of ASG Lilabari had regular contact and that the petitioner had made 53 calls to the CISF personnels at Lilabari and had also received 28 calls on reply.

3. Based on the finding of the preliminary inquiry, a Memo dated 15.02.2010 with the articles of charge, statement of imputation of misconduct, list of documents and list of witnesses, were served upon the petitioner. Reply was submitted by the petitioner to the memo of charge denying the allegations made against him. However, one Shri S.K. Mohanka, Commandant, CISF, NALCO was appointed as in Inquiry Officer in terms of office order dated 20.04.2010 and on conclusion of the inquiry, the same was submitted and a copy of the said report was also supplied to the petitioner vide letter No. 379 dated 1.6.2011. A reply was submitted by the petitioner and ultimately an order was passed by the respondent No. 3 dated 18.06.2012, whereby and whereunder the petitioner has been awarded a penalty of compulsory retirement from service in terms of Rule 14 of 1965 Rules.

4. Heard Mr. K.P. Deo, learned counsel for the petitioner and Mr. Rajiv Sinha, learned Assistant Solicitor General of India.

5. Learned counsel for the petitioner has submitted that initially a Complaints Committee was constituted with respect to the allegations of sexual harassment made by lady constable Sarita Das and based on the report of the Complaints Committee, the departmental proceeding was initiated against C.L. Ganjir only. The petitioner never figured as one of the parties to sexual harassment meted out to lady constable Sarita Das and in such circumstances when at the very initial stage, the petitioner has not been named or any aspersions have been cast against the petitioner, the departmental proceeding itself should not have started merely on some bald allegations having been made by C.L. Ganjir and that too after expiry of a considerable length of time. It has further been submitted that the allegations, which have been made against the petitioner of conspiracy, are only on account of telephone calls which the petitioner had made and had received during the period of incident and that itself cannot be a ground to find the petitioner guilty in departmental proceeding and inflicting punishment of compulsory retirement from service. It has also been submitted that the order dated 18.06.2012 is based on surmises and conjectures and there is no iota of evidence to link the petitioner with the angle of conspiracy as alleged by C.L.

Ganjir. Learned counsel for the petitioner further submits that infact the original complainant i.e. lady constable Sarita Das was also proceeded against departmentally and ultimately vide order dated 29.10.2010 passed by the Commandant, CISF, ONGC, Nazira, she was dismissed from service. The appeal and the revision was also dismissed and writ application, which was preferred by lady constable Sarita Das before the Hon''ble Gauhati High Court, was allowed and charges were declared to be wholly untenable and departmental proceeding initiated against her was unsustainable. Learned counsel for the petitioner, therefore, adds that the Hon''ble Gauhati High Court had taken into consideration the charges, which were levelled against lady constable Sarita Das and since the allegations/charges were interlinked and intertwined and as such the impugned order dated 18.06.2012 should be quashed and set aside and the respondents be directed to reinstate the petitioner in service.

6. Mr. Rajiv Sinha, learned Assistant Solicitor General of India, on the other hand, has submitted that learned counsel for the petitioner has delved on the inquiry proceedings, which cannot be looked into/interfered by this Court. It has been submitted that no procedural irregularity or illegality has been pointed out by learned counsel for the petitioner so as to necessitate interference by this Court. It has also been submitted that so far as setting aside the order of dismissal of lady constable Sarita Das by Hon''ble Gauhati High Court is concerned, the same was with respect to alteration of charges in the midst of a departmental proceeding, which led the Hon''ble Gauhati High Court to interfere in departmental proceedings. No such fact exists in the present case and, therefore, the petitioner cannot equate his case with that of lady constable Sarita Das. It has also been submitted that the statement of C.L. Ganjir and the imputation, which have been made by him and subsequent preliminary inquiry conducted do point to the fact that there was a criminal conspiracy on the part of the petitioner and, therefore, this aspect of the matter has been properly appreciated by the disciplinary authority before inflicting the order of punishment. It has also been submitted that conspiracy can be hatched from a distant place and it is not necessary that conspiracy will be effected near the actual place of incident. The charges, which have been levelled against the petitioner, are serious and the acts alleged and proved in departmental proceeding against the petitioner are unbecoming of the position, the petitioner was holding and more so being a member of a disciplined force like CISF.

7. Replying to the contentions put forth by Mr. Rajiv Sinha, learned Assistant Solicitor General of India, Mr. K.P. Deo, learned counsel for the petitioner has submitted that conspiracy cannot be hatched solely without there being other participants to the conspiracy. It has been submitted that although C.L. Ganjir, the petitioner and lady constable Sarita Das was proceeded against departmentally but in none of the circumstances, efforts were made by the respondents to pin point the actual conspirators to bring them to justice. As per the argument of learned counsel for the petitioner, although there was specific allegation against the trap team but they were not proceeded against and only

after 2 and 1/2 years based on a flimsy and frivolous allegation made by C.L. Ganjir, the petitioner was proceeded against departmentally and inflicted the punishment of compulsory retirement.

8. C.L. Ganjir was imposed a punishment of compulsory retirement based on the allegations of sexual harassment made against him by lady constable Sarita Das. On the written complaint having been made, a Complaints Committee under the Chairperson-ship of Mrs. Jayati Ghosh, Commandant, CISF, was constituted, which had submitted its finding on 7.11.2007 to the effect that C.L. Ganjir had fallen into a trap laid out by his subordinate functionaries through a well planned conspiracy. However, the angle of conspiracy as had been detected by the Complaints Committee could not be pursued further and only on the application submitted by C.L. Ganjir dated 14.04.2009, the petitioner was proceeded against departmentally on the suspicion that the petitioner was also involved in conspiracy. This suspicion according to respondents have been substantiated by the fact that at the time of incident, several phone calls were made and received by the petitioner. The inquiry report has mainly dealt with the conversations made on telephone between the petitioner and lady constable Sarita Das and has come to a conclusion with respect to the conspiracy hatched by the petitioner on the assumption that there was no value addition by way of talking over phone. It has also been concluded by the inquiry officer that the petitioner and lady constable Sarita Das were engaged in some other business over the phone. The report of the Complaints Committee has been quoted in the order passed by the Hon"ble Gauhati High Court and for better appreciation of the case, the same is reproduced hereunder:-

"The question, as to why the Lady Constable also became a party to the conspiracy is important. Probably she became fed up due to the unwarranted remarks of the AC at work place and finding no other option she became a party in the well-laid out conspiracy by the SOs (SI/Exe Satish Kumar, SI/Exe DK Goutam, SI/Exe RK Dev and Lady SI/Exe Hemlata Goutam) of the Unit. There is no direct evidences /witnesses with regard to sexual harassment of the Lady Const. Sarita Das at work place by the AC Shri C.L. Ganjir. This fact has only been substantiated by the husband of the Lady Const. PC Das in his statement, apart from the telephone calls made to her by the AC on various occasions which are indicative of some wilful advances/harassment of the Lady Const. Sarita Das by the AC of the Unit Sri CL Ganjir. The added fact was to put the Lady Const. Sarita Das on duty at the places which were not of her choice must have further pushed the Lady Constable to connive with the above 04 SOs and teach the AC a lesson. Since the lady Const. Sarita Das has reported in the Unit only on 01.07.2006 i.e. she had completed only approx two months in the Unit, the SOs tried to make her bait considering her as a disgruntled person/member due to AC's attitude towards her. Therefore, she also became a party to the conspiracy and she was used as a bait by the SOs to fix up the AC of the unit".

9. The peculiarity of the case can be seen from the fact that on the allegation of

sexual harassment made by lady constable Sarita Das, C.L. Ganjir was imposed a punishment of compulsory retirement from service. On the basis of the complaint made by C.L. Ganjir, the petitioner was proceeded against departmentally and having found the petitioner to be a part of conspiracy, he was also inflicted with a punishment of compulsory retirement. Lady constable Sarita Das, whose initiative led to initiation of a departmental proceeding against C.L. Ganjir and the petitioner and their subsequent punishment of compulsory retirement from service was not spared either rather on the charges being proved, she was dismissed from service, which order was, however, set aside by the Hon''ble Gauhati High Court. The report of the Complains Committee has put the blame on the lady constable also along with the subordinate officer to be a party to the conspiracy. If the entire aspect of the case is considered in its totality, it would seem that all the parties had conspired against each other. No doubt the order of dismissal of lady constable Sarita Das was set aside by the Hon''ble Gauhati High Court but the same was on account of the fact that the charges were altered by the Inquiry Officer. Be that as it may, it is indeed surprising to note that although the Complains Committee had specifically named the subordinate officers as being a part of the conspiracy but none of the said officers were proceeded against departmentally. Merely because telephone calls were exchanged between the petitioner and lady constable Sarita Das on inquiry of the incident, which fact has also been noted down by the Inquiry Officer and who has also considered the fact that the child of lady constable Sarita Das was sick and that there was both social and family relationship between both of them, it could not have been assumed that that the petitioner was a conspirator in the incident involving C.L. Ganjir. There cannot be any direct evidence in case of conspiracy and it has to be gathered from the surrounding facts and circumstances. Exchange of telephone calls in the background of relationship, which the petitioner was sharing with lady constable Sarita Das cannot be construed to mean that a conspiracy was being hatched to malign C.L. Ganjir. Moreover, the report of the Complains Committee does not mention the involvement of the petitioner and names some subordinate officers, who are said to have hatched the conspiracy along with the complainant lady constable Sarita Das and mere exchange of telephone calls at the time of incident without there being anything to show prior meeting of minds, the conspiracy theory on the basis of which the departmental proceedings have taken wings seems to be a botched effort on the part of the disciplinary authority. The charge, which was framed against the petitioner was of commission of an act of gross misconduct by taking active part in the conspiracy hatched by CISF Personnel of CISF Unit ASG Lilabari against Shri C.L. Ganjir, the then Assistant Commandant, CISF Unit, Lilabari Unit in the case of alleged sexual harassment. The charge, therefore, itself was related to the conspiracy hatched with the petitioner being one of the conspirators. This charge, as has been indicated above, has not been substantiated in the disciplinary inquiry, which is based on surmises. If the petitioner was indeed a part of the team conspiring against C.L. Ganjir, the same would have reflected in the report of the Complains Committee but neither the name of the petitioner had come to the surface in the

said report, nor the other alleged conspirators were proceeded against. These facts have not been taken into consideration by the author of the order dated 18.06.2012 (Respondent No. 3) while imposing a punishment of compulsory retirement from service.

10. In such circumstances, therefore, the order dated 18.06.2012 cannot be sustained and accordingly the same is hereby quashed and set aside and consequently the respondents are directed to reinstate the petitioner in service along with all consequential benefits, admissible as per law.

11. This writ application is allowed.