

\$~10

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

Decided on : 21.09.2015

+ **W.P.(C) 5863/2014**

ARVIND

.....Petitioner

Through: Sh. Mahesh Srivastava and Sh. Vaibhav. M.
Srivastava, Advocates.

versus

UNION OF INDIA AND ANR.

.....Respondents

Through: Sh. Anurag Ahluwalia, CGSC and Sh. Arunava
Mukherjee, Advocates, for Respondents Nos. 1 to 3.
Sh. Ganesh Balooti, Assistant Commandant, CISF.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

%

1. The petitioner in this writ proceeding is aggrieved by an order of removal issued by the Central Industrial Security Force (CISF). His departmental remedies against his removal were of no avail and he has consequently approached this Court.

2. The petitioner joined the CISF as a constable in 2008. On 15.09.2012 CISF issued a charge sheet to him alleging: (1) that he used a mobile phone while on duty, contrary to instructions; (2) that he contacted a female Sub-Inspector (hereafter "the complainant") through his personal mobile phone, on as many as 8 occasions to befriend her despite her previous rebuffs and having been requested not to do so by her brother in the past, and (3) that he threw away his phone on 09.09.2012 to evade detection and that he misled

his superior officers by stating he had left the phone in his barracks. For the first allegation, the petitioner was charged with gross dereliction and negligence towards his duties. For the second and third allegations, the petitioner was charged with gross indiscipline and misconduct.

3. On 28.09.2012, a Deputy Commandant of CISF was appointed as Enquiry Officer to inquire into the charges leveled against the petitioner. During the course of the departmental inquiry, the statement of the complainant was recorded on 10.12.2012. She stated that she had received calls from an unknown number and had informed her brother about them. When she again received those calls on 09.09.2012 she informed Inspector Rakesh Ranjan about the same. The Enquiry Officer after granting reasonable opportunity to the petitioner during the proceeding, prepared his report and submitted his findings; he concluded that all the articles of charges were proved. The report of inquiry proceedings was furnished to the petitioner on 12.01.2013 with an opportunity to rebut and make his representations. He did so and in the course of his representation he admitted to actions. As a consequence, on 15.01.2013, he was awarded the penalty of removal. The petitioner appealed to the Deputy Inspector General. That appellate authority after going into the matter, on 20.05.2013, dismissed the appeal and rejected the petitioner's allegations. He has, therefore, approached this Court.

4. It is contended in support of the writ petition that the order of removal imposed by the CISF was based upon a complete misreading of the charges. Learned counsel urged that the findings of the Enquiry Officer are baseless and not in accord with the evidence and materials adduced before him. Stating that there was nothing to connect the telephone or article recovered

allegedly from the bushes with the petitioner, learned counsel highlighted that the statement of the complainant was uncorroborated. Learned counsel also contended that no specific rule or regulation was cited in the entire disciplinary proceeding which the petitioner was alleged to have violated. Furthermore, there were no allegations of sexual harassment against the petitioner. During the search of the petitioner's personal possessions, no mobile phone was discovered. In these circumstances, there was complete absence of any material to prove the petitioner's connection with the mobile phone recovered or that he had actually made any phone call to the complainant. It was secondly urged that even if it were assumed that the petitioner was guilty of making unwarranted phone calls to the complainant, the penalty of removal was too severe and disproportionate to the offence or misconduct found. Highlighting that the petitioner was of young age and had been recruited barely four years prior to the alleged misconduct – in 2008 – learned counsel said that such youthful indiscretions need to be condoned even though dealt with firmly. The learned counsel submitted that the disciplinary and appellate authority of the CISF did not take note of these extenuating and mitigating circumstances which entirely vitiates the penalty and entire supplementary proceedings.

5. This Court has considered the submissions and the materials on record. Two salient aspects come into sight: first that the petitioner and the complainant were both members of the CISF. It is not denied by the petitioner that there were specific instructions from the CISF authorities prohibiting use of mobile phones at the relevant time. More importantly, regardless of the mobile phone's discovery or recovery and the alleged lack of any material to connect the petitioner with it, the fact remains that eight

messages were retrieved from the telephone of the complainant. Furthermore, she unequivocally stated that the petitioner had made advances to befriend her but she had rebuffed him. She also deposed that her brother had intervened earlier and requested the petitioner to stop contacting her. Despite being clearly told off, the petitioner continued to make unwanted advances. In view of these circumstances, and keeping in mind that departmental proceedings are not criminal proceedings where the charge is to be proved beyond reasonable doubt¹, there can be no doubt that the petitioner's misconduct- at least as to the second charge (which is the gravest)- was proved by sufficient materials and evidence on the record in that regard. The satisfaction arrived at by the disciplinary authority and appellate authority cannot be faulted. It is also important to note that the petitioner in fact admitted his fault at the earliest opportunity- his reply dated 21.09.2012 clearly states that he felt attracted to the complainant and after her hospitalization had visited her; he also admitted to sending the messages and making the telephone calls. During the cross-examination also, there are references to the petitioner admitting his guilt. Once again, after the conclusion of recording of evidence also, he admitted his guilt on 05.01.2013.

6. Turning next to the question of proportionality, there is no doubt that on several occasions the Supreme Court as well as this Court have highlighted the importance of an executive or disciplinary authority,

¹ *High Court of Judicature at Bombay through its Registrar v Udaysingh & Ors* AIR 1997 SC 2286 where it was observed that in departmental proceedings “*The doctrine of 'proof beyond doubt' has no application. Preponderance of probabilities and some material on record would be necessary to reach a conclusion whether or not the delinquent has committed misconduct.*”

proportionately responding to the act in a given situation. In sum, this principle requires the disciplinary authority to be commensurate in response to proven misconduct. To put it another way, a hammer cannot be used to swat a fly. Various factors make up the elements of a proportionate response to proven indiscipline or misconduct. This would be: (a) the nature of the misconduct alleged and proved; (b) the propensity of the delinquent or charged officer; (c) the nature of the penalty proposed imposed and in certain cases; (d) further career prospects of the charged employee; (e) in certain situations, perhaps exceptionally so, even the familial circumstances of the complainant or the delinquent may be relevant.

7. The primary allegation against the petitioner is that he made unwanted and persistent advances towards a female member of the force. The other two charges (of unauthorisedly using a mobile phone, and of later hiding the evidence) are charges that flow from the main allegation of harassment. The petitioner – being a member of a disciplined force required to secure and guard public spaces and installations – was expressly prohibited by the prevailing policies from using mobiles. He not only violated those instructions but, more importantly, he sought to make unwarranted advances to a female member of the force. He made telephone calls to her; he also sent text messages to the complainant. In her statement, the complainant brought out all these facts. The petitioner was unable to shake the veracity or the genuineness of her deposition. Given these circumstances, and the fact that members of CISF are uniquely tasked with securing public spaces and installations, the propensity of a member of the Force to virtually thrust himself upon a female employee, could not have been ignored. This Court cannot countenance the submission that being a young man, the petitioner's

indiscretions had to be condoned. Age might be a relevant factor in some circumstances; yet it may be irrelevant in others. The tendency of a CISF personnel to show unwanted attentions to a female co-employee despite being told off, cannot be viewed by the Court as a condonable indiscretion. It is not the Court's view which is important, but that of the public employer. CISF is, in that sense, within its rights to say that the misbehaviour the petitioner was charged with - and proved of - cannot be tolerated, given the nature of his duties i.e. possibility of frequent contact. It is precisely this kind of "indiscretion" which amounts to harassment at the workplace that are outlawed by the *Vishaka*² guidelines and the recently enacted Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The object of such policies and enactments is not merely to make a point that such acts constitute misconduct and then let off the delinquent with a light punishment. These policies require male employees and officials to behave in a manner that female co-employees do not feel threatened, or harassed. The nature of the penalty imposed is also a signal to the female employees in the establishment that the employer is intolerant of such misbehaviour. The larger purpose of the enactment and all such sexual harassment prohibition policies is also to stop unwanted attentions towards female employees which may from a male perspective seem to be merely low intensity misbehaviour (a "boys will be boys" attitude). The law attempts to strike at the root of the imperfect balance of power in the workplace. The larger social goal is to achieve an equal and safe workplace where the worth of the individual matters, not her or his gender or looks. It is, therefore, that a male employee enters the prohibited

² *Vishaka & Ors v State of Rajasthan* AIR 1997 SC 3011

"harassment zone" once he presses his attentions beyond the point of acceptance upon the female co-employee, even if in his own eyes, it may simply be romantic pursuit. Considering all the circumstances, this Court holds that the penalty of removal which is not a disqualification for further employment, in the present case, was neither incommensurate nor disproportionate to the misconduct proved against the petitioner.

8. For the above reasons this Court finds no merit in the writ petition; it is accordingly dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

SEPTEMBER 21, 2015

