

(2016) 01 CAL CK 0069
In the Calcutta High Court
Case No : W.P. No. 26261 (W) of 2015.

Rajesh Kumar Sharma

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Central Industrial Security Force Act, 1968 — Section 8(1)
Constitution of India, 1950 — Article 266, 311

Citation : (2016) LIC 1862

Hon'ble Judges : Sanjib Banerjee, J.

Bench : Single Bench

Advocate : Sujata Mukherjee, Advocate, for the Appellant; Sajal Kanti Bhattacharyya, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Sanjib Banerjee, J. - The petitioner challenges the order of punishment as affirmed in appeal and endorsed in revision and says that even if the charge of misconduct levelled against him is seen to have been established, his removal from service is grossly disproportionate to the misdemeanour complained of.

2. The wife of a colleague in the Central Industrial Security Force living in the adjacent quarters complained against the petitioner that the petitioner grabbed the hand of the concerned lady, invited her to have an illicit relationship with him and pulled her towards him or the bed. The petitioner's defence was that it was the wife of the colleague who made an indecent proposal to him, whereupon the petitioner quickly returned to his quarters and narrated the same to his wife. There is no evidence of the wife having told off the victim or even of the wife going into the neighbouring quarters immediately thereafter. The evidence is that the complainant rushed out of her quarters, where she was alone, after freeing herself from the petitioner and she immediately reported the matter to another neighbour. The wife was not called as a witness by the petitioner before the inquiry officer. It also appears to be the fairly admitted position that the

petitioner sought and was offered some food by the victim. The petitioner gained access to the neighbouring quarters in such circumstances.

3. The petitioner says that since no criminal complaint was lodged in respect of the incident, the matter should not have been taken so seriously. The petitioner says that the conduct complained of could not amount to misconduct attracting any major punishment under Section 8(i) of the Central Industrial Security Force Act, 1968. The petitioner contends that, in any event, the matter did not pertain to the line of duty of the petitioner and, as such, even it is accepted that the petitioner made an inappropriate suggestion to the concerned lady or even touched her hand, such conduct did not warrant the punishment of removal from service.

4. On the findings rendered by the inquiry officer and accepted by the disciplinary authority, the petitioner cannot show that the petitioner had not been afforded reasonable opportunity to present his version or bring his witnesses. Even though it is not required in this extraordinary jurisdiction to reappraise the evidence, it is evident from the statements recorded in course of the inquiry that the case against the petitioner was well made out and sufficiently established. The disciplinary authority looked into the petitioner's arguments countering the inquiry officer's findings and rejected the same. Even the appellate authority, in its short order, considered the evidence before the inquiry officer and found that a credible case had been made out by the victim.

5. On the ground of disproportionate punishment, the petitioner refers to a judgment reported at 2013 11 SCC 187 (Jai Bhagwan v. Commr. of Police). The charge in that case against a wireless operator at a police station was of using rude language to a superior, of not being in uniform at the relevant point of time and of taking unusually long to open the door to let the superior officer in. The punishment of removal from service was found to be grossly disproportionate to the offence that had been committed and the Court reduced the punishment by requiring the petitioner to be demoted in rank. Surely, the facts pertaining to the reported judgment are not relatable to this case. In a disciplined force as the CISF which guards major installations and critical units, which are now targeted for terrorist strikes, the loss of kinship between persons fighting the enemy shoulder to shoulder undermines not only the morale of the force but also reduces the trust factor which is sometimes the key to a spirited defence.

6. Since the charge against the petitioner was established in course of the departmental action and the charge was as gross as molestation by seeking to take advantage of the absence of any other person in the quarters to make an indecent proposal to a colleague's wife, the punishment of removal from service does not shock the conscience of the Court or otherwise appear to be disproportionate to the grievous fault for which the petitioner has been found guilty.

7. W.P. 26261(W) of 2015 is dismissed. There will be no order as to costs.

8. Certified website copies of this order, if applied for, be urgently made available to the parties, subject to compliance with all requisite formalities.