

Madhu Sudan Singh Vs. Union of India and ors.

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Court : Delhi

Decided On : May-12-1999

Reported in : 1999IVAD(Delhi)42

Judge : Mukul Mudgal, J.

Acts : [Constitution of India](#) - Article 226; [Indian Penal Code \(IPC\), 1860](#) - Sections 499

Appeal No. : C.W. No. 4213 of 1997

Appellant : Madhu Sudan Singh

Respondent : Union of India and ors.

Advocate for Def. : Ms. Rekha Palli Adv.

Advocate for Pet/Ap. : Mr. H.S. Dhaiya Adv

Judgement :

ORDER

Mukul Mudgal, J.

1. The petitioner was working as Constable in the CISF Unit, ONGC (DVP) Jorhat, Assam. While serving in the unit, it is stated that he was illegally and arbitrarily dismissed from the service. While dismissing the services of the petitioner, two

articles of charge were leveled against the petitioner leading to filing of the present writ petition. The first charge was that the petitioner who belongs to Central Industrial Security Force Unit reported for duty on 23rd March, 1995 in an intoxicated condition which amounted to gross indiscipline and dereliction of duty. The second charge leveled against the petitioner reads as under:

'That No. 912296153 Constable Madhusudan Singh of Jorhat Sector of CISF Unit, ONGC (DVP) Jorhat reported to threaten his superior officers couching inepertate language in his petition dated 30.3.1995 that 'on 23.3.95 Incharge, Control Room has made false allegations and suspend him from duty. It is wrong as per Section 191 of Indian Penal Code. If this will not be considered the applicant will take necessary action in Court' which amounts to gross indiscipline being a member of an Armed Force and violation of CISF Rules. Hence this charge.'

2. A bare perusal of the charge shows that the second charge is obviously unsustainable as raising a grievance by filing a petition in accordance with law cannot be considered to be a misdemeanour. Averring about superior officers that he was deprived of his duty by false allegations cannot amount to indiscipline as far as the second article of charge is concerned particularly when this was contained in a representation in accordance with law sent to his superiors. The Hon'ble Supreme Court in a recent judgment reported as *Rajendra Kumar Sitaram Pande & Others v. Uttam and Anr.* (1999) 1 LRI 568 has decided the question whether a prima facie case existed for trial or exception 8 to Section 499 of the Indian Penal Code pertaining to offence of defamation. Exception 8 to Section 499 clearly indicates that it is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with regard to the subject matter of accusation. Hon'ble Supreme Court has further held that 'Under such circumstances, the fact that the accused persons had made a report to the superior officer of the complainant alleging that he had abused the treasury officer in a drunken state which is the gravamen of the present complaint and nothing more, would be covered by exception 8 to Section 499 of the Indian Penal Code 1860.'

3. In view of this position of law the second charge thus cannot be sustained. therefore, as far as the second article of charge is concerned the said article of charge against the petitioner is hereby set aside.

4. Originally the petitioner was given a report of the Enquiry Officer on 13th July, 1995 and was given 10 days time to make a representation to the disciplinary authority. However, the petitioner was given the fair copies of the testimony of the prosecution witnesses on 24th July, 1995 and was thus entitled to a time of 10 days to make representation granted on 13th July 1995, to file the representation w.e.f. 24th July 1995. However, before the petitioner could file the representation within 10 days of 24th July, 1995, the disciplinary authority i.e. the Commandant, respondent No. 5, passed the impugned order of dismissal on 31st July, 1995. This procedure obviously negated the opportunity of making a representation to the Disciplinary Authority.

5. Thus the time of 10 days granted originally by the letter dated 13th July, 1995 for making a representation had not lapsed before the impugned order dated 31st July, 1995 leading to the present petition was passed. The order of dismissal dated 31st July, 1995 thus violated the provisions of natural justice as it was passed before the petitioner preferred a representation and, therefore, it cannot be sustained. Accordingly the dismissal order dated 31st July, 1995 as well as the rejection of the revision petition filed against the said order dated 21st March, 1996 passed by the DIG respondent No. as also the order dated 17th June, 1996 by the Inspector General, CISF, respondent No. naturally cannot be sustained.

6. In so far as the findings on the 1st charge are concerned, the petitioner will prefer a representation within 10 days from the receipt of the certified copy of this judgment to the Disciplinary Authority i.e. respondent No. 5, the Commandant, and the said representation may be disposed of on merits by the respondent No.2 within a period of 4 weeks from the date of receipt of the representation being uninfluenced by the findings recorded earlier.

7. However, it is not appropriate in the present circumstances to direct the reinstatement of the petitioner consequent to the setting aside of the order of dismissal. Accordingly it is directed that the petitioner be deemed to be placed

under suspension with effect from 31st July, 1995 and be paid the allowances as admissible under the rules till the final order by the disciplinary authority on the representation filed by the petitioner is passed. The petitioner if aggrieved by the order of the disciplinary authority, will be entitled to ventilate his grievance in accordance with law.

8. With the above observations the petition is disposed of. There will be no order as to costs.

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