

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

+ **WP(C) No.7838/2011 & CM No.17733/2011**

% **Date of Decision: 09.11.2011**

S.C.Singh Petitioner

Through Mr.K.K.Rai, Sr.Advocate with Mr.S.K.
Pandey & Mr.Awnish Kumar, Advocates

Versus

Union of India & Anr. Respondents

Through Mr.Sumeet Pushkarna, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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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? | NO |

ANIL KUMAR, J.

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CM No.17733/2011

Allowed subject to just exceptions.

WP(C) No.7838/2011

1. The petitioner, an Inspector in the Central Industrial Security Forces (CISF), has challenged the report dated 31st December, 2009 of the Complaint Committee holding him responsible for passing lewd remarks against the lady Sub Inspector, Ranu Rana, and order dated 17th September, 2010 passed by the DIG, WZ, CISF, Navi Mumbai (Disciplinary Authority) imposing the penalty of compulsory retirement

from service with full pensionary and gratuity benefits and also the dismissal of his appeal by the Appellate Authority by order dated 25th October, 2010 along with the order of the Revisional Authority, the Director General, CISF dated 10th June, 2011 partly allowing the revision petition and reinstating the petitioner with reduction of pay to the lowest stage from the date of his compulsory retirement in the time scale of pay/pay band for a period of three years and further directing that during the period of three years, the petitioner will not earn increment of pay and on expiry of the period, the reduction will have the same effect of postponing his future increments of pay and adversely affecting his pension.

2. The petitioner has impugned the orders on the ground that the findings of the Complaint Committee is based on no evidence and that the penalty imposed is contrary to Rule 34 (iv) of CISF Rules, 2001 and that the order of the punishment has made him subordinate to his juniors resulting in the petitioner facing constant humiliation, though the petitioner has an impeccable service record. It is contended that the entire proceedings against him is based on hear say and uncorroborated evidence.

3. Brief relevant facts to comprehend the controversies are that the petitioner was an Inspector, CISF Unit, Bhopal and was posted at Bangalore Airport at the time of the alleged incident of sexual

harassment. On 25th May, 2007, at about 10:30 AM, it is alleged that the complainant Ranu Rana, a Sub Inspector, heard the petitioner passing vey lewd remarks about her “YEH RANU APNE HUSBAND KE PASS JA RAHI HAI, AB WAHAN SE PREGNANT HO KAR AAYEGI LEKIN KYA PATA WHO USKE HUSBAND SE HOGA YA KISI AUR SE”

(TRANSLATION ‘THIS RANU IS GOING TO HER HUSBAND AND WILL COME BACK PREGNANT BUT HOW DO WE KNOW THAT SHE WOULD BE CONCEIVING HER HUSBAND’S BABY AND NOT ANYBODY ELSE’S (ENGLISH).’)

4. According to the petitioner, the complainant on 25th May, 2007 did not respond or make any complaint against the alleged lewd remarks made against her. It was only on 11th June, 2007 that she made the complaint to the State Commission for Women, Karnataka. The complainant, Sub Inspector Ranu Rana, on 23rd July, 2007 made another complaint regarding the alleged incident of sexual harassment to the Director General, CISF, New Delhi.

5. The petitioner made a representation dated 9th August, 2007 contending that though he did not get the charge sheet, list of documents and the list of witnesses but pleaded that the complaint against him was misplaced and motivated by ulterior motive. In his representation, the petitioner asserted that in his 30 years of service there had not been any complaint against him and that he had served

with honesty and discipline and that he could not have passed such remarks to his junior officer, the complainant or to anyone else. The petitioner also asserted that the complainant is being used and misguided by her colleagues who are annoyed by him and want to settle scores through the complainant. The petitioner categorically represented that as the feeling of the complainant is hurt due to misunderstanding and misguidance by her colleagues, he too is distressed and as such he expressed his regret and sorry for such sort of affair. The petitioner, referring to the complaint, also contended that though she claimed that three Sub Inspectors were present and heard the remarks which the petitioner had allegedly passed, however, on the other hand she claims that these officers were afraid to be witness to the alleged incident, which shows the ill feeling of the complainant against him because of the petitioner's discipline and hard work.

6. The complainant replied to the representation dated 9th August, 2007 made by the petitioner by her reply dated 21st August, 2007 in which she reiterated that lewd remarks were passed by the petitioner against her. She contended that the petitioner is trying to divert the case by imputing that she has ill feelings against him though he has not given any reason or fact for the complainant having any ill feeling against the petitioner. Regarding the allegation that the complainant is acting on behalf of some of the colleagues, who have misguided her, the complainant contended that the petitioner has tried to dilute the case.

However, the fact is that she has not been misguided, nor can any other colleague be blamed. She asserted that the decision to lodge the complaint against the petitioner was taken by her after consulting her family members. She asserted that there was no misunderstanding and the petitioner had made the lewd remarks which were clearly heard by her causing grave damage to her modesty and self respect. In reply to the petitioner's representation, the complainant also requested for recording the statement of Sh.Siddharth Srivastava, Sub Inspector, as the petitioner is pressurizing him and all other witnesses through their respective families so that the witnesses to the incident do not come forward to tell the truth. She requested that the decision may be taken immediately.

7. The complainant, thereafter, sent another communication dated 8th April, 2008 contending that after making the complaint against the petitioner, she has been facing a lot of trouble in the department for which she had lodged another complaint before the Karnataka State Commission for Women on 7th September, 2007. She requested for an early decision on her complaint as the reasonable time has already elapsed. She also requested to supply the copy of the statement of the petitioner and other witnesses. She also prayed for action against Sh.D.K.Chakravarty, Assistant Commandant, Sh.R.B.Singh, Assistant Commandant and Sh.Digvijay Singh, Commandant along with the petitioner. She also stated in her communication dated 8th April, 2008

that Sh.R.B.Singh, Assistant Commandant had advised her on 14th July, 2007 not to take the matter against the petitioner to the Karnataka State Commission for Women directly and that on 19th July, 2007, Sh.R.B.Singh had conveyed that the Senior Commandant had directed the Assistant Commandant, Sh.R.B.Singh, to communicate to her to compromise the matter and threatened the complainant of dire consequences. The complainant in the said communication also disclosed that on 25th August, 2007 Sh.Siddharth Srivastava had appeared before the Commission supporting her allegation. She also highlighted the action of Sh.Digvijay Singh, Commandant regarding issuance of a Memorandum dated 23rd February, 2008 as she had not been ready to compromise the matter with the petitioner.

8. Pursuant to the complaint made by the complainant and taking cognizance of her allegation, a Complaint Committee was constituted before whom the complainant made a statement on 2nd December, 2008. In her statement, she reiterated the lewd remarks passed against her and stated that she did not understand what to do because the petitioner was her senior and she had never expected such lewd remarks from him and since the incident had taken place before she had to board the flight immediately, she couldn't make the complaint at the time. The complainant deposed that she returned on 3rd June, 2007 and told about the incident to her colleagues Sh.S.N.Kumar, Sub Inspector; Sh.S.K.Singh, Sup Inspector and Sh.Siddharth Srivastava,

Sub Inspector who accepted that the petitioner had passed lewd remarks and that they are very sorry to know that such an incident had taken place with the petitioner. However, they tried to make the complainant understand that such incidents often take place with working women and they have to bear such things. The complainant further deposed that when she asked them to bring the truth in front of everyone, they said that if they will help her, the department will become hostile to them and since they are married, they may also have to bear the wrath of being transferred to different places. The complainant also deposed that by 27th July, 2007 her company was changed and by that time Sh.S.C.Singh, the petitioner, was the only Company Commander and because of it her shift and shift of her husband were changed which became different. This had led to the complainant and her husband coming in different shifts though at Bangalore Airport other husbands and wife used to come in the same shift. According to complainant this had happened on the instructions of Inspector S.C.Singh, the petitioner.

9. The sexual harassment committee constituted by the Director General, CISF, by order dated 5th May, 2008 headed by Smt.Santhi G.Jaidev, Senior Commandant, CISF and three other members recorded the statements of the complainant, SI S.N.Kumar, SI S.P.Srivastava, SI Sudhir Kumar Singh and the petitioner, SC Singh. The sexual harassment enquiry committee considered the statements recorded in

detail, documents and analyzed the evidence and also observed and recorded the demeanor of the witnesses, specially Sh.S.N.Kumar who was very aggressive throughout the cross-examination. It was also noted that some witnesses clearly exhibited attitude that showed gender bias towards women. It was concluded that the allegation of the petitioner passing lewd comments against the complainant on 25th May, 2007 is made out. The committee also noted the behaviour of the witness Sh.S.P.Srivastava who was of the opinion that if a woman is insulted in public, in order to protect her dignity and respect, it is better for her to keep quiet about it and accept it, as otherwise it would also tarnish her image, and it may also spoil the reputation of the Force and that she may be subjected to harassment.

10. The copy of the enquiry report was given to the petitioner and after considering the representation made by him, and on observing that the petitioner had participated in the enquiry conducted by the committee as per the laid down procedure, that the statements of the witnesses were recorded in his presence who were cross-examined by the petitioner as well, that the relevant documents were exhibited during the enquiry proceedings which were duly seen and signed by the petitioner and were taken on record, and also that the petitioner was provided ample opportunity to produce his defence witnesses though he did not produce any, but instead submitted his written statement of defence on completion of the examination of the witnesses. On 17th

September, 2010 the Disciplinary Authority noted that the allegations made by the complainant were substantiated by the deposition of SI S.P.Srivastava who had also deposed against the petitioner, though he did not have any personal animosity against him. Therefore, it was held that the allegation of passing lewd comments by the petitioner against the complainant was made out. The Disciplinary Authority, therefore, held the petitioner guilty of the allegation leveled against him. Considering the entire service record of the petitioner who had rendered 32 years of regular service and who had remained disciplined throughout his service except for one minor penalty of censure which was awarded to him on 6th January, 1979 immediately after he had joined the unit on completion of his basic training, the Disciplinary Authority took a lenient view and awarded a penalty of “compulsory retirement from service” from the date of receipt of the order dated 17th September, 2010.

11. Against the order of the Disciplinary Authority dated 17th September, 2010, the petitioner preferred an appeal to the D.I.G./CISF emphasizing the many inconsistencies and improbabilities in the statements of the witnesses recorded before the enquiry committee. The petitioner emphasized on the statement of Sh.S.N.Kumar who was alleged to be a witness to the lewd comments passed by the petitioner against the complainant. The said witness had categorically refuted the allegations made by the complainant during the enquiry. It was

therefore, contended that the statement of the complainant remained uncorroborated. The petitioner also contended that on 25th May, 2007, the complainant was not on duty as she was going for vacation, and therefore, the incident of the petitioner passing the alleged lewd comments against her could not have been said to have taken place at the “work place”, and therefore, it could not be brought under the jurisdiction of the complaint committee. The petitioner also raised the issue that the complainant should have registered the complaint as early as possible and in any case within 15 days of the alleged incident, however, the complainant had made the complaint to Karnataka State Women Commission only on 12th June, 2007 after the expiry of 18 days since the day of the incident though she had returned from her vacation on 3rd June, 2007. In the circumstances, even after returning from the vacation the complainant took 9 days for registering the complaint, which reflects that the allegations made by the complainant were a concocted and baseless story. The petitioner refuted the statement of Sh.S.P.Srivastava, SI on the ground that he was the batch mate of the husband of the complainant and also because he himself deposed that he had not heard the petitioner passing lewd comments against the complainant. Instead he had stated that he had heard from someone else that such comments had been passed by the petitioner against the complainant. According to the petitioner, the committee had not evaluated the depositions of the witnesses properly and had concluded about the guilt of the petitioner on the basis of their whims and fancies.

12. The appeal of the petitioner against the order of the Disciplinary Authority dated 17th September, 2010 was, however, dismissed by the order dated 25th October, 2010 by the Inspector General, Western Zone, Appellate Authority.

13. Aggrieved by the order of the Disciplinary Authority dated 17th September, 2010 and the Appellate Authority dated 25th October, 2010, the petitioner preferred a revision petition to the Director General, CISF on 17th November, 2010. The revision petition was decided by the Director General, CISF by his order dated 10th June, 2011 who had taken into consideration the pleas and contentions of the petitioner. The Revisional Authority inferred that the complaint committee had rightly concluded about the guilt of the petitioner and relied on the deposition of Sh.S.P.Srivastava who had categorically deposed in his cross-examination that Sh.S.N.Kumar had disclosed the facts of the lewd comments passed by the petitioner on the complainant. Emphasis was laid on the fact that no reason had been disclosed as to why the complainant would have lodged a false complaint against the petitioner. The Revisional Authority also repelled the plea of the petitioner that the entire proceedings were allegedly conducted in the absence of the presenting officer. It was held that the petitioner was not prejudiced in any manner on account of the absence of the presenting officer nor any prejudice to the petitioner has been alleged. The Revisional Authority,

however, took a compassionate view of the long service rendered by the petitioner and gave him another chance to serve in the Force, and therefore, set aside the penalty order of compulsory retirement of the petitioner and awarded the punishment of reduction of the pay to the lowest stage from the date of his compulsory retirement in the time scale of pay/pay band for a period of three years with further direction that during the period of reduction, the petitioner will not earn the increment of pay and on expiry of the period, the reduction will have the affect of postponing his future increments of pay and will adversely affect his pension. The intervening period from the date of his compulsory retirement from service to the date of joining on reinstatement was ordered to be regularized by treating the same as "Dies Non".

14. The orders Revisional Authority and Appellate Authority passed against the petitioner are challenged in the present writ petition primarily on the ground that there was no evidence against the petitioner before the enquiry committee and that the statement of the complainant remained uncorroborated. On behalf of the petitioner, it has also been contended that the statement of the witness Sh.S.P.Srivastava could not be relied on as it was based on hear say and that whatsoever was stated by him was based on the statement of Sh.S.N.Kumar who has not supported the plea of the complainant. In the circumstances, it was contended that there wasn't sufficient

evidence against the petitioner for establishing that he had passed the lewd comments against the complainant and that the case against the petitioner is based on no evidence. The learned counsel for the petitioner relied on Rule 34 (iv) of the Central Industrial Security Forces Rules, 2001 and asserted that under the said Rule, the scale of pay of the petitioner could be reduced to only the next lower grade of pay and not to the lowest stage.

15. The pleas and contentions raised on behalf of the petitioner have been refuted by the learned counsel for the respondents who appeared pursuant to an advance notice given to the respondents and he has relied on the reasons as stipulated in the report of the Enquiry Committee and the reasons given by the Disciplinary Authority as well as the Appellate Authority and Revisional Authority to conclude that there was sufficient evidence to infer that the petitioner had passed the lewd comments against the complainant on 25th May, 2007.

16. This Court has heard the pleas and contentions of the parties in detail and has also perused the record produced along with the writ petition especially the statements of the complainant; Sh.S.P.Srivastava, a witness; the petitioner, and Sh.S.N.Kumar, another witness recorded by the respondents during the enquiry proceedings.

17. The jurisdiction of the Court in judicial review is limited. The charges in departmental proceedings are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, but an Enquiry Officer has to analyze the evidence and documents to reach a conclusion on the basis of preponderance of probability, in order to infer whether the charge against the charged officer is made out or not on the basis of the record. While doing so he cannot take into consideration any irrelevant facts, nor can he refuse to consider the relevant facts. The Enquiry Officer/Committee also cannot shift the burden of proof nor can it reject the relevant testimonies of the witnesses only on the basis of its own surmises and conjectures.

18. The High Court also cannot take over the functions of the Disciplinary Authority, nor can it sit in appeal on the findings of the enquiry committee, the Disciplinary Authority nor can assume the role of the Appellate Authority. The Court, therefore, should not interfere with the findings of fact arrived at in the disciplinary proceedings except in the case of mala fides or perversity i.e. where there is no evidence to support a finding or where the finding is such that no one acting reasonably or with objectivity could have arrived at such a conclusion or where a reasonable opportunity has not been given to the charged officer to defend himself or the case is that there has been non application of mind on the part of the Enquiry Authority or if the

charges are vague or if the punishment imposed is shocking to the conscience of the Court.

19. The learned counsel for the petitioner has contended that there is no sufficient evidence to substantiate the allegations against the petitioner as the statement of Sh.S.P.Srivastava was based on whatsoever was disclosed to him by Sh.S.N.Kumar and therefore, the statement of the complainant remain uncorroborated. Perusal of the statement of the complainant reveals that she had categorically deposed that when she had gone after the security check at the Airport, after taking her Cabin baggage from the X-ray machine, she had heard the petitioner speaking to SI S.N. Kumar in a very filthy language and passing lewd comments, stating that if the complainant, who is going to her husband would come back pregnant, it would not be known whether it would be by her husband or someone else. Though Sh.S.N.Kumar had not supported the complainant's statement, however, the Enquiry Committee had categorically noted the demeanor of the said witness, who was said to be quite aggressive throughout the cross-examination. The Enquiry Committee had also noted that gender bias was quiet apparent in Sh.S.N.Kumar's attitude towards women. Even though Sh.S.N.Kumar, SI had not corroborated the version of the complainant, in the facts and circumstances, the statement of Sh.S.P.Srivastava becomes relevant since he had deposed that Sh.S.N.Kumar had told him about the incident. Perusal of the statement of the complainant and the

statement of Sh.S.P.Srivastava and the fact that no motive or reason has been successfully alleged or established by the petitioner against the complainant and the said witness that they gave false depositions to implicate the petitioner, reflects that the enquiry committee had not drawn any such inferences which are unreasonable or which have been arrived at without any objectivity which would show non application of mind. In (1982) 1 SCC 143, J.D.Jain Vs State Bank of India, it was held that the confession of the delinquent made in the presence of witnesses and to the higher officer who also appeared as witness, is reliable. It was further held that in domestic enquiry, if the complaint against the delinquent employee is not frivolous and if substantiated by circumstantial evidence, can be relied on. Supreme Court in State of Haryana Vs Rattan Singh, (1977) 2 SCC 491 had held that in domestic enquiry there is no allergy to hearsay evidence provided it has reasonable nexus and credibility. The Apex Court in para 4 had held 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 was held that in departmental enquiry strict rules of Evidence Act are not applicable and inference has to be drawn on the basis of fair play and natural justice. Rather, only total absence and not the

sufficiency of evidence before the Tribunal is ground for interference by Court. In the circumstances, the plea of the learned counsel for the petitioner that there isn't any sufficient evidence and thus, the case against the petitioner is based on no evidence cannot be accepted. The finding of the enquiry committee and the Disciplinary Authority as well as the Appellate Authority cannot be interfered by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India in the facts and circumstances. On the basis of preponderance of probability, it is apparent that the reasonable inference is that the allegation that the petitioner had passed lewd comments against the complainant is made out and that the plea to the contrary by and on behalf of the petitioner is to be repelled.

20. The next plea on behalf of the petitioner by the learned counsel is that under Rule 34 (iv) of CISF Rule, 2001, the petitioner could not be awarded the penalty of reduction of pay to the lowest stage and that the petitioner instead could have been awarded at the most only the penalty to place him in the lower grade by one stage or immediately below his pay scale or grade. On plain reading of Rule 34 (iv) of CISF Rules, it is apparent that the said rule does not contemplate that the penalty of reduction to a lower time scale of pay grade can be restricted by one grade only. Under Rule 34 (8) dealing with minor penalties, it is clearly stipulated that the penalty of reduction to a lower stage would be by one stage only. Whereas, no such restriction is stipulated in Sub Rule (iv) of

the said Rule. In the circumstances, it is apparent that wherever the penalty of reduction of pay to lower stage by one stage is to be imposed, it is specially stipulated. This cannot be disputed by the petitioner that the penalty imposed was a major penalty and not a minor penalty. The respondents had imposed a major penalty of compulsory retirement from service as against the petitioner which was, however, modified by the Revisional Authority to reduction of his pay to the lowest stage from the date of his compulsory retirement as contemplated under Rule 34 (iv) of said Rule. In the circumstances, the penalty imposed upon the petitioner cannot be held to be contrary to the relevant rules and the petitioner is not entitled for any interference by this Court in the facts and circumstances.

21. No other ground or plea has been raised on behalf of the petitioner. In the circumstances, this Court finds no such illegality, irregularity or perversity in the orders challenged by the petitioner which require any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition is therefore, dismissed.

ANIL KUMAR, J.

SUDERSHAN KUMAR MISRA, J.

November 09, 2011.

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