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

+ **W.P.(C) 8121/2016**

EX CT. AVINASH KUMAR Petitioner

Through: Mr.H.S.Tiwari, Advocate.

versus

UNION OF INDIA AND ORS. Respondents

Through: Ms. R.Malhotra and Mr.Himanshu
Kaushik, Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

% **04.12.2018**

Dr. S. Muralidhar, J.:

1. The challenge in this petition is to the order dated 8th July 2015 of the Disciplinary Authority removing the Petitioner from service of the Railway Protection Special Force (RPSF) pursuant to an inquiry on the charges of gross indiscipline, discreditable act and negligence in the performance of his duties. The order dated 20th January 2016 of the Appellate Authority and the order dated 15th March 2016 of the Revisional Authority affirming the above order have also been challenged.

2. The background facts are that the Petitioner was recruited in the RPSF on 9th October, 2006. He was subsequently posted with the Special Platoon, 6th Battalion, RPSF, Dayabasti at Delhi. The Petitioner was

selected to undergo a Training of the Trainers (TOT) course at the Jagjeewan Ram Academy, Lucknow which was to take effect from 11th May, 2014.

3. On reaching the Academy, the Petitioner was accommodated in Barrack No.11 of SO's Hostel along with one Head Constable (HC Dharmendra Kumar Yadav) of RPF, NCR, Allahabad. Room No.13 in the said SO's Mess was allotted to a Lady Constable who was the Instructor of the Petitioner and who lived there along with her three year old child and a niece who was juvenile. Her husband was present at the time in the Academy and was staying in Room No.2 as he had come to take their child and niece to Mumbai.

4. The charge against the Petitioner was that in the intervening night of 14th and 15th May 2014, he illegally entered the said room No.13 allotted to the Lady Instructor and was caught red handed by the Lady Instructor and her husband while committing an indecent act with her niece. The Petitioner was issued a major penalty charge sheet on 17th June, 2014 under Rule 153 of the Railway Protection Force Rule, 1987 (RPF Rules) by the Disciplinary Authority (DA) i.e. Adjutant 6th Battalion. After setting out the substratum of the charge, it was stated:

‘Your abovementioned act being a member of the disciplined Force tantamount to gross indiscipline, discreditable act and showed negligence in the duty. Thus violated RPF rules 1987 Rules No.146.1, 146.2(iii) and 147.1(vi). Hence the charge.’

5. The inquiry was conducted on various dates. Seven prosecution witnesses were examined. These included the victim, the Lady Instructor

(PW-7), her husband (PW-6) and a constable who was on night duty (PW-2). Apart from being given the full opportunity to cross-examine these witnesses, the Petitioner also led defence evidence and examined ten defence witnesses on his behalf.

6. The Enquiry Officer (EO) submitted his findings/report dated 19th May, 2015 to be DA holding the Petitioner guilty of the charges levelled against him.

7. A copy of the EO's report was provided to the Petitioner on 20th May, 2015 and he was given time to make his submissions. The Petitioner gave his representation against the report of the EO on 5th June, 2015. On going through the record after going through and discussing the submissions made on behalf of the Petitioner, a detailed order dated 8th July, 2015 passed by the DA i.e. Senior Commandant, 6th Battalion, RPSF, DBSI-Delhi. While agreeing with the findings of the EO, the DA imposed the punishment of removal from service on the Petitioner.

8. The Petitioner's appeal was dismissed by the Appellate Authority (AA) on 20th January, 2016. Concurring with the DA that the Petitioner had acted irresponsibly in a highly immoral and immodest way and brought disrepute to the disciplinary force, the AA observed that the Petitioner deserved no sympathy. The punishment of removal from service was held to be appropriate and proportionate to the proven charges.

9. The revision petition of the Petitioner was dismissed by the

Revisional Authority viz., the Inspector General (IG), RPSF by an order dated 15th March, 2016. All these orders have been assailed in the present writ petition. After many adjournments and subject to payment of costs, a reply to the petition was filed by the Respondents on 3rd January, 2016.

10. Thereafter on 7th July, 2018 a further affidavit was filed by Commanding Officer of the 6th Battalion, RPSF where in paragraphs 3 and 4, it was stated as under:

“3. That while the Petitioner herein was charge sheeted, the charges were framed under rule 146.1, 146.4 and 147(ii) RPF Rules, 1987 but on account of inadvertent typographical error the same was shown as under Rule 146.1, 146.2(iii), 147.1(vi) RPF Rules 1987.

4. That I apologize for the inconvenience caused to this Court because of this error in drafting charge-sheet.”

11. This Court has heard the submissions of Mr. H.S. Tiwari, learned counsel for the Petitioner and Ms. R. Malhotra, learned counsel appearing on behalf of the Respondents.

12. At the outset, it was submitted by learned counsel for the Petitioner that on account of the obvious error in the charge sheet, the entire inquiry should be set aside and a fresh inquiry should be held on properly framed charges. This submission was based on what was stated in the further affidavit dated 7th July, 2018 of the Respondents which has been extracted hereinabove.

13. A perusal of the charge sheet reveals that there were three elements of the charge which the Petitioner was called upon to answer: (i) gross indiscipline; (ii) discreditable act; and (iii) negligence in duties.

14. Rule 146 of the RPF Rules is titled 'Code of behaviour for members of the Force'. Rule 146.1 mandates that "all members of the Force, irrespective of their ranks shall submit themselves to the requirement of the following code of behaviour, both on and off duty." It further states that it shall be incumbent upon all members of the force 'to respect the code of behaviour and of an attitude of complete discipline and maintain to it.' Therefore, as far as the mentioning of Rule 146.1 is concerned, it is relatable to that part of the charge sheet and states that the acts with which the Petitioner was charged amounted to 'gross indiscipline'.

15. Turning to the second part of the charge, viz., a discreditable act, it is actually Rule 146.4 which deals with 'discreditable conduct' whereas Rule 146.2(iii) speaks of being 'absent without leave or be late for any duty'. Clearly this was an error in the charge sheet and the correct rule for this charge was Rule 146.4. Nevertheless, the actual substance of the charge was clearly intimated to the Petitioner. The charge sheet stated that he had committed an immodest activity with the juvenile niece of the Lady Instructor. This fully answers the description of 'discreditable conduct'. The only error was in the Rule number. Instead of Rule 146.4 which states that 'no member of force shall act in any manner prejudicial in discipline or conduct himself in a manner which is likely to bring discredit to the reputation of the Force', Rule 146.2 (iii) was mentioned.

This does not make any real difference because a reading of the charge sheet clearly shows the substratum of the charge and its description as 'discreditable act' was clearly mentioned. In other words, the Petitioner would have been in no doubt about the second charge he was required to meet.

16. Likewise, even as regards the third element of the charge, viz., showing negligence in duty, instead of mentioning Rule 147 (ii) i.e. 'wilful breach or neglect of any provisions of this Act or any rule or of Directives or of any other lawful orders which he is bound to observe or obey,' what was mentioned was Rule 147.1 (vi) which talks about 'absenting himself without proper intimation to his controlling authority or without sufficient cause overstaying leave granted to him or failing without reasonable cause to report himself for duty on the expiry of such leave'. The substratum of the charge, viz., negligence in duty, answered the description of the act of the Petitioner mentioned in the charge sheet which should have been under Rule 147 (ii). Here again the Petitioner was in no doubt as to the charge he was required to meet.

17. In these circumstances, the failure to mention the correct Rule number *per se* caused no prejudice to the Petitioner as the case he was required to meet was unambiguously made known to him. This is not a substantive defect in the charge sheet which would lead to cancelation of the enquiry held and require a fresh charge sheet to be issued, much less a fresh inquiry to be held based on it. The above submission of the Petitioner is accordingly rejected.

18. The counsel for the Petitioner then focused on the process of the inquiry. According to him, the proceedings against the Petitioner were convened and proceeded on the basis of circumstantial evidence and that there was no eye witness to the alleged offence committed by the Petitioner. According to him, the whole story was concocted.

19. It is further submitted on behalf of the Petitioner, that the statement of the victim girl was not recorded at the relevant point of time. Reference was made to the inconsistencies and contradictions in the statements of the Lady Instructor, her husband and the statement of the victim. According to the Petitioner, even the manner of conducting the inquiry was biased and arbitrary.

20. The Petitioner further submitted that the call detail records (CDRs) of the mobile phone of the Petitioner were not called for and valuable evidence was therefore denied to him. This is in respect of his contention that he entered the room of the Lady Instructor only pursuant to a call received by him on his mobile phone from her niece.

21. Learned counsel for the Respondents on the other hand referred to the detailed orders passed by the AA Authority and the Revisional Authority which have discussed the evidence in great detail. He pointed out that during the course of preliminary inquiry conducted by the RPF Academy Administration, the statement of the victim girl was recorded and she was cross-examined. The EO had conducted a fair enquiry. Reasonable opportunity was provided to the Petitioner throughout to

defend himself in the inquiry. The statements of the Lady Instructor and her husband and the statement of the victim herself were consistent in stating that the Petitioner had entered the room of the victim at an odd hour of the night and was found with her in an objectionable position.

22. The Court has perused the entire record. The inquiry appears to have been a full-fledged one with many witnesses having been examined for the prosecution as well as the defence. In particular, the testimonies of the Lady Instructor and her husband (PW-7 and PW-6 respectively) and a duty Constable (PW-2) were relevant.

23. The Petitioner was caught red-handed by PW-6 and PW-7 in a compromising position with the girl at around 11:30 pm and thereafter other prosecution witnesses also assembled there. In the D & AR proceedings, these prosecution witnesses gave statements to the effect that the Petitioner had entered the room of the victim girl. The statements of PW-6 and PW-7 were to the effect that they had caught the Petitioner red handed in the room with the girl in a compromising position and at that time the Petitioner had begged to be excused.

24. This was corroborated by PW-2 who stated that he was on night duty in the intervening night of 14th and 15th May, 2014 at the academic campus. On being informed of the incident, he reached the SO's Mess and asked the Petitioner why he had entered the room of the Lady Instructor. On this, the Petitioner is stated to have replied that after drinking water he had entered the room by mistake. This was contrary to his earlier plea that the victim had called him on his mobile and asked

him to come there. It was further noted that during the D&AR proceedings, the Petitioner was asked by the EO on 24th and 25th April, 2015 that ‘you have stated in your statement that the victim girl called you on phone in her room, have you any proof or certificate to prove this version’? In reply to this question, the Petitioner stated that ‘he has no any certificate/proof of call details.’

25. The Court is of the view that in view of the above recording of what transpired during the D&AR proceedings, the plea of the Petitioner that his CDRs should have been produced has no merit. In any event, nothing prevented the Petitioner from getting those CDRs and producing them in the proceedings.

26. One defence witness (DW-7) had stated that the Petitioner was acquainted with the victim and that on two occasions the Petitioner had even taken her and the Lady Instructor on his motorcycle. As rightly noted by the DA, even if she was acquainted the victim, it was highly objectionable on his part to enter the room occupied by a minor girl who was alone in the odd hours of the night and be caught in compromising position. This indeed was a very serious misconduct by a member of a security force.

27. The Court has not been shown any error in the conduct of the inquiry by the EO. The reasons given by the DA for awarding the punishment of ‘removal from service’ are clear, cogent and suffer from no legal infirmity. Likewise, the orders of the AA and the Revisional Authority are also reasoned and again do not call for an interference.

28. No grounds have been made out by the Petitioner for interference with any of the impugned orders.

29. The petition is accordingly dismissed.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

DECEMBER 04, 2018

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