

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 529/2000

Monday, this the 9th day of April, 2001.

CORAM:

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

Lilly John,
Women Police Constable No.366,
Police Station, Minicoy. - Applicant

By Advocate Mr KV Raju

Vs

1. The Superintendent of Police,
Union Territory of Lakshadweep,
Kavarathy.

2. Shri Joseph James,
Principal S.I. of Police,
Police Station,
Minicoy.

3. Union of India
represented by the Secretary,
Ministry of Home Affairs,
New Delhi. - Respondents

By Advocate Mr S Radhakrishnan

The application having been heard on 9.4.2001, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

This application is directed against the order dated 10.5.2000 issued by the first respondent placing the applicant, a woman/Constable under suspension, as a disciplinary proceeding against her was contemplated and directing that she should not only refrain from leaving Minicoy, but should also report to the Police Station both in the morning and evening for roll call. The historical

background which led to the filing of this application can be shortly stated thus: The applicant, a woman Police Constable posted at Minicoy, had her family in the mainland and her husband away serving as a Defence personnel in the Field. When her husband was coming on leave and her children were on vacation, she applied for a month's leave from 8.5.2000 hoping to be with them. She had also booked her tickets by ship. She was to proceed to Cochin on 8.5.2000. Although leave was granted to her, suddenly when she approached the second respondent, who was the officer-in-charge of the Police Station for permission to leave headquarters, the latter refused permission. She was also not allowed to go to the hospital, though she complained of illness. However, she went to hospital and had treatment. On the recommendation of the second respondent, the applicant was served with the impugned order dated 10.5.2000 placing her under suspension. The applicant has alleged that the action of the first respondent in acting at the instance of the 2nd respondent against whom she had made a complaint of sexual harassment, is arbitrary, without application of mind and discriminatory. It has also been alleged that while the applicant was under suspension, the 1st respondent could not have validly called upon her to report to the Police Station on the morning and evening for roll call. With these among other allegations, the applicant has filed this application seeking to set aside A-1 order of suspension and a direction to the respondent to permit the applicant to leave Minicoy and to proceed to Cochin till the granted leave expired.

2. Counsel for the applicant, when the application came up for hearing, states that the relief at Sub para(ii) has now become infructuous and therefore, the challenge to A-1 alone needs to be considered.

3. Though the 2nd respondent had been impleaded in his personal capacity, he did not consider it necessary to appear and to file an affidavit opposing the allegation of personal malafides made against him. The first respondent, the Superintendent of Police has filed a reply statement in which it is stated that the action of the 2nd respondent in directing the applicant to report for duty on 8.5.2000 was perfectly in order as the percentage of Police Constables on leave had exceeded permissible 20% of the strength, that no complaint of sexual harassment while the applicant and second respondent were working in Kochi was received ^{while} ~~✓~~ the first respondent was posted in Kochi, that the applicant has misbehaved with the second respondent shouting and accusing him, that this has been admitted in her statement given to second respondent(R-4), the applicant had admitted that she misbehaved with the second respondent and that disciplinary proceedings being contemplated against the applicant for her insubordination and misconduct, the order of suspension was issued in consonance with the Rules. It is also contended that such a Police Constable has to maintain discipline, to call upon her to attend roll call during suspension was also justified. The respondents plead that the application may be dismissed. However, the respondents themselves have produced

R-2 which shows that the applicant had made a complaint of sexual harassment against the 2nd respondent. Respondents relied upon a statement alleged to have ^{been} made by the applicant on 9.5.2000 in which she had requested the 2nd respondent to pardon her for reminding him of the occurrence at Cochin and stated that the second respondent cannot be faulted for reporting to the 1st respondent to take disciplinary action against the applicant, as the applicant herself has admitted in R-2 that she had complained against the 2nd respondent. The action of the respondents in directing the applicant to report morning and evening for roll call is sought to be justified on the ground that even under suspension, a Government servant does not cease to be a Government servant.

4. We have carefully considered the pleadings and the documents placed on record in the light of the argument advanced on either side. It is not in dispute that the competent authority had granted leave to the applicant with effect from 8.5.2000 that she had booked her voyage by the ship which was to leave on 8.5.2000 and that no order cancelling her leave had been issued. It is also a common case when she sought permission to leave Minicoy on 8.5.2000, the second respondent told her that she could not go and might probably go on 9th, provided Constables on leave would return from leave. It was under such circumstances that the second respondent reported to the first respondent that the applicant shouted at him and showed insubordination. The first respondent immediately placed the applicant under suspension

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directing that she should report in the office both in the morning and evening for roll call. To show that the applicant insulted the second respondent, the respondents have produced a statement given by the applicant admitting what she was said. It is profitable to reproduce the statement of the applicant contained in R-4 which reads thus:

"നൊമ്പുതുന്തുക്കുട 01C P.S. കൊച്ചിക്കുട്ടം
സമുച്ചിക്കി ഉല്ലിട്ട് ഇന്ത്യൻ നീലപൊലിസ്റ്റിന്റെ
ലിംഗി ഭേദവി ചീഴ്ക്കുട്ട്.

4.5. 2000 നീജി 07:35 ഓണിക്ക് തിക്കി
സെന്റേ, കെതിപ്പൻ. അനിക്ക് 30 വിവസ്വത്തേ E L
കിക്കിലു മുത്തുര തൊക്ക് 01C ദേശാംബ ലിംഗി പൊകിം
മെന്ന് പറഞ്ഞു. തൊരു മുത്തുര തിക്കുകൾക്കുള്ള
പബ്ലിക്. സാക്ക എന്നോട് ദേശാംബ ചെന്തു ടെക്കാവി
ദോട് ഇന്തോക്കുവന്തീരു ചെന്നാരെ പറഞ്ഞു
മുച്ചയിൽ സംസാരിച്ചു. കെതിപ്പൻ ആഫ്റ്റിനിൽ
വച്ചുനോക്കു കാലും പറഞ്ഞു. തു ഭേദപിശകിൽ
സാന്നിദ്ധ്യം അവി കുന്നേരമാണ് അ ഭേദപിശകം,
അവി ഭേദവിൽ ഇന്തോരു തെക്കുകുകൾ ഇന്തോക്കുള്ള,
വിക്കികൾ കൊള്ളാവുള്ള അ ചിയക്കി ക്രൈസ്തവ ഇ ഒരു
ഇന്തോന്ത്രം ചെന്തു ടെക്കാവ് ലിവിക്കുവന്ന 13-10
നീജി കിരിച്ചുപൊക്കുകയുണ്ടാണ്. തൊരു മുത്തുരു
ഞ്ചു ഇന്നോലു കിഞ്ചിക്കു പൊകിം മെന്ന് സാറിദോ
ക് പറഞ്ഞു. ഭേദവിൽ ഇ അന്തരം കു രൂ കു കു
ആവാക്കി കുക്കിക്കിഴു."

It is evident from what is contained in R-4 that the insult was only in speaking about the occurrence in Kochi office:

"കെതിപ്പൻ കൊച്ചിനിൽ സ്വർഗ്ഗ മന്ദിരക്കാലും
പറഞ്ഞു. തു ഭേദപിശകിൽ സാന്നിദ്ധ്യം ദോട്
അവി കുന്നേരമാണ് തു ദേപ ശ്രീ ക്രീഡനം"

It is very clear from this that something had happened between the applicant and second respondent while they were in Kochi and mention of that had been considered by the second respondent as "Bogesabu".

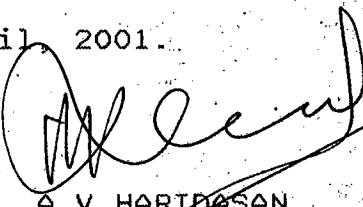
When the first respondent received the report as also the R-4, in which occurrence in Kochi was referred to, the first respondent as a senior superior officer before jumping into any conclusion and deciding to suspend the applicant, should have tried to understand what had really happened. The first respondent was aware that the applicant was granted leave with effect from 8.5.2000. He should have understood that the leave had not been cancelled and that if the Police Constables on leave exceeded 20%, the applicant was not responsible for that. He should have understood that the vacation of her children and the leave of her husband, a Jawan posted in the field in Kashmir, could not wait for the convenience of the second respondent, that by disallowing the applicant to go by the ship on 8.5.2000 the leave granted to the applicant would become infructuous and that the applicant would lose the chance of being with her husband during his annual leave. At least before filing the reply statement in this case, the first respondent should have questioned the second respondent about the allegation of malafides and complaint of sexual harassment. The first respondent, a senior officer should have shown better wisdom in acting on the report of the second respondent, especially when the Annexure-R-4 was before him, and should have dispassionately understood the disappointment and panic of a woman, anxious to join her husband and children

on vacation, when all of a sudden told that she could not go by the ship in which she had reserved a seat and her going at all was not sure and would depend on several contingencies. Since the impugned order was issued only on the basis of the report of the second respondent against whom malafides has been alleged and as the second respondent despite notice has chosen not to file affidavit denying the allegations and in the light of what has been stated above, we find that the impugned order of suspension which is arbitrary and issued without due application of mind is unsustainable. To require an official on suspension to present for roll call in the morning and evening also does not appear to be reasonable as the counsel of the respondents has not been able to show us any rule or instruction which permits such a direction to be given to an officer under suspension. It appears that the respondents wanted to put the applicant under undeserved tension and difficult.

5. In the result, in the light of what is stated above, we allow this application, set aside the impugned order A-1 with all consequential benefits to the applicant. No costs.

Dated, the 9th of April 2001.


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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LIST OF ANNEXURES REFERRED TO IN THE ORDER:

1. A-1: True copy of Order F.No.18/31/99/POL dated 10.5.2000 issued by the 1st respondent.
2. R-2: True copy of letter F.No.18/31/99-Pol dated 25.5.2000 issued by the Dy. Superintendent of Police.
3. A-4: True copy of the reply filed by the applicant dated 9.5.2000 to the memo issued by the Principal S.I. of Police, Minicoy.