

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C)No. 7624/2009

% Date of Decision : 24th September, 2010

SUKHDEV SINGH Petitioner

Through Mr. H.S. Kathuria, Adv.

versus

UOI & ORS. Respondents

Through Mr. Sachin Datta and Mr. Manikya
Khanna, Advs. for R-1

CORAM :-

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE J.R. MIDHA

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| 1. | Whether Reporters of Local papers may
be allowed to see the Judgment? | Yes |
| 2. | To be referred to the Reporter or
not? | Yes |
| 3. | Whether the judgment should be
reported in the Digest? | Yes |

GITA MITTAL, J. (Oral)

1. This writ petition has been filed assailing the orders dated 28th June, 2006 of the disciplinary authority; the order dated 12th September, 2006 of the appellate authority and the order dated 19th December, 2006 of the revisional authority.

2. It appears that disciplinary proceedings were conducted against the petitioner based on the following charges :-

“ Charge-01

That Force No. 901310208 Constable Sukhdev Singh, CISF Unit, GAIL Pata on dated 12.02.2006 at about 2115 hours in the Family Residential

Complex of the Unit GAIL at H.No. 622 fought with his wife and abused filthy language loudly. On hearing the loud voice of his wife, the neighbourer constable Ombir Singh and the constable at that time present At the house of constable Ombir Singh i.e. Constable Sanjeev Kumar went to the house of constable Sukhdev Singh and they tried to make understand constable Sukhdev Singh, but constable Sukhdev Singh also misbehave with them and abused them in loud oice. Being a member of disciplined armed force, the aforesaid act done by the constable Sukhdev Singh Shows his indiscipline, mis-behave and misconduct.

Charge-02

“That the force No.901310208 constable Sukhdev Singh, CISF Unit, Gail Pata dated 12.02.2006 at about 2120 hours armed with knife went to the house of force No.854360345 constable Ombir Singh at the family residential complex and pushed the doors of his house with force, create nuisance and called him to come out by abusing filthy language in the name of his mother (Madarchod) etc. Being a member of disciplined armed force, the force member went to the house of his colleague force member armed with knife and pushed the door of his house and openly abused filthy language, which shows the indiscipline, misconduct, irresponsible and indiscipline towards his duty rather it shows his criminal mentality.

Charge-03

“ That the force No. 9013110208 constable Sukhdev Singh, CISF Unit, AIL Pata on 12.02.2006 from 2115 hours to 2145 hours created nuisance and abused filthy language in the family residential complex of the unit and due this reason, the family members residing in the family residential complex of unit faced difficulties in taking rest, he broke the peace of colony and polluted the environment of the family residential complex. Being a member of disciplined armed force, the aforesaid act done by the constable Sukhdev Singh shows his indiscipline, mis-behave and misconduct.

Charge-04

“ That the force No.901310208 constable Sukhdev

Singh, Unit, CISF Unit, GAIL Pata, as per the detail of service record, during his very small service period he has been punished twice with major punishment for abusing his colleagues and senior force members as well as misbehave and due to absent from the duty he has been punished twice with minor punishment. Therefore, the aforesaid member has been provided opportunity to amend his behaviour, but despite of this he did not amend in his nature, behave and discipline, which shows his great irresponsibility.

3. The petitioner contested the proceedings and has alleged that the incident on 12th February, 2006 was completely misinterpreted by the respondents in initiating the disciplinary proceedings. The petitioner, on 12th February, 2006 contends that there was a private quarrel between the petitioner and his wife within the precincts of family quarter without any disturbance to any other person. In breach of privacy of the couple, Ct. Ombir Singh and Ct. Sanjeev Kumar, two of colleagues of the petitioner, entered the petitioner's quarter, without any provocation and authority Ct. Ombir Singh slapped the petitioner. Provoked by this action and the violence against him after the unwarranted intrusion, the petitioner was angered and followed Ct. Ombir Singh to his quarter with a knife from his kitchen. Before he could reach the quarter, another person came and dissuaded the petitioner not to pursue the matter. In this background, the petitioner had thrown the knife on the ground.

4. The petitioner has further submitted that in this incident Ct.

Ombir Singh had also come out armed with a lathi to attack the petitioner but was not allowed to do so. The petitioner submits that he had placed all these facts before the authorities in answer to the notice to show cause which was issued to him. It is contended that instead of the proceeding against the petitioner, the respondents ought to have proceeded against the two constables who had intruded into the petitioner's private quarter without any reason and beaten him up.

5. Mr. H.S. Kathuria, learned counsel for the petitioner has drawn our attention to the proceedings recorded by the inquiry officer. It is submitted that the only material witness to the incident was the petitioner's wife who was not permitted to be examined on the pretext that she was not a serving personnel. Certainly, there could have been no other witness of the alleged incident of violence by the petitioner. It is well settled that in matrimonial affairs, it is only the parties who are within the four walls of the house who would be the only effective and material witnesses to the incident. Mr. Kathuria contends that the petitioner's request to examine his wife was denied on the ground that she was not a serving personnel of the force. The submission is that this denial has resulted in grave injustice to the petitioner having regard to the nature of allegations against the petitioner.

6. Learned counsel for the petitioner has also drawn our attention to the statements recorded by the inquiry officer of the

prosecution witnesses. It is submitted that there is no evidence that there was any disturbance of any kind on 12th February, 2006 relating to any incident from the petitioner's quarter.

7. We also find that there is not a wit of an explanation for the intrusion into the petitioner's quarter and invasion of his privacy. Even assuming there was a quarrel between the petitioner and his wife, it was obviously in the realm of a private personal dispute to which no other outsider could certainly claim entitlement to intervene, the impugned orders placed before us do not consider this aspect of the matter. No explanation has also been rendered as to why the petitioner's wife was not examined. This in our view an important omission inasmuch as, in view of the nature of allegations against the petitioner to the effect that on 12th February, 2006 he had fought with his wife and was abusing her loudly in filthy language. The entire intrusion into the petitioner's quarter by Ct. Ombir Singh and Sanjeev Kumar is premised on this allegation. Her testimony is extremely material so far as the finding of culpability of the petitioner in respect of the charges is concerned. If this allegation were untrue, the reaction of the petitioner in retaliation to the provocation by such intrusion cannot be faulted.

8. Inasmuch as there is no credible evidence of the incident as has been made the basis of the charge against the petitioner, we find that the respondents were bound to have considered the

matter from the perspective of the petitioner which was faced with the unwarranted intrusion. This has not been done.

9. Looked at from any angle, there is substantial doubt in the portrayal of the incident by Ct. Ombir Singh and Sanjeev Kumar. Given the provocation meted out to the petitioner, certainly any reasonable person would have reacted. The question then would be as to whether the extent of his reaction to the intrusion was reasonable or justified. The same is, however, not the subject matter of the charge. We find that the order dated 28th June, 2006 of the disciplinary authority as well as that of the appellate authority dated 12th September, 2006 and the revisional authority dated 19th December, 2006 have failed to take into consideration the petitioner's contention that he had been slapped by these constables as well as the fact that they had unwarrantedly intruded into the petitioner's personal family matter. The orders also do not take into consideration the effect of the failure of the prosecution to examine the petitioner's wife who was the most material witness. In this view of the matter, we find that the orders have ignored relevant material. Even assuming that the petitioner was to be found guilty of the allegations which have been levelled against him, in the given facts and circumstances noticed hereinabove, certainly the punishment of removal from service which has been imposed upon the petitioner in the order dated 28th June, 2006 and sustained by the appellate and revisional authorities is grossly

disproportionate to the nature and gravity of the allegations with which he was charged.

10. Taking into consideration the totality of the facts and circumstances noted hereinabove, the orders dated 28th June, 2006, 12th September, 2006 and 19th December, 2006 are not sustainable and are hereby set aside and quashed. As a consequence, the petitioner shall be reinstated into service subject to the petitioner being otherwise fit. On a consideration of the matter in totality, it is directed that the petitioner would not be entitled to back wages for the period from 12th February, 2006 till his reinstatement. So far as the period of suspension, if any, is concerned, the petitioner will also not be entitled to any arrears of wages for the period. The necessary order in terms of the above directions shall be passed within two months from today.

This writ petition is, accordingly, allowed in the above terms.

GITA MITTAL, J

J.R. MIDHA, J

September 24, 2010(kr)