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W.P.No.21009 of 2012



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P.No.21009 of 2012

Beerendra Pal Singh

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Petitioner

versus

- 1.Union of India,
Represented by its Secretary
to the Government,
Department of Home Affairs,
New Delhi.
- 2.The Director General,
CISF Head Quarters,
No.13, C.G.O. Complex,
Lodhi Road,
New Delhi - 110 003.
- 3.The Inspector General,
CISF Head Quarters South Sector,
Chennai Port Trust Campus,
Near War Memorial,
Chennai - 600 009.
- 4.The Deputy Inspector General,
CISF Head Quarters South Zone,
'D' Block First Floor Rajaji Bhavan,
Besant Nagar, Chennai - 600 090.
- 5.The Group Commandant,



Group Head Quarters NISA Complex,
Hakimpet, Hyderabad - 500 078.

6. The Commandant,
CISF Unit, NLC, Neyveli,
Cuddalore District.

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Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the third respondent dated 29.03.2012 in his order No.V-11015/L&R/SS/Rev/BPS/2011-107, confirming the order passed by the fourth respondent dated 29.12.2011 in his appellate order No. V-11014/Appeal-72(BPS)/L&R/SS/2011-10449, and confirming the order of the fifth respondent dated 30.03.2011 in his final order No.V-15014 /CISF/GHH/SH(01/11)/BPS-SJM/Adm.IV/2011-1061 and quash the same and to direct the respondents to release the increments with all monetary benefits.

For Petitioner : Mr.A.S.Mujibur Rahman

For Respondents : Mr.T.L.Thirumalaisamy
Central Government Standing Counsel

ORDER

The writ petition is filed challenging the order of the fifth respondent dated 30.03.2011 imposing punishment of reduction of pay to the minimum stage for a period of 5 years with cumulative effect and as confirmed by the fourth respondent in appeal, by order dated 29.12.2011 and further confirmed by the third respondent in revision, by order dated 29.03.2012.



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2. The petitioner, who was appointed as Constable on 19.04.2003 in the Central Industrial Security Force (in short, “CISF”) at Jhansi, Uttar Pradesh, was serving in the CISF Unit NLC, Neyveli w.e.f. August 2011 under the sixth respondent. Earlier, while he was serving at the CISF Unit, Salarjung Museum (in short, “SJM”), Hyderabad, an office order dated 29.10.2010 from the CISF Headquarters, South Sector, Chennai, was received stating that a complaint petition was submitted as against the petitioner by a lady constable, namely Ms.xxx of CISF Unit, SJM, Hyderabad.

3. The above said complaint was referred to the Complaints Committee. The Committee, after concluding the enquiry submitted a report on 09.03.2011 holding that it is not a case of sexual harassment but it would only amount to cheating. On receipt of the enquiry report, the same was forwarded along with the memorandum dated 09.03.2011 stating that the disciplinary authority will take suitable action on receipt of the reply. The petitioner had submitted his reply on 25.03.2011, based on which the fifth respondent, by order dated 30.03.2011, had awarded a penalty of reduction of pay to the minimum stage with immediate effect for a period of 5 years with cumulative effect.



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4. The petitioner had preferred an appeal to the fourth respondent, which came to be rejected by order dated 29.12.2011, holding that the appeal had been preferred after a period of 5½ months, therefore the appeal cannot be entertained as it is not submitted within a period of 30 days. The petitioner had further filed a revision to the third respondent wherein, by order dated 29.03.2012, the third respondent rejected the revision holding that it has been preferred after the stipulated time and the same is time barred.

5. Assailing the impugned orders, the petitioner had preferred the above writ petition.

6. Heard the learned counsel for the petitioner and the learned Central Government Standing Counsel for the respondents and perused the materials available on record.

7. The facts are not in dispute that the petitioner who was originally appointed as Constable on 19.04.2003 in CISF at Jhansi, Uttar Pradesh, was transferred and working in the CISF Unit, SJM, Hyderabad and thereafter, he was transferred and working in the CISF Unit, NLC, Neyveli, w.e.f. August 2011.



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8. While the petitioner was working in the CISF Unit at Hyderabad, a memorandum dated 01.02.2011 was issued stating that one lady constable [No.074410110] working in the CISF, SJM, Hyderabad, had lodged a complaint of sexual harassment as against the petitioner. Based on the complaint, the same had been referred to the complaints committee. The complaints committee conducted an enquiry and enquired 5 witnesses and after concluding the enquiry, submitted an enquiry report dated 09.03.2011 to the Department holding that it is not a case of sexual harassment, however, the committee had observed that considering the pitiable condition of the complainant, proceedings have to be taken against the individual due to the trauma caused to the life of the complainant. The findings of the complaints committee is extracted hereunder:-

“On Perusal of all the Statements, documents on record and submitted by the Complainant the Board had come to a conclusion that it is a clear case of CHEATING but not a case of SEXUAL HARRASSMENT. As the Complainant had lost her relation with her own Parents due to her affair with Const. B.P.Singh, lost finance as she rendered support to him and she gave herself totally to the alleged official hence the concept of cheating by Const. B.P.Singh is unbearable to her and she decided to remain unmarried throughout her life. The alleged official because of his misdeeds had caused enormous damage to the complainant personality both physically and mentally which can never be regained. The Board saw her in a very pitiable condition and felt very sympathetic to her and strongly felt that Const. B.P.Singh may not be spared and has to be dealt mercilessly for causing an individual to undergo severe trauma in her life.”



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9. When the complaint was referred to the complaints committee, concluding the enquiry, the committee had ultimately found that the complaint of sexual harassment is not true and therefore held that it is not a case of sexual harassment and had only made observations that in view of the suffering of the complainant, the Department may take appropriate proceedings.

10. On receipt of the enquiry report, as the committee had concluded that it is not a case of sexual harassment, it was for the respondent Department to take a decision as to whether to proceed further by issuing a charge memo in respect of any delinquencies if the Department felt that the petitioner had violated any of the regulations. The fifth respondent by proceedings dated 09.03.2011 issued an office memorandum by enclosing a copy of the enquiry report and had stated the following:-

“Reference IG, CISF, South Sector HQrs, Chennai Order No.V-15014/SH NGO/RK/SS/2010/8744 dated 29.10.2010 detailing therein Complaint Committee to inquire into the sexual harassment allegations leveled against you by No.074410110 L/Const. Rashmi Kumari formerly of CISF Unit, SJM, Hyderabad.

02. A copy of Enquiry Report submitted by the Complaint Committee is enclosed herewith. The Disciplinary Authority will take a suitable decision after considering your representation. If you wish to make any representation or submission against the report of the Enquiry Officer, you may do so in writing to the Disciplinary Authority within 15 days from the date of receipt of this letter.”



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11. Therefore, the petitioner was called upon to explain and make his representation in respect of the report submitted for taking further action.

Pursuant to the memorandum, the petitioner had submitted his reply dated 25.03.2011 stating that the complaint was totally false and in fact, the committee also, after enquiry, had found that the complaint of sexual harassment to be false and instead of proceeding as against the complainant for giving a false complaint, notice has been issued to him and he had specifically denied that he had never harassed the complainant in any manner.

12. On receipt of the reply, the fifth respondent without conducting any further enquiry, simply by order dated 30.03.2011, had imposed a penalty of reduction of pay to the minimum stage with immediate effect for a period of 5 years with cumulative effect. The fifth respondent in his order has observed that the charged official did not cross-examine the witnesses inspite of giving an opportunity to do so and further has held that although his misdeeds in the instant case do not precisely amount to sexual harassment, his proven act of cheating a fellow lady constable in a manner he did in this case is much more grave than sexual harassment and therefore,



he is imposing the penalty. Paragraphs 6 & 7 of the order of the fifth respondent are extracted as under:-

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“6. Thus, the misdeeds of the charged official in this instant case clearly depict an act of cheating a fragile fellow Lady Constable by inducing her into total submission which ultimately resulted in severing her relation with her parents because of her affair with the charged official, caused enormous damage to her personality, both physically and mentally which can never be regained. A Government servant is expected to maintain a reasonable and decent standard of conduct even in his private life and not bring discredit to his service by his misdemeanor. The charged official by virtue of his misdemeanors in the instant case has acted in a manner unbecoming of a Government servant. Although his misdeeds in the instant case do not precisely amount to sexual harassment, his proven act of cheating a fellow Lady Constable in a manner he did in this case is much more grave than sexual harassment and such kind of tendency on the part of personnel deserves to be dealt with stringently in the overall interests of the Organization. However, keeping in view the charged official's career ahead and also with a view to give him a chance to redeem his conduct in future and all other aspects in mind, I intend to take a lenient view this time.

7. I, therefore, in exercise of powers conferred upon me under Rule-32 read in conjunction with Schedule-I and with Rule-34 (v) of CISF Rules 2001 hereby award the penalty of “Reduction of pay to the minimum stage with immediate effect from Rs.7,370/- + Rs.2,000/- (Grade Pay) to Rs.6,060/- + Rs.2,000/- (Grade Pay) in the Pay Band of PB-1 for a period of five years with further directions that during the period of reduction, he will not earn increments of pay and on expiry of this period, the reduction will have the effect of postponing his future increments of pay” to No.033260309 Const. B.P.Singh of CISF Unit, SJM, Hyderabad.”

13. When the complaint referred to the complaints committee was enquired into and the committee had submitted a report holding that it is not a case of sexual harassment and had made further observations that the Department may take appropriate proceedings against the delinquent, then it



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was for the respondent authorities to frame necessary charges and conduct an enquiry in a manner known to law. Instead the respondents had not issued any charge memo charging the delinquent for the delinquency by committing the offence of cheating and without even framing any charge and issuing a charge memo and calling for an explanation from the petitioner and conducting an enquiry in this regard, straightaway the fifth respondent had passed the order imposing a major punishment of reduction of pay to the minimum stage with immediate effect for a period of 5 years with cumulative effect.

14. When the same was specifically put to the learned Central Government Standing Counsel for the respondents to verify as to whether any charge memo was issued charging the petitioner in respect of these charges for which the punishment has been imposed, the learned counsel on instructions fairly submitted that no charge memo has been issued as against the petitioner by framing any charges in respect of cheating and the punishment had been imposed by holding that the same is imposed by proven act of cheating only based on the observations made in the enquiry report submitted by the complaints committee.



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15. Therefore, it is abundantly clear that the punishment has been imposed on the petitioner delinquent for the charge of cheating, even without framing any charge to that effect and issuing a charge memo, affording any opportunity to the petitioner to explain and no enquiry has been conducted in this regard.

16. In fact, the fifth respondent in the impugned order had referred that the petitioner had not availed the opportunity of cross-examining the witnesses. When the fact remains that all the witnesses who have been examined before the complaints committee were in favour of the petitioner, there was no further need for the petitioner to cross-examine them and in fact, the committee had, ultimately based on the witnesses, held that the allegations of sexual harassment are not correct. Only if the specific charge of cheating is framed and enquiry is conducted in respect of those charges by letting in any evidence against the petitioner, he would be in a position to cross-examine them to disprove the charges levelled against him.

17. In the instant case, the punishment imposed by the fifth respondent holding that the same is imposed in view of the proven charge of cheating without framing any charge in respect of the same and issuing any charge memo calling for any explanation and conducting an enquiry, is in



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violation of principles of natural justice and the said punishment cannot be sustained. No person can be made to suffer any punishment by penalty imposed as against him without framing necessary charge calling for his explanation and conducting an enquiry to prove the charges.

18. It is admitted on the part of the respondents that prior to imposing the punishment, they have not issued any memorandum framing the charge of cheating and the punishment has been imposed without conducting any enquiry in so far as the charge of cheating is concerned. In such circumstances, the punishment imposed as against the petitioner cannot be sustained and is liable to be set aside.

19. Though the appeal preferred by the petitioner before the fourth respondent and the revision preferred before the third respondent had been rejected, it was only on the ground that the same had been preferred after a period of 30 days, therefore, it was beyond the period of limitation. Once this Court has come to the conclusion that the very punishment imposed by the fifth respondent cannot be sustained in view of the fact that the charge has not been framed in respect of the punishment that has been imposed, subsequent orders of the respondents 3 and 4 also need to be interfered with.



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20. At this stage, the learned Central Government Standing Counsel for the respondents contended that since the punishment has been imposed without framing any charges as against the petitioner, the respondent Department may be given liberty to proceed afresh after framing necessary charges in respect of cheating.

21. This is the issue that arose in respect of the complaint given in the year 2011. In fact, the complaint was referred to, where 5 witnesses were examined and after examining all the evidence, the committee itself found that the charges levelled against the petitioner are not proved but only observed that the respondents may proceed departmentally for trauma caused to the complainant. When the main issue of the sexual harassment as alleged in the complaint was found to be not proved, allowing the respondents to issue a fresh charge memo at this length of time after a period of 15 years would not serve any purpose and therefore, the same is rejected.

22. In view of the above deliberations, the Writ Petition stands ***allowed*** and the impugned orders imposing the punishment as against the petitioner are set aside.



23. There shall be no order as to costs.

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Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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To

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Union of India,
Department of Home Affairs,
New Delhi.
- 2.The Director General,
CISF Head Quarters,
No.13, C.G.O. Complex,
Lodhi Road,
New Delhi - 110 003.
- 3.The Inspector General,
CISF Head Quarters South Sector,
Chennai Port Trust Campus,
Near War Memorial,
Chennai - 600 009.
- 4.The Deputy Inspector General,
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G.ARUL MURUGAN, J.

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