

Unreportable

IN THE HIGH COURT OF DELHI AT NEW DELHI

DATE OF HEARING: 29.10.2007

Constable Om Prakash

Petitioner.

Thru. Ms.Avnish Ahlawat with Ms.Latika Chaudhry, Advocates.

- Versus -

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Respondents.

Thru. Mr.Amiet Andley with
Mr.Arun Sharma,Advocates.

CORAM :-

THE HON'BLE MR.JUSTICE A.K.SIKRI

THE HON'BLE MR.JUSTICE VIPIN SANGHI

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

A.K. SIKRI, J.

The petitioner herein who was working as Constable in Delhi Police was charge-sheeted levelling allegation of habitual absentism amounting to gross misconduct. He was dismissed from service vide

order dated 10.10.2002. Petitioner's statutory appeal against the said dismissal order was also rejected by the Appellate Authority on 4.3.2003. These orders were challenged by the petitioner before the Tribunal in OA.No.3032/2003. The Tribunal has, however, dismissed the said application of the petitioner as well vide impugned order dated 11.8.2004 against which present petition is filed. On 6.5.2005 while issuing notice, it was limited to the issue of sentence as is clear from the said order:

"Notice waived by Mr.Amiet Andley on the issue of petitioner's sentence to be reduced from dismissal to compulsory retirement in view of his having rendered 20 year service. Reply within four weeks. Rejoinder within two weeks. List on 30.08.2005"

In view of the aforesaid order, reconsideration is limited to the question of quantum of punishment, namely, whether the circumstances of this case warrant the punishment of dismissal to be reduced to compulsory retirement. We may take note of certain facts having aforesaid issue in focus. The petitioner was appointed as Constable on 1.12.1980. On 4.10.2001 he proceeded for casual leave for two days which was extended by another two days. After the expiry of leave he was supposed to return back on 9.10.2001. However, on that date he lodged DD No.27 dated 9.10.2001 informing that he was sick and, therefore, he would not be able to join his duty. Ultimately he joined duty on 2.1.2002 after availing 85 days medical leave. On 11.4.2002 he was charge-sheeted alleging that though he had proceeded on 2+2 days casual leave, he did not join the duty on 9.10.2001 and got a report lodged vide

DD No.27 dated 9.10.2001 about his illness and stated that he is admitted in Government Hospital Jhunjhunu (Rajasthan). He resumed duty on 2.1.2002 after availing medical rest of about 85 days and produced certificates of three different hospitals/dispensaries situated at three different places in Rajasthan i.e. Singhana, Jaipur and Saga and he also failed to submit medical treatment slips about his illness to suggest that he was actually ill and admitted in the Government Hospital despite the fact that he was personally directed by the RI/P&L in the charge-sheet. It is mentioned that his earlier record showed that he had absented himself on 63 different occasions between 10.12.81 to 18.12.2001 suggesting that he was a habitual absentee. After the enquiry, Enquiry Officer held the petitioner guilty of the aforesaid charge. It was, inter alia, mentioned in the report that the petitioner did not produce the medical treatment card. The contention of the petitioner was that he had in fact produced photocopies of these documents at the time of joining his duty. Accordingly, he made detailed representation pointing out the aforesaid aspect and also submitted copies of the medical treatment slips as well on the basis of which he claimed that he was admitted in Primary Health Centre, Singhana, Rajasthan on 9.10.2001 and discharged from there on 10.10.2001. He also submitted that three hospitals from where he had taken treatment in the same vicinity, his explanation was that when the Ayurvedic treatment and Primary Health Centre treatment did not cure he was shifted to Sawai Man Singh Hospital, Jaipur, Rajasthan. The Disciplinary Authority, however, dismissed him from service and the appeal was also dismissed as aforesaid.

The learned Tribunal while dismissing his OA noted that absence period of 85 days was not contested. The controversy centered around the medical condition of the petitioner during this period. As per the respondent, neither the medical certificates nor his behaviour for obtaining treatment supported his case, inasmuch as, he took treatment at long distant villages (three different hospitals). The Tribunal was of the opinion that the petitioner was not able to show any infirmity in the enquiry proceedings and the conclusion recorded by the Disciplinary Authority and observed that it was not for the Court to substitute its judgment over the judgment of the Disciplinary Authority. The operative part of the impugned judgment of the Tribunal is as under:

"In the case of Appeal Export Promotion Council Vs. A.K. Chopra (JT1999(1) SC 61) it is held that strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer.

In the present case disciplinary authority has come to the conclusion according to the rules for imposition of such penalty and the applicant has not been able to show infirmity in this regard and as such it would be incorrect on our part to substitute our judgment over the judgment of the disciplinary authority. The only requirement of the law is that evidence on which action has been taken supports the principle of

preponderance of probability and that any reasonable person acting reasonably and with objectivity may arrive at a finding upholding the charge against the delinquent officer.

We note that the applicant has produced medical certificate from different hospitals of Rajasthan which are situated at distant places from his village and as such the certificates do not support his averments that he was so medically incapacitated that he could not report back for duty".

We may state at this stage that learned counsel for the petitioner had submitted that though the notice was issued on limited aspect, it was permissible for the petitioner to argue the case on all counts and even on merits and in support again reiterated the explanation furnished by the petitioner on the basis of which it became necessary to take treatment from three different hospitals. However, after hearing the counsel for the petitioner, we are of the opinion that the order of the Tribunal did not suffer from any infirmity and the approach of the Tribunal which is evident from the afore-quoted portion of the judgment is in tune with the legal principles. Therefore, no case for interference with the said judgment on merits is made out.

With this we proceed to discuss the issue on which notice

was issued by this Court, namely, quantum of punishment. According to the petitioner, the extenuating circumstances in the present case were "the petitioner had put in more than 20 years of service which was unblemished and by imposing the punishment of dismissal the petitioner was even deprived of his right to get pension and other retirement benefits. It was further submitted that the medical certificates produced by the petitioner were of the Government Hospital. It was not a case of falsehood on the part of the petitioner. He was in fact suffering from Jaundice and was absented for 85 days. Even as per PW-3 who appeared as prosecution witness to support the charge, doubt was created in his mind only because of the reason that the petitioner did not produce the treatment card. However, the said witness admitted that no enquiry was made to find out as to whether medical certificates submitted were genuine or not. Learned counsel for the petitioner also pointed out that as per the enquiry report itself, in the final defence statement the petitioner had submitted that he was never given any verbal or written direction by PW-3 to produce medical slip; he had submitted medical certificates in original to suggest that he was actually ill; he had also attached medical treatment card issued by Medical Officer, Incharge, Singhana, Jaipur and

Sawai Man Singh Hospital, Jaipur. Learned counsel further pointed out that in the Enquiry Report the Enquiry Officer had himself even observed as under:

"In toto medical certificates may be genuine but the sequence of so called treatment in the dispensaries give ample scope of discredit to the conduct of the defaulter and that too when he is a previous habitual absentee case on 63 occasions though the previous absentee cases have been decided but are sufficient evidence to draw an inference of a case of frequent absenteeism without any cogent reason".

She thus submitted that it was only on account of inferences that the petitioner was held guilty and punished. Insofar as previous 63 occasions were concerned, Ms. Avnish Ahlawat pointed out that PW-2 had made categorical statement that "all the absence have been filed in the decision column of the absentee record" and thus those previous occasions could not be taken into consideration which was even indicated by the Enquiry Officer as well but he was still drawing an inference of a case of frequent absenteeism and stated that this was his 64th occasion when the petitioner was absent and that would be sufficient to discredit

his conduct.

We are of the opinion that these are the aspects, on the quantum of punishment which merit consideration. We feel that the Disciplinary Authority, Appellate Authority have not bestowed their consideration on these aspects in deciding the quantum. Since it is not for the Court to interfere with the punishment unless it is shocking disproportionate, we deem it more appropriate to remit the case back to the Appellate Authority with direction to reconsider the question of punishment, namely, whether the circumstances warrant taking lenient view of the matter and imposing the punishment of compulsory retirement or maintaining the punishment already awarded. The Appellate Authority shall pass speaking order on this aspect within 8 weeks from today.

The writ petition is disposed of in the aforesaid terms leaving the parties to bear their own costs.

(A.K. SIKRI)
JUDGE

January 18,2008.
skk

(VIPIN SANGHI)
JUDGE