

HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.1316 of 2007

ORDER:

In the present writ petition, challenge is to the final order of punishment passed by the Commandant, CISF Unit VSP, Visakhapatnam, 3rd respondent herein, vide proceedings No.V-15014/CISF/VSP/AD.II/MAJ-03/TS/2005/6239, dated 04.06.2005, as confirmed by the appellate and reviewing authorities vide orders dated 19.04.2006 and 25.08.2006.

2. While working as Constable/Fire at Visakhapatnam, petitioner herein was served with a charge memo dated 31.01.2005 with the following charge:

“ARTICLE OF CHARGE

No.944300183 Constable/Fire T.Ramakrishna of CISF Unit, VSP Vizag has exhibited an act of gross misconduct, indiscipline and unbecoming being a member of an Armed Force of the Union, in that he misbehaved many times with Kumari S.Hemalatha D/o.Constable/Fire S.Y.Reddy (CISF No.844508344) of the Unit, harassing her by uttering filthy and obscene words whenever she was accosted by Constable/Fire T.Ramakrishna while going for/returning from School, tuition or market and particularly on 03-01-2005 at about 1830 hrs while she was returning to her home from tuition in Sector-V of VSP Township along with her friend Kumar R.Tanuja, D/o.R.Sasikumar. Hence the charge.”

3. Responding to the said charge memo, petitioner herein submitted written representation on 17.02.2005 and thereafter a departmental

enquiry was ordered against the petitioner under the Central Industrial Security Force Rules, 2001. An enquiry officer was appointed and the said enquiry officer conducted enquiry and submitted a report to the disciplinary authority on 25.05.2005. Basing on the said report, the disciplinary authority/3rd respondent herein vide final order dated 04.06.2005 inflicted on the petitioner the punishment of reduction of pay by three stages from Rs.3575/- to Rs.3350/- in the time scale of pay of Rs.3050-75-3950-80-4590 for a period of two years with immediate effect with a further clause that the petitioner would not earn increments of pay during the period of reduction and the reduction would have the effect of postponing the future increments of pay.

4. Aggrieved by the said order of punishment passed by the 3rd respondent, petitioner herein preferred appeal before the 2nd respondent herein and the said appeal ended in dismissal by virtue of the orders passed by the 2nd respondent vide proceedings No.V-11014/45/2005/L&R(SZ) 2669 dated 19.04.2006. Thereafter, petitioner herein filed a review before the 1st respondent/Inspector General and the 1st respondent/Inspector General also confirmed the same by way of order dated 25.08.2006 vide proceedings No.V-11015/PRB/REV/SS/06-3982. The present writ petition assails the validity and the legal sustainability of the said orders passed by the primary, appellate and reviewing authorities.

5. Heard Smt.K.Udaya Sri, learned counsel for the petitioner, Sri B.Narayana Reddy, learned Asst. Solicitor General for the Union of India for the respondents and perused the material available on record.

6. It is contended by the learned counsel for the petitioner that the impugned order of punishment is highly illegal, arbitrary, unreasonable and violative of Article 14 of the Constitution of India. It is further submitted by the learned counsel that the impugned orders are perverse and respondents passed the said orders without assigning any valid reasons. It is also the submission of the learned counsel that the disciplinary authority failed to take into consideration the evidence adduced on behalf of the petitioner herein and that the findings of the enquiry officer also suffer from the element of perversity. It is further argued by the learned counsel that the respondents-authorities ought to have exonerated the petitioner herein having regard to the conduct of the petitioner. It is further submitted that, having made observations in favour of the petitioner herein, respondents-authorities are not justified in inflicting the punishment under challenge and no independent witness was examined to prove the guilt of the petitioner.

7. Per contra, it is submitted strenuously by the learned Asst. Solicitor General that there is absolutely no illegality nor there exists any procedural infirmity in the impugned action and in the facts and circumstances of the case, respondents-authorities are perfectly justified in inflicting the punishment under challenge. It is further submitted that the offence alleged against the petitioner herein is a heinous one; as such, the petitioner herein is not entitled for any indulgence of this Court under Article 226 of the Constitution of India. It is further contended by the learned Asst. Solicitor General that all the three authorities, viz., disciplinary, appellate and reviewing authorities

categorically and uniformly found against the petitioner herein, only after taking into consideration entire material available on record; as such, the orders under challenge are not amenable for any judicial review under Article 226 of the Constitution of India.

8. The information available before this Court manifestly reveals that the respondents-authorities took into consideration the evidence of P.Ws.1 to 4 and also considered the evidence of D.Ws.1 to 6. According to the learned counsel for the petitioner, there is no independent witness examined to prove the guilt of the petitioner herein and that P.W.4, who alleged to have accompanied P.W.2, did not depose against the petitioner herein. A perusal of the material available on record discloses that during the course of preliminary enquiry, P.W.4 stated categorically against the petitioner herein. The disciplinary authority also took into consideration one significant fact that the parents of P.W.4 tried to get back the statement of P.W.4 from the preliminary enquiry officer and concluded that the parents of P.W.4 were not interested to involve the girl in the enquiry of the charged officer. The disciplinary authority also took into consideration the distance between the place of work and the place of residence. The disciplinary authority also took into consideration the settled principle of law that in the departmental proceedings “rule of strict proof” cannot be applied and also found that in disciplinary cases, the standard of proof required is that of preponderance of possibility and not proof beyond reasonable doubt. It is further evident from the order of punishment that the disciplinary authority took a lenient view having regard to the past conduct of the

petitioner herein. Both the appellate and reviewing authorities categorically observed that no father or mother of a girl child would normally come forward to make complaint of the present nature, involving modesty of the girl child, which will affect the social life. It is a settled and well-established proposition of law that this Court, in exercise of jurisdiction under Article 226 of the Constitution of India, cannot sit over the findings arrived at, during the departmental proceedings, as an appellate authority. In the considered opinion of this Court, the disciplinary authority, only after elaborately considering the entire material on record, passed the order under challenge. In the definite opinion of this Court, the orders under challenge do not suffer from any perversity. This Court is not inclined to meddle with the orders under challenge in the facts and circumstances of the case.

9. For the aforesaid reasons, the writ petition is dismissed. No order as to costs.

As a sequel, miscellaneous petitions if any pending in the writ petition stand closed.

A.V.SESHA SAI, J

June 5, 2017
MRR