

(2012) 12 DEL CK 0215

In the Delhi High Court

Case No : Writ Petition (C) 7376 of 2012

Sanjay Kumar Sourav

APPELLANT

Vs

Central Industrial Security Force

RESPONDENT

Date of Decision : 05-12-2012

Acts Referred:

Citation : (2012) 12 DEL CK 0215

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : Anil Mittal, for the Appellant; Amrit Pal Singh, Advocate with Asstt. Comdt. Satyendra Kumar Jha, CISF, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Heard learned counsel for the parties. Record of Inquiry conducted against the petitioner has been perused.

2. After serving a charge sheet upon the petitioner on August 23, 2011 and holding an inquiry, vide order dated December 5, 2011 passed by the Disciplinary Authority penalty of removal from service was inflicted upon the petitioner against which appeal filed was rejected vide order dated 17/18 January, 2012. Revision Petition filed stands rejected vide order dated April 26, 2012.

3. No procedural defect in the inquiry proceedings is alleged. Plea taken in the writ petition is that the finding returned that the petitioner passed lewd comments against Ms. Renu (a married lady) is without any evidence. Conceding that the Charge No. 1 i.e. of absenting himself from the Unit Lines without permission on July 30, 2011 stood proved and even otherwise being admitted by the petitioner, it is prayed that the penalty order, the appellate order and the revisional order and the Inquiry Report dated November 18, 2011 be quashed.

4. Though in the writ petition it is prayed that all orders be quashed and matter be dropped, learned counsel for the petitioner states that an appropriate penalty may be levied with respect to Charge No. 1.

5. Two charges were listed against the petitioner as per the Charge Memorandum dated August 23, 2011.

6. The first was of not reporting back to the Unit Lines at 17:00 hrs. on July 30, 2011 after performing duty till 14:00 hrs. at Shivaji Stadium Metro Station. The second charge was of passing lewd comments against a married lady Ms. Renu Devi in the evening of July 30, 2011.

7. At the inquiry three witnesses were examined by the Department. Inspector (Ex.) S.L. Virk as PW-1, Inspector (Ex.) O.P. Chaudhary as PW-2 and ASI Saleem Ahmed as PW-3.

8. Testimony of PW-1 would reveal that he deposed of working as a "A" Coy Commander of the Unit of which the petitioner was a member of and on July 30, 2011 was on night shift duty from 22:00 hrs. to the next day 07:00 hrs. and that at 22:45 hrs. he received information from Delta Control to reach the line and on reaching the line at 23:25 hrs. saw SI N.K. Jain and ASI Saleem Ahmed standing alongwith a few force members who informed that petitioner alongwith his friends Dev Kishore and Kamal Khan, while riding a scooter, had teased and passed comments on a lady near Golak Dham Mandir at which her husband Narender Rana managed to stop his car in front of the scooter and gave a beating to Dev Kishore and Kamal Khan. Petitioner escaped. After making complaint to the police, Narender Rana with few civilians had come to the barracks searching for the petitioner and that the force personnel did not allow them entry inside. Accompanied by Inspector Som Nath he went to P.S. Kapashera and found Dev Kishore at the Police Station in an injured condition and that Dev Kishore and Kamal Khan said that the petitioner had passed lewd comments regarding the lady. His utterances were "chalti hai kya".

9. We have perused the testimony of PW-2 and PW-3 as well who have deposed in sync with PW-1 and have categorically stated that when confronted, the petitioner admitted in the night of July 30, 2011 that it was he who had passed the lewd comment directed at Ms. Renu.

10. Before the Inquiry Officer the petitioner admitted that the lewd comment in question was made but stated that he did not say so, but did not say who said so. It is obvious that the petitioner meant that it was one of his two friends who were on the scooter with him.

11. Now, as a member of a disciplined force, after completing his duty at the Metro Station at 14:00 hrs. the petitioner was expected to report back and not move around in his dress. The petitioner does not claim that he reported back to the Unit and changed his dress and wore civilian clothes and left again. It is not his case that he went to duty in civilian clothes. He admits not being in the Unit Lines when parade and roll call was conducted at 05:00 p.m. The petitioner admits that one out of the three i.e. the group on the scooter passed lewd comments directed at Ms. Renu. He claims that he did not do so and thus seeks to shift the blame on either one of his two friends.

12. In the decision reported as State of Haryana and Another Vs. Rattan Singh, the Supreme Court held, in paragraph 4, as under:-

It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The "residuum" rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence-not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has relevance to the charge leveled against the respondent. Therefore we are unable to hold that the order is invalid on that ground.

13. The dictum of law laid down in the aforesaid judgment would squarely apply to the facts of the instant case. The testimony of the three prosecution witnesses who had confronted the petitioner when Surender Rana, husband of Ms. Renu and his friends were baying for the blood of the petitioner at the Unit Lines and the petitioner was hiding inside, would amply prove that the petitioner had confessed to have passed lewd comments directed towards Ms. Renu.

14. No leniency can be shown to a force personnel, who in dress indulges in eve teasing. Only four days back the Supreme Court has issued directions to secure the safety of women in public places; and who else would do so other than those who don the khaki uniform. The national emblem is worn on the dress by the men in khaki and they must realize the honour bestowed on them of being the only ones permitted by law to don the national emblem on their dress. The

slightest deviant behaviour by men in uniform directed against the female sex cannot be countenanced. We dismiss the writ petition in limine but refrained from imposing any costs.