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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 13996/2009

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Date of decision: 28th September, 2012

SMT. G. SWARNA LATHA

..... Petitioner

Through : Mr. A.K. Trivedi,
Mr. Mohan Kumar,
Mr. Vijendra Singh, Advs.
along with petitioner in
person.

versus

UOI AND ORS

..... Respondents

Through : Dr. Ashwarni Bhardwaj,
Adv.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE J.R. MIDHA

GITA MITTAL, J. (Oral)

1. The writ petitioner was appointed as an Assistant Commandant in the Central Reserve Police Force (CRPF) on 24th April, 1999. On 19th December, 2003 and 27th January, 2004, the petitioner was subjected to extreme incidents of sexual harassment by senior officials. The petitioner's complaints dated 13th January, 2004 and 27th January, 2004 did not result in any action. On the contrary, the petitioner suffered further humiliation and harassment

even to get audience with the senior personnel of the CRPF.

2. It appears that the matter reached the attention of media which raised an issue on the petitioner's complaint. The publicity received by the incidents complained of by the petitioner resulted in finally constitution of a Complaint Committee on the 9th August, 2004 which concluded that the allegations made by the petitioner's were true and "proved beyond doubt".

3. Inter alia the petitioner had made the following allegations:

- (i) Exploitation of competitive situation between two women officers by Mr. Ashok Bali, Commandant.
- (ii) Abusive language, offensive comments during parade on women asking for mobile numbers of Mahila Constables for friendship and for personal sexual favour by Mr. Ashok Bali.
- (iii) Forceful kissing by Mr. Srivastava, IGP, RAF on 29.1.2003.
- (iv) Non-acknowledgement of her complaint by senior officers.
- (v) Offensive comments by Shri Kelaram.

4. The petitioner had thus made a complaint inter alia of serious sexual harassment; personal sexual favours; exploitation and extreme misbehavior even by an officer of the rank of the IGP

on 29th January, 2003 and then the effort to cover up acknowledging her complaint. The charges were of very serious nature yet no departmental action was taken.

5. The allegations of the extreme sexual harassment by senior officials were independently investigated by the National Commission for Women which made a report on 30th May, 2005 finding the allegations to be true and having been established beyond any doubt. The National Commission for Women had recommended departmental action against guilty officers. The National Commission for Women recommended immediate and appropriate action against all those held responsible for sexual harassment alleged by the petitioner.

Unfortunately, the respondents failed to take any action in such a serious matter.

5. The petitioner was thus compelled to file a WP(C) No.234/2005 before the Supreme Court of India with regard to the failure of the respondents to take action against the guilty persons. We are informed that the Supreme Court had directed initiation of action against the guilty officers. Instead of treating the matter with the seriousness it deserved, the respondents undertook cosmetic action and imposed trivial punishments which included issuance only an office memo on 20th September, 2006 to the then Commandant with remarks to be careful in future and to avoid rigorous and such lapses. On 29th January, 2003, the respondents

merely imposed the penalty of reduction of time scale of pay by one year against the other officer. The proven allegations were against such senior officers. The punishment enabled both these officers to continue in service.

In view of the respondents having taken action, the petitioner's writ petition came to be disposed of by the Supreme Court vide order dated 30th November, 2007 holding that the same had been rendered infructuous.

6. It is undisputed that the petitioner was a healthy and able bodied person when she joined the CRPF and had satisfactorily served the organization. The petitioner has placed before this Court the record of several appreciations and commendations received by her for her exemplary service and initiative taken in hard circumstances.

7. The serious incidents of sexual harassment which had taken place in the year 2003 and the difficulties faced by the petitioner after she made the complaint took their toll on the health of the petitioner. The petitioner has contended that faced with such harassment, she developed medical illnesses. It is contended that around 2005-2006, she began to suffer from severe depression. The medical condition of the petitioner is manifested from the fact that she remained under treatment in the CRPF Hospital which had referred her to the specialized Institute of Human Behavior & Allied Sciences (IHBAS), New Delhi. The petitioner was admitted

in IHBAS on 6th July, 2006 and was diagnosed as a case of major depression disorder and psychiatric features. She remained admitted in IHBAS till 9th September, 2006 for treatment.

8. The doctors of the CRPF examined the petitioner on 28th November, 2007 and declared that she was unfit to join duties due to severe depression. The petitioner was placed in medical category S4P3(T24) that is to say that the petitioner was temporarily unfit for 24 weeks and her medical condition was required to be reviewed after 24 weeks.

9. The respondents had raised a query from IHBAS with regard to the petitioner's health status. The Head of Psychiatry Department and Chairman of IHBAS had constituted a four member board chaired by him, which examined the petitioner on 26th March, 2008 and opined that the petitioner continued to suffer from depressive disorder even though she had been on treatment. It was specifically opined that the petitioner was not fit to join her duties and needs continued treatment.

10. A Review Medical Board was also held by the respondents to examine the petitioner on 29th November, 2008. Three senior medical experts of the CRPF examined the petitioner and also opined that the petitioner was not fit to join duties at that time. Her medical category was opined as S4P3 (T24).

11. In the meantime, it is alleged by the respondents that there was an incident of misbehavior on 4th July, 2006 in which the

petitioner's husband had entered into the office of her Commandant and misbehaved with the Commandant. It was alleged that the petitioner was accompanied her husband and she took no steps to prevent or stop the misbehavior. On the contrary, it was alleged that the petitioner obstructed the other CRPF personnel who tried to stop her husband's misbehaviour. With regard to this incident, on 5th July, 2006 a police complaint was lodged and by an order of the same date, the petitioner was placed under suspension with her Headquarters at Lucknow. The respondents also issued a memorandum dated 30th November, 2006 with regard to the same incident proposing to commence disciplinary proceedings against the petitioner.

12. The respondents have stated that vide letter dated 19.12.2006 the petitioner intimated that she was in a bad state of health having suffered nervous breakdown and sought time to submit a written statement of defence. She expressed her inability to attend the enquiry on account of bad health and advice of her treating doctor. On 15th May, 2007, the respondents appointed an Enquiry Officer who on 25th June, 2007 conducted a preliminary hearing.

13. The petitioner addressed yet another letter dated 19th June, 2007 informing the Enquiry Officer that she was on medical rest till 8th July, 2007. The respondents have submitted that in view of this request, the enquiry was postponed to 12th July, 2007.

14. Given the above status of her health, the petitioner addressed

yet another letter dated 10th July, 2007 that she had on medical rest till 8th August, 2007. The hearing was adjourned to 9th August, 2007.

15. The above narration and the reports of the medical experts, including those of the medical experts of the CRPF shows that during this period, the petitioner was certainly medically unfit and under medical treatment. Her medical condition had resulted in reduction of her medical category.

16. In this background yet another communication dated 2nd August, 2007 was addressed by the petitioner informing that she had been advised eight weeks rest. The Enquiry Officer fixed the hearing on 19th October, 2007 and on this date the matter was adjourned to 17th December, 2007.

17. Finally ex parte proceedings were directed by the Enquiry Officer on 17th December, 2007, in view of the petitioner's absence. Statements of four prosecution witnesses were then recorded.

18. A letter of 4th December, 2007 was received from the petitioner that her medical rest stood extended for eight weeks from 4th December, 2007. The enquiry proceedings were scheduled on 6th February, 2008.

19. On 6th February, 2008, the petitioner could still not be present and a letter was received after statements of two

prosecution witnesses had been recorded to that effect that she was advised medical rest for one month with effect from 28th January, 2008.

20. The Enquiry Officer required the petitioner to produce her documents, evidence and list of witnesses and proceeded in the matter. Communication was received from the petitioner on 17th August, 2008 to the effect that she is not fit and therefore could not come on 18th August, 2008.

21. It is submitted by the respondents that despite several opportunities given to the petitioner, she failed to participate in the enquiry proceedings or to produce adequate evidence. It is stated that even the written brief submitted by the department was sent to the petitioner but the petitioner failed to reply to the same. In this background, the enquiry proceedings culminated in an enquiry report dated 2nd June, 2009 finding the petitioner guilty of the charges.

22. The enquiry report dated 2nd June, 2009 was forwarded to the petitioner under cover of the communication dated 10th November, 2009. The petitioner failed to respond to the same.

23. The respondents have submitted that the disciplinary authority had agreed with the findings of the enquiry report.

24. In the meantime, on 2nd July, 2009 the petitioner submitted a representation to the respondents that she was not in a position to

continue with her service with the CRPF due to her mental disease and physical incapacity. The petitioner thereby sought retirement on medical grounds with pensionary benefits. This request was accompanied with a medical certificate.

25. As the respondents failed to respond to this request, the petitioner filed the present writ petition before this Court on 16th December, 2009 making a prayer that she was still suffering from psychiatric disorder and for the same she was undergoing treatment from IHBAS and the respondents be directed to consider and grant her case for retirement/invalidation on medical grounds.

26. It appears that the respondents commenced processing the application of the petitioner dated 2nd July, 2009 during the pendency of the writ petition, the respondents also passed an order dated 5th February, 2010 directing the petitioner to report to Group Centre, CRPF, Lucknow along with the latest medical documents so that the petitioner's case could be processed and submitted to higher authorities for the invalidation pension.

27. The petitioner appeared before and was examined by the Medical Board constituted in the Group Centre, Lucknow on 22nd April, 2010. The Medical Board categorically opined that the petitioner was completely and permanently incapacitated for further service of any kind in CRPF in consequence of RTA Head Injury and severe depression. The Medical Board also assessed the disability of the petitioner as 88% and certified that she is unfit for

duty with effect from 16th July, 2007.

28. So far as the disciplinary enquiry proceedings are concerned, the Ministry of Home Affairs vide a communication dated 21st October, 2010 referred the matter for opinion to the UPSC.

29. The UPSC responded by a communication dated 19th January, 2011 recommending that the ends of justice would be met in the case if the penalty of compulsory retirement was imposed on the petitioner.

In this background, the disciplinary authority passed an order dated 25th February, 2011 ordering compulsory retirement of the petitioner. It was further directed that the suspension period of the petitioner would not be counted to her qualifying service under the CCS(Pension) Rules, 1972.

Having passed the order dated 25th February, 2011, the respondents did not process the petitioner's application for seeking retirement / invalidation from service on medical grounds.

30. So far as the petitioner's entitlement upon compulsory retirement is concerned, our attention is drawn to a communication dated 29th August, 2011 of the Pay and Accounts Officer of the respondent who has observed that the petitioner's qualifying service for the purposes of pension comes to 7 years, 2 months and 10 days which is less than the required 10 years service and as such pension is not admissible to her. The respondents have therefore

observed that the petitioner does not have the requisite qualifying service for grant of pension.

31. This order was passed during the pendency of the writ petition necessitating the amendment in the writ petition. A challenge has been permitted to be made to the order dated 25th February, 2011 in the amended writ petition.

32. The above narration of facts would show that on all material dates when the petitioner was subjected to disciplinary proceedings, there was categorical medical opinion to the effect that she was suffering from psychiatric problems and was not fit for performing her duties. No effort at all has been made by the respondents to ascertain her fitness to participate in the enquiry proceedings.

33. The matter was dealt with in routine and adjournments were made in the enquiry proceedings as if the petitioner was suffering from a routine problem, unmindful of the fact that petitioner is suffering from psychiatric problem which had necessitated her admission to the IHBAS between 6th July, 2006 to 9th September, 2006 and protracted treatment. The medical experts, including the Board CRPF had certified the petitioner as medically unfit to perform her duties even on 22nd April, 2010.

35. There is nothing at all to show that the petitioner was capable of defending the charges against her or participating in the disciplinary proceedings. The certification by the experts shows

that the petitioner was hopelessly unfit.

36. It is trite that the opportunity to defend charges led against a person has to be meaningful and realistic. The opportunity to defend has to be a fair opportunity. Fitness to defend a disciplinary enquiry rests on both physical and mental fitness. Certainly a person who is medically unfit and has therefore been declared medically unfit to perform duties, more so for psychiatric reasons, would not be in a position to defend herself against the charges which have been levelled against her.

37. The respondents have accepted the unfitness of the petitioner when enquiry was adjourned on receipt of the petitioner's application. However, the respondents place reliance on the opportunities afforded to a person to file her written statement of defence; cross-examination of prosecution witnesses; to lead evidence and to make submissions. The medical status of the petitioner, when tested against the requirements of conducting her defence, would show that the opportunity to the petitioner to defend or participate in the enquiry in the above circumstances was neither real nor meaningful.

38. The medical opinion of the Medical Board constituted by the respondents on 22nd April, 2010 has found that the petitioner is suffering from 88% disability and that she is still unfit for duty. No purpose would be achieved by permitting a de novo enquiry.

39. It is noteworthy that the respondents have acted upon the request for medical invalidation which the petitioner had made by

the letter dated 2nd July, 2009 inasmuch as they had constituted a Medical Board in the Group Center, Lucknow which had physically examined the petitioner on 22nd April, 2010. The petitioner's disability stood assessed at 88%. The Medical Board had categorically also opined that the petitioner was unfit for duty with effect from 16th July, 2007 as well as in future.

40. The challenge to the disciplinary proceedings and the penalty deserves to be considered from yet another angle. The medical status of the petitioner and her psychiatric problems have been triggered due to the extreme harassment to which she has been subjected. Even if we were to uphold the legality and validity of the enquiry proceedings the punishment imposed upon the petitioner is not sustainable having regard to the proportionality of the penalty which has been awarded to the petitioner. The complaints of sexual harassment made by the petitioner were of the most serious nature which have been found true and correct. The respondents have treated the complaints of the petitioner in a casual manner and have shown reluctance in taking action thereon.

41. It is noteworthy that the alleged incident on 4th July, 2006 took place when no action at all had been taken by the respondents with regard to the incidents of 2003. If such an incident took place, undoubtedly it was reprehensible. However, it appears to manifest the extreme agony, frustration and helplessness of the petitioner and her failure to secure justice at the hands of her superiors.

42. Despite their own committee holding against the senior

officers with regard to their culpability so far as those serious allegations were concerned, the petitioner had to approach the Supreme Court of India by way of a writ petition before the respondents even responded to a dire need for an action. Thereafter they imposed minor punishment on one officer while deprived the other officer of only the benefit of reduction of time scale of pay by one stage for only one year. As against these punishments, a tormented and medically unfit, in fact disabled petitioner has been eased out of the department by the order of compulsory retirement. She has also been deprived of the benefit of service during the period of her suspension resulting in denial of pension to her.

43. An impression is created that punishment for similar offences would vary depending on the rank of the delinquent. If an officer was found guilty of improper acts against a junior, he would be treated differently as against a junior who committed such act upon the senior officer. The sense of injustice when there is an interplay of gender gets magnified. Such standards are impermissible and legally not sustainable. They leave indelible scars on the person concerned and would have a demoralizing effect on the members of the force.

44. In view of the above discussion, we find substance in the petitioner's contention that the enquiry has been conducted in violation of principles of natural justice and the petitioner has been deprived of a meaningful opportunity to defend herself. As a result

the enquiry proceedings and orders of the disciplinary authority dated 25th February, 2011 are rendered illegal and not sustainable. The same are hereby quashed.

45. In the facts and circumstances of the instant case, there is merit in the petitioner's contention that the respondents proceeded on her request for retirement on medical grounds which application deserves to be favourably considered. Given the certification of the petitioner's condition by the Medical Board dated 22nd April, 2010, her medical unfitness and disability percentage stands ascertained.

45. It is accordingly directed as follows:

(i) The order dated 25th February, 2011 is hereby set aside and quashed. Consequently, the period between 5th July, 2006 till 25th February, 2011 will be treated as spent on duty by the petitioner with all consequential benefits.

(ii) Given the petitioner's medical unfitness, the petitioner shall be invalidated out from service with effect from 25th February, 2011 and the benefit of pension, gratuity, etc and all consequential benefits be given in accordance with law.

(iii) Appropriate orders in terms of the directions given at serial nos. (i) and (ii) above shall be passed within a period of 6 weeks from today.

(iv) The payments shall be made to the petitioner after adjusting

any amount paid to her as subsistence allowance, within four weeks thereafter.

(v) The petitioner is entitled to costs of the present petition which are quantified to Rs.25,000/- to be paid by the respondent within ten weeks from today.

This writ petition is allowed in the above terms.

GITA MITTAL, J

J.R. MIDHA, J

SEPTEMBER 28, 2012
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