

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 08.02.2018

PRONOUNCED ON: 04.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

W.P.No.19119 of 2013

& MP.No.1 of 2014 & WMP.No.11033 of 2016

K.G.Nidhi..

Petitioner

Vs

1. The Union of India,
rep. by the Secretary to Government,
Ministry of Home Affairs,
New Delhi.
2. The Deputy Inspector General/AP-SZ,
Central Industrial Security Force,
2nd Floor, D Block,
Rajaji Bhavan, Besant Nagar,
Chennai-90.
- 3.The Senior Commandant,
Central Industrial Security Force, Unit,
ASG, Chennai.

Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorari to call for the entire records of the third respondent dated 06.02.2013 in proceeding No.V-15014/CISF/ASG/CH(MAJ)-05/NKG/DISC/12/1236 and confirmed by the second respondent by order No.V-15019/L&R/AP-SZ/Appeal-03/2013/4022 dated 13.06.2013 issued by the Deputy Inspector General/AP-SZ, Central Industrial Security Force, Chennai-90, issued to the petitioner and quash the same.

For Petitioner : Ms.T.Girija for

Mrs.Sudharshana Sundar

For Respondents:Mr.S.Arokkiam, CGSC

ORDER

This writ petition has been filed by the petitioner under Article 226 of the Constitution of India with a prayer to call for the entire records of the third respondent in disciplinary proceeding No.V-15014/CISF/ASG/CH(MAJ)-05/NKG/DISC/12/1236 including the order dated 06.02.2013 which has been confirmed by the second respondent/ the Deputy Inspector General/AP-SZ, Central Industrial Security Force, Chennai-90 vide order No.V-15019/L&R/AP-SZ/Appeal-03/2013/4022 dated 13.06.2013, and to quash the same issuing a writ of certiorari or any other appropriate writ.

2. It appears that the petitioner, who is presently working as Sub Inspector in CISF Unit, ASG, Chennai, was earlier posted in Visakhapatnam as such, wherein one B.D.Deepak, was working as her superior, the then Deputy Commandant. The petitioner alleges that she was harassed by the said B.D.Deepak, while so working in her work place in a different manner including sexual harassment. An anonymous complaint having been received against said B.D.Deepak by the higher authority, alleging misconduct including the sexual harassment meted out to the writ petitioner, a discrete enquiry was conducted by one D.K.Singh, then Deputy Inspector General/Commandant, CISF Unit, VSP, Vizag, wherein the petitioner was examined and was asked about such harassment meted out to her. According to the petitioner, though she was reluctant at the first instance to substantiate the same but on the assurance of confidentiality, she narrated sexual harassment meted out to her in writing before the Officer, conducting the enquiry. Thereafter, treating such writing of the petitioner to be a complaint on sexual harassment, a Complaint Committee was constituted under Rule 36 (2A) of the Central Industrial Security Force Rules(herein after referred to as the 'CISF Rules'). The Complaint Committee enquired into the matter and came to the conclusion, that the allegation made by the petitioner was baseless and false one and actuated with malafide to seek transfer from the station. On the basis of such report of the Complaint Committee, the said B.D.Deepak was exonerated of the charge and was given promotion. On the other hand, the petitioner was issued with a charge memo dated 06.08.2012 for allegedly making such a baseless allegation against an Senior Officer with an intention of malice the image of the Senior Officer and the same amounts to a gross indiscipline/ mis-conduct.

3. Challenging the report submitted by the Complaint Committee constituted under Rule 36 (2A) and the show cause

notice and the charge memo issued to her, the petitioner had filed W.P.No.22412 of 2012 before this Court, inter alia on the grounds that since the report of the Complaint Committee was not given to him to challenge the same, she could not have been proceeded on such report by issuance of the charge memo. The said writ petition came to be dismissed by this Court holding the grounds taken therein to be untenable and the charge memo was not interfered with. The petitioner participated with such departmental proceeding and ultimately, a finding of guilt having been recorded on the charge of misconduct alleged and penalty of fine equivalent to five days pay having been imposed, petitioner prefer an appeal as provided in the Rules against such finding and penalty before the Deputy Inspector General/Airport, CISE SZ HQRS, Airport Sector, Chennai/ 2nd respondent under the CISE Rules. The respondent no.2/appellate authority in the said appeal came to the conclusion that the appeal was devoid of merits and the petitioner having been awarded with a vary lenient penalty, the punishment imposed on her needs to be enhanced to that of "reduction of pay by two stages for a period of one year with cumulative effect" and asked the petitioner to show cause on the same.

4. Aggrieved by such show cause notice, this writ petition has been filed by the petitioner challenging inter alia on the grounds that the finding of the Enquiry Committee against B.D.Deepak being perverse in as much as the Enquiry Committee before exonerating him of the charges had not appreciated the evidence on record in proper perspective and she was also not given an appropriate opportunity to prove her case against B.D.Deepak, so also such report of the Enquiry exonerating B.D.Deepak holding the charge to be baseless and stigmatizing the writ petitioner to have baselessly made, the same being actuated with malice not being provided to her to challenge the same in the appropriate forum, the same could not have been made a foundation to proceed against her and a finding of guilt and punishment imposed against her. The same is more so there being no regularly constituted complaint by the writ petitioner alleging misconduct of sexual harassment against B.D.Deepak, and the Complaint Committee having not recommended the authority to proceed against her for making any false complaint of sexual harassment in the work place as contemplated under Section 14(1) of The Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act 2013. She was also having not given any appropriate opportunity to prove her defence in the disciplinary proceeding, the finding recorded against her in such disciplinary proceeding is also vitiated. The appellate authority without considering the same and without giving him an appropriate opportunity having come to a

conclusion as revealed from the notice of show cause that the appeal filed is without any substance and the punishment imposed needs to be enhanced by the proposed punishment the show cause notice as such suffers from the vice of violation of the principle of natural justice and as such liable to be quashed. Consequently, the disciplinary proceeding and the penalty imposed.

5. The respondent in their counter affidavit have disputed the contention raised in the writ petition that the proceeding against B.D.Deepak was not initiated under Rule 36 (2A) of the CISF Rules on any complaint of the petitioner inasmuch as the petitioner, had given a complaint in writing alleging the sexual harassment to the officer making enquiry on an anonymous complaint against B.D.Deepak, pursuant to which the enquiry was conducted by the Complaint Committee constituted under Rule 36 (2A) of the CISF Rules. The said Committee in the report submitted having, held the complaint to be false and actuated with malafide against a Senior Officer after giving due opportunity to the petitioner to prove her case, who was examined as a witness therein, the authority decided to proceed against the petitioner as the finding recorded against her amounts to a gross misconduct. In the said enquiry against the B.D.Deepak, there being no provision of appeal against the finding of exoneration of the delinquent officer at instance of the complainant the report was not provided to her and she was proceeded with vide the charge memo. The petitioner having challenged the same, in the writ petition in W.P.No.22412 of 2012, this Court also did not entertain such prayer challenging the proceeding against her, hence challenge to the finding of guilt and also the penalty imposed against the petitioner vide the impugned disciplinary proceeding on that ground is devoid of merit. So far as challenge to such disciplinary proceeding on the ground that no appropriate opportunity was given to her to defend her, is concerned the same is contrary to the materials on record. Inasmuch as the petitioner being given the opportunity to produce her defence witnesses could not produce the same, hence the finding of guilt and the punishment. With regard to averment that the notice of show cause to enhance the punishment imposed by the appellate authority on the ground that there was non-application of mind and also predetermined one, it has been averred in the counter affidavit to be without any merit inasmuch as the authority has given him the opportunity to file show cause against such proposed punishment and yet to take a decision as the show cause notice has been challenged in this appeal. The same being strictly in accordance with the procedure prescribed in the Rules, the writ petitioner could not have challenged the same without exhausting the Appellate Forum where the matter is pending. Hence, this writ petition filed challenging the finding recorded in the disciplinary

proceeding as well as the show cause notice issued is devoid of merit and as such entails dismissal.

6. During the course of hearing, learned counsel appearing for the respondent has assailed the finding recorded in the disciplinary proceedings on the ground that there was no foundation to initiate the same inasmuch as the Complaint Committee constituted under Rule 36 (2A) was not on a complaint of her and as such she could not have been charged for initiating a false and frivolous complaint against B.D.Deepak moreso when she was not given a chance challenge such report of the Complaint Committee against the aspersion cast on her for making a false complaint being actuated with malafide, so also there was no recommendation to initiate such complaint against her as provided under Section 14(1) of The Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal Act 2013'' to proceed against her for making a false complaint. The appellate authority also without taking note of the aforesaid fact and giving him the opportunity to ventilate her grievance against the same more particularly that she was also not given an appropriate opportunity to defend her by examining her witnesses having issued with the show cause to enhance penalty, recording that the appeal is devoid of merit, the impugned show cause notice issued, the same is vitiated. Hence, the learned counsel for the writ petitioner has submitted to allow the writ petition with the relief sought for.

7. In response, learned counsel appearing for the respondent submits the same to be contrary to the materials on record and also the provisions of law inasmuch as this Court in the earlier writ petition No. W.P.No.22412 of 2012 had not entertained the prayer challenging the charge memo issued for initiation of the disciplinary proceeding on the ground of non supply of copy of the report of the Complaint Committee exonerating the said B.D.Deepak, casting aspersion on the writ petitioner of making a false and frivolous complaint of sexual harassment to a women in a work place inter alia on the grounds taken in this writ petition challenging the disciplinary proceeding for making the same a foundation. Therefore, the petitioner cannot be heard of challenging the same on the said ground. So far as the question of opportunity of hearing in the disciplinary proceeding is concerned the materials discloses that she was given ample opportunity to defend her case including examining the witnesses relevant to prove her innocence. But the petitioner having not avail of the same, by adducing the defence witnesses as proposed by her, the disciplinary proceeding and consequential finding of guilt cannot be said to be vitiated on the ground of violation of principles of natural justice. So also so far as the show cause

of the appellate authority is concerned on the ground that the same is prejudged one, it is submitted that the appellate authority having power of enhancement of penalty while considering the appeal filed by the Delinquent employee as contemplated in Rule 52 of the CISF Rules after coming to a conclusion the appeal on merit to be without any substance, for only hearing the delinquent on such proposed enhancement of penalty, the notice of show cause was issued and the petitioner without responding to the same in the midst of the appeal could not have come to this Court challenging the same, in as much the appeal is yet to be finally disposed of and the appellate authority's order also against the enhancement of the punishment of the petitioner can be challenged by filing a second appeal. Hence, this Court should not exercise the power under Article 226 of the Constitution of India at this stage and otherwise also this writ petition is devoid of merit, is also the submission of the learned counsel for the respondents.

8. Needless to say that the appeal filed by the petitioner against the finding of the departmental proceeding is yet to be finally disposed of inasmuch as the appellate authority has given a notice of show cause for enhanced punishment after finding the appeal on merit against the finding of guilt to be without any substance. Such power of enhancement of sentence is available to the appellate authority as seen in Sub Clause (i) to Clause (C) of Sub Rule 2 of Rule 52 CISF Rules. However, the same can only be enhanced only after giving a chance of show cause to the Condemned Officer. Such question of enhancement only arises after coming to a conclusion that the appeal is devoid of merit and the sentence imposed is inadequate looking into the materials produced in the disciplinary proceedings as well as the appeal memo. Therefore, the appellate authority having adhered to the same and issued the show cause notice, the writ petitioner could not have challenged the same without filing show cause and any final order on the penalty imposed by the appellate authority on such enhanced punishment. Needless to say, if the appellate authority records an enhanced punishment after appreciating the aggravating vis-à-vis the mitigating and extenuating circumstances brought to record, the Rule 46 provides for a second appeal challenging such finding of guilt and enhance punishment imposed by the appellate authority in which the condemned public servant can raise all the contentions raised here on the merit. Further more the appeal is still pending. In such premises even though this Court jurisdiction under Article 226 of the Constitution of India is not fettered to examine the correctness of the contentions raised pending disposal of the statutory appeal, still this Court should be loath in interfering with the decision of the appellate authority exercising the statutory power at this stage, without any compelling reasons.

Therefore, this Court is not inclined to interfere with the notice of show cause as well as the finding recorded examining the merits of such finding in the disciplinary proceeding on any of the grounds advanced and dispose of the writ petition giving liberty to the appellate authority to proceed with the matter in accordance with the law but giving a chance to the petitioner to file the show cause within a period of one month from the date of this order against the show cause. However, it is made clear that since this Court has expressed no opinion on the merit of the show cause notice, while not allowing the prayer made by the petitioner in this writ petition, the appellate authority should not construe the reluctance of this court to interfere proceeding pending with the appellate authority at this stage as an expression of any opinion on the merit of the show cause notice issued but shall dispose of the same strictly taking into consideration the relevant materials on record and in accordance with the law. So also after the disposal of the appeal if any forum is approached against the order to be passed the reluctance of this Court to interfere at this stage in the appeal pending, should not be considered as an expression of any opinion of this Court on the merit of the findings recorded by any of the statutory forum provided in the rules, but dispose of the same in its own merits.

9. Accordingly, this writ petition stands disposed of. However, in the circumstances, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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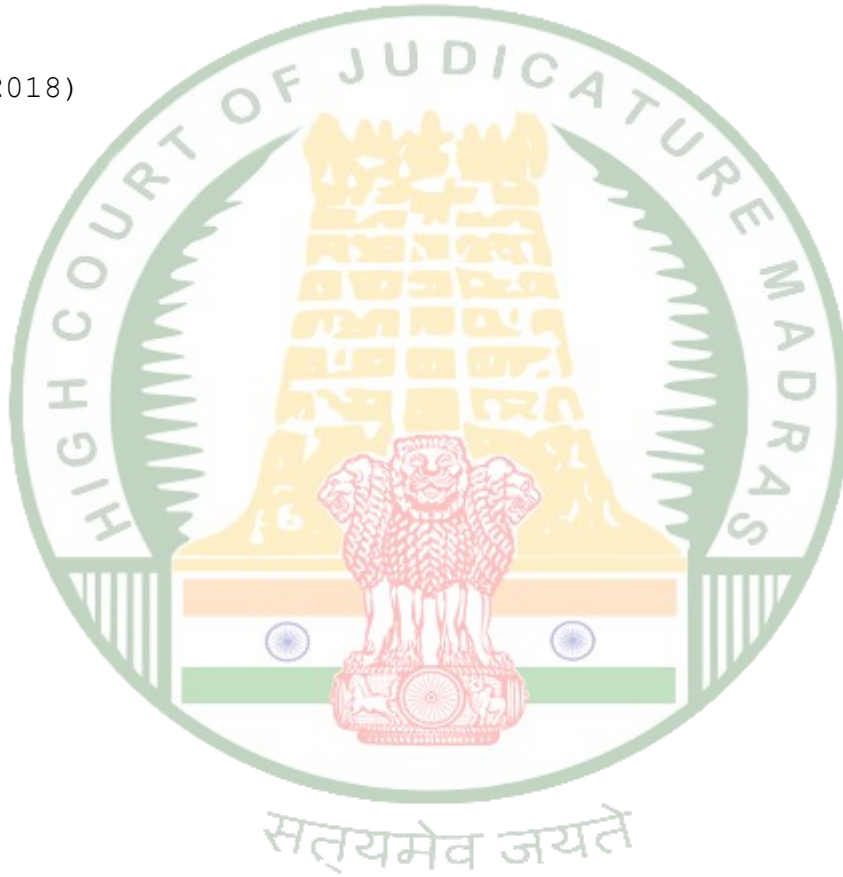
1. The Secretary to Government,
Ministry of Home Affairs,
New Delhi.
2. The Deputy Inspector General/AP-SZ,
Central Industrial Security Force,
2nd Floor, D Block,
Rajaji Bhavan, Besant Nagar,
Chennai-90.

3.The Senior Commandant,
Central Industrial Security Force, Unit,
ASG, Chennai.

+1 CC to Mr.S. Arockiam, Advocate sr 34491.

W.P.No.19119 of 2013

SVN(CO)
SP(13/06/2018)



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