

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

Reserved on: 14.09.2015

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Decided on: 06.11.2015

+ **W.P.(C) 3977/2012**

PREMLATA KUMARI

..... Petitioner

Through: Mr.Vishwendra Verma, Advocate

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr.Abhay Prakash Sahay, CGSC for
UOI.

+ **W.P.(C) 4872/2012**

AJIT SINGH

..... Petitioner

Through: Mr.Ravindra S.Garia, Advocate

versus

INSPECTOR GENERAL CENTRAL INDUSTRIAL SECURITY
FORCE AND ANR.

..... Respondents

Through: Mr.Bhagwan Swarup Shukla, CGSC
with Mr.Suyash Kumar, Advocate for
UOI.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MS. JUSTICE DEEPA SHARMA (JUDGMENT)

1. We propose to dispose of both writ petitions by this common judgment since in both these cases the departmental enquiries emanate from the same incident dated 28.03.2011.

2. There are certain love stories that do not have a happily ever after

ending.

The petitioners finally lost their jobs.

3. The common facts in both cases are that on 28.03.2011 both the petitioners who were employed by the Central Industrial Security Force (CISF) met in a hotel room at Kelson Dx, Paharganj from where petitioner Constable Premlata Kumari made a telephone call making certain allegations against Ajit Singh (Petitioner in W.P.(C) No.4872/2012). Thereafter a committee of (i) Shri M.K.T. Salvan, TC; (ii) Inspector/Exe B.S. Malhi; (iii) SI/Exe A.K. Dang and (iv) L/Ct. (CHM) Z. Radhika was constituted by commandant to confirm the incident at the spot. The Committee reached at spot and made enquires and thereafter a court of enquiry was held against both the petitioners independently.

Enquiry and finding in case W.P.(C) 4872/2012 relating to SI Ajit Singh.

4. The following charge was framed against SI Ajit Singh:

“Force No.09821100915 SI/Karya Ajit Singh (suspended) CISF unit, DMRC, Delhi on 28.03.2011 at around 0945 hours force No.081758925 woman Constable Premlata Kumari went to hotel Kelson DX Paharganj Delhi and made physical relation with her. Aforesaid conduct shows his misconduct and violation of discipline of the force and renders him unfit for the post. The force member by his such conduct has maligned the image of the force. Hence the charge.”

5. The enquiry which was ordered was held from 04.06.2011 to 04.08.2011. The enquiry report was submitted on 06.08.2011. The enquiry officer confirmed the following facts on completion of the enquiry:

“2. Prosecution witness No.1,2,3, and 4 who had gone to the place of incident hotel Kelson DX room No. 101 on 28.03.2011, their statements and question and answer have made it clear that on seeing situation it seemed to them that on 28.03.2011 in room No. 101 of hotel Kelson DX S.I. Karya Ajit Singh and women constable Premlata Kumari might have made physical relation with mutual consent. Therefore under the circumstances it cannot be ruled out in the room of the hotel S.I. Karya Ajit Singh made physical relation with women constable Premlata Kumari.”

6. The said petitioner Ajit Singh submitted his representation dated 23.08.2011 against the findings of Enquiry Officer. The disciplinary authority went through the reply of the petitioner and thereafter made the following observations:

“8.The statement of charged force member that on 28.03.2011 in hotel Kelson DX room No.101 he did not make physical relation with women constable Premlata Kumari is not acceptable, the charged force member himself showed his voter ID card and introduced women constable Premlata Kumari as his wife and booked a room in hotel and stayed with women constable Premlata Kumari in room for three hours alone. Apart from this the charged force member has himself accepted that previously also for 2-3 times he has meet women constable Premlata Kumari alone and has also spent time with her in hotel after booking a room. If the charged force member had to only talk with women constable Premlata Kumari he could have done so

by going at any public place. But stating the women constable Premlata Kumari to be his wife, booking a room and staying with the women constable Premlata Kumari for alone, itself raises a question mark on the conduct of the charged force member.

9. Prosecution witness No.1,2,3 and 4 who on dated 28.03.2011 had gone to hotel Kelson DX room No.101, they also have in their statement and questions clarified that looking at the circumstances it appears to them that on 28.03.2011 in room No. 101 hotel Kelson DX sub inspector/Karya Ajit Singh and women constable Premlata Kumari had made physical relation by mutual consent meaning thereby that in the circumstances the possibility of sub inspector/Karya Ajit Singh making physical relation with women constable Premlata Kumari in the hotel room cannot be ruled out."

7. The penalty of removal from service was imposed against the petitioner. He preferred an appeal. The Appellate Authority after going through the appeal of the petitioner rejected it. The revision which was preferred by Ajit Singh was also rejected. The revisional authority observed that:

"Minute analysis of materials held on record in the case file reveals that the petitioner was involved in physical relation with his subordinate Lady Constable of the Force immorally at Hotel Kelson Dx, Paharganj, New Delhi on 28.03.2011 for which he booked Room No. 101 in the hotel by paying Rs. 1000/- for a day room rent, falsely declaring Lady Constable Premlata Kumari as his wife."

8. It is apparent that all the authorities starting from the enquiry officer till the revisional authority have concurred on the finding that the petitioner

developed a physical relationship with Ct. Premlata with mutual consent. Although in his representation the petitioner had levelled allegations against Ct. Premlata Kumari, those were rejected as baseless by the enquiry officer, appellate authority as well as the revisional authority.

Enquiry in case W.P.(C) 3977/2012 of Prem Lata woman Constable.

9. The following charges were proposed against Petitioner Premlata Kumari on 29.04.2011:

“On 28.03.2011, No. 081752925 Lady Constable Prem Lata Kumari, (under suspension) CISF, DMRC, Delhi along with the girls of the ‘A’ Shift on the pretext of duty in uniform at about 0945 hours went along with No.092810095 SI/Ex Ajit Singh In Hotel Kelson DX Paharganj New Delhi and has established physical relation with him which shows her pre-planned planning. Her above said act shows her misconduct and breach of discipline of the Force and declares her unfit for the force. The Force member has lowered down the reputation of the Force from her this act. Therefore the charge.”

10. The petitioner duly replied the memorandum. After conclusion of the enquiry, the enquiry officer submitted a report on 23.10.2011, whereby on the basis of evidence recorded during the enquiry, it was concluded that;

“ Decision of the Facts:

Contention of the charge official that on 28.03.2011 SI/Exe Ajit Singh had made physical relations forcibly with her in Room No. 101 of Hotel Kelson Dx is not acceptable, because the prosecution witnesses no. 1,2,3 and 4 who had gone to the place of incident Room No. 101 of Hotel Kelson

on 29.01.2011 and keeping in view the position of the place of incident they have clarified that on looking the position of the place of incident and the expressions of both the force members, nothing such is apparent that any act has been committed with the charged official forcibly. It became clear from the statement of prosecution witness No. 1,2,3 and 4 and the question answer put to them that on 28.03.2011, the incident of making physical relation in Room No. 101 of Hotel Kelson Dx, the same has happened with the mutual consent of lady constable Prem Lata Kumari and SI/Exe Ajit Singh.”

11. In the said order, the respondents noted the following facts being proved on record:

“It has been clearly stated keeping in view the circumstances, nothing such was apparent that any forcible act has been committed with lady Constable Prem Lata, rather the incident which took place for developing physical relation, the same has happened with the mutual consent of both of them.”

12. The enquiry report also contains the summary of the statement of the charged official Premlata Kumari and has noted as follows:

“In reply to question 11 she stated of not finding the parents of Ajit Singh there, she had gone with SI Ajit Singh in the room because SI Ajit Singh had given her proposal of marriage.”

13. Then again during the enquiry proceedings the petitioner had stated:

“In reply to question 14 she told that SI Ajit Singh was not unknown person, he was the senior officer of her department, apart from this they had already love affairs with each other. In reply to question 15 she stated, “yes, we

had already developed physical relation.”

14. Again in reply to question 24, Premlata Kumari had stated:

“that SI Ajit Singh had promised to marry, therefore I had not made complaint to the police,”

15. On the basis of this enquiry report, the final order was passed whereby the Commanding Officer, on the strength of the evidence recorded during the enquiry and statement of petitioner, concluded that the physical relationship between the petitioners SI Ajit Singh and Ct. Premlata Kumari was with mutual consent and that no force had been used against the latter.

The Commanding Officer concluded thus:

“It become clear from the statements of prosecution witnesses No. 1,2,3 and 4 and from the question answers asked from them that the incident of making physical relation in Room No. 101 of Hotel Kelson Dx on 28.03.2011, the same has happened with the mutual consent of the charged official and SI/Exe Ajit Singh. From the statement of the charge official and from the question answer asked from her, it is proved that under a pre-planned plan the charged official left the Shashtri park Ladies Hotel in uniform and along with civil dress with the members of the first shift without any intimation and without permission of the Competent Officer on 28.03.2011. After changing the clothes at Rajiv Chowk Metro Station met with SI/Exe Ajit Singh at gate No. 2 of R.K. Ashram Road Metro Station and along with him both went to Hotel Kelson Dx and booked room No. 101 both as husband and wife and remained in that room for about 3 hours and developed physical relation. In reply to question No. 15 during the question answer in the inquiry the charged official herself

admitted that she had gone to some hotel of Pahar Ganj alongwith SI/Ex Ajit Singh prior to 28.03.2011 and they had made physical relation. From this it is proved that charged official and SI/Exe Ajit Singh have been making physical relation by going in hotel also prior to 28.03.2011. To state this by the charged official in reply to question 14, they had already love affair, it is also proved that due to the love affairs, the charged official under the pre-planned plan had gone to the hotel on her own on 28.03.2011 and had made physical relation with him.”

16. Thereafter, the Commanding Officer imposed a punishment of removal from service against the petitioner who then preferred an appeal. His appeal was dismissed by the appellate authority by order dated 29.11.2011. After considering all the contentions in the petitioner's appeal, the Appellate Authority recorded the following facts:-

“During the inquiry this fact came in light that the above said force member has left in uniform in the bus of the First Shift, which takes the Lady force members from the Barrack to station for morning duty, while her duty was not in the first shift. She met with No. 092810095 SI/Exe Ajit Singh near R.K. Ashram Metro Station and both have gone to Hotel Kelson Dx Pahar Ganj, New Delhi. Where they with mutual consent has made physical relations.....”

17. From the enquiry report, dismissal order, appellate authority's and revisional authority's order in both cases it is apparent that the authorities had maintained throughout on the basis of the evidence on

record that both the petitioners had established a physical relationship with mutual consent. These authorities had rejected all contentions raised by the petitioners against each other as unfounded. There is no dispute that during the enquiry the prescribed procedure was followed and the petitioners were afforded due opportunity and had also been heard. The petitioners too have not found any fault in the manner the enquiry was conducted.

18. The common argument of learned counsel for both petitioners is that given the proved facts during enquiry, they had not committed any misconduct as they had not violated any rules or regulations of the force.

19. Misconduct is not defined under the CISF Rules. However, in ***Shri Santosh Kumar Sur vs. Union of India and Ors:*** (2010) ILR 4 Delhi 788, this Court has defined the misconduct as under:-

“48. The petitioner has, therefore, raised a basic question as to what is the nature of conduct which could be construed as misconduct inviting disciplinary proceedings and penalty against him. The expression ‘Misconduct’ is not defined under the CISF Act, 1969. It is well established that in case a term has not been statutorily defined, guidance from the meaning obtainable in ordinary and common parlance may be taken and the word has to be understood in its ordinary dictionary meaning. Since it is difficult to give

an exhaustive definition of what amounts to misconduct, the ordinary meaning of the expression "misconduct" in various dictionaries may be considered.

A reading of that judgment would reveal that the Court noticed several judgments. The judgment of the Supreme Court in ***State of Punjab v. Ram Singh*** 1992 (4) SCC 541 *inter alia* states that

“6. Thus it could be seen that the word 'misconduct' though not capable of precise definition, its reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order.

The authorities are unanimous in that though the term “misconduct” has many hues, it touches upon the behaviour and acts of some in relation to his office. At the same time, if the behaviour is reprehensible, and results in

lowering esteem of the general public of the office, the conduct may be misconduct regardless of its being unconnected with official work.

20. Further the provisions of Rule 3 of CCS (Conduct) Rules, 1969 provides the functions and duties of every Government servant:

“69. So far as the duties which the petitioner was required to perform are concerned, our attention is drawn to the provisions of Rule 3 of the Central Civil Service (Conduct) Rules, 1964 which provides the following functions and duties of every Government Servant:

3. General

(1) Every Government servant shall at all times--

(i) maintain absolute integrity;

(ii) maintain devotion to duty; and

(iii) do nothing which is unbecoming of a Government servant.”

21. The legal position is, therefore, crystal clear that even if an act of a Government servant does not fall within the ambit of misconduct, the employer is not precluded, in certain circumstances and peculiar facts, from reasonably treating such an act as misconduct. From the findings of the enquiry report it is apparent that both the petitioners had established their relationship voluntarily. The evidence on the enquiry record shows that the petitioners were in love and planned to marry. Constable Premlata had even asked her parents to consider SI Ajit Singh as her future husband and made

enquiries about him. She also admitted that her parents did in fact, make enquiries about SI Ajit Singh. SI Ajit also in his statement had acknowledged his relationship with Premlata and their plans of marrying. These statements clearly show that they seriously contemplated marriage and life together. In the context of these facts, it was the duty of the respondent to show that this constituted an act forbidden, improper or prohibited or an act unbecoming of a government employee.

22. The contention of the respondent is that by their acts, the delinquents had brought disrepute to the Force in the eye of hotel staff/general public and thus violated the discipline of the Force. However, the charges given to do not speak of bringing disrepute in the eye of hotel staff/general public, but that the petitioners went to the hotel and established a physical relationship, which maligned the image of Force and amounted to a breach of discipline of the Force.

23. No evidence has been brought on record by the respondent to prove that any disrepute had been brought to the Force or that the image of the Force stood maligned by the act of the petitioners. There are no allegations that they had indulged in any physical act in public or in public view or within view of hotel staff. At the relevant time, the petitioners were

consenting adults, and were together in a hotel in the privacy of a room occupied by them. No one can or should (the public employer being no exception) be allowed to speculate what transpired between them. Equally the State or a public employer cannot intrude into the privacy of an individual's personal relationship. It is established law that no individual dilutes or surrenders his fundamental rights upon entering public service. ***O.K. Ghosh v. E.X. Joseph*** AIR 1963 SC 812; ***Kameswar Prasad vs. State of Bihar*** AIR 1962 SC 1166 such being the case, the CISF should not, in this Court's opinion have speculated and drawn conclusions about the alleged misconduct. Clearly the autonomy and choice of the petitioners was targetted baselessly by the CISF, when the choice was neither unlawful nor was done in public, or within public view. Society is slowly liberating itself and in the process of such liberation, what was once considered a taboo or a prohibited act earlier, has found acceptance in society.

24. The Courts have not even considered a live-in relationship (pre-material sex) an offence. The Supreme Court in ***Lata Singh vs. State of U.P. and others*** AIR 2006 SC 2522 has clearly held that no offence is committed by two consenting adults of the heterogenic sex to have a sexual relationship with the exception of adultery, and that a major girl is free to live with

anyone she likes or live with the one she likes.

25. The Indian Constitution ensures to all equality of treatment and opportunity in matters of employment and assures dignity to every human being. An integral part of the freedoms and liberties guaranteed is that of privacy and individual autonomy. (Ref. ***Kharak Singh vs. State of Uttar Pradesh*** 1963 Cri.L.J. 329; ***R. Rajagopal vs. State of Tamil Nadu*** AIR 1995 SC 264; ***Govind vs. State of Madhya Pradesh and Anr.*** AIR 1975 SC 1378).

Every individual has the right to live with dignity and to preserve its privacy. Justice P.N. Bhagwati in ***Francis Coralie Mullin vs. The Administrator, Union Territory of Delhi & Ors*** 1981 Cri.L.J.306 has recognized that “*the right to life includes the right to live with human dignity and all that goes along with it*”. Our Constitution although does not contain any specific provision relating to right to privacy however the Supreme Court in ***Kharak Singh (supra)*** has held that “right to privacy” is a part of the right to life in Article 21 of the Constitution. The expression ‘privacy’ necessarily includes the freedom to private intimacy and autonomy which gives an individual opportunity to establish and nurture relationships consensually and without harming any other individual. The exercise of such right by an individual can by no means be termed as ‘misconduct’.

26. As per respondent's own case, the petitioners, unmarried, were in a consensual relationship. The acts of misconduct attributed to them occurred in privacy. It is nobody's case that these were in dereliction of their duties or offended any law.

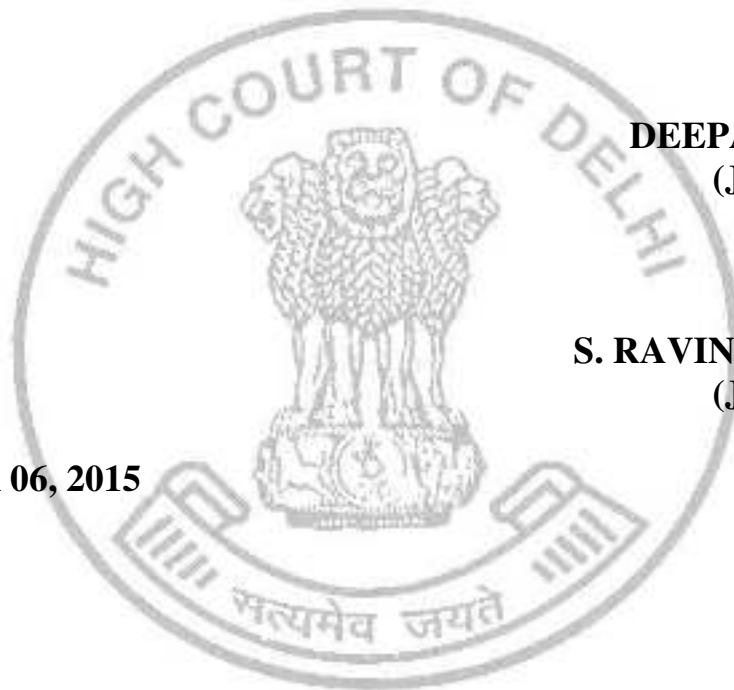
27. The respondents have failed to bring to our notice any rule or regulation governing the petitioner, which forbids consensual relationship between adult, public servants. Absence of any rule/law which prohibits someone's consensual physical relationship with another, (except what is an offence), it, therefore cannot be a misconduct. Constable Premlata was also charged for leaving the hostel along with girls of 'A' shift on the pretext of duty and went along with SI Ajit Singh, but in the circumstance of the case, this can be termed only a small lie spoken with the sole object of meeting the beloved.

28. In view of the totality of circumstances of the case, we are of the opinion that the act of the petitioners does not constitute misconduct for the reason that the respondents have miserably failed to produce any evidence on record to show that the petitioners had lowered the reputation of the force or committed breach of discipline.

29. We, for the above reasons, hereby set aside the impugned orders.

Petitioners are ordered to be reinstated into the service forthwith along with all the consequential benefits, including seniority, revision of pay increments etc. They shall also be entitled to 50 percent of back wages. Necessary orders be passed within six weeks from today.

30. Both the writ petitions are succeeded and are hereby allowed in the above terms. There shall be no order as to costs.



**DEEPA SHARMA
(JUDGE)**

**S. RAVINDRA BHAT
(JUDGE)**

NOVEMBER 06, 2015
bg/rb