

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WRIT PETITION No.2831 of 2009

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Between:

P.V.Rao

...Petitioner

and

The Inspector General, CISF,
Chennai and others

...Respondents

DATE OF JUDGMENT PRONOUNCED: 21.07.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

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| 1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment
may be marked to Law Reporters/Journals? | Yes/No |
| 3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? | Yes/No |

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**COUNSEL FOR THE PETITIONER : SRI JAGADISHWAR REDDY
FOR SRI B.SHIVA KUMAR**

**COUNSEL FOR THE RESPONDENTS : SRI HEERALAL
FOR SRI B.NARAYANA REDDY,
Assistant Solicitor General**

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

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ORDER:

This Writ Petition is filed for a mandamus to set aside final order bearing No.V-15014/CISF/VSP/AD-II/Maj-22/2004/1881, dated 21.02.2005 passed by respondent No.3, order bearing No.V-11014/27/05/L&R(SZ)/1608, dated 03.03.2006 passed by respondent No.2 and order bearing No.V-15014/SS/Rev-PVR/2006/4946, dated 19.10.2006 passed by respondent No.1.

The brief facts leading to the filing of this Writ Petition are as under:

The petitioner is a CISF Constable. While he was working in Visakhapatnam, a charge of alleged misconduct was framed against him. The sole article of charge reads as under:

“That CISF No.944650796, Const. P. Venkata Rao of CISF Unit, VSP, Visakhapatnam has exhibited gross misconduct and indiscipline in that taking the advantage of resident of opposite quarter in the same block, he had offered a cool drink mixed with alcohol to Smt. Sidheswari Murmu wife of Const. B.C.Murmur, at about 1930 hours on 03.10.2004 when her husband was away from his residence on sports meet at CISF Unit, FACT udyogmandal, Kerala, so as to ensure semi unconsciousness of Smt. Sidheswari Murmu with an ulterior motive to commit misbehavior with her and the glass filled with drink has been handed over to her compellingly despite her resistance. When she has closed the door of her quarter, he willfully knocked the door repeatedly at 2100 hrs, 2230 hrs and 0200 hrs on the intervening night with an ulterior motive to take an advantage of her loneliness in the quarter. The act, committed by Const. P. Venkata Rao amounts to gross misconduct, indiscipline and unbecoming being a member of an Armed force of the union.”

The Assistant Commandant, CISF Unit, APSU Vizag was appointed as an enquiry officer to hold an enquiry into the charge framed against the petitioner. Before the enquiry officer, nine witnesses were examined in support of the charge and two

witnesses were examined by the petitioner in defence against the charge. In his enquiry report, dated 29.01.2005, the enquiry officer has found the petitioner guilty of the sole charge. Feeling aggrieved by the said order, the petitioner has unsuccessfully filed appeal and revision. Assailing the orders of the disciplinary, appellate and revisional authorities, the petitioner filed this Writ Petition.

The gravamen of the charge against the petitioner is that on 03.10.2004, when the husband of Smt. Sidheswari Murmu, a Co-Constable, and also the wife of the petitioner were away from the town before the alleged incident has taken place, the petitioner has offered a cool drink mixed with alcohol to Smt. Sidheswari Murmu at about 19.30 hours on 03.10.2004 so as to ensure her semi-consciousness with an ulterior motive to “commit misbehaviour” and that he has compelled the said woman to take the glass filled with drink and willfully knocked at the door repeatedly at 21.00 hours, 22.30 hours and 02.00 hours on the intervening night with an ulterior motive to commit misbehaviour with her taking advantage of her loneliness in the Quarter. The petitioner was accordingly charged for the gross misconduct, indiscipline and unbecoming being a member of an armed force of the Union.

The record shows that except Smt. M.Sidheswari, there was no eye-witness to the alleged incident. Though the incident has allegedly occurred on the night of 03.10.2004, P.W.1, who was the victim, informed P.W.2, her husband, over phone and also P.Ws.5 to 7 on the following day i.e. 04.10.2004 about the said incident. However, till returning of her husband to Visakhapatnam from Kerala on the night of 09.10.2004, no complaint was submitted by anyone on the alleged incident. The record further shows that P.W.3 was informed about the incident by P.W.2, the husband of the victim, on 10.10.2004. P.W.4 has deposed that the victim and her husband informed him on 10.10.2004

about the incident that has allegedly occurred on 03.10.2004 and that the complaint was basically given by P.Ws.1 and 2 only with a view to see that the petitioner is evicted from the Quarter.

The petitioner however put forth the plea of alibi by examining D.Ws.1 and 2 to make it appear that at the time during which the incident has allegedly taken place, he was not at the Quarter and that he has met D.Ws.1 and 2, took dinner and spent some time talking with each other till late night. The enquiry officer and the disciplinary authority have not believed this version of the petitioner and have concluded that the petitioner has set up D.Ws.1 and 2 in order to save him.

In holding the petitioner guilty by believing the version of the victim, the disciplinary authority has taken into consideration the fact that there was no enmity between him and the family of the victim and therefore, an innocent woman is not expected to give a false complaint. This reasoning of the disciplinary authority is not liable to be interfered with. Therefore, the extent of the charge that the petitioner went to the house of P.W.2 during his absence and offered cool drink to P.W.1 at 7.30 p.m. and he has also knocked at the door of the Quarter subsequently at 21.00 hours 22.30 hours and 2.00 hours on the intervening night of 03.10.2004 does not call for any interference.

However, the part of the charge which relates to the petitioner allegedly offering cool drink mixed with alcohol with a view to ensure semi-consciousness of P.W.1 with an ulterior motive to commit misbehaviour with her, in my opinion cannot be sustained for the reasons mentioned infra.

I would like to preface my further discussion with the observation that I am conscious of the fact that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India would not

examine the orders passed in the disciplinary proceedings as an appellate authority. However, the law is well settled that if any finding is not based on evidence, this Court would certainly interfere with such finding.

It is the case of the department that P.W.1 has preserved the drink allegedly offered by the petitioner and handed it over to P.W.2, who in turn requested P.W.9 to give his opinion about the nature of the drink. P.W.9, who is an Inspector, on smelling the contents of the bottle, opined that it was giving pungent smell and that it was not either a pure cool drink or liquor. However, the department has not sent the cool drink for chemical analysis. Thus, there is no evidence on record which conclusively show that what was offered by the petitioner was a cool drink mixed with alcohol. Therefore, the allegation that the petitioner with a

mala fide intention of misbehaving with P.W.1 has offered alcohol to her is based on a pure hypothesis. Thus, the charge as well as the finding recorded by the enquiry officer as accepted by the disciplinary authority to the effect that the petitioner offered alcohol to P.W.1 with an ulterior motive to ensure her

semi-consciousness and commit misbehaviour is a mere surmise, unsupported by any evidence whatsoever. The penalty of reducing the pay of the petitioner to a lower stage in the time scale with a further direction that the petitioner will not earn increments of pay during the period of reduction which will have the effect of postponing his future increments of pay, is imposed on the petitioner based on the assumption that he has offered alcohol mixed cool drink to P.W.1 with an ulterior motive to commit misbehaviour. In my opinion, if this part of the charge is not proved, severity of the remaining charge drastically gets reduced. The petitioner will thus be accused of offering cool drink to P.W.1 at 19.30 hours and knocking at the door of her Quarter three times on the intervening night of 03.10.2004. While the conduct of the

petitioner in offering cool drink to P.W.1 initially and knocking at the door on three occasions thereafter, certainly constitutes misconduct and more so by a person who is a part of a disciplinary force, the penalty imposed on him is highly disproportionate to the gravity of misconduct. In my opinion, such misconduct even if held proved as in this case may not warrant the severe penalty that was imposed on him. This Court notices certain mitigating/extenuating circumstances for reducing the penalty. Firstly, the petitioner has not overtly misbehaved with P.W.1, uttered vulgar words or displayed diabolical intentions by making any indecent proposal. Secondly, there was no attempt on the part of the petitioner to force P.W.1 to satisfy his alleged sinister desire. His misbehaviour is limited to the extent of knocking at the door on 03.10.2004 three times during the night. There is no allegation that he has tried to pursue with P.W.1 by repeating his misconduct in any manner for six days, till return of P.W.2 to Visakhapatnam on 09.10.2004.

Ordinarily, this Court in exercise of its power of judicial review would not substitute the penalty, unless it shocks the judicial conscience of the Court. As observed hereinbefore, the disciplinary authority would not have imposed on the petitioner the severe penalty, as was done by it, if the part of the charge, as held by this Court as unsupported by any evidence, did not exist.

In view of the mitigating circumstances, as noted above, I am of the opinion that the petitioner is liable for a lesser penalty and accordingly, the penalty imposed on the petitioner is modified to the extent of withholding three annual increments with cumulative effect.

The order of the disciplinary authority, as confirmed by the appellate and revisional authorities, is accordingly modified to the above effect.

The Writ Petition is accordingly party allowed.

As a sequel to disposal of writ petition, WPMP.No.3636 of 2009
filed by the petitioner for interim relief is disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

21st JULY, 2015.

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