
(2010) 09 AHC CK 0158

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 23902 of 2008

Smt. Neeraj Sharma

APPELLANT

Vs

R.S. Yadav, Constable No. 761020305 and Others

RESPONDENT

Date of Decision : 16-09-2010

Acts Referred:

Citation : (2011) 2 AWC 1402 : (2011) 129 FLR 1

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.P. Sahi, J.—The 3 orders under challenge in this petition relate to the removal of the Petitioner from service from the post of a Lady Constable in the Central Industrial Security Force.

2. The Petitioner was removed from service vide order dated 28.6.2006 and the appeal filed by her met the same fate on 12.9.2006. The revision preferred by her to the Inspector General of C.I.S.F. has been dismissed on 20.12.2006. Hence, this petition.

3. The disciplinary proceedings were initiated against the Petitioner on account of an incident which is alleged to have taken place on New Years Day of the year 2006 at about 5.30 P.M. at a public place in Sendha Bazar, Near Mukesh General Store, Panki, District - Kanpur. The allegation as indicated in the charge reproduced in the impugned order of removal is to the effect that the Petitioner caught hold of the collar of Head-constable R.S. Yadav and assaulted him with her footwear. It is also alleged that she was accompanied by a civilian namely Sri Narendra, who abetted the act by active participation and threatened the victim with dire consequences and exhorted that he would take his life by shooting him with a Pistol.

4. The Petitioner was served with a charge-sheet and she submitted her written reply on 23.2.2006. The Petitioner denied the charges and also the incident as a

concoction where after the inquiry proceeded. The Enquiry Officer summoned the Petitioner, whose statement was recorded. The prosecution witnesses were also summoned and opportunity to cross-examine was given. It is also recorded in the order that during the course of inquiry, 2 persons, who were civilians and had been named as witnesses did not turn up in spite of notices having been sent to them. The Petitioner submitted her written submissions and counter claim in defence alleging harassment and unusual requests where after the inquiry report was submitted. Three witnesses were examined on behalf of the prosecution namely the complainant Head-constable R.S. Yadav, Constable Jai Murat Singh and Sub-Inspector of Police G.S. Rawat. The Court witness Y.C. Rajwar was also examined. On behalf of the Petitioner, she presented herself setting up her defence.

5. The Disciplinary Authority, on the basis of the evidence led, came to the conclusion that the charge was proved and accordingly ordered removal.

6. The Petitioner set up a defence of complete denial of the incident and also indicated that the Petitioner was being compelled to visit the residence of the Deputy Commandant and having refused to do so, she was harassed and victimised by the Head-constable Mr. R.S. Yadav. The Petitioner being a young widow, resisted the alleged unusual request as a result whereof she had to reap the consequences. The Petitioner filed an appeal and the appellate authority affirmed the findings of the Disciplinary Authority. The Petitioner approached the Inspector General of the C.I.S.F. for revision of the order and had also approached the Home Minister, Government of India, for a sympathetic consideration but of no avail and ultimately she failed to get any relief from the authorities. The Inspector General, while rejecting the revision, recorded that the Petitioner had appeared before him and had allegedly pleaded guilty for the charges as levelled against her, and begged for being excused for the alleged misconduct. The Inspector General rejected the request and also held that the charges were grave enough so as to deny continuance to the Petitioner in a disciplinary force.

7. A counter-affidavit has been filed denying the averments contained in the writ petition and supporting the findings recorded in the impugned orders.

8. I have heard Sri Shivraj Singh Rathore, learned Counsel for the Petitioner and Sri Manoj Kumar Mishra on behalf of the Respondents. The counter-affidavit has been filed by Mahavir Singh declaring in paragraph No. 1 that it is on behalf of the Respondents.

9. Sri Rahtore submits that it was a case of absolutely no evidence to support the allegations planted in the charges, and in the absence of any independent witness or any corroboration of the incident by any further cogent evidence, the charge could not be brought home by the prosecution, hence the impugned order is vitiated. He submits that the statements recorded are of no avail inasmuch as the independent witness namely Sompal as mentioned in the written complaint

never deposed before the inquiry and he was not produced by the prosecution. The presence of an alleged individual namely Narendra at the scene of occurrence is a pure imagination and no effort was made by the prosecution to produce or summon the said Narendra in spite of the fact that the Respondent alleged that he was a person in existence at the time of the scene of occurrence. The statements recorded in support of the complaint are of biased and interested witnesses.

10. Sri Rathore submits that the entire story has been-concocted and there is no person by the name of Narendra either involved in the incident nor any such incident ever took place. Falsehood howsoever magnificiently stated does not become truth. He submits that the Petitioner was being victimised by her superiors through the Head-constable Sri R.S. Yadav and since the Petitioner did not yield to their demands, she was persecuted and ultimately removed from service. In essence the dominance of chauvinistic approach has resulted in the action taken which is a malafide exercise of power that inheres in it the elements of legal malice coupled with appreciation of concocted evidence ending in perversity.

11. On facts Sri Rathore submits that the evidence that has emerged during inquiry makes it highly probable that the charge was levelled and the case was built afterwards. This suspicion stands corroborated by the fact that two civilian witnesses are alleged to have given some information during the preliminary inquiry and according to the presenting Officer, the said two civilians in spite of notice did not turn up to depose during the inquiry. It is, therefore, submitted that the prosecution failed to adduce evidence by producing those witnesses who had allegedly witnessed the said incident. It is urged that the entire inquiry is as vague as a shadow and false description of the incident is writ large resulting in truth being a casualty. The whole incident, according to Sri Rathore, is like a procession with a bodyguard of lies. Criticizing the Enquiry Officer's report, Sri Rathore submits that the same has been accepted by the Disciplinary Authority as "all looks yellow to a jaundiced eye" (Alexander Pope).

12. Sri Rathore further submits that had there been such an incident or even otherwise the Petitioner did assault the victim/complainant, there ought to have been a reason for such an assault. He submits that the statements do not reflect any basis which may reflect the reason for such an assault. On the other hand, he contends that if the Petitioner did do this then the same might reflect on the character of the individuals who attempted to intimidate her. He, therefore, submits that even if the version of the department is believed, then the cause for the Petitioner to attempt this assault has either been camouflaged and buried or else the entire incident is false. It is for this reason that neither the complainant nor the department did choose to lodge an F.I.R. which could have led to a fair and independent investigation.

13. Coming to the statements of the complainant and the other witnesses, the complainant has been unable to disclose the name of the shopkeeper who had

allegedly come to his rescue when the same could have been very easily found out as shopkeepers are available and such a witness cannot be said to have evaporated. The Court witness has travelled far beyond the charges and has levelled allegations about Narendra being present in the premises of the Petitioner with some girls about which he had made some inquiry and the alleged dispute with one contractor Rajendra. These allegations were all imaginations without any substance and without any proof in support thereof. It is, therefore, urged that the statements are not worth relying and the Enquiry Officer as well as the Disciplinary Authority committed a manifest error by placing reliance on the same. The evidence is routine and dull as ditchwater. The plot was well planned but the serious omissions have proved to be Achilles' heel.

14. It is the contention of the learned Counsel for the Petitioner that no F.I.R. was lodged more so when the incident alleges the commission of offences which were non-bailable. The nature of the assault did not bring about any injury and the story of getting first aid from the Primary Health Centre had no evidence to support the same either in the shape of a Hospital ticket, a prescription or the statement of the medical practitioner or Attendant, who provided first aid to the complainant. The complainant even did not disclose the name of the doctor or the medical Attendant who provided first aid.

15. The submission, therefore, is that neither on facts found nor on the story set up, does the charge appear to have been established and hence the findings recorded by the Disciplinary Authority as affirmed by the superior authorities are perverse. The Petitioner has been given rough justice and, therefore, the orders are liable to be set aside. The appellate authority and the revisional authority have wished off the grounds taken as if they had signed a pledge to dismiss every claim.

16. Having heard learned Counsel for the parties, it may be stated at the outset that the pleadings in the writ petition on the issues raised are modest, but the same have been supplemented with the help of the evidence on record by Sri Rathore with his forensic arguments.

17. The narration of facts indicate that the Petitioner had been transferred from her place of posting at the industrial Unit to another place which under the orders of the superior authorities had been deferred on 19.10.2005. The Petitioner appears to have not been able to effectively join her duties due to the resistance put forth by the authorities and which may have been the cause of annoyance to the authorities. The Petitioner has levelled allegations against the complainant in coercing the Petitioner to attend on the Deputy Commandant. The Deputy Commandant has not been called upon to give his version on such an allegation.

18. It is not understood as to why this lady in an open market area would assault a Head-constable just for nothing. The complainant has not come forward with any evidence as to what prompted the Petitioner to suddenly flare up and

physically assault him. The cause of provocation is not disclosed in the deposition of the complainant. The complainant was also claiming to be present in the market for making some purchase. Admittedly, no purchase was made and he deposed that he returned from the market empty handed. The official purchase to be made was for some packing material due to movement orders.

19. The witnesses of the scene except Constable Jai Murat were neither produced nor any bona fide or genuine effort was made to produce them and compel their presence. The Central Industrial Security Force is a Police Force and it cannot be presumed that the prosecution was helpless in producing the witnesses when it was proceeding to deal with the services of a member of its own force. The omission to produce the independent witnesses, therefore, casts a serious doubt, if not on the actual assault, definitely on the place of occurrence.

20. The Petitioner has denied her presence in the market place. To fix the said positioning, it was necessary that some independent witnesses of the market ought to have been produced when it was a day light incident in a busy market place and a shopkeeper was named by the complainant. It is not the case of the prosecution that the witnesses have refused to depose on account of any unnecessary involvement or any threat of persecution.

21. What is surprising is that the entire incident discloses the commission of offences which could have been subject matter of a criminal investigation. The Head-constable, who is the complainant being a victim, ought to have registered a F.I.R. and he does not give any explanation in his deposition as to why he did not choose to lodge a F.I.R. when the incident involves not only the Petitioner but also an alleged outsider Sri Narendra. The said individual is alleged to be armed with a country-made pistol as alleged by the complainant himself. Not lodging of the F.I.R. either by the individual or by the security authorities does not stand to reason when the allegations are of assault by an outsider in a market place.

22. The incident is not one of duty hours and the dispute if any was of a purely personal nature and, therefore, it would have been normal that an F.I.R. could have been lodged. The assault is being related to injury and medical treatment being given thereafter. Not visiting the police station, therefore, casts a serious doubt on the conduct of the complainant and his accompanying constable Jai Murat.

23. The complaint in writing was given on the next day. The preliminary inquiry is alleged to have been conducted in a manner which appears to be most casual and absolutely formal with no credibility inasmuch as it names witnesses, who were never produced during the inquiry. This circumstance also indicates that the Petitioner was subjected to a proceeding with a predisposed mind by making accusations for a desired result. The other constable, who is stated to be the witness, is a Member of the same force and he has simply repeated what has been stated in the complaint. His complete bias and favour for the complainant places him an interested category.

24. The said witness has stated that he had retired on 31.12.2005 and he was to move out, therefore, he had gone to the market to make some purchase where he went along with the complainant. He states that a person by the name of Narendra abused the complainant and caught hold of him where after the Petitioner assaulted the complainant with a footwear. He also deposed that he did not receive any injury during the alleged assault. He also states that he had made an effort to separate the two but he could not control them where after some shopkeepers came and separated the complainant and the Petitioner. During examination, he further stated that he did not clearly hear the threats given by Narendra. He denied any use or mention of fire arms by Narendra or any threat being extended with a country-made pistol. The aforesaid statement of Jai Murat, therefore, belies the statement of the complainant and the allegations contained in the complaint about the presence of Narendra.

25. The Disciplinary Authority as well as the appellate authority and the revisional authority have, therefore, interpreted the incident and the evidence in support of the charge without adverting to the aforesaid aspects of the matter. The appreciation of belief and disbelief has been casually met to nail the Petitioner. In the absence of any solid proof through the deposition of any independent witness, it can be presumed that the complainant along with his accompanying friend Jai Murat framed up the entire story without there being any other evidence to support the occurrence of the incident in a market place.

26. The Petitioner has denied the occurrence in its entirety. It is quite possible that the incident may have taken place somewhere else and in order to give support to such an incident, it may have been located at a market place. This possible change of location may have been for some reason which one does not know but this much is established that there are no witnesses to the occurrence for the actual site in the market place. Applying the theory of preponderance of probability and the absence of any clinching material the only conclusion that can be drawn is that the prosecution has failed to establish the presence of any independent witness as also the alleged place of occurrence of the incident. This is not a case of insufficient evidence but a total lack of independent cogent evidence to support the incident. It was necessary to bring the charge home by linking it with a plausible statement by an independent witness which has not been done.

27. The weak nature of the evidence, the highly improbable place of occurrence and no independent witness available, does not even cater to the ingredients of a remote possibility or highly probable incident. The witnesses named did not depose and their non-production clearly supports the stand of the defence especially in the case of Narendra who could have been identified by producing Rajendra, the Contractor. There is nothing on record to indicate that any attempt was made to invite Rajendra to depose in order to fix the identity or existence of the individual Narendra. For all practical purposes, Narendra remained nothing more than a ghost. The conclusion drawn by the authorities is only founded on

surmises and conjectures as painted by the complainant and his friend Jai Murat. The decision arrived at and recorded by the disciplinary authority reminds us of Denis Diderot (Le Neveu de Rameau) who said "we swallow greedily any falsehood that flatters us, but we sip only little by little at a truth which we find bitter."

28. This Court does not sit in appeal over a finding of fact in a domestic enquiry, but where perversity is exhibited raw, then such judicial review on facts is permissible by superior courts. Reference be had to Paragraph No. 35 of Cholan Roadways Limited Vs. G. Thirugnanasambandam, quoted below:

35. Errors of fact can also be a subject matter of judicial review. (See E. v. Secy, of State for the Home Deptt.) Reference in this connection may also be made to an interesting article by Paul P. Craig, Q.C. titled "Judicial Review, Appeal and Factual Error" published in 2004 Public Law, p. 788.

29. The discussion made above is no re-evaluation of the evidence, rather it is a reflection on the non-consideration of vital facts and misconstruing of the material on record that tends to establish a perverse approach adopted by the authorities. As a matter of fact there was absence of probable evidence, which could have been evaluated, but was never adduced by the prosecution. Non-production of the eye-witnesses leads the Court to believe that a witness cannot give evidence of his age before he is born.

30. During her service for long years from 1996, the Petitioner was never reported as a cross-patch except for the period immediately preceding the incident, that too even by the complainant and no one else. The Petitioner entered into service on 4.11.1996 and has been removed after almost ten years of service. One is compelled to ponder that the Petitioner must not have become so indisciplined overnight upon putting in ten years of service so as to behave in an unusual manner.

31. From the narration herein above, it is evident that truth has been a casualty and the evidence of the prosecution was like a temporary perfume which was spread with an attempt to cover up the incident but had no fragrance and went futile. The deception of the story that has been transcribed leads to the conclusion in the words of Cahiers (1917-52) "Truth exists; only lies are invented" (Le Jour et la nuit).

32. There is one more aspect which needs to be considered. The revisional authority, while proceeding to reject the revision, has indicated that the Petitioner appeared before the revisional authority and she pleaded guilty for the charge levelled against her. There is nothing in the order which may indicate that the Petitioner's statement was recorded before the revisional authority or she has given it in writing that she has accepted her guilt. The order further recites that the Petitioner made a request for being excused for the misconduct. The aforesaid recital in the order is also unsupported by any evidence. The colossal authority of the Inspector General with its awesome powers as head of a police

force is sufficient to submit to such a situation. There is no dearth of examples when even the bravest have succumbed to confess false accusations upon being driven to the wall when life and honour are at stake.

33. Apart from this, it is contrary to the specific stand taken by the Petitioner through out and there is no admission in writing on her part either before the Disciplinary Authority or before the Appellate Authority. The aforesaid finding, therefore, reflects that the Petitioner went in revision as hopeful as the break of day but she may have found herself as helpless as a babe. It may have been a fond hope. This desperation might have prompted her to make some statement which has been construed to be an admission of her guilt. One can gainfully remember Laurence C. Coughlin "Don't talk unless you can improve the Silence".

34. This conclusion drawn by the revisional authority from a desperate statement, if at all made about which the Court has serious doubts, does not amount to any confession of a guilt where the Petitioner through out has taken a defence denying the entire incident. The aforesaid alleged statement of the Petitioner has been taken to be suicidal as if she gave a sword to the revisional authority which was stuck into her.

35. The Petitioner has been shown the red card and has been booted out of her job. The Petitioner was left to the mercy of the Respondents who have unceremoniously given her a push. She has fallen from their grace on a trumped up story that has hardly any truth nor does it have the propensity to outright show the way out to the Petitioner. A victim of serious prejudice, she has been treated harshly, and consequently her children brutally who had lost their father and now their source of sustenance.

36. The doctrine of proportionality in the given circumstances to my mind need not be gone into as the incident does not inspire confidence for ordering a retrial to leave the Petitioner to the tender mercy of the Respondents. It is not necessary to be cruel to be kind. The New Year incident, as alleged, is definitely unhappy for all, and therefore, has to be given a judicial quietus.

37. The verdict of guilt against the Petitioner, therefore, could not have been arrived at without the witnesses having been produced to testify and to assess the correctness or otherwise of the incident. The proceedings have been concluded on absolutely opaque circumstances that do not support the charge or prove the guilt. Accordingly, the order of removal dated 28.6.2006 and the order of affirmance in appeal dated 12.9.2006 as well as the rejection of the revision dated 20.12.2006 are all set aside. The Petitioner shall be reinstated in service with 50% back wages provided she certifies that she has not been in gainful employment after her dismissal till today.

The writ petition is allowed with no order as to costs.