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

+ W.P.(C) 2070/2014

UNION OF INDIA & ORS

..... Petitioners

Through: Mr. Ruchir Mishra, Advocate.

versus

BABU LAL YADAV

..... Respondent

Through: Mr. Anil Singal, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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08.01.2019

1. The Union of India has preferred the present writ petition to assail the order dated 13.03.2013 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (in short 'Tribunal') in O.A. No. 686 of 2012 preferred by the respondent. The Tribunal allowed the said Original Application and quashed the report of the Enquiry Officer; the Disagreement Note of the Disciplinary Authority; Order dated 16.12.2010 imposing the punishment of compulsory retirement from service upon the respondent; and, the Appellate Order dated 03.11.2013 enhancing the said penalty to that of dismissal from service. The respondent was directed to be reinstated in service. However, back wages were denied to him.

2. The respondent at the relevant time was posted with the Indian Embassy in Tokyo, Japan as Sepoy of SSF. It is alleged that he was involved in a case of sexual assault on a young Japanese girl, who had come to the Indian Embassy to obtain Indian Visa on 05.09.2005. The said incident led

to investigation by the Japanese police and a warrant for arrest of the respondent was issued by the Japanese Police. However, he could not be arrested as he was transferred back to India. The case of the petitioner is that the Indian Embassy and the Republic of India faced embarrassment on account of the conduct of the respondent since, for the first time, the Japanese authorities declared a person of the Indian Embassy as a “Not Acceptable Person” in terms of the Rule 9 (1) of Vienna Convention on Diplomatic Relations.

3. After conduct of, what appears to be, a preliminary enquiry contained in the communication dated 01.06.2007 of Sh. K.B.S. Katoch, Joint Secretary (Personnel) addressed to Joint Secretary (Administration), Government of India, Ministry of Home Affairs, North Block, New Delhi, the impugned charge-sheet dated 04.03.2008 was issued to the respondent. The Article of Charge framed against the respondents read as follows;

“ARTICLE

That the said Shri Babu Lal Yadav, No.2144, Sepoy of SSF while deployed on deputation at Embassy of India, Tokyo, Japan on 9th September 2005, sexually molested a Japanese girl Ms. Ai Ohtani, student of Urdu language and Indian Culture, who visited the Mission for obtaining a tourist visa.

The above act on the part of Shri Babu Lal Yadav, No.2144, Sepoy of SSF created a diplomatic stand off between the two governments which constitutes gross misconduct of assault the Japanese girl sexually, willful breach of orders and conduct unbecoming of a Govt. Servant. Hence the charge.”

The memorandum also contains the statement of misconduct and misbehaviour in support of the Article of Charge; the list of documents; and the list of witnesses by which the Article of Charge framed against the respondent was proposed to be sustained. However, it appears that during

the enquiry, the petitioner did not examine any witness to lead any evidence, or prove the documents sought to be relied upon against the respondents. On the conclusion of the disciplinary proceedings and passing of the order dismissing the respondent from service, he preferred the aforesaid Original Application. The Tribunal has taken a note of the judgement of the Supreme Court *inter alia* **Roop Singh Negi v Punjab National Bank & Ors.**, 2009 2SSC 570 and held that since no evidence was led by the department, the proceedings have to be quashed.

4. The submission of Mr. Ruchir Mishra, learned counsel for the Union of India is that in a case of this nature, it was not possible for the petitioner to produce in the enquiry proceedings either the victim of the sexual assault, or the officers of the Japanese police who had conducted investigation in the said case.

5. There can be no doubt that in such circumstances, the petitioner could not have been expected to produce the said witnesses in the enquiry. At the same time, there can be no doubt that in the enquiry, all the relevant materials in support of the charge should have been produced and tendered by some witness (es) who may have dealt with the case as it arose at the Indian Embassy in Japan, or by those who received the incriminating materials from the Japanese Police. Nothing prevented the petitioner from producing at least those of the relevant Indian Officers at the Indian Embassy, who witnessed the fall out of the incident. The petitioner could have led other circumstantial evidence in support of the charge.

6. A perusal of the impugned order shows that while quashing the disciplinary proceedings, the Tribunal has not made any observation-one way or other, with regard fresh holding of the enquiry in accordance with

law. Mere irregularity in the conduct of the enquiry proceedings does not wash away the serious charge against the respondent. Thus, while upholding the impugned order passed by the Tribunal, we permit the petitioner to re-open the enquiry proceedings from the stage of examination of the departmental witness(es). Keeping in view the fact that with the passage of time, the availability of the witnesses would have to be reassessed, we permit the petitioner to submit its fresh list of witnesses and documents before the Enquiry Officer within four weeks with advance copy to the respondent. The proceedings shall be conducted by the Enquiry Officer—who may be appointed afresh, from that stage onwards. Considering the facts that the matter has been hanging fire since 2005, the Enquiry should be completed within one year from today and no unnecessary adjournments shall be sought, or be granted to either of the parties.

7. The petition stands disposed of in the above terms.

VIPIN SANGHI, J

A. K. CHAWLA, J

JANUARY 08, 2019

Pallavi