



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

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Reserved on: 18th May, 2023

Pronounced on: 19th July, 2023

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W.P.(C) 1389/2016

MUKESH MALIK

..... Petitioner

Through: Mr. R.S. Kaushik & Mr. B. Sengupta, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Jaswinder Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J

1. The present petition under Articles 226 and 227 of the Constitution of India has been filed on behalf of the petitioner seeking to set aside the Orders dated 05.10.2011 of Compulsory Retirement from Service and also consequential Orders dated 19.06.2012, 16.10.2012 and 12.11.2013 upholding the dismissal of the petitioner. It is further sought that directions be issued for his reinstatement with full salary and consequential benefits.

2. The petitioner was appointed as Constable in the Central Industrial Security Force (*hereinafter referred to as "CISF"*) in the year 1987. During his service, he was posted to various CISF Units where he performed well. The petitioner, based on his unblemished service record, was promoted to the rank of Head Constable, CISF in April, 2009 and was posted to the CISF Unit, Uranium Corporation of India Limited (*hereafter referred to as "UCIL"*) Jaduguda, Jharkhand.

3. On 19.09.2010, a quarrel took place between the husband of one Lady Constable, Ritu (CISF No. 072700134) and Sub-Inspector Mohd. N.A. Khan of CISF of which the petitioner was the witness. A complaint was made of this incident *vide* GD No. 637. The statement of petitioner was recorded in the Preliminary Enquiry against the husband of the Lady Constable Ritu.

4. In the month of January 2011, the petitioner was deployed as a Mess Commander and while discharging his duties, a Major Penalty proceeding was drawn against him under Rule 36 of the CISF Rules, 2001. A Memorandum of Charge dated 01.03.2011 was issued to him by the Chairperson of Enquiry Committee, so constituted by Inspector General, CISF, Western Sector, Mumbai. The Charge levelled against the petitioner was *that on 12.01.2011 at about 2100 hrs. under the influence of liquor with an intention of sexual harassment, he had given a call to Lady Constable Ritu from his Mobile Number 9471380538 and used abusive and unparliamentary language on her mobile.*

5. The petitioner in his Statement of Defence dated 15.03.2011, denied the charge and stated that he was working on the date of alleged incident and had left his mobile for charging. He was not aware as to who

gave the call to Lady Constable Ritu from his mobile phone. The petitioner claimed that he had been falsely implicated by Head Constable Sangram Singh, Company Havaldar Major in collusion with Lady Constable Ritu. A day before the incident, the petitioner had seen Head Constable Sangram Singh coming out from the house of Lady Constable Ritu and he had told him that it was not good and may bring a bad name for the Unit. The petitioner asserted that action had been taken against him on the basis of a false complaint.

6. Learned counsel for the petitioner has further submitted that the Inspector General, CISF/respondent No. 3 appointed a Sector Level Sexual Harassment Enquiry Committee. None of the Petitioner Witnesses (PWs) stated in their deposition that they could say with certainty that the petitioner was under the influence of liquor. Even the Medical Report dated 13.12.2011 given by the Additional Chief Medical Officer of UCIL, Jaduguda, Jharkhand did not suggest that when the petitioner was brought before him, he was under abnormal condition. The Medical Report states that the petitioner was fully conscious and oriented about place, time and person. There was no sign of injury found and the petitioner was stated to be in absolute fit condition. Further, the record of mobile calls suggested that the mobile of the petitioner was used only for 40 seconds while talking to Constable Ritu. There was no evidence on record that the husband of Constable Ritu was ever abused or threatened by the petitioner on the mobile phone. The only evidence against the petitioner was a Medical Report which contained the following remarks: -

“Smell of alcohol per breath but he was not under the influence of liquor”.

7. Though the complainant/Constable Ritu had stated that a number of missed calls were given by the petitioner through his mobile, however, no record of mobile calls was produced. The complainant had also stated in her Complaint dated 13.01.2011 that she had video recording of the incident, but she denied the same during the course of her cross-examination.

8. Accordingly, the respondents have failed completely to prove the Charge by any cogent evidence despite which the Committee held the Charge as proved. The Disciplinary Authority without applying independent mind and taking a fair approach, agreed to the findings of the Committee and awarded the punishment of Compulsory Retirement from Service *vide* Order dated 05.10.2011.

9. Being aggrieved, the petitioner filed a Statutory Appeal before the Director General, CISF, Force HQrs, New Delhi. The petitioner *vide* Letter dated 03.04.2012, was directed to file Appeal before concerned Appellate Authority giving the cause of delay in filing the appeal.

10. Accordingly, the petitioner submitted his Appeal dated 17.04.2012 before the Appellate Authority, Deputy Inspector General, CISF DAE HQrs. Hyderabad stating that the delay in filing the Appeal was caused “*inadvertently*”. However, the Appeal was rejected by the Appellate Authority *vide* Order dated 19.06.2012 on the ground of limitation without considering the merits of the Appeal.

11. The petitioner then submitted the Statutory Revision Petition dated 15.10.2012 to the Revisioning Authority/respondent No. 3 but it was also rejected *vide* Order dated 20.11.2012 on the ground of limitation without considering the merits, even though the Revision Petition had been

submitted within four months, which is within the statutory period of six months as provided under the CISF Act.

12. The petitioner then made a Representation dated 15.07.2013 to the Secretary, Ministry of Home Affairs, Government of India, New Delhi seeking intervention against the rejection of Revision Petition *vide* Order dated 20.11.2012, and the Order dated 19.06.2012 passed by the Appellate Authority, Deputy Inspector General, CISF DAE Hqrs. Hyderabad. The Representation was disposed of by respondent No. 2 who was not legally competent and had no authority to intervene. It is only the Central Government which has unfettered powers to call the record of the proceedings at any point of time and to pass such orders or directions as it thinks fit, under Section 9 (3) of the CISF Act. This power cannot be delegated to the subordinate authority by an Executive Order. The Order rejecting his representation is claimed to be *void ab initio* and not maintainable in law.

13. The petitioner has sought for setting aside the Order dated 05.10.2011 of Compulsory Retirement from Service and also consequential Orders dated 19.06.2012, 16.10.2012 and 12.11.2013 upholding the dismissal of the petitioner.

14. **The respondents in their Counter-affidavit** have stated that a Preliminary Enquiry was initiated into the incident dated 12.01.2011, wherein the petitioner was alleged to have made calls from his mobile phone to lady Constable Ritu under the influence of liquor and for having used filthy and unparliamentary language.

15. It is submitted by the learned counsel for the respondents that on conclusion of the preliminary enquiry, it was referred to higher Authority

for information and necessary action. Accordingly, the Inspector General, Western Sector, Hqs., Mumbai vide Letter No. 1447 dated 25.02.2011 referred the matter to Sector Level Sexual Harassment Enquiry Committee, which conducted the enquiry in depth recording the gist of its findings against the petitioner. The enquiry proceedings were received by the Disciplinary Authority (Commandant, CISF Unit UCIL, Jaduguda, Jharkhand), who served a copy of Enquiry Report to the petitioner for making his final representation. After following due procedure, the proceedings culminated into imposition of penalty of “*compulsory retirement from service with full pension and gratuity*” vide Final Order No. 1537 dated 05.10.2011 of the Disciplinary Authority, which was acknowledged by the petitioner on the same day.

16. The Appeal preferred by the petitioner was not within the time limit of 30 days as the same was submitted after six months without giving any justification. Hence, the Appeal was rejected vide Appellate Order No. 3482 dated 19.06.2012 by the Appellate Authority as time barred.

17. It is submitted that aggrieved by the Order dated 19.06.2012, the petitioner made the Revision Petition dated 15.10.2012 to the Inspector General, Western Sector, Navi Mumbai i.e., Revisioning Authority. No justification was given for delay. Resultantly, the Revision Petition was dismissed vide Order No. 9870 dated 20.11.2012 on the ground of delay and laches without considering the merits of the case.

18. Lastly, it is stated that the Disciplinary Enquiry was conducted according to the Rules and the penalty had been rightly imposed upon the petitioner after giving all opportunity to defend his case, thus natural justice has been followed.

19. **The petitioner in his Rejoinder** has reaffirmed the assertions as made in the petition.

20. **The petitioner in his Written Submissions** reiterated his averments as contained in the petition and in support of his assertions, has placed reliance on the decisions in Narinder Mohan Arya vs. United India Insurance Co. Ltd. (2006) 4 SCC 713, Roop Singh Negi vs. Punjab National Bank and Others (2009) 2 SCC 570 and Sualal Yadav vs. The State of Rajasthan and Others (1976) 4 SCC 853.

21. **The respondents in their Written Submissions** have also reaffirmed the same assertions as made in the counter-affidavit.

22. **Submissions heard.**

23. The petitioner admittedly was Chargesheeted on 01.03.2011 by the Chairperson of the Enquiry Committee on the basis of Written Complaint dated 13.01.2011 made by lady Constable Ritu alleging that the petitioner had made a mobile call to her in an inebriated condition and abused her and also used unparliamentary language.

24. The Enquiry Committee after recording the evidence of the witnesses, concluded the charge to have been proved. The Disciplinary Authority considered the Enquiry Committee Report and awarded the punishment of *Compulsory Retirement with all retiral benefits vide* Order dated 05.10.2011. The Order dated 05.10.2011 was received by the petitioner on the same day. The grievance of the petitioner is that his Appeal, Revision Petition and Representation have not been considered on merits, but were dismissed on the ground of limitation.

25. **Section 8 of CISF Act, 1968** provides for the dismissal, removal etc. of members of the Force by any supervisory officer. **Rule 34** of the

CISF Rules, 2001 defines dismissal from service and compulsory retirement as *major penalty*.

26. **Section 9 of CISF Act, 1968** provides for Appeal by any member of the Force aggrieved by an order of dismissal, removal etc. made under Section 8 against him, “*which may be preferred within 30 days from the date on which the Order is communicated to him*”, and the decision of the Appellate Authority shall be final. However, the *proviso* provides that if the Authority is satisfied that the appellant was prevented by *sufficient cause* from filing the Appeal in time, the Appeal may be entertained beyond the period of 30 days.

27. Admittedly, the petitioner had preferred the Appeal before the Director General, CISF, Force HQs. New Delhi after about 93 days. The petitioner was told by the Director General, CISF, Force HQs. New Delhi to file it before the Competent Authority at Hyderabad and the Appeal was returned to the petitioner. The petitioner then filed the Appeal before the Deputy Inspector General, CISF, DAE Hqs. Hyderabad on 30.04.2012 i.e., after 111 days. The Statutory Appeal was dismissed on 19.06.2012 by the Appellate Authority on the ground of limitation without going into the merits.

28. The petitioner had preferred the Appeal and thereafter Revision with a total delay of 174 days after excluding the limitation period of 30 days which is permissible under the CISF Act, 1968 for filing the Appeal. Proviso to Section 9(1) of the Act does give a discretion to entertain the Appeal beyond the period of limitation but only on disclosing *sufficient cause*. Neither in the petition nor in the affidavit any explanation is given to justify the delay of about 63 days beyond the period of limitation in the

first instance in New Delhi and thereafter, a delay of about 111 days in filing the Statutory Appeal before the Deputy Inspector General, CISF, DAE Hqs. Hyderabad.

29. Pertinently, in the impugned Dismissal Order dated 05.10.2011, it was specifically recorded that if the petitioner is aggrieved, he may prefer an Appeal to the Deputy Inspector General, CISF, DAE Regional HQrs. Hyderabad within 30 days on receipt of the Order. However, despite being informed about the period of filing the Appeal and the Authority before which the Appeal could be preferred, no reason whatsoever has been given by the petitioner while filing the Appeal before CISF Force HQrs., New Delhi in the first instance instead of Hyderabad and that too, in his own sweet time after a delay of 63 days beyond the limitation period of 30 days. Thereafter also, the Appeal was filed in Hyderabad after a further delay of 111 days. The circumstances as discussed above, reflect deliberate conduct of not filing the Appeal before the appropriate forum. A much more cogent explanation than *inadvertence*, as claimed by the petitioner, was required to explain the delay.

30. The conduct of the petitioner reflects that he was in no hurry to file the Appeal before Competent Authority, **Hyderabad**. The petitioner, despite the opportunity being granted, even in the present petition, has not able to give any cogent explanation for delay of filing the Statutory Appeal except "*inadvertence*" which is no explanation at all. The cavalier attitude, casual behaviour and perfunctory explanation for delay reflects complete disregard of the petitioner towards his Institution as well as towards himself.

31. The question of considering the merits of Dismissal Order dated

05.10.2011 could have arisen only if the petitioner was able to cross the first hurdle of limitation which he has miserably failed to do so, at every stage, viz. Appeal, Revision and even before this Court. The dismissal of the Appeal on the ground of limitation, as there was an inordinate delay, without any cogent reason in filing the Appeal, can therefore not be faulted.

32. Accordingly, we find no ground to interfere with the Dismissal Order dated 05.10.2011 and subsequent Orders dated 19.06.2012, 20.11.2012 and 12.11.2013.

33. The present petition along with pending application(s), if any, is dismissed accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

(SURESH KUMAR KAIT)
JUDGE

JUNE 19, 2023

S.Sharma