

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

Reserved on 21.09.2015

Decided on: 22.01.2016

+ W.P. (C) 3063/2014

GAYATRI SARKAR

..... Petitioner

Through: Ms Ankita Patnaik and Ms Garima
Sachdeva, Advs.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Ms Abha Malhotra and Mr Gaurang
Bindra, Advs.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MS. JUSTICE DEEPA SHARMA (JUDGMENT)

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1. The writ petitioner has impugned the dismissal order dated 13.09.2012 and order dated 28.12.2012, rejecting her statutory appeal and, order dated 16.05.2013, dismissing her revision petition.

2. The petitioner joined the CISF in January, 2008 as Constable (GD). She was transferred to Delhi and was posted at Delhi Metro Railway Corporation (DMRC) with effect from 01.08.2011. She was, from time to time, applying for leave to attend to her minor daughter who was living in Bhilai.

3. The petitioner's plea is that she had applied for Child Care Leave (CCL) in the month of September, 2011, but on being asked to apply for

casual leave, she applied for that and leave was duly sanctioned for 15.10.2011 to 04.11.2011. Leave was sought to attend to her ailing minor daughter. She further applied for 26 days of leave, but was informed that she could only be given leave from 23.02.2012. She alleges that her efforts to meet the superior authorities failed and on 13.02.2012, she was informed that her leave would be sanctioned only with effect from 23.02.2012. On 18.02.2012, she was asked to collect the leave certificate after her duty hours, but on reaching the office of Coy Commandant she learnt that her leave was not sanctioned. She alleges then about her attempt to meet Coy Commander at the office of DIG, but without success. This caused her distress; she made the call to the Police Control Room, dialing 100. It is submitted that instead of addressing her grievance, a Memorandum of Charge dated 14.03.2012 was issued to her which she duly replied, denying all the allegations. She was subsequently transferred to Jaipur, where the enquiry was conducted.

4. She has further alleges that she had never created any nuisance since she had never threatened to commit suicide as was alleged against her. It is submitted that there is no evidence to prove that she had threatened to commit suicide or had created any nuisance. Even testimonies of Inspector

Ishwar Singh and Constable Rajesh Kumar, who reached at the spot, clearly show that they found her sitting alone and weeping. None of them stated that she was creating any nuisance or threatening to commit suicide. It is submitted that in the absence of any evidence to prove the charge, she could not have been held guilty. The enquiry report which concludes otherwise is apparently vitiated and is liable to be set aside.

5. It is argued that attitude of the respondents had been vindictive which is clearly apparent from the fact that the penalty imposed upon her is grossly disproportionate. She was given a censure on 02.03.2010 for purchasing a Scooty without permission. It is submitted that when she was in Bhilai, one Assistant Commandant, Tara Chand was taking undue advantage of the fact that she was a young divorcee and wanted her to visit him at his residence and on her refusal to succumb to his advances, he started harassing her and implicating her in false cases. He got her implicated in a case of theft for which a penalty was imposed upon her on 19.03.2010. She thereafter filed a sexual harassment complaint against him and a four member-committee, enquired into her complaint but under the influence of Assistant Commandant Tara Chand, exonerated him and subsequently she was charge-sheeted for levelling false charges against Assistant Commandant

Tara Chand and in that matter, by order dated 12.07.2011, the penalty of reduction of pay at two stages was imposed upon her which she challenged before the High Court of Chhatisgarh in Writ Petition No.485/2012. It is argued that the penalty of removal is thus motivated by these facts. It is also contended that the petitioner was under tremendous mental stress at the relevant time on account of denial of leave which she needed urgently for her daughter who had suffered a head injury in an accident. The petitioner thus has prayed that the penalty imposed should be set aside.

6. The contention of the respondent is that the penalty was imposed upon the petitioner after a fair enquiry, duly conducted as per the procedure, in which she had fully participated and cross-examined all the witnesses. Her statement was also recorded by the Enquiry Officer. It is submitted that the witnesses examined clearly show that the petitioner had been sanctioned leave whenever she had asked for it and that a sympathetic approach was always adopted towards her. For the leave starting from 23.02.2012, the petitioner was advised to meet the senior officers when it was learnt that she had been planning to the leave station on 18.12.2012 without the sanction. The petitioner, however, did not meet her senior officers. The leave application of those officials who had applied earlier than the petitioner were

taken up prior to her application and proper orders were passed. On the date of incident, i.e., 18.02.2012, when the petitioner had made a call to the Police Control Room on 100 number, she was well aware that her leave application was still pending consideration and had not been rejected (as she was to proceed on leave from 23.02.2012) yet, she created a nuisance on that count and brought disrepute to the institution. It is further contended that the DD No.13A, which was recorded on her call to the police, clearly show that she had taken the departmental matter relating to the sanctioning of her leave, to the police and had also used intimidating language by threatening to commit suicide (in the event the leave was not sanctioned). The petitioner has not disputed making the phone call to the police and has also shown no reason on part of the police to record incorrect facts in DD No. 13A dated 18.12.2012. The fact that she made a telephone call of such nature to the Police Department proves misconduct.

7. We have heard the arguments of the learned counsel for the parties and given the due consideration to the rival contentions of the parties.

8. The admitted facts that emerge are that the petitioner had applied for leave with effect from 23.02.2012. Till 18.02.2012 her application was under consideration and had not been rejected. Her contention is that on

13.02.2012, she was informed that her leave would be sanctioned with effect from 23.02.2012. It is also an undisputed fact, that the petitioner had made a phone call to the police at number 100. Her only contention is that she did not state in that telephonic conversation that she would commit suicide. However, the documentary evidence, i.e. DD No.13A which was recorded only on the telephonic conversation of the petitioner clearly records that the petitioner had clearly stated to them that “*she was going to commit suicide on account of non-sanction of leave*”. The PCR informed the concerned police station that the petitioner was present at Kashmiri Gate Metro Station. This DD No. 13A was duly proved in the inquiry.

9. By dialing No.100 to the Police Control Room, the petitioner set the police machinery into motion. Inspector Ishwar Singh and Constable Rajesh Kumar reached the spot and took the petitioner to the police station and thereafter informed her department. As a result PW-1 Assistant Commandant N. Pradhan, PW-2 Inspector Lakshmi Devi and PW-3 Inspector T.S. Rautela reached the police station and assured the petitioner that her leave would be sanctioned, brought her from the police station and subsequently handed over the leave sanctioning order to her.

10. The first charge against the petitioner is that she created a nuisance at Gate No.2 at Kashmiri Gate Metro Station by making sanctioning of her leave into an issue to seek intervention by police and used intimidating words, all the while threatening to commit suicide. CISF states that she tarnished the image of the Force. All the proved facts, discussed above, show that the alleged incident did take place and are clearly corroborated by DD No.13A. The facts are further proved by the petitioner's contention that she did not threaten to commit suicide *per se* but had only questioned whether she needed to die before her leave was sanctioned. It, therefore, cannot be said that the findings of the Inquiry Report are based on no evidence. It is a settled principle of law that the Court cannot substitute a finding of guilt in departmental proceedings with its own decision unless the said findings are based on no evidence. As discussed, since the present case is not an example of no evidence, it calls for no interference by Court under Article 226 of the Constitution.

11. The petitioner has further argued that the respondent had based the penalty on the second charge framed against her which relates to earlier punishments awarded to her. These include one major and two minor punishments. She has taken the plea that she was under tremendous pressure

to go home to attend to her daughter staying in Bhilai for whom she had applied for leave and since her leave was not sanctioned and on 18.02.2012, her efforts to meet senior officers also failed, she was extremely frustrated and stressed. It was under these conditions that she made the said telephone call. It is argued that these factors should have been taken into consideration by the Disciplinary Authority while imposing the penalty instead taking stock of her previous punishment and associating the present incident with them. It is further contended that the penalty imposed is utterly disproportionate to the misconduct alleged. On the other hand, the contention of the respondent is that since the conduct of the petitioner, had brought disrepute to the Force and had tarnished its image, the penalty imposed was commensurate to the proven charges.

12. It is a settled principle of law that the Courts would not interfere with the decision of the Disciplinary Authority in the choice of a particular penalty, for proven charges. However, where it is found that the penalty imposed is disproportionate to the extent that it is utterly shocking, harsh or perverse or excessive or irrational in relation to the proved charges, the Courts may interfere with it and either substitute the penalty or refer the matter for re-consideration.

13. The Supreme Court in the case of ***Chairman-Cum-Managing Director, Coal India Limited and Another vs. Mukul Kumar Choudhuri and Others***: (2009) 15 SCC 620 held as under:-

“19. The doctrine of proportionality is, thus, well recognized concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision-maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review.

20. One of the tests to be applied while dealing with the question of quantum of punishment would be: would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment.”

14. The admitted facts are that the petitioner did apply for leave as she had to attend her minor daughter in Bhilai and had on earlier occasions also been seeking leave (duly sanctioned) for the needs of her daughter. As per advice, she applied for leave with effect from 23.02.2012 and till 18.02.2012, no decision had been taken with regard to her application.

15. The Court notes that the petitioner, a single parent, and concerned about her daughter living at a distant place in Bhilai, was under tremendous

mental stress and anxiety at the relevant time. Also, the evidence on record (statement of Inspector Ishwar Singh and Constable Rajesh Kumar) show that she was not creating any nuisance at the spot, i.e., at the public place and she made a call to the police at number 100 in which she had informed them about her non-sanctioning of leave and threatening to commit suicide. In a sense, this conduct was an expression of her frustration. PW-5 Constable Anupana Joshi has supported the petitioner on the count that on the date of incident, i.e., on 18.02.2012 before she made a telephonic call to the police, she had tried to meet the Company Commander and the Assistant Commander, but when she was informed the witness that they were not there, and were at the DIG's office, she left the place. The petitioner had also stated in her statement during the enquiry that she went to the Office of DIG where Coy Commander and Assistant Commander were not found. All these facts clearly show that she, as advised, tried to meet her seniors, but in vain. It was under these circumstances that she appears to have called number 100.

16. Appropriate penalty for a proven misconduct would entail a complete appraisal of all circumstances. Undoubtedly what the petitioner did could not be condoned. However, her conduct had to be necessarily considered in

the circumstances she was placed in. There is no doubt that lack of any definitive response to her request (and inability of her officers to meet her) led to her despairing and the momentary loss of control. These facts, in the opinion of the Court, had powerfully mitigating role which was lost upon the authorities. No single conduct can and should be viewed in isolation—rather the surrounding circumstances in most cases tell their own tale.

17. In the light of the foregoing discussion, the Court concludes that the penalty of dismissal was shockingly disproportionate; it is hereby modified to one of withholding of two increments for three years without cumulative effect. The respondent is directed to issue an appropriate pay fixation order and reinstate the petitioner within six weeks. Arrears of salary and allowance shall be released to the petitioner within eight weeks. This order is without prejudice to any other penalty which may have been imposed for any unrelated misconduct. The petition is allowed in the above terms. No costs.

DEEPA SHARMA
(JUDGE)

S. RAVINDRA BHAT
(JUDGE)

JANUARY 22, 2016
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