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

+ **W.P.(C) 9571/2018**

SANDEEP YADAV

..... Petitioner

Through: Mr.V.Shekhar, Senior Advocate with
Mr.Amit Chadha, Advocate.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr.Sanjeev Uniyal with Mr.Dhawal
Uniyal, Advocates for R1 & R2.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE SANJEEV NARULA

ORDER
01.11.2018

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Dr. S. Muralidhar, J.:

1. The Petitioner has challenged an order dated 10th July 2018 passed by the Disciplinary Authority i.e. the Director General, CRPF awarding the Petitioner the penalty of removal from service pursuant to a departmental inquiry ordered against him.

2. The charge against the Petitioner was that while he was functioning as DIG, GC CRPF New Delhi in 2014 he committed a serious misconduct in sending nude pictures of himself and sexually explicit material from his mobile phone to a woman on her mobile. It was stated that between 6th May and 1st June 2014, i.e. a period of 26 days, the Petitioner made 395 calls to

the said woman from his mobile phone mostly during office hours and also indulged in immoral conversations with her. It was stated that the Petitioner's act had tarnished the image of the organisation and that he had failed to maintain absolute devotion to duty and had acted in a manner which was unbecoming of a government servant thereby violating Rule 3(ii) and (iii) of the CCS (Conduct) Rules, 1964.

3. The reason for the said inquiry was a complaint filed by the woman's husband regarding the aforementioned acts of the Petitioner. A preliminary hearing was held by an Inquiry Officer who was appointed by the DIG (CRN Vigilance) Directorate General CRPF by an order dated 22nd July 2015. However, the Petitioner at the preliminary hearing objected to the said IO and stated that he would apply for change of the IO directly to the Disciplinary Authority. Thereafter by another order dated 19th August 2015 another IO was appointed to hold the inquiry.

4. There are two audio compact discs (CDs) containing conversations of the Petitioner with the husband of the woman and eight photographs. The presenting officer produced six documents, at the hearing on 18th October 2015 and these comprised of three complaints sent by the husband of the woman, the CDR of a mobile phone ending with digits 6278, the aforementioned two audio CDs and eight photographs. The IO noted that these documents "were inspected by the charged officer and admitted by him to be correct." They were then taken as State exhibits (SE) and numbered SE-1 to SE-6.

5. On the aspect of appointment of a defence assistant (DA), the IO informed the Petitioner that he could not nominate a law qualified person and to send any other qualified person as his DA. However, by a letter dated 25th October 2015, the Petitioner sought permission to engage a practicing advocate as his DA. Noting that the presenting officer (PO) was not law qualified and that under Rule 14(a)(a) of the CCS (CCA) Rules, 1965 the DA nominated by the Petitioner likewise could not be law qualified, the Petitioner was again directed to nominate a DA. Thereafter, the Petitioner nominated a DIG Range CRPF as his DA.

6. By a letter dated 25th October 2015 the Petitioner requested the IO to provide him 12 documents. On 28th October 2015 the IO wrote to the PO forwarding the copy of said letter and asked him to make available the said documents. The PO in turn requested the DIG (CRN DIG) Directorate General CRPF by a letter dated 29th October 2015 for arranging the aforementioned additional documents requested by the Petitioner. The DIG by a letter dated 4th November 2015 *inter alia* pointed out that the Petitioner, while requesting for additional documents in his defence, had to indicate the relevancy of the same. Since he had not done so, there was no requirement to supply those additional documents.

7. The IO then brought this to the notice of the Petitioner and his DA at the hearing on 8th December 2015. The Petitioner intimated that in his defence he would be producing certain photographs, certain audio recordings, transcript/photographs of messages SMS received from the woman by the Petitioner, appreciation letter etc.

8. There were three witnesses examined on the side of the complainant. SW-1 was the woman's husband, SW-2 was the woman herself and SW-3 a Joint Telecom Officer. Nine documents were exhibited on the side of the Complainant. These included apart from the documents referred to hereinbefore, ten photographs of the Petitioner which was submitted by SW-2 while tendering her statement before the IO on 21st December 2015; six pages of WhatsApp chat between the Petitioner and her and the CDR of the mobile ending in 6278 submitted by SW-3.

9. On his part the Petitioner examined only himself as a witness. Four documents were exhibited by him. This included mobile snap shots of incoming/missed calls from SW-2 to the Petitioner. SWs 1, 2 and 3 were cross-examined by the DA. The Petitioner was examined on 22nd December 2015.

10. One of the contentions raised by the Petitioner before the IO was that government servants were very much entitled to a private life and what a servant does in his private time (after office/duty hours), is his/her business and the government has no control over it. The IO in his report responded by pointing out that the Petitioner was found to have made numerous calls to SW-2 "during normal office hours." Government servants especially from Armed Forces because of their training and specific role are subjected to public scrutiny and were expected to maintain higher standards.

11. On the issue of not being permitted to engage an advocate as a DA the IO referred to what had transpired, and that the Petitioner did propose the

name of a DA after his request for engaging an advocate was turned down and that this was consistent with Rule 14(8)(a) of the CCS (CCA) Rules, 1965. On the CDR of the mobile ending in 6278 which SW-2 admitted to using, it had been authenticated by the BSNL. The CDR of the said phone had been taken on record. SW-1 had deposed that he had come to know that two numbers were used by the Petitioner and two by SW-2 one for talking and one for chatting.

12. On the question of authentication of the audio CDs the IO observed that the Disciplinary Authority must have got it verified before framing of the charge. On the contrary, the Petitioner had failed to prove any scientific proof which could raise a doubt on the authenticity of the CDs. It was noted that in the said conversations SW-1 was heard to be abusing the Petitioner. The Petitioner was at the receiving end and was requesting to meet SW-1 in person so that he could ask for his forgiveness. As such the said audio recording did not directly relate to any ingredient of the charge.

13. On the issue of the photographs having been 'photo-shopped' and unsupported by scientific evidence the IO noted that SW-2 during her statement identified and attested the ten nude photographs (which were almost same as the three photographs including SE-6 with slightly different angle) to be that of the Petitioner. The IO noted that these exhibits were not questioned by the Petitioner during the inquiry and he was unable to prove if these were tempered with.

14. Regarding the authenticity of SE-8 containing extract of the immoral

chatting between the Petitioner and SW-2 these were provided by SW-2 herself. This was evident even from the extract of the chat submitted by the Petitioner himself along with his statement of defence. Again, no material had been placed on record by the Petitioner to doubt their authenticity.

15. The Court finds that the IO has meticulously analysed the entire evidence placed on record and answered every issue raised by the Petitioner. Certain important findings, which have been unable to be controverted, are that out of the 395 calls made by the Petitioner from his mobile numbers to the mobile number ending in 6278 used by SW-2 between 6th May and 1st June 2014, 127 calls were made between 9.30 am and 1.30 pm and 3 pm and 6 pm which were normal working hours in the services. No family member of the Petitioner was examined to substantiate his claim that his personal mobile numbers were kept at his residence and used by them. The IO held that the act of the Petitioner in sending his nude photographs to SW-2, a married woman, and making immoral conversations stood clearly proved.

16. A copy of the inquiry report was furnished to the Petitioner and he submitted his comments thereon to the Disciplinary Authority on 3rd December 2016. The Disciplinary Authority then consulted the Union Public Service Commission (UPSC) which tendered its advice on 6th September 2017. The UPSC considered that the ends of justice would be met if the penalty of removal of service which shall not be a disqualification for future employment under the Government is imposed on the Petitioner.

17. After receiving a copy of the advice of the UPSC, the Petitioner submitted his further reply dated 10th January 2018 to Disciplinary

Authority. After considering the said representation of the Petitioner the impugned order was passed by the Disciplinary Authority.

18. Mr. V. Shekhar, learned Senior Counsel for the Petitioner, first submitted that the non-supply of the documents sought by the Petitioner which initially the IO had forwarded to the PO had seriously prejudiced the Petitioner. He submitted that the IO changed his mind later by justifying the non-supply of such documents to the Petitioner.

19. The Court finds that valid reasons have been given by the IO for declining to supply all of the documents as demanded by the Petitioner. Indeed the Petitioner did not indicate the relevance of those documents to the inquiry and, therefore, did not comply with the legal requirement in terms of Rules 11 to 14 of the CCS (CCA) Rules, 1965. The Court also finds that whatever documents were relevant to the charge against the Petitioner were indeed provided to him. The IO has strictly gone by those very documents and the depositions of the witnesses. The Court does not accept the plea of the Petitioner that the denial of the above documents as demanded by him has resulted in any miscarriage of justice or has caused any prejudice to the Petitioner. Indeed many of the documents that he was seeking had no relevance to the charge against him.

20. Mr. Shekhar then contended that the veracity and authenticity of the photographs, whatsapp chat etc. ought to have confirmed by an independent agency such as the Forensic Science Laboratory (FSL) and the failure to do so has resulted in a miscarriage of justice.

21. It must be remembered that this was a departmental inquiry and not a criminal trial. As noted by the IO no formal request appears to have been made to the Disciplinary Authority by the Petitioner at any time that he wished to have the contents of the audio CDs or the print out of the whatsapp chats verified or authenticated by the FSL or any other similar agency. SW-2 produced photographs and whatsapp chats during the course of her submission and authenticated it. She was subjected to cross-examination but was unable to be discredited.

22. In fact the key element in the departmental inquiry was the testimony of SW-2 herself. Although Mr. Shekhar repeatedly urged that SW-2 herself was not the complainant but it was her husband SW-1 who was the complainant, the fact remains that the subject matter of the inquiry was about the Petitioner sending his nude photographs to SW-2; making innumerable calls to her from his mobile numbers and sending her explicit texts as whatsapp chats. SW-2 herself was examined as witness and cross-examined by the Petitioner. He was unable to demonstrate that she was either untruthful or unreliable. Most importantly the Petitioner was unable to show there was any oblique motive for SW-2 to falsely accuse him of such conduct.

23. The Court finds that the decisions relied upon by the Petitioner viz., ***Kuldeep Singh v. Commissioner of Police JT 1998 (8) SC 603*** or ***Roop Singh Negi v. Punjab Natinoal Bank (2009) 2 SCC 570*** are distinguishable on facts and do not come to the assistance of the Petitioner. Those were instances of there being absolutely no evidence supportive of charge framed

or instances where documents were produced without their contents being proved.

24. This Court is not sitting in appeal over the report of the IO. The Court finds that the procedure adopted by the IO was just and fair and fully consistent with the requirements of natural justice. All the relevant material that was necessary for the Petitioner to defend himself against the charge was provided to him. Further, he was given a full opportunity to present his defence and challenge the authenticity of the evidence presented against him.

25. This was not a criminal trial. The standard of proof in a Departmental Inquiry is not as high as that in a criminal trial. This is also not an instance where the IO has relied on any irrelevant material in order to come to the conclusions against the Petitioner.

26. Mr. Shekhar then dwelt on the punishment awarded to the Petitioner and submitted that it was disproportionate to the alleged misconduct. He also pointed out to the numerous commendation certificates given to the Petitioner including the fact that he was awarded the President's Police medal for meritorious service in 2010.

27. The Court can only observe that the higher the position that is held by a public servant the greater the standard of rectitude that has to be maintained. Serving as a DIG in the CRPF, a paramilitary force, the Petitioner was not expected to indulge in the kind of conduct which has been proved against

him in the inquiry. The Court in the circumstances does not consider the penalty awarded to the Petitioner to be disproportionate to the gravity of his conduct.

28. The writ petition is accordingly dismissed.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

NOVEMBER 01, 2018

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