

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF JUNE 2022

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MS.JUSTICE J.M. KHAZI

W.A. NO.5651 OF 2017 (S-DIS)

IN

W.P.Nos.12681-12685 OF 2016

C/W

W.P.Nos.8694-8696 OF 2016 (S-DIS)

BETWEEN:

1. SRI. VIKAS VERMA
AGE 26 YEARS
S/O SRI. BALBIR SINGH.
2. SRI. ANKUR PUNIYA
AGE 27 YEARS
S/O SRI. YASHPAL SINGH.
3. SRI. PINKU KUMAR
AGE 26 YEARS
S/O SRI. KANWAR PAL.
4. SRI. JEETENDRA SINGH
AGE 26 YEARS
S/O SRI. GOBARDHAN SINGH.
5. SRI. YOGENDRA
AGE 26 YEARS
S/O SHRI. LEELADHAR.

APPELLANTS 1 TO 5 ARE

CONSTABLES OF CISF
OF BHARATIYA RESERVE BANK
NOTE MUDRANA PRIVATE LIMITED
MYSORE-577 001.

6. SRI. VIKAS K. TIWARI
AGE 27 YEARS
S/O SRI. RAM TIWARI.
7. SRI. CHANDAN KUMAR
AGE 27 YEARS
S/O SRI. SURESH SINGH.
8. SRI. RAHUL DIVAKAR
AGE 27 YEARS
S/O SRI. GOVARDHAN SINGH.

APPELLANTS 6 TO 8 ARE CONSTABLES
(UNDER ORDERS OF DISMISSAL)
OF CENTRAL INDUSTRIAL SECURITY FORCE
BHARATIYA RESERVE BANK
NOTE MUDRANA PRIVATE LIMITED
MYSORE-577 001.

... APPELLANTS

(BY MR. P.A. KULKARNI, ADV.,)

AND:

1. UNION OF INDIA
TO BE REPRESENTED BY ITS SECRETARY
MINISTRY OF HOME AFFAIRS
GOVERNMENT OF INDIA
NORTH BLOCK, NEW DELHI-110 001.
2. DIRECTOR GENERAL
CENTRAL INDUSTRIAL SECURITY FORCE HEADQUARTERS
BLOCK NO.13-CGO COMPLEX
LODHI ROAD, NEW DELHI-110 003.
3. GROUP COMMANDANT
CENTRAL INDUSTRIAL SECURITY FORCE HQ
RAJAJI BHAVAN

BESANT NAGAR
CHENNAI-600 090.

4. DEPUTY INSPECTOR GENERAL
CENTRAL INDUSTRIAL SECURITY FORCE (SOUTH ZONE)
HEADQUARTERS, RAJAJI BHAVAN
BESANT NAGAR, CHENNAI-600090.
5. DEPUTY COMMANDANT
CENTRAL INDUSTRIAL SECURITY FORCE UNIT
BHARATIYA RESERVE BANK
NOTE MUDRANA PRIVATE LIMITED
MYSURU-577 001.

.. RESPONDENTS

(BY MR. M.B. NARGUND ASGI A/W
MR. S. RAJASHEKAR, CGC FOR R1-R5)

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THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE COMMON ORDER DATED 8/8/2017 IN WRIT PETITION 12681-685/2016 C/W WRIT PETITION 8694-8696/2016 [S-DIS] PASSED BY THE LEARNED SINGLE JUDGE AND ALLOW THE WRIT PETITIONS.

THIS W.A. COMING ON FOR FURTHER HEARING, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This intra Court appeal emanates from order dated 08.08.2017 passed by the learned Single Judge by which writ petitions preferred by the appellants have been dismissed. In order to appreciate the grievance of the appellants few facts need mention which are stated infra.

2. The appellants, on 18.07.2012, were appointed as Constables in Central Industrial Security Force (hereinafter referred to as 'the CISF' for short) and in the year 2015, were posted to Bharatiya Reserve Bank Mudrana Pvt. Ltd. Mysuru. A Constable's wife (hereinafter referred to as 'the complainant' for short) filed a complaint against the appellants in which it was stated that she was blackmailed and repeatedly raped by the appellants.

3. In the said complaint, it was stated that the complainant was residing in a Government quarter. Sometime in March and April 2015, appellant No.1 namely Vikas Verma introduced himself as the friend of her husband. The aforesaid Vikas Verma namely appellant No.1 was working in Unit's mess and volunteered to bring things from the market to the complainant as he used to visit the market frequently for procuring the goods for Unit mess. The appellant No.1 obtained the mobile number of the complainant and while the husband of the complainant was away during March and April 2015, the appellant No.1 used

to call her late at night and initially talked about her general health and family. Thereafter, he started talking about sexual matters and expressed his desire to have physical relationship with the complainant in the night.

4. Again, appellant No.1 called the complainant at 1.30 a.m. and told her that he is waiting outside the house of the complainant and in case she does not have physical relationship with him, he would reveal the recorded telephonic conversation between them to her husband. The complainant thereupon was forced open the door and thereafter the appellant No.1 entered the house of the complainant and raped her. Thereafter, appellant No.1 kept on calling the complainant repeatedly. He raped the complainant again prior to 23.05.2015.

5. Thereafter, the appellant No.2 Ankush Punia and appellant No.6 Constable V.K.Tiwari also called the complainant on 06.06.2015 and told her that they knew about her illicit affair with Vikas Verma. The complainant was further told that in case she does not open the door of

the house, they would disclose her illicit affair to everyone. The complainant was forced to open the door and thereafter, the appellant No.2 and appellant No.6 raped her one by one.

6. Similarly, appellant No.7 Chandan Kumar also contacted her and blackmailed her about physical relationship with other appellants and called her to parade ground and raped her. Similarly, appellant No.3 Pinku Kumar also called the complainant and at the threat of disclosure of her illicit physical relationship with other Constables, raped her. On 18.06.2015, at about 1.30 a.m. appellant No.6 V.K.Tiwari called her and blackmailed her and visited the house of the complainant with Constables Rahul Divakar appellant No.8 and Jitendra Singh appellant No.4 who raped the complainant one by one.

7. On 26.06.2015, the husband of the complainant came back from CISF SCCL unit, Singreni. The complainant fearing for the family life, did not disclose anything to her husband. On 28.06.2015, when appellant No.1 Vikas Verma had called the complainant at about 11.30 p.m. and while the

complainant was talking to appellant No.1, her husband snatched the phone and enquired as to whom she was talking to. The complainant apprised him about her ordeal on 01.07.2015. The husband of the complainant was shocked and became furious and started behaving in an abnormal manner.

8. The complainant thereafter, lodged a complaint on 02.07.2015. On receipt of the complaint, a preliminary enquiry was conducted and a preliminary enquiry report was submitted. The Disciplinary Authority, by an order dated 02.08.2015, *inter alia* held that in an armed police force like CISF, the discipline and morale are of paramount importance. It was further held that in the facts of the case, an enquiry into the incident is not reasonably practicable as it would have adverse ramification on the discipline of the force in general. Therefore, the requirement of holding an enquiry was dispensed with in exercise of powers under Rule 39(ii) of the CISF Rules, 2001 and under clause (b) of second proviso to Article 311(2) of the Constitution of India. The Disciplinary Authority imposed a penalties of dismissal from

service on the appellants. The appellants filed an appeal under Rule 46 of CISF Rules. The Appellate Authority, by an order dated 27.11.2015, dismissed the appeal preferred by the appellants.

9. The appellants assailed the validity of the orders dated 02.08.2015 and 27.11.2015 passed by the Disciplinary Authority as well as the Appellate Authority in writ petitions. The learned Single Judge, by an order dated 08.08.2017, inter alia held that disciplinary authority has assigned cogent reasons for arriving at a conclusion to dispense with the regular departmental enquiry and the disciplinary authority in the facts of the case was justified in dispensing with the regular enquiry. It was further held that misconduct is inhumane and adverse inference has to be drawn against the appellants on their refusal to share call records of their admitted phone numbers. It was also held that there is no animosity between the complainant, her husband and the appellants, therefore, the version of the appellants that they have been falsely implicated cannot be accepted. Accordingly, the penalty of dismissal from service was upheld

and the writ petitions preferred by the appellants were dismissed. In the aforesaid factual background, these appeals have been filed.

10. Learned counsel for the appellants submitted that decision to dispense with the regular enquiry as provided under Rule 36 cannot be taken by the disciplinary authority at the time of passing the order of punishment in view of Rule 36(2A) of the Rules. It is further submitted that the authority is bound by principles of natural justice before taking a decision to dispense with the regular enquiry. It is urged that in the facts and circumstances of the case, there is no justification for dismissal of services of the appellants as they have already been acquitted in a criminal case vide judgment dated 30.07.2019 passed by the trial court. It is also urged that from the statement of the complainant recorded in the criminal case it was evident that she was a consenting party to the alleged incident. It is also argued that mere on the basis of suspicion penalty of dismissal from service cannot be imposed on the appellant. In support of aforesaid submissions, reliance has been placed on division

bench decision of this court in '**THE GOVERNMENT OF INDIA, REP. BY SECRETARY MINISTRY OF HUMAN RESOURCE DEVELOPMENT AND OTHERS VS. DHANU S. RATHOD**', **ILR 2002 KAR 4911** and decision of Supreme court in '**CAPT. M. PAUL ANTHONY VS. BHARAT GOLD MINES LT., AND ANOTHER**', **(1993) 3 SCC 679**.

11. On the other hand, learned ASGI for respondents submitted that after receipt of the complaint, the same was meticulously examined. The disciplinary authority visited the place of incident and in the facts and circumstances of the case has rightly taken a decision to dispense with the disciplinary enquiry. It is pointed out that valid and cogent reasons have been assigned by the disciplinary authority for dispensing with the regular departmental enquiry. It is also pointed out that appellate authority as well as the learned Single Judge has held the punishment of dismissal from service had rightly been imposed, the order passed by the learned Single Judge does not call for any interference in this appeal.

12. We have considered the rival submissions made on both sides and have perused the record. Under Section 22 of the Central Industrial Security Force Act, 1968, the Central Government has framed the Rules viz., Central Industrial Security Force Rules, 2001 (hereinafter referred to as 'the Rules' for short). Rule 39 of the Rules which has been invoked in the instant case and provides for special procedure in certain cases reads as under:

39. Special procedure in certain cases.—*Notwithstanding anything contained in rules 36 to 38--*

(i) where any penalty is imposed on an enrolled member of the Force on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules, the disciplinary authority

may consider the circumstances of the case and make such orders thereon as it deems fit:

Provided that the enrolled member of the Force may be given an opportunity of making representation against the penalty proposed to be imposed before any order is made in case under clause (i).

13. Thus, the disciplinary authority for reasons to be recorded by it in writing has to be satisfied that it is not reasonably practicable to go in an enquiry in the manner prescribed under the Rules. It is also pertinent to note that the aforesaid provision is in pari materia with Article 311(2)(b) of the Constitution of India. A constitution bench of the Supreme Court in **'UNION OF INDIA VS. TULSI RAM PATEL', (1985) 3 SCC 398** while dealing with Article 311(2)(b) has held that condition precedent for application of clause (b) in Article 311(2) is the satisfaction of the disciplinary authority that it is not 'reasonably practicable to hold the enquiry' as contemplated by clause (2) of Article 311 of the Constitution of India. The issue whether it was practicable to hold an enquiry or not, must be judged in the

context of whether it was reasonably practicable to do so and same has to be assessed with reference to opinion of a reasonable man taking a reasonable view of the prevailing situation. It has further been held that disciplinary authority is not expected to dispense with an enquiry lightly or arbitrarily or out of ulterior motive.

14. In **JASWANT SINGH VS. STATE OF PUNJAB AND OTHERS', (1991) 1 SCC 362** it was held that when the satisfaction of the concerned authority is questioned in a court of law, it is incumbent on those who support the order to show that satisfaction is based on certain objective facts and it is not outcome of the whim or caprice of the concerned officer. In **UNION OF INDIA VS. BALVEER SINGH', (1998) 5 SCC 216**, while examining the scope of judicial review in respect of an order of dismissal, it was held that satisfaction recorded by disciplinary authority to dispense with a regular enquiry can be examined to ascertain whether it is vitiated either by malafides or based on wholly extraneous and / or irrelevant grounds. It has further been held that there has to be a material before the disciplinary

authority to arrive at a conclusion for dispensing with the regular enquiry and the court cannot sit in appeal over the decision taken by disciplinary authority. It has also been held that the court will not lightly presume abuse or misuse of power and will make allowance of the fact that the disciplinary authority is the best judge of the situation. Similar view was taken in ***FOOD CORPORATION OF INDIA, HYDERABAD VS. A PRAHALAD RAO'***, (2001) 1 ***SCC 165.***

15. In the backdrop of well settled legal principles, we may advert to the facts of the case in hand. The complainant filed a complaint on 02.07.2015 alleging that she was blackmailed, raped and sexually abused by the appellants. Thereafter, a preliminary enquiry was conducted and the statements of the appellants were recorded between 02.07.2015 to 05.07.2015, which were duly signed by the appellants. Thereafter preliminary enquiry report dated 10.07.2015 was submitted, in which inter alia it was found that appellant No.1 viz., Vikas Verma had attempted to steal the affection of lady wife of Constable / G.D. Pradeep S and

had later tried to blackmail the complainant and sexually abuse and exploit her. Similar misconducts of blackmailing, sexual harassment and abuse was done by 7 other Constables viz., appellant Nos.2 to 5. Accordingly, it was concluded that a prima facie case exists against the appellants.

16. The disciplinary authority by an order dated 02.08.2015 in para 3 recorded the reasons for arriving at a conclusion that it is not reasonably practicable to hold an enquiry. Para 3 of the order passed by the disciplinary authority reads as under:

And whereas, in the facts and circumstances of the case, which is one of the rarest of rare cases in any Armed Police Force like CISF where discipline & morale are of paramount importance. I am of the considered view that conducting enquiry into the incident is not reasonably practicable for the following reasons.

Unlike civilian Government employees, all CISF personnel live inside the Unit campus. Within the Unit campus, personnel living with their family are allotted government

accommodation and the bachelors are accommodated in barracks under single roof. Only about 50% of the personnel in a Unit are allowed to keep their family at duty station as per authorization. Therefore 50% of the personnel stay as bachelors in every CISF Unit. CISF personnel are often required to stay away from their place of posting on official duty, leaving behind their family alone at the Unit campus. In the instant case, the charged official along with 7 other Constables have indulged in an inhumanly act of blackmailing/threatening the wife of a fellow Constable and have sexually abused her one after the other, when her husband was away from the Unit. All the accused personnel in the case are bachelors and they live together with other bachelor members of the force inside the barracks. Therefore, if enquiry is conducted the information relating to the heinous crime meted out to a lady wife, whose husband was away from the station, is bound to spread to every rank and file of the and file of the force which will not only have serious psychological impact resulting in insecurity in the minds of CISF personnel and their families, but will also seriously undermine the efficiency of the force deployed in vital

installations as well as on Internal Security/Election Duties away from the Unit. Moreover, it will also lead to administrative difficulties whenever a family member is to be deployed for night duty/temporary duty away from the unit. Further, it will also have adverse ramification on the discipline of the force in general.

17. The disciplinary authority on the basis of details of call record of the complainant, which were verified by it held that appellants have made calls on mobile number of the complainant. Therefore, the contention of the appellants that they did not know as to who the complainant is contrary to record. It was further held that there is material evidence to arrive at the inference that the appellants repeatedly abused the complainant and shared her contact number with some of the colleagues who further abused the complainant by blackmailing her. The disciplinary authority therefore held that the appellants are guilty of heinous offence involving moral turpitude which has not only shocked the conscious of the disciplinary authority but has shattered the sanctity of

the institution. Therefore, the penalty of dismissal from service was imposed on the appellants.

18. The appellate authority by an order dated 27.11.2015 inter alia held that there is not procedural flaw either in the disciplinary proceeding or in the order passed by the disciplinary authority. The appellate authority also took note of the details of the call records of the complainant as well as the fact that the appellants had refused to share their call details. It was further held that the appellants are guilty in respect of the charge made against them and it was not reasonably practicable to hold an enquiry in the facts of the case. The contention of the appellants that the complainant was equally responsible for the incident was rejected. Thus, in view of the stand taken by the appellants before the appellate authority, it is axiomatic from the defence taken by the appellants before the appellate authority that the incidents had taken place. The appellate authority had therefore, confirmed the order of dismissal.

19. The incidents being rarest of the rare and considering the discipline and moral of the force, the

disciplinary authority rightly held that it is not reasonably practicable to hold a regular enquiry. The disciplinary authority has rightly held that if a regular enquiry would have been held, the same would have spread the news of heinous incidents committed in the premises of CISF when the complainant's husband was away for duty. It would have caused serious psychological impact and insecurity in the minds of personnel who have left their family on campus and holding of departmental enquiry would have adverse ramification and administrative difficulties while deploying the personnel outside the area of premises. Thus, the disciplinary authority has recorded the satisfaction on the objective facts and the decision to dispense with the departmental enquiry is neither outcome of whim or caprice of the disciplinary authority nor is malafide. This court cannot sit in appeal over the decision taken by disciplinary authority to dispense with enquiry. Therefore, no case for interference with the decision to dispense with the regular enquiry is made out in exercise of powers of judicial review.

20. There is ample evidence on record to prove the charges against the appellants. The issue of sufficiency of the evidence has not been raised by the appellants. The disciplinary as well as the appellate authority by taking into account the material available on record has held that the charges leveled against the appellants are proved.

21. In the instant case, the disciplinary authority has invoked the power under Rule 39 of the Rules, which prescribes for a special procedure in certain cases and is a non obstante clause. Thus, the power under Rule 39 of the Rules can be invoked notwithstanding the power under Rule 36(2A) of the Rules, which deals with power to deal with complaint for sexual harassment. Such a complaint is required to be referred to the complaints committee. In the instant case, the disciplinary authority as stated supra has invoked the power under Rule 39 of the Rules and invocation of the said Rule in the peculiar facts of the case has been held to be justified. Therefore, the contention that power under Rule 39 of the Rules cannot be exercised in view of Rule 36(2A) of the Rules is misconceived.

22. So far as the submission that the disciplinary authority is bound by principles of natural justice before taking a decision to do away with regular enquiry is concerned, the same is also sans substance. In support of aforesaid submission, reference was made to proviso to Rule 39(iii), which envisages an opportunity of making a representation to an employee in case, the penalty is proposed to be imposed on conviction on a criminal charge. The aforesaid Rule has no application to the facts of the case and therefore, the contention raised in this regard does not deserve acceptance.

23. The subsequent acquittal of the appellants in a criminal case is of no assistance to the appellants as decision in ***Capt. M Paul Anthony*** supra was explained by Supreme Court in '***Union of India and Ors. Vs. Seetharam Mishra and Anr.***', (2019) 20 SCC 588, wherein it has been held that acquittal in the course of criminal trial cannot operate ipso facto as a ground for vitiating the finding of misconduct which has been arrived at during the course of disciplinary proceeding.

In view of preceding analysis, we do not find any merit in this appeal, the same fails and is hereby dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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