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

% *Date of Decision: 18th November 2009.*

+ **WP(C) 6180/2008**

SUBHASH CHANDER Appellant
Through: Mr.Rajat Sharma, Advocate.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr.Manoj Ohri, 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 the Reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

PRADEEP NANDRAJOG, J. (Oral)

1. On the intervening night of 3rd and 4th April 2005, it was alleged against the petitioner that he fired three rounds from the licensed firearm issued to him and that at said point of time the petitioner was intoxicated, having drunk liquor.

2. Notwithstanding that the petitioner pleaded guilty to the charge, an inquiry was held and in view of the evidence, being the testimony of the eye-witnesses, it was concluded that the incident was correct.

3. Noting the fact that the petitioner had pleaded guilty and had apologized for the mistake, the disciplinary authority

imposed punishment of reduction of pay to the minimum pay-scale for a period of two years for which period the petitioner was not to earn any increments and that the said loss of two increments was to have future effect as well.

4. The appellate authority, admittedly having power to suo motu review the penalty under Rule 54 of the CISF Rules, felt that the penalty imposed was shockingly low. Forming a tentative opinion that being a member of the disciplined force, the conduct of the petitioner in firing from the SLR (Self Loading Rifle) issued to him was serious, coupled with the fact that the petitioner was intoxicated, a show cause notice was issued to the appellant on 25.1.2006 as to why penalty of dismissal from service be not imposed.

5. Considering the response of the petitioner in which he stated that suffering from cold he consumed alcohol and that nobody was injured in the firing, the appellate authority opined that the same were hardly any mitigating circumstance. Reiterating that it was a serious misconduct to fire three shots from the self loading rifle issued to the petitioner coupled with the drunkenness of the petitioner at the time when he committed the act, the proposed penalty of dismissal from the service was inflicted upon the petitioner.

6. Further two remedies availed by the petitioner in the form of further appeal and thereafter a revision were negated. Hence, the instant petition challenging the order passed by the appellate authority and the two further orders which have

confirmed the same.

7. A two folds submission has been urged at the hearing of the appeal.

8. Firstly that under Rule 54(1)(d) of the CISF Rules 2001 the superior authority can suo motu call for the record and pass orders as it deems fit but within six months of the date of the original order, it is urged that the original order imposed by the disciplinary authority is dated 20.7.2005 and that the show cause notice as to why penalty be not imposed is dated 25.1.2006. It is thus urged that there is a delay of five days in taking suo motu action by the appellate authority.

9. Second contention urged is that the disciplinary authority weighed the pros and cons before inflicting the punishment and therefore the immediately superior authority could not have substituted the penalty.

10. Both submissions have to be negated for the reason under Rule 54(1)(d) of the CISF Rules 2001 the period of six months have to be reckoned with effect from the date of communication of the order imposing penalty to the superior authority. Limitation has not to be reckoned with effect from the date of the original order. It has to be reckoned with effect from the date the same is communicated.

11. As regards the second plea, suffice would it be to state that undisputably the immediately superior authority above the disciplinary authority is vested with a power to enhance the penalty imposed. Thus, it cannot be urged that since the disciplinary

authority has weighed the quantum of punishment, the same can never be interfered.

12. Obviously, the suo motu power to enhance the penalty is vested, to be exercised, where the penalty imposed by the disciplinary authority is shockingly low.

13. Thus, the question which needs to be considered is, whether the penalty imposed by the disciplinary authority was shockingly low and secondly whether the penalty imposed by the immediately superior authority as confirmed by the further superior authority, is disproportionately severe.

14. As regards the first, suffice would it be to state that firing indiscriminately from the service firearm i.e. the self loading rifle and that too three times, is indeed a serious misconduct. That the fellow brother *jawans* of the petitioner were not hit is a matter of chance.

15. For the misconduct in question, indeed, the penalty imposed by the disciplinary authority is shockingly low.

16. Thus, the immediately superior authority was fully justified in taking suo motu action to enhance the penalty.

17. On the issue of disproportionality of the enhanced penalty, with reference to the gravity of the offence, we have questioned the learned counsel for the petitioner as to how many years service has been rendered by the petitioner. Our intention in seeking said information is to see whether to convert the penalty to one of removal entitle the benefit to the petitioner in the form of pecuniary benefits.

18. Learned counsel states that having rendered seven years service, even if the penalty of removal from service is imposed, no financial benefits would flow to the petitioner.

19. We had intended to consider whether the penalty could be lowered and be of the kind that without the petitioner being in service some monetary benefit could flow to him, for the reason we are satisfied that the misconduct committed by the petitioner is of the kind that it would be hazardous to keep him in service.

20. We record our satisfaction that the misconduct committed by the petitioner is severe and warrants a cessation of service.

21. The penalty imposed cannot be called disproportionate to the gravity of the offence.

22. The petition is dismissed.

23. No costs.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

NOVEMBER 18, 2009

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