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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : December 08, 2009*

+ **W.P.(C) 12251/2004**

RAJBIR SINGH Petitioner
Through: Mr.H.S.Dahiya, Advocate.

versus

UOI & ORS. Respondent
Through: Mr.Satyakam, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

PRADEEP NANDRAJOG, J. (ORAL)

1. On 23.12.2000 a charge memo was issued and served upon the petitioner. The indictment against the petitioner is in the following words:-

“On 20.10.2000 at about 12:15 hours force member met the Commandant outside of his office without permission and in connection with his leave did not behave properly and did unnecessary arguments, which is gross misconduct and indiscipline.”

2. The petitioner submitted his response on 23.12.2000 and in the response to the charge memo brought

out two facts.

3. The first fact brought out was that he went to meet the Commandant during the rest period of class at 12:15 hours and thus the part of the indictment that he met the Commandant outside his office without permission was incorrect. For, having left during rest period, the question of taking any permission from anybody did not arise.

4. With respect to the indictment of not behaving properly and indulging in unnecessary arguments with the Commandant, the petitioner denied the same and stated that he was constrained to meet the Commandant on account of having received information that his wife was seriously ill and the petitioner wanted to obtain leave from the Commandant. The petitioner pointed out that since the Commandant was not inclined to sanction leave he requested him to pass necessary orders on his leave application so that if the leave was rejected, he could approach the senior officer. With reference to the latter part of the charge of not behaving properly with the Commandant and engaging with the Commandant in unnecessary arguments, the petitioner drew attention to an entry at serial No.312 in the General Diary as per which it was recorded that at 12:15 hours the petitioner had visited the office of the Commandant. The petitioner pointed out that

General Diary entry was entered as per information given by the Commandant and the same did not record that the petitioner did not behave properly with the Commandant or engaged in unnecessary arguments. Thus the petitioner relied upon a document prepared contemporaneously which did not record any verbal dialogue between the petitioner and the Commandant.

5. The Competent Authority held that the petitioner had not been able to make out a defence. Noting that the petitioner admitted having met the Commandant in the verandah outside the office of the Commandant, it was held that it is apparent that he had met the Commandant. With respect to the dialogue which the petitioner had with the Commandant, it stands recorded that being excited the petitioner was not speaking properly. So recording, conclusion drawn is that the petitioner committed gross indiscipline by speaking in excited manner with a senior officer for which penalty of stoppage of increments for two years with future effect was inflicted upon the petitioner vide order dated 18.2.2001.

6. The petitioner preferred an appeal against the order of penalty. He met with partial success. Vide order dated 13.8.2001 the penalty was reduced to one year.

7. On 6.11.2001 vide Annexure P-8 the petitioner was issued a promotion order promoting him to the rank of Sub Inspector. But, in view of the penalty imposed the said order of promotion dated 6.11.2001 was kept in abeyance till penalty was over.

8. The petitioner preferred a revision against the appellate order which was turned down i.e. dismissed vide order dated 11.2.2002.

9. Thereafter, after one year of the penalty period being over the petitioner was promoted.

10. The grievance in the writ petition is that the penalty imposed upon the petitioner is without any basis. It is urged that the disciplinary authority failed to give any reasons, in that, the defence of the petitioner has not been dealt with.

11. From a perusal of the brief resume of facts afore-noted, it is apparent that the charged against the petitioner has two limbs. Firstly, meeting the Commandant without permission at 12:15 hours on 20.10.2000 and the second of not behaving properly with the Commandant and engaging the Commandant in unnecessary arguments.

12. Qua the first part of the charge we note that the petitioner has taken a defence of there being rest period of class at 12:15 hours and thus the petitioner required no

permission to meet the Commandant. With reference to the charge of not behaving properly and engaging the Commandant in unnecessary arguments the petitioner had a two-fold defence. Firstly, it has not been indicated as to what words were used by him and secondly the General Diary entry at Serial No.312 does not record that the petitioner had indulged in any unbecoming conduct or having engaged the Commandant in an unnecessary discussion. With reference to the General Diary entry, the petitioner highlighted that the same was recorded as per information given by the Commandant. To put it simply, the petitioner was highlighting that the contemporaneous conduct of the Commandant did not evidence that the petitioner had any verbal altercation with the Commandant.

13. With reference to the order passed by the Disciplinary Authority, the Appellate Authority and the Revisional Authority, we note that the defence has not even been considered.

14. All the three orders proceeded on the basis as if the Commandant's words were the last and final word and had to be treated as the Gospel Truth.

15. We note that without noting, much less dealing with the defence, the disciplinary authority has relied upon some

fact finding inquiry report which was not even supplied to the petitioner. We further note that the Disciplinary Authority, while passing the final order has not even referred to as to what was spoken by, said or done by the petitioner. It is simply stated that the petitioner spoke in an excited manner with a senior officer and misbehaved.

16. Misbehaviour is not a matter of fact. It is a conclusion to be drawn from a fact i.e. something done or spoken. What is the conduct or spoken words which has to be labeled as misbehaviour has not been set out.

17. If it is intended to be conveyed by the order that the misbehavior was speaking in an excited manner to a senior officer, in said eventuality, the words spoken off should have been highlighted.

18. Under the circumstances, we are left with no option but to quash the impugned orders.

19. The writ petition is allowed. Impugned order dated 1.2.2001 passed by the Disciplinary Authority, the order dated 13.8.2001 passed by the Appellate Authority as also the order dated 11.2.2002 passed by the Revisional Authority are quashed.

20. Mandamus is issued to the respondents to promote the petitioner with effect from the date he was required to be

promoted in terms of the order dated 6.11.2001.

21. Noting that the said order has not been given effect to after one year penalty period was over, we direct the respondents to grant seniority and pay all consequential benefits to the petitioner by treating him as having been promoted as a Sub Inspector with effect from the date the person immediately junior to the petitioner was promoted.

22. Salary difference required to be paid by the petitioner in terms of the present order would be paid within 12 weeks from today.

23. The petitioner is entitled to costs against the respondents in sum of Rs.5,000/-.

PRADEEP NANDRAJOG, J.

DECEMBER 08, 2009
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SURESH KAIT, J