

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5837 of 2013

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Kanwar Singh, son of Sh. Banwari Lal, Resident of village- Khatoli Ahir, P.O.
Kamania, Tehsil Narnaul, District- Mahendragarh, Haryana.

... .. Petitioner/s

Versus

1. The Union of India through The Secretary, Ministry of Home Affairs, Central Secretariat, North Block, New Delhi.
2. The Director General, CISF, Ministry of Home Affairs, CGO Complex, Lodhi Road, New Delhi.
3. The Inspector General, CISF Office Complex, CISF Headquarters, Eastern Sector, Boring Road, Patna.
4. The Deputy Inspector General, CISF Unit RSP Rourkela, Sundergarh (Orissa).
5. The Senior Commandant, CISF Unit, Rourkela, District - Sundergarh (Orissa).
- 6.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bajarangi Lal, Advocate
For the Respondent/s : Mr. Anshuman Singh, (C.G.C.)

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 27-06-2018

Heard the parties.

2. This writ petition under Article 226 of the Constitution of India has been filed for setting aside order dated 12.02.2010 passed by Senior Commandant, CISF (Disciplinary Authority) by which petitioner has been imposed punishment of removal from service and order dated 13.05.2010 passed by D.I.G., CISF, (appellate authority) by which appeal of petitioner was dismissed and order dated 29.09.2010 passed by I.G. , CISF (Revisional Authority) by which Revision Petition of petitioner was dismissed.



3. Briefly stated, the facts of the case is that petitioner was appointed as Constable in C.I.S.F. on 04.05.1997. He was awarded 7 cash and other rewards. Petitioner was transferred to Rourkela and was proceeded departmentally for acts of misconduct.

4. Petitioner was put under suspension by order dated 01.09.2009 in contemplation of departmental proceeding and memo of charge dated 10.09.2009 was served upon petitioner on 12.09.2009 with two charges. The two charges for which petitioner was proceeded are as follows:-

(i) Without prior permission and intimation of any competent authority petitioner went at Rourkela Railway Station with his other colleagues in Government jeep No. OR-14Q-3762 to see off Constable Prahalad (who was going to his house on leave in Samleshwari Express).

(ii) Petitioner used undesirable words for Lady Constable Champa Hui of the unit (who was going home on leave on 08.07.2009 in Samaleshwari Express) and committed misbehave with her in presence of other civilian passenger.

5. Complaint was made by Lady Constable Champa Hui in which she has alleged that she was going to her home by Samaleshwari Express on 08.07.2009 after obtaining leave and



petitioner and four others misbehaved with her and used indecent and undignified language against her in public place.

6. She sent her Complaint dated 09.07.2009 through fax to the Senior Commandant after arriving home which has been marked as Exhibit-1. She has stated that she was granted 18 days earned leave and two days casual leave. She had reservation in the train and schedule time of train was 10.30 PM. She proceeded from hostel at 9.40 and reached station at 10 'o' clock and boarded the train and occupied her seat. Thereafter Constable driver Prahalad sat on the adjacent seat. To see off Prahalad, constable driver Rajeev and three others had come. They came near her and asked if she was also going home on leave thereafter they told Prahalad in which they used very vulgar and indecent remarks against complainant. When she told them not to use indecent language they started abusing her. They were drunk, they also tried to touch her and thereafter surrounded her then she started weeping. They went away when the train started moving. She has further written that if such behaviour goes unpunished it will be difficult for her to go home and prayed for action against these constables.

7. On the said complaint made by Champa Hui, a preliminary enquiry was conducted by the department and it



was resolved to initiate departmental proceeding against petitioner and two charges as stated above were framed against petitioner. In support of charges five witnesses have been examined on behalf of department.

8. P.W.-1 Champa Hui in her deposition has stated that she was going Kharagpur on 08.07.2009 by Samaleshwari express, she had reservation in AC-3 coach and occupied her seat then driver Rajeev, Amit and constable from Head quarter company Narendra and Kanwar Lal arrived there. Driver Rajeev was shouting and making vulgar remarks against her. Prahalad exchanged his berth and came on the berth adjacent to her. Prahalad remained sitting there and other constable left the place and she went to toilet and when she was returning to her seat Rajeev called her from back then Kanwar Lal (petitioner) and Amit from the front side and Rajeev from the back side surrounded her and thereafter Kanwar Lal (petitioner) abused her in filthy language while abusing her Kanwar Lal also tried to touch her body then she went on her seat and started weeping but still they continued abusing her publicly. When she sent the fax to the Commandant she was not aware about name of petitioner and other constable but she knew them by face and after coming back she could know name of said constables.



9. P.W. 1 has been cross examined by the petitioner at length but she has stood the test of cross-examination and there is nothing to disbelieve her testimony. Other witnesses in support of charge are P.W. 2 driver Rajeev Kumar, P.W. 3 driver Amit Kumar, P.W. 4 driver Prahalad, P.W. 5 G.D. Narendra Singh who are all named in the complaint filed by complainant but have become witnesses in the departmental proceeding initiated against petitioner. From reading of the complaint filed by complainant exhibit-1, it is apparent that similar allegation has been alleged against these persons also who had accompanied petitioner to see off Prahalad Yadav but it appears that no proceeding has been initiated against them, although they were also equally guilty of offence.

10. It was incumbent upon the department to initiate combined departmental proceeding against all the constables against whom complainant had levelled serious allegations of outraging her modesty but only petitioner has been singled out for said proceeding which is discriminatory. If offence has been committed as alleged by the complainant by all four persons as named by her then initiating proceeding against petitioner only is discriminatory and there has to be parity in departmental proceeding also. Authorities cannot initiate proceedings against



one and condone misconduct of others at their whims sweet will and choice. The department instead of initiating proceeding against them has made them witnesses against the petitioner which is not permissible. Department has to maintain parity in matter of Disciplinary Action and employees committing similar nature of misconduct has to be treated similarly. Department cannot single out one of them for departmental proceeding and absolve others although they are equally guilty of same misconduct. The Selective Departmental Action against petitioner does not stand the test of fairness and reasonableness and parity is to be maintained in matter of punishment. Department cannot apply two different yardsticks to treat its employees who are similarly placed. Department cannot treat four similarly placed employees differently by punishing one (petitioner) and absolving four others who are equally guilty of same offence.

11. Although misconduct committed by petitioner is serious in nature and charges stands proved. There is improvement in version of complainant (PW-1) in her deposition before the Enquiry Officer vis-a-vis allegation as made in complaint (Exhibit-1) send by fax by the complainant but in her deposition also she has levelled allegation against



four constables who were in the compartment but those have been made witnesses on behalf of Department in a clandestine manner to support the charge and to depose against petitioner. Proceeding there is no provision to make accused approve in departmental proceeding. Even in criminal trial approved are pardoned sentence after being convicted.

12.From the evidence of PW-2, PW-3 and PW-4 as recorded before the Enquiry Officer they have not supported the charge of prosecution. In their deposition they have not made any serious allegation against the petitioner. Enquiry Officer is expected to conduct trial in a fair and impartial manner. He is not an agent of Disciplinary Authority or the department. He cannot put question to chargesheeted employee. It is for the Presenting Officer to adduce evidence on behalf of department with right of chargesheeted employee to cross-examine witnesses. Similarly Presenting Officer, who represents department has right to cross examine defence witnesses and to discredit defence evidence.

13. For the reasons as stated above this Court finds that departmental proceeding against the petitioner has been initiated in a predetermined and vindictive manner and protecting other four for unexplained reasons. The respondent



in their counter affidavit have accepted that for similar allegation others have been absolved but has not stated any reason to arrive at such decision. In para no. 33 at page 25 they have given an evasive reply as following:-

“So far as the allegations against Constable/Driver Rajiv Budhwar, it is submitted that each and every case in departmental proceedings has its different nature and cannot be dealt similarly. The fact remains that the petitioner has been found guilty of charges in duly conducted departmental enquiry on the basis of statement of the Pws and documentary evidences adduced during the course of departmental enquiry. The petitioner cannot escape from proved acts of grave misconduct by putting example of others who have been dealt separately depending upon merit of the cases.”

14. This Court after going through materials available on record i.e. complaint by Fax (Exhibit-1) statement of complainant during preliminary enquiry Exhibit-2 as well as her deposition as PW-1 could not find much difference in nature or gravity of misconduct committed by petitioner or other constable Rajiv Budhwar and others and parity in Disciplinary Action/punishment has to be maintained. The counter-affidavit on this aspect is evasive and it has not been



stated whether other four constables have been departmentally proceeded and imposed any punishment or not.

15. The orders passed by Departmental Authorities were fit to be quashed on this score only but looking at the nature of charge this Court is not inclined to interfere in the order of holding petitioner guilty of charge but the matter is remitted to the Revisional Authority (Respondent No. 3) to reconsider the quantum of punishment and to impose similar punishment upon petitioner as has been imposed upon Rajiv Bhudwar and three others against whom also complainant has levelled similar allegation. If no departmental proceeding has been initiated against these four and they have been absolved then petitioner has to be also given similar treatment.

16. The respondent will pass a fresh order after reconsidering the quantum of punishment and will treat petitioner similarly vis-a-vis treatment meted out to other 4 constables within three months from date of receipt/production of a copy of this order.

17. With the said observation and direction, this writ petition is disposed of.

18. The Original record of the departmental proceeding produced by the Central Government counsel for



perusal of this Court is directed to be returned to him.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	12.02.2018
Uploading Date	20.07.2018
Transmission Date	N.A.

