

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.13495 of 2019

(Application under Articles-226 and 227 of the Constitution of India, 1950)

Jagan Jally

....

Petitioner

-versus-

Union of India & Others

....

Opposite Parties

For Petitioner

:

***Mr. Lalatendu Samantaray,
Advocate.***

For Opposite Parties

:

***Mr. Bimbisar Dash, Senior Panel
Counsel for the Union of India
for Opposite Parties 1 to 4.***

CORAM:

JUSTICE V. NARASINGH

DATE OF HEARING :01.08.2022

DATE OF JUDGMENT :01.08.2022

V. Narasingh, J.

1. The petitioner, joining the CISF as Constable on 8.03.2010 was assigned the number 107341064.
2. Being aggrieved by the Order of Revisional Authority (I.G. Western Circle , CISF)- Opposite Party No.2 at Annexure-5 dated 07.02.2018 confirming the order passed by the Disciplinary Authority and the Appellate Authority, dated 19.06.2017 and 24.07.2017 at

Annexure-3 &4 respectively, removing the petitioner from service, the present Writ Petition has been filed.

3. Brief facts germane for just adjudication are stated hereunder;

During the incumbency of the petitioner as constable he was posted in CISF Unit, MBPT (Mumbai Port Trust) and deputed to work at Reliance Industries Limited, Jamnagar.

While working as such the petitioner was put under suspension in contemplation of Departmental Proceeding on the allegation was that the present petitioner had kept physical relationship with a lady, with an assurance to marry but subsequently he resiled.

4. It is stated that in spite of opportunities given by the Authority, the petitioner failed to resolve the matter at his level for which initiation of departmental proceeding was warranted, keeping in view the nature of duties discharged by the petitioner as a member of a disciplined post like CISF.

5. The imputation of charges in respect of which inquiry was conducted is quoted hereunder;

“ARTICLE

CISF No. 107341064 CT/GD Jaganjally of CISF Unit RIL Jamnagar established sexual relationship with Miss Vidhya Pandharinath Shinde resident of Mumbai with an assurance of marriage which continued for 06 six years but he didn't marry her. Owing which said lady submitted a written complaint being aggrieved. After that the member of the force was provided sufficient opportunity to resolve his personal matter but he failed to resolve his personal matter and created administrative crises to the department in his solely personal matter. The said act of member of the force is not according to provisions mentioned in Central Civil Services (conduct) rule 1964 and is an indicative of unethical behavior & unethical turpitude.

Being a member of the disciplined armed force, the commission of the act done by the force member is in the category of grave misconduct and is not suitable to the expected decorum of a disciplined member of the force. Hence it is charge.”

6. After thorough inquiry the Inquiry Officer returned with finding that the “charge is proved”.

7. On being given an opportunity the petitioner preferred a representation for exoneration.

8. On consideration of the same by Order dtd. 19.06.2017 (Annexure-3) the petitioner was found guilty and order of removal was passed. Thereafter he preferred the statutory appeal and revision which are dismissed vide Annexure -4 and 5 respectively and accordingly the present Writ Petition has been filed.

9. Learned counsel for the petitioner, Sri Samantray relying on the Provisions of C.I.S.F. Act dealing with dismissal, removal etc. and relying on Section-10 thereof submitted that the charge ex-facie does not in any way come within the ambit of dereliction of duties so as to warrant even initiation of proceeding what to speak of an order of dismissal.

10. Mr. Dash, Learned Senior Panel Counsel for the Union of India relying on the Counter Affidavit submits that, it cannot be lost sight of that the C.I.S.F. personnel discharge onerous responsibility and keeping in view the overall discipline of the force who are engaged in safeguarding, sensitive installation, the conduct of the petitioner is not at all acceptable and when the petitioner even after being given sufficient opportunity to put his house in order did not succeed, there was no option left with the authorities to initiate the proceeding.

11. It is submitted by Mr. Dash, learned counsel for the Central Government Counsel that on perusal of the proceeding it can be seen that the petitioner was given ample opportunity to defend himself and after following norms of natural justice, the impugned order of removal was passed by the Disciplinary Authority and which has been rightly affirmed by the Appellate Authority as well as Revisional Authority. As such the writ petition is liable to be rejected.

12. It is apt to note here that though question of territorial jurisdiction of this Court to entertain the present writ petition(c) was stated in the counter affidavit. Learned Senior Panel Counsel in his wisdom referring to the law laid down by the Apex Court in the case of **Shanti Devi Vrs. Union of India**: (2020) 10 SCC 766 did not press the same, at the time of hearing. Accordingly, it is held that the Court has the territorial jurisdiction to adjudicate the lis.

13. Section- 8 of the Act thereof deals with dismissal, removal etc. of enrolled members of the Force which reads as follows.

“Dismissal, removal etc. of enrolled members of the Force:- Subject to the provisions of article-311 of the Constitution and to such rules as the Central Government may make under this Act supervisory officer may:-

- (i) Dismiss, remove, order of compulsory retirement or reduce in rank any enrolled member of the Force whom he thinks remiss or negligent in the discharge of his duty, or unfit for the same; or
- (ii) award any one or more of the following punishments to any enrolled member of the Force who discharges his duty in a careless or negligent manner, or who by any act of his own renders himself unfit for the discharge thereof, namely:
 - (a) Fine to any amount not exceeding seven days pay or reduction in pay scale
 - (b) Drill, extra guard, fatigue or other duty.

- (c) Removal from any office of distinction or deprivation of any special emolument.
- (d) Withholding of increment of pay with or without cumulative effect.
- (e) Withholding of promotion.
- (f) Censure.”

14. The Charge of imputation has already been extracted herein above. Learned counsel for the petitioner Mr. L.Samantaray placed on record the statement of the complainant who deposed in the proceeding as P.W.1 and that of one Raghunath Patra cited as D.W.1. Gist of both the statements as recorded during the enquiry is noted hereunder for convenience of ready reference.

P.W.1-Miss Vidhya Pandharinath Sindhe

She stated that the petitioner had kept physical relation with her for more than six years with assurance to marry but he did not do so in spite of several request and the petitioner used to abuse her in filthy languages, finding no other alternative she made a complaint before the authorities.

D.W.1-Raghunath Patra

He stated that he along with the petitioner went to Bandra Station where they met with the compliant and his mother and gave proposal of marriage but the complainant's mother refused to the marriage proposal on the ground of caste, language and culture and also stated that the marriage of her daughter will be solemnized within 8 days.

15. It is stated by the learned counsel for the petitioner that the allegation even if accepted at its face value relates to the personal life of the Petitioner and admittedly there is nothing on record that the same has affected his discharge of duties as a disciplined personnel of the Force.

16. It is further submitted that the Disciplinary Proceeding for imposition of penalty as envisaged under Section-8 can only be initiated

in the event, the duties enjoined as per Section-10 of the Act are violated and it is stated that on the face of it as there was no violation of the duties a member of the force is supposed to carry out, the very initiation of proceeding is thoroughly misconceived and the orders passed by the Disciplinary Authority, Appellate Authority as well as the Revisional Authority at Annexure-3, 4 and 5 are liable to be set aside.

17. For convenience of reference the duties of the members of the Force as in Section-10 of the Act is extracted hereunder.

“Duties of member of the Force-It shall be the duty of every member of the Force-

- (a) Promptly to obey and execute all orders lawfully issued to him by his superior authority;
- (b) To protect and safeguard the Industrial Undertaking owned by the Central Government together with such other installations as are specified by that Government to be vital for the carrying on of work in those Undertakings, situate within the local limits of his jurisdiction;
Provided that before any installation not owned or controlled by the Central Government is so specified, the Central Government shall obtain the consent of the Government of the State in which such installation is situate;
- (c) To protect and safeguard any joint venture, private industrial undertaking and such other Industrial Undertakings and installation for the protection and security of which he is deputed under section-14 ;
- (d) To protect and safeguard the employees of the Industrial Undertakings and installations referred to in clauses (b)(c)
- (e) To do any other act conducive to the better protection and security of the industrial undertakings and installations referred to in clauses(b) and (c) and the employees referred in clause (d);
- (f) To provide technical consultancy services relating to security of any private sector industrial establishment under section -14-A.
- (g) To protect and safeguard the organizations owned or funded by the Government and the employees of such

organizations as may be entrusted to him by the Central Government,

- (h) Any other duty within and outside India which may be entrusted to him by the Central Govt. from time to time.”

18. While considering the imputation as against the petitioner neither the Disciplinary Authority nor the Appellate or the Revisional Authority have addressed themselves to the questions raised by the petitioner as to whether the conduct in personal life can form the basis of initiation of departmental proceeding, keeping in view the duties of the Force as stated in Section 10 of the Act.

19. It is also submitted by the learned counsel for the Union of India that the procedure as envisaged under CCS (conduct) Rules, 1964 were followed in the matter of the Departmental Proceeding and it is submitted that the Act complained of is indicative of “unethical behavior and unethical turpitude”. Hence it is stated that in terms of Rule-3(i) (vi) of the Conduct Rules, 1964 as the petitioner was not able to “maintain high ethical standards and honesty”, there was no illegality in the approach of the authorities in passing the order of removal, keeping in view the peculiar nature of duties discharged by the petitioner.

20. This Court perused the statements of the D.W.1 in the inquiry proceeding which were part of the pleadings, wherein the D.W.1 has stated that the proposal of the petitioner to the complainant to join him in matrimony was negated by her family members.

21. Be that as it may, this Court is persuaded to hold that even if the entire allegation against him is accepted at its face value even then the conduct of the petitioner does not come within the ambit of duties of members of the force as stated in Section-10 of the Act, so as to warrant initiation of proceeding and imposition of penalty of removal as envisaged under Section-8 of the Act.

21.1 The Disciplinary Authority as well as the Appellate Authority and Revisional Authority failed to address the issue in its proper perspective and were swayed away by the fact that the petitioner had a relationship with a civilian lady, admittedly a major, for six (6) years on promise of marriage. This Court cannot lose sight of the fact that there is no finding on record that such conduct of the petitioner has in any way affected his discharge of duty as a C.I.S.F. personnel in terms of the duties as enumerated in Section-10 of the C.I.S.F. Act.

22. As such, while passing the impugned Order of removal which was subsequently confirmed in Appeal and Revision, the authorities have allowed their decision to be clouded by materials which are not germane for just consideration while failing to take into account the factors which have a direct bearing on the point at issue.

23. As such the impugned orders passed by the Disciplinary Authority, Appellate Authority and Revisional Authority at Annexure-3, 4 and 5 respectively, being outcome of gross non-application of mind suffer from the vice of malafide and therefore, set aside, with consequential benefits.

24. The Writ Petition is accordingly allowed.

25. No order as to costs.

(V.Narasingh)
Judge

Orissa High Court, Cuttack,
Dated the 1st of August, 2022/Balaram