

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.(S) No. 3726 of 2013

Laxmi Narayan Thakur, S/o. Late Dilip Singh Thakur, Aged About 31 Years, R/o. Near Shukla Bhawan, Budhapara, City Kotwali, Raipur, Civil And Revenue Distt. Raipur, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh, Through The Secretary, Department Of Home (Police), Raipur, Chhattisgarh
2. The Director General Of Police, Police Headquarters, Chhattisgarh, Civil Lines, Raipur, Chhattisgarh
3. The Inspector General Of Police, Chhattisgarh, Raipur.

---- Respondents

For Petitioner	:	Mr. B.P. Sharma with Mr. Chakresh Tiwari, Advocates
For State/Respondents	:	Mr. Akash Pandey, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

01.02.2021

Heard

1. Challenge in this petition is to the order dated 27.10.2009 passed in a review in exercise of power under Regulation 270 of the Chhattisgarh Police Regulation. By this order, the review petition of the petitioner was dismissed.
2. The brief facts of this case are that the petitioner along with three others were subjected to departmental enquiry on an allegation that on 02.06.2007 at 10:30 p.m., the victim X along with her daughter Y were having refreshment in a Hotel named Manav Mandir at Rajnandgaon. It is alleged that the present petitioner Laxmi Narayan Thakur along with three other friends had also placed order and were waiting for food while were sitting in different table. It is further alleged that during such period of waiting they had shown obscene gesture and had given flying kiss to daughter Y. The victim X & Y objected to it and in such retaliation, the

petitioner along with others abused them and extended threat on the ground that they are in the police department and asked them to leave without any alarm. The victim objected to such behavior and during such time public outrage also erupted. Therefore, police from station reached the spot and tried to control the petitioners and others but they did not hear and being so the petitioner Laxmi Narayan Thakur and three others were arrested under Section 151 of Cr.P.C. and Istgasha was filed under Section 107 & 116(3) of Cr.P.C. Subsequent to such activities, the petitioner and other three were subjected to departmental enquiry and in the departmental enquiry, the charges leveled against all of them stand proved and eventually by an order dated 29.09.2008, the petitioner was dismissed from service on the ground that the charges stand proved. Along with the petitioner, the other three persons were also terminated on the similar grounds. The petitioner and others filed an appeal under Regulation 262 of the Police Regulation before the higher authority. The said appeal was dismissed by an order dated 28.01.2009 (Annexure P-4). Against such dismissal of the appeal, a review petition was filed by invoking Regulation 270 of the Police Regulation and the review petition was eventually dismissed on 27.10.2009 by Annexure P-5.

3. Learned counsel for the petitioner would submit that the order under review was passed without giving any opportunity of hearing to the petitioner. He went through the statement of the complainant and would submit that in all three charges were framed including petitioner and other three police officers and they were too terminated and reinstated but ignoring the statement of the victim X and her daughter Y, the petitioner have been made to suffer. It is contended neither identification was carried out nor direct evidence existed on the record against the petitioner. He would further submit that the main allegation of giving a flying kiss was against Ishwar Lal Chandrakar and despite this fact the evidence against

him was proved, he was not held guilty in the departmental enquiry and was reinstated in exercise of review power under the Regulation 270 of the Police Regulation. He would further submit that as many as three persons were reinstated leaving apart the petitioner though the nature of allegation was one and same. He would submit that at first instance the review petition of the petitioner was dismissed in the year 2009, but in subsequent year, order of review passed in 2011, the reinstatement order was passed against other three persons except the petitioner. He further submits that the nature of punishment imposed against the petitioner is shockingly disproportionate and despite the similar facts and events of alleged misconduct was one & same, the petitioner was differently treated. Therefore, by rule of parity, the petitioner is also entitled for the reinstatement.

4. Per contra, learned State counsel opposes the argument and would submit that for the petitioner, in his departmental enquiry, it was proved that he is guilty of the misconduct alleged. He would further submit that in respect of the persons who were reinstated in exercise of the review power, in their departmental enquiry they were not found guilty. Consequently, the order of reinstatement was passed for them. Therefore, the case of the petitioner would be different from that of the other persons who have been reinstated and the rule of parity cannot be claimed as a matter of right.
5. I have heard learned counsel appearing for the parties and perused the record.
6. The record contains the statement recorded during the course of departmental enquiry. In the departmental enquiry, initially the statement was recorded on 09.07.2007 and the victim was examined which bears the date 27.08.2008. In her statement, she contended that she do not want

any enquiry and do not want to give her statement. So virtually she did not adhere to the earlier statement made.

7. Perusal of the initial statement would show that the victim had named four persons and in respect of the allegation out of four no person was particularly named in the statement of the victim/daughter Y. In the first statement on 09.07.2007, it was recorded by the police, she has not leveled the allegation on the petitioner in particular that he had misbehaved and in the subsequent statement in respect of the flying kiss, the allegation was on Ishwar Lal Chandrakar and the obscene gesture was attributed to the petitioner. In the examination before the departmental enquiry, it is stated that she do not want any action against the petitioner. Therefore, the cumulative reading of the statement would show that the persons were initially named whereby the allegations were attributed however in the examination during the departmental enquiry, the charges leveled were not adhered to by the complainant.
8. The document attached with this petition would show that in the initial preliminary statement of the victim Y recorded before the enquiry, she had named Ishwar Lal Chandrakar and during departmental enquiry the statement given at prior point of time was not corroborated. The similar situation existed as far as petitioner. However, in exercise of power of review under Police Regulation 270, the DGP on 28.06.2011 has reinstated the said Ishwar Lal Chandrakar. The review petition contains a statement that the departmental enquiry has not been proved against said Ishwar Lal Chandrakar. It appears that mainly on the statement of the victim in the cross examination wherein they have stated they do not want any further action against the petitioner was relied on. Therefore, if one of the employee have been given the benefit in the departmental enquiry then the same analogy would be applicable to the petitioner. The records would show that Amit Joseph, Ishwar Lal Chandrakar and Neelam Manish

Pandey who were also on the same footing that of the petitioner while their services were terminated, their review petitions were accepted; however, in case of the petitioner, his review petition was dismissed.

9. The nature of allegation against the petitioner and three other police officer were omnibus and same. The statement would show that the joint allegations were attributed and specially considering the case of Ishwar Lal Chandrakar who was reinstated in a review, the statement of the victim inculpated his conduct in the initial statement but during examination in departmental enquiry, she has not supported her earlier statement and made a general statement that she do not want any further action against the employees. Therefore, before D.E. no statement inculpating the petitioner existed. The said statement of the examination as appears was relied upon while Ishwar Lal Chandrakar was reinstated. However, in case of the petitioner, the said piece of examination wherein the victim too has contended that she do not want any action against the petitioner has not been acted upon. When there are two similar charges are against two employees and one has been given the benefit of reinstatement with reduction of the punishment, the petitioner would also be entitled for fresh consideration. Furthermore, as has been contended that before the review, which is contained in the Police Regulation 270, the authority have not heard the petitioner. The review petition was dismissed, therefore, in order to meet out the case of the petitioner, he should have been given an opportunity of hearing. The other employees who were also terminated, they were reinstated in the year 2011 and in case of the petitioner the review was dismissed in the year 2009. Therefore, obviously there was no occasion before the reviewing authority to consider the case of the petitioner to extend the similar benefit, as such, in the considered opinion of this Court, he is also entitled for a fresh hearing on the review, so that

his case may be considered again giving him an opportunity of hearing before any order is passed.

10. The Supreme Court in case of *Avtar Singh v. Union of India & Ors.*¹ has evolved a theory of “McCarthyism” which primarily points out the chance of reformation has to be afforded in suitable cases. The Supreme Court in Para 37 held as under :

“37. The “McCarthyism” is antithesis to constitutional goal, chance of reformation has to be afforded to young offenders in suitable cases, interplay of reformatory theory cannot be ruled out in toto nor can be generally applied but is one of the factors to be taken into consideration while exercising the power for cancelling candidature or discharging an employee from service.”

11. In the case in hand, three persons were given the benefit of reform and cases were separately considered though similar evidence is existed. Accordingly, the order passed in the review petition dated 27.10.2009 (Annexure P-5) is set aside. The matter is remitted back to the DGP to reconsider within a period of 60 days from the date of receipt of a copy of this order.
12. In a result, the petition stands allowed. No order as to cost.

Sd/-
(Goutam Bhaduri)
Judge

Aks

¹ (2016) 8 SCC 471