

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.1862 of 2009

ORDER :

Heard the counsel for petitioner, and Smt. T. Balajayasree for respondents.

2. The petitioner herein is employed as a constable in the Railway Protection Force since 04.04.2000.

3. A criminal case was registered against him before the I Town local Police of Srikakulam being Crime No.31 of 2005 under Section 366-A of Indian Penal Code on the ground that he induced and attempted to outrage the modesty of a minor girl by name D. Brunda Florence, aged 14 years, whose family was residing next to his house. The incident in question took place allegedly on 11.03.2005 and 13.03.2005.

4. The petitioner was arrested and remanded to custody by the Criminal Court.

5. Subsequently, a charge-sheet was filed in Sessions Case No.115/2005 on the file of the Principal Assistant Sessions Judge, Srikakulam.

6. The petitioner was placed under suspension on 18.04.2005 and a charge-memo was issued to him on 12.05.2005 framing four charges, viz., :

“1. A criminal case for inducing and attempting to outrage the modesty of a minor girl by name D. Brunda Florence aged 14 years was registered against him by I Town local police of Srikakulam Town in crime no.31/2005 U/s 366-A I.P.C.

2. He failed to inform the Administration of his arrest in Crime No.31/2005 U/s.366-A I.P.C. and thus deliberately concealed the facts of his arrest.

3. He inducing in an act of discreditable conduct involving Moral Turpitude by inducing and attempting to outrage the Modesty of a Minor girl by name D. Brunda Florence, D/o.Sri D.B.D.B. Kumar, R/o.Harijana Colony, Old Srikakulam Village, Srikakulam and threatening her family members with dire consequences, which amounts to serious misconduct unbecoming of a member of the force.

4. He did not turn up for the return roll call for the 00.00 hrs. to 8.00 hrs. on 16.04.2005 as per the GD entry No.15 of 16.04.2005 of VSKP O/P and remained absent till 27.04.2005 in an unauthorized manner which shows his scant regard to his job and negligence on his part.”

7. It was alleged that he violated Rule No.146.1, 146.2 (i), (ii), (iii), 146.4 and 147(vi) of the Railway Protection Force Rules, 1987 and Rule No.3(i)(iii) of the Railway Services (Conduct) Rules, 1966.

8. An enquiry officer was nominated and he conducted enquiry into the charges against the petitioner. He examined 6 witnesses and marked 14 exhibits on the side of the employer. The petitioner did not produce any witnesses or any documents.

9. On 08.09.2005, the enquiry officer submitted his enquiry report holding all the charges proved against the petitioner.

10. The petitioner was supplied with copy of the proceedings of the enquiry officer on 23.10.2005 and was asked to submit a final explanation. He submitted the same on 31.10.2005.

11. On consideration of the same, the 2nd respondent in proceedings No.B/XP.227/153/2005/09 dt.04/15.11.2005 vide Divisional Order No.128/2005 agreed with the findings of enquiry officer that the petitioner was guilty of the charges framed, but took a lenient view giving him a chance to reform and imposed punishment of reduction in pay in Scale of Rs.3,050-4,590 from his existing pay of Rs.3,500/- to that of Rs.3,050/-, i.e., minimum of scale, for a period of two years with recurring effect. The 2nd respondent held on appreciation of evidence that petitioner was involved in Crime No.31/2005, and therefore charge No.1 was proved. He also held that petitioner had an obligation to inform his employer about his arrest, and violation of this obligation is also a mis-conduct. He thus held charge no.2 is proved. Charge no.3 related to petitioner's discreditable conduct of inducing and attempting to outrage the modesty of a minor girl and threatening her family members with dire consequences. The plea of petitioner that the minor girl was mentally mature and was in love with him was rejected on the ground that she was a minor. The evidence of the girl's father, who was examined as PW.2, to the effect that there was an incident of kidnap of his daughter on 31.03.2005, and keeping in mind the family's honor, an amicable settlement was reached through the Ambedkar Yuva Jana Sanga, Old Srikakulam;

and that an apology letter given by petitioner, was held substantiated by other witnesses' evidence. It was also found that petitioner had disturbed the peace and tranquility of the colony by creating nuisance in front of PW.2's house by threatening him and his family with dire consequences; and that 170 residents of the colony, where the petitioner resides, gave a complaint Ex.P.14 addressed to the local police about the conduct of petitioner. Thus, charge no.3 was held to be proved. Charge no.4 which related to petitioner's absence for return roll call on 16.04.2005 and his absence till 27.04.2005 unauthorisedly was also held proved, and his pleading that he was kidnapped by unknown persons on 16.04.2005 was not accepted.

12. Aggrieved by this order, the petitioner preferred an appeal to the 1st respondent.

13. The appellate authority agreed with the findings of disciplinary authority and rejected the appeal by proceedings No.B/XP.227/153/2005/09 dt.16.12.2005 vide Divisional Order No.137/2005. It observed that petitioner, being a member of a disciplinary force, failed to observe the expected standards of decency and morality, and his conduct did not deserve any tolerance and the order passed by the disciplinary authority did not warrant any interference.

14. Thereafter, the petitioner filed a representation 24.11.2007 to the 3rd respondent stating that he has been acquitted by the Criminal Court on 20.07.2007 in the Sessions Case No.115 of 2005, but the

said representation was also rejected on 26.05.2008 on the ground that it was time-barred. It was further stated that acquittal in criminal case has no bearing since the standard of proof in a departmental enquiry is different from the standard of proof required in a criminal case.

15. Assailing the same, the present Writ Petition is filed.

16. The counsel for petitioner contended that petitioner has been acquitted in the criminal case, and on the said basis the punishment imposed on the petitioner by respondents ought to be set aside.

17. It is settled legal position that the standard of proof in a criminal case is 'proof beyond reasonable doubt' which is different from the burden of proof in a disciplinary enquiry, where preponderance of probabilities is considered sufficient.

18. The girl in question and her father deposed in the criminal case in favour of petitioner obviously in view of the settlement through the Ambedkar Yuva Jana Sanga, Old Srikakulam between the parties keeping in view the family honour of the girl as stated by her father in the disciplinary proceeding in view of the family's honour. The petitioner himself claimed that the minor girl was in love with him and produced certain letters allegedly written by the said girl. But the girl being a minor, this plea was rightly not accepted. It was also proved in the disciplinary enquiry that the petitioner had threatened her family members with dire consequences and 170 members of the colony where the petitioner resided, gave a complaint to the police

about the conduct of petitioner which complaint was marked as Ex.B.14 in the disciplinary enquiry.

19. This last event was not the subject matter of the criminal case. Moreover, the unauthorized absence of petitioner was also proved in the disciplinary proceedings.

20. For the foregoing reasons, it cannot be said that the punishment imposed on the petitioner by the respondents is disproportionate to the proved misconduct. So it is not liable to be interfered with in exercise of jurisdiction conferred in this Court under Article 226 of the Constitution of India.

21. I therefore do not find any merit in the Writ Petition, and it is accordingly dismissed. No order as to costs.

22. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 09-02-2017

Ndr/*