

\$~36

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

% **Date of Decision: 3rd February, 2021**

+ **W.P. (C) 1348/2021**

ANEESH AHMADPetitioner

Through: Mr.Abhishek Kaushik, Advocate

Versus

UNION OF INDIA & ORS.Respondents

Through: Ms.Archana Gaur and Ms.
Riddhima Gaur, Advocates

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

ASHA MENON, J: (Oral)

CM No.3783/2021

Exemption allowed, subject to all just exceptions.

W.P. (C) 1348/2021, CM APPL. 3782/2021

1. The petition has been heard by way of video conferencing.
2. The petition has been filed by an ex-ASI/Clerk of the Central Industrial Security Force (CISF) with the following prayers:-

“a) Issue a writ of Certiorary, or any other appropriate writ, setting aside impugned order bearing Letter No. V-11014/APS/Rev-08/AA/LC/2020- 6794 dated 31.08.2020, passed by the Office of the Spl. Director General/APS, Central Industrial Security Force (Ministry of Home Affairs) through Sh Vikram Singh Mann, Inspector General/APS-I rejecting the Revision Petition filed by the petitioner against the penalty of 'dismissal from service' awarded by the Disciplinary Authority, Commandant, ASG, Amritsar, vide his F.O No. V-15014/CISF/ASG-A/Rule-36/A.A./2019/6408 dated 20.07.2019 and upheld by DIG/AP-NZ/Hqs, New Delhi being the Appellate Authority vide Appellate order V-15014/DIG/AP-NZ/Disc/01/ Appeal/AA/2019 - 1905 dated 19.11.2019; and

b) Issue a writ of Mandamus, or any other appropriate writ, directing re-instatement of the petitioner with full backwages and continuity of service; and

c) Issue a writ of prohibition prohibiting the Respondent from harassing the petitioner; and/or

d) Pass any other or further order/s as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

3. The petitioner was posted at the CISF Unit, ASG Shimla and residing in a rented accommodation in the year 2019 at Jubbarhatti, Shimla. A charge memorandum was issued to him for mis-conduct by the Commandant/CISF ASG Amritsar (Disciplinary Authority) on 25th February, 2019 and the articles of charge reads as under: -

"Force No. 094170016 ASI/Clerk Anish Ahmed, CISF

Unit ASG Shimla, when he was residing at his rental house in Jubbadhatti, Shimla on 04.02.2019, at about 14.15 hrs, a teenaged girl named Prachi Chauhan aged about 09 years visited his room to get the shirt for sewing by her mother. With bad intentions, he shut the door of his room and molested her with attempt to physically attack her. Being a member of a disciplined Force, his conduct is not in consonance with the conduct of a disciplined member of Central Force. His act is against the disciplined conduct expected from a member of disciplined force and also reflects the moral turpitude, gross indiscipline and misconduct which also tarnish the image of the Force."

4. After the Disciplinary Authority considered his written response, it directed conduct of a departmental inquiry. Nine witnesses were examined and at the end of the inquiry, the Inquiry Officer submitted his report dated 17th June, 2019 to the Disciplinary Authority holding the petitioner guilty. Against this report, the petitioner submitted his representation on 6th July, 2019. However, the Disciplinary Authority accepted the report of the Inquiry Officer and imposed a penalty of dismissal from service upon the petitioner vide final order dated 20th July, 2019. His appeal against this order was rejected by the Appellate Authority vide order dated 19th November, 2019. A revision petition was also filed, addressed to the Inspector General/Airport Sector-1, Mahipalpur, New Delhi, which was also rejected vide order dated 31st August, 2020.

5. We have heard learned counsel for the petitioner and have perused

the record. Sh.Abhishek Kaushik, Advocate appearing on behalf of the petitioner insisted that the entire charge against the petitioner was only a set of allegations, the truth of which was extremely doubtful on account of the significant fact that though the petitioner had been produced at the local police station, no action was taken by the police to register an FIR, though since the alleged victim was only nine years old, provisions of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) would have been attracted. According to the learned counsel, the entire effort was only to put pressure on the petitioner.

6. We are not impressed with these arguments. The attendant circumstances, namely, the injury on the finger of the child, the intervention of the parents of the child before whom the petitioner begged forgiveness and apologized to the child as well as to the parents, the presence of the CASO/Assistant Commandant, ASG Shimla, are sufficient factors to lend credence to the occurrence of the incident. Merely because the child was not examined by a child psychologist during the disciplinary inquiry, would not detract from the fact that she, being the victim, was a credible witness who testified to the incident before the Disciplinary Authority. Our attention has not been drawn to any fact that would suggest that for some reason, the child and her family members and the senior officer, who came to the spot subsequently, all had hatched some kind of a conspiracy against the petitioner.

7. The learned counsel then submitted that the penalty was disproportionate and that the petitioner was young and had a family dependent on him and had a long service career ahead of him and that

neither before this incident nor thereafter has the petitioner been found wanting of good conduct.

8. There is no dispute that the petitioner was a member of the CISF, which is a disciplined Force, and was expected to maintain highest moral standards and self discipline. The Supreme Court had dealt with the question of proportionality of punishment in *Om Kumar v. Union of India* (2001) 2 SCC 386, *Union of India v. G. Ganayutham* (1997) 7 SCC 463 and *Union of India v. Dwarka Prasad Tiwari* (2006) 10 SCC 388 and observed that the Court would interfere with the punishment imposed pursuant to disciplinary proceedings only if it was so disproportionate that it shocked the conscience of the court. Here, it is the action of the petitioner that has shocked the conscience of the court. While it may be true that the petitioner could have had a good career ahead of him and the dismissal may put paid to such ambitions, we cannot overlook the fact that a child of nine years was subjected to such grave trauma. It appears from the facts that the child's presence of mind alone saved her from the mal-intentions of the petitioner. A person with such underlying propensities as displayed by the petitioner would be a liability and not an asset for the CISF. The personnel of CISF are often posted in areas which may be out of public sight and abuse of situations by such persons cannot be overlooked. The order of dismissal of petitioner from service is in no way a disproportionate penalty for the reprehensible conduct of the petitioner.

9. The petition is devoid of merits and is accordingly dismissed along with the pending application.

10. The judgment be uploaded on the website forthwith. Copy of the judgment be also forwarded to the learned counsel through e-mail.

ASHA MENON, J

MANMOHAN, J

FEBRUARY 03, 2021/s

