

CWP No. 6521 of 2015(O&M)
Date of decision : 08.04.2015

versus

Union of India and others Respondents

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

AJAY TEWARI, J. (Oral)

By this petition the petitioner has challenged the order whereby he was dismissed from service and the appellate order.

The petitioner was appointed as a Constable in the Railway Protection Force on 02.07.2005. In the month of July, 2012 he was on guard duty on the Jammu Rajdhani train when a woman, who was travelling with her family in a two tier A.C. compartment, alleged that he had tried to outrage her modesty during night when the train was running by inappropriately touching her. Chargesheet was issued. During investigation statements of the colleagues of the petitioner were recorded who stated that they had all individually received information

about a fracas in a particular coach and when they reached there they found a lady with her husband and children crying and complaining against the petitioner. The competent authority held that it would not be practicable to hold an inquiry since even the named witnesses(co-passengers) would be hard to trace and hard to get for the inquiry and dismissed the petitioner from service. The appeal, revision petition and mercy petition having been dismissed the petitioner is before this Court.

Learned counsel has argued that for taking the extreme step of dismissal it was necessary that the guilt of the petitioner be established if not on the anvil of 'beyond reasonable proof', at least on the anvil of 'preponderance of probability'. As per learned counsel in the absence of the charge having been proved by the above standards the extreme order of dismissal would not have been passed. He has also relied upon the fact that the FIR lodged by the complainant is also in the process of being closed. Further learned counsel has argued that no opportunity of hearing or of producing evidence in his behalf was given to the petitioner. In the circumstances as per learned counsel there is an infraction of the rule of audi alteram partem.

I put it to the learned counsel whether the complainant had any animus against the petitioner; he has fairly stated that the complainant and the petitioner were unknown to each other. I then put it to him why the complainant would have lodged such a serious complaint when she was, in all probability, sleeping peacefully in the

train on her berth with her family. Learned counsel has given a rather facile explanation. As per him sometime in a moving train a person may lose one's balance and accidentally touch another passenger. I am afraid this explanation cannot wash. The specific allegations levelled by the complainant were that while she was sleeping she was woken up by a touch on her cheek and her lips. She tried to see who was there who had touched her but the petitioner managed to hide himself behind the curtains. Thereafter the complainant stated that she felt that she may have been mistaken and tried to dismiss the incident from her mind and go back to sleep but after ten minutes somebody tried to kiss her on the lips. It was at that stage that she got up and tried to raise objection and the petitioner immediately withdrew but she recognised him. In these circumstances the argument that it could have been an accidental touch cannot be accepted.

It is a sad commentary on our Nation that one of the first external stimuli which a female learns to recognise even from the age of 6 or 7 is a glad eye or an inappropriate gesture. Our women have been subjected to this indignity in crowded public places and moving vehicles every day and it is too much for me to believe that this particular lady mistook an innocent accident. It cannot be lost sight of that the job of the petitioner was to protect passengers which included protecting women passengers from such lascivious males. In this case I am not persuaded to differ either with the decision to dispense with the inquiry or with the finding of guilt recorded against the petitioner by

three authorities.

Petition is dismissed.

Since the main case has been decided, the Civil Misc.
Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

April 08, 2015
sunita