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

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W.P.(C) 8439/2019

KUMARI SANGEETA

..... Petitioner

Through: Mr Tarun Sharma with Ms Akanksha
Kapoor, Advocates.

versus

CENTRAL INDUSTRIAL SECURITY FORCE

..... Respondent

Through: Mr Bhagwan Swarup Shukla, CGSC
with Mr Mukesh Pandey, Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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21.11.2019

1. The Petitioner, who is a Lady Constable with the Central Industrial Security Force ('CISF'), has challenged the order dated 22nd September, 2016 passed by the Sector Commander, CISF Unit, ISP, Burnpur, holding the charge levelled against her to be proved, and awarding her the penalty of fine equivalent to an amount of three days' pay. She has also challenged the subsequent order dated 30th December, 2016 passed by the Deputy Commandant, CISF Unit, Burnpur, modifying the aforementioned punishment to that of 'censure'. She has further challenged an order dated 1st May, 2017, passed by the Commandant, CISF, rejecting her revision petition against the aforementioned orders dated 22nd September, 2016 and 30th December, 2016. Finally, she also challenges an order dated 13th July, 2018 issued by the Deputy Inspector General ('DIG'), CISF, communicating to the Petitioner that her representation for setting aside the penalty of censure

has been rejected.

2. When this petition was first heard on 6th August, 2019, this Court passed the following order:

“The petitioner was awarded minor penalty of payment of fine equivalent to three days pay by the Disciplinary Authority vide order dated 22.09.2016. The Appellate Authority vide order dated 30.12.2016 reduced the punishment to censure. The revision preferred by the petitioner was dismissed on 01.05.2017.

Prima-facie, it appears to us that the penalty of censure awarded to the petitioner has worked itself out since over two years have lapsed since its imposition. Learned counsel for the respondent wishes to take instructions whether, or not, the said penalty would have any bearing on the future prospects of the petitioner, particularly, in her appearing in the internal departmental examination for the post of Assistant Sub-Inspector/ Sub- Inspector.

List on 26.08.2019.

Dasti.”

3. At the subsequent hearing on 26th August, 2019, learned counsel for the Respondents, on instructions, informed the Court that even the penalty of censure would disqualify the Petitioner from appearing in the Limited Departmental Competitive Exam (‘LDCE’) for the post of Assistant Sub-Inspector (‘ASI’)/Sub Inspector (‘SI’). At that stage, this Court directed notice to be issued to the Respondents.

4. The facts in brief, relevant for the present petition, are that by a Memorandum dated 12th September, 2016, the Petitioner was charge-sheeted

on the allegations that she had deliberately got herself admitted into a hospital at Burnpur between 3rd and 6th September, 2016 to avoid reporting for internal security (IS) duty at the Delhi Metro Rail Corporation ('DMRC'), New Delhi, and that such an act amounted to "gross negligence of duty, carelessness and dereliction of duty, which is a highly unbecoming conduct being a member of a disciplinary force like CISF". In reply to the charge memo, the Petitioner stated that she was pregnant and had been getting treatment from 22nd August, 2016 onwards at the Burnpur hospital on account of bad health.

5. The medical records of the Petitioner, which were also available to the Respondents, have been annexed with the present petition. The Medical Treatment Book has been issued by the Base Hospital of CISF at Burnpur in West Bengal with entries from 22nd August, 2016 onwards. A careful perusal of the said medical record of the Petitioner reveals that she was asked to undergo a colour pregnancy test on 22nd August 2016, which turned out to be positive. On 30th August 2016, it was recorded that she is 'unfit' and has been advised rest for three days. On 2nd September, 2016, there is an entry of extension of rest by one day with a remark "fit from 03.09.16". On the next page, there is an entry for the date of 3rd September, 2016, *inter alia*, where she is advised to be "admitted in the gynae ward". Thereafter, there is an entry which gives the date of admission as 3rd September, 2016 and the date of discharge as 6th September, 2016.

6. In the order dated 22nd September 2016, passed by the Sector Commander of the CISF Unit, ISP, Burnpur, it is observed that the plea of the Petitioner

that she had not taken medical rest intentionally on 30th August 2016, and further was admitted in the hospital on 3rd September 2016, “cannot be accepted because on the very next date i.e. on 30th August 2016, after receiving the message regarding her IS duty, she went to the hospital and took medical rest for 03 days.”

7. It is further stated that when she came to know that the IS duty personnel had to move to New Delhi on 4th September, 2016, “she got admitted herself in the hospital in spite of the doctor had declared her fit for duty from 3rd September, 2016 and was discharged from the hospital on 6th September, 2016 i.e. after the departure of other personnel for IS duty to DMRC, New Delhi.”

8. The above order makes no reference to the actual entries in the medical records referred to hereinbefore. It fails to notice that after the entry, which states “fit from 03.09.2016”, another entry starts from 3rd September, 2016, where the advice specifically is that she should be “admitted in the gynae ward”. This is consistent with the complaint of nausea, vomiting, which is not uncommon in the early stages of pregnancy.

9. It is not the case of the Respondents that the above entries were made by the doctors in connivance with the Petitioner. These are notes made by medical professionals on the prescribed form of the medical record. If indeed the medical record is believed for all entries up to 2nd September, 2016, there is no reason why it should be disbelieved for the entries from 3rd September, 2016 onwards. It is nobody’s case that the entries in the medical

record were procured by the Petitioner by making a false representation to the doctors concerned. Unless there are good reasons to disbelieve the medical records of the government medical facility, which in this case is the base hospital at Burnpur, the authorities should not disregard such medical record.

10. It should be remembered that the Petitioner, at the relevant time, was at Burnpur at West Bengal, and had to undertake a journey by rail up to New Delhi to report at the DMRC, Mayur Vihar, New Delhi for IS duty. Clearly, therefore, unless she was medically fit, she could not have undertaken that journey. To conclude, simply because there is only one entry on 2nd September 2016, which states “fit from the 03.09.2016”, that she got herself deliberately admitted again in the hospital to avoid reporting for duty would not in the circumstances be warranted.

11. By missing out the above crucial aspect of the medical record, the Sector Commander, who passed the order dated 22nd September 2016, committed a serious error, which has resulted in miscarriage of justice. The Court is constrained to observe that the observation that the Petitioner got her admitted in spite of the doctor declaring her fit for duty, is to say the least, perverse and contrary to the medical record.

12. Consequently, the Court finds that the conclusion arrived at by the Sector Commander that the charge levelled against the Petitioner stands proved, is also perverse and deserves to be set aside.

13. With the quashing of the order dated 22nd September, 2016, all

subsequent orders, including the order dated 30th December, 2016, modifying the punishment as ‘censure’, are also held to be bad in law and are hereby set aside.

14. Since the Court has set aside the censure awarded to the Petitioner, it is not called upon to examine whether such censure would actually be a disqualification for her further promotions.

15. The petition is allowed in the above terms. No costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 21, 2019

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