

* **HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: December 09, 2009

+ W.P.(C) 6758/2008

Bhag Singh Petitioner

-versus-

The Delhi High Court Respondent

Advocates who appeared in this case:

For the Petitioner : Mr.Saurabh Kripal, Ms.Alpna Poddar

For the Respondent : Mr.Rajiv Bansal

CORAM:-

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MS. JUSTICE VEENA BIRBAL

1. Whether the 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 Digest?

Veena Birbal, J.

1. By way of present writ petition, petitioner has challenged the order dated 12.03.2008 whereby punishment of removal from service was imposed upon him.
2. Briefly the facts relevant for disposal of present petition are as under:-

Petitioner since 1999 was working in this court as a Court Attendant. In May, 2007, petitioner was posted in the court of Mr.Justice J.M.Malik (as his Lordship then was) as a Court Attendant.

On 10.5.2007, petitioner was placed under suspension vide suspension order dated 10.05.2007 issued by respondent in contemplation of disciplinary proceedings against him. On 29.05.2007, petitioner was served with a Memorandum proposing to hold an inquiry under Rule 14 of CCS (CCA) Rules, 1965 in respect of Articles of charge framed against him which are as under:-

“Article-I

“That Shri Bhag Singh, Permanent Court Attendant while working in the Court of Hon’ble Mr.Justice J.M.Malik abused his office by obtaining a slip dated 04.05.2007 from Mr.Manmohan Khanna, Restorer requisitioning the Judicial file of W.P.(C) 2926/07 titled Shri K.L.Shroff Vs. Designated Authority for reference in W.P.(C) 2069/2004 from the Writ Branch of this Court on the pretext that the same was required for perusal by the Hon’ble Judge.”

Article-II

“That Sh.Bhag Singh, Permanent Court Attendant after the receipt of Judicial file of W.P.(C) 2926/07 by Mr.Manmohan Khanna, Restorer in the Court, took the second set of the said judicial record and carried it out from the Court House to the Private photocopying shop No.7 in the High Court Premises for its unauthorized photocopying.”

Article-III

“That Sh.Bhag Singh, Permanent Court Attendant obtained the said judicial record and took the same out of the Court house in the manner aforesaid in violation of statutory provisions contained in High Court Rules and Orders, Volume-V and Original Side rules-1967.”

Article-IV

“That Sh.Bhag Singh, Permanent Court Attendant obtained the record of Judicial file of W.P.(C) 2926/07 with an ulterior motive to make the unauthorized photocopy of the same and deliver that to a third person i.e a clerk of an advocate for his personal gain.”

Accordingly, the said Shri Bhag Singh, Restorer by his above acts of omission and commission has acted very irresponsibly and tried to misuse his official position for

his personal gain and thus committed violation of Rule 3(1) of CCS (Conduct) Rules, 1964 and that such a conduct on his part is unbecoming of a servant of this Court.

In case the above charges are substantiated, Shri Bhag Singh, Court Attendant would be guilty of grave misconduct unbecoming of a servant of this Court rendering him liable to disciplinary action under CCS (CC&A) Rules, 1965.”

3. On 4th October, 2007, petitioner submitted his detailed reply to the charges levelled against him. In reply to Article I of Charge petitioner had stated that he got requisitioned the file of WP(C) 2069/2004 titled K.L.Shroff Vs. Designated Authority from the Writ Branch of this court through Mr.Manmohan Khanna, Restorer of the court, as one of his relatives i.e. Shri Ajay Kotnala wanted to see the orders from the file. He denied that file was got requisitioned on the pretext that same was required by the Hon’ble Judge. Petitioner also stated in reply that there was only one set in the judicial file and there was no second set nor the same was sent by the dealing clerk. Rest of articles of charges were specifically denied by the petitioner.

4. Vide letter dated 24th July, 2007 of Registrar (Admn.) of this court, petitioner was informed that a regular inquiry under Rule 14 of CCS (CCA) Rules had been directed to be held against the petitioner as well as Mr.Manmohan Khanna, Restorer of the court and was also informed that common proceedings had been ordered against the petitioner as well as the other official, namely, Mr.Manmohan Khanna. By another letter dated 2nd August, 2007, petitioner was informed that Shri J.R.Aryan, Joint Registrar of this court had been appointed as an Inquiring Authority by the Disciplinary Authority. Petitioner participated in the inquiry wherein seven witnesses were examined on

behalf of this court and two witnesses were examined by the petitioner as defence witnesses. Upon conclusion of the inquiry, petitioner also submitted written submissions. Inquiring Authority vide his report dated 5th December, 2007 held that all the four articles of charges against the petitioner have been established. A copy of Inquiry Report dated 5.12.2007 was supplied to petitioner vide Court Memo No. 30956 E-VIII/Estt./DHC/103 dated 22.12.2007. Vide same memorandum petitioner was called upon to submit written representation or submission, if he so desired, against the findings recorded by the Inquiry Authority on the Articles of charge framed against him.

5. Petitioner gave representation against the inquiry report dated 5th December, 2007 which was received in the office of respondent on 8th January, 2008. Thereafter, vide impugned orders dated 12th March, 2008, petitioner was informed that the Disciplinary Authority being Hon'ble the Chief Justice of this court had been pleased to direct the petitioner's removal from service w.e.f. 10th March, 2008. Petitioner submitted mercy petition against the said impugned order which was also rejected by the Disciplinary Authority vide orders dated 23rd May, 2008. Aggrieved with the same, petitioner has filed the present writ petition praying for quashing/setting aside of impugned order dated 12.3.2008 whereby punishment of removal from service has been imposed upon him and also the Inquiry Report and all orders passed in pursuance thereof.

6. At the outset, learned counsel for the petitioner has submitted that petitioner is not challenging the finding of the Inquiry Authority in respect of charges against him. His only grievance is that

punishment of removal from service imposed upon him by the Disciplinary Authority is very harsh and excessive. It is contended that considering the nature of misconduct proved against him, punishment is on higher side.

7. It is further contended that the other co-charged official, namely Mr.Manmohan Khanna, Restorer is given lesser punishment as, vide order dated 10.3.2008 he had been “compulsorily retired” from the services of this court but thereafter, he had filed a petition being W.P.(C) No. 7160/2008 before this court challenging the order dated 10.3.2009 of Disciplinary Authority wherein notice was issued to respondent confining only to the quantum of punishment. This court vide its order dated 2nd December, 2008 adjourned the case to 16.2.2009 for filing rejoinder and in the meantime left it open to the Competent Authority to consider the aspect of quantum of punishment in view of the fact that prayer before the court was confined to that aspect by the learned counsel for the said petitioner and the representations made were inclusive of merit of the case. Thereupon, considering the response of said official, the Disciplinary Authority vide order dated 16th March, 2009 has been pleased to reduce the penalty from “Compulsory Retirement” from service to that of reduction of pay by three stages in the pay band of Rs.5200-20200 with Grade of Pay of Rs. 2800 (PB-I) for a period of three years w.e.f the date of imposition of earlier penalty i.e., 10th March, 2008 resulting in the reinstatement of Mr.Manmohan Khanna, Restorer in the services of this Court.

It is contended that the mercy petition filed by the petitioner prior to filing of present writ petition for reducing the punishment

was rejected by the Disciplinary Authority. It is further submitted that during the pendency of present writ petition, petitioner had again made a representation for review of penalty imposed upon him. However, same has also been rejected by the Disciplinary Authority vide orders dated 14th October, 2009.

It is further contended that punishment given to the petitioner is disproportionate to the charges proved against him and it is also discriminatory and violative of the petitioner's right to fair and equal treatment as the other co-charged official named above was earlier given lesser punishment i.e., he was compulsorily retired from service. On his making representation, the punishment of compulsorily retirement has been reduced to reduction of pay by three stages.

8. On the other hand, learned counsel for the respondent has submitted that role of co-charged official Mr. Manmohan Khanna, is not as serious as compared to that of petitioner. It is contended that the petitioner had taken the 2nd set of judicial file out of court premises for getting the same photocopied for ulterior motives. It is further submitted that all the four charges against the petitioner as stated above have been proved against him. In the case of Mr. Manmohan Khanna, out of four charges, only two charges were proved. The first charge proved is that without verifying the facts that concerned file was required by the Judge, he issued a slip for requisition of same. The second charge proved against him is that he did not place the file before Judge as was stated by him in the request slip. The other two charges that he facilitated the removal of judicial record and that gave the same to petitioner for unauthorized copying

is not established in the inquiry proceedings jointly held against him and petitioner.

It is contended that lesser punishment to a co-charged official is not a ground for interference by this court. It is further contended that considering the charges proved against the petitioner, punishment imposed by the Disciplinary Authority is neither excessive nor the same is so disproportionate so as to shock the conscience of the court, as such this court ought not interfere with the same. In support of his contention, learned counsel for the respondent has relied upon (i) **State of Meghalaya & ors Vs. Mecken Singh N Marak** : AIR 2008 SC 2862 and (ii) **Chairman & Managing Director, United Commercial Bank and Ors Vs. P.C.Kakkar** : AIR 2003 SC 1571.

9. We have considered the submissions made and perused the material on record. As mentioned above petitioner has not challenged the findings of Inquiring Authority in respect of charges framed against him. However, in order to find out as to whether fair and proper inquiry has been conducted, we have gone through the inquiry proceedings including statement of witnesses examined during inquiry, inquiry report etc. Principles of natural justice have been complied with by the Inquiring Authority. Petitioner has been given full opportunity to participate in the inquiry proceedings. He has cross examined witnesses of the Department and has also led defence evidence by producing two defence witnesses. The only ground raised in the petition on which finding of the inquiry report is challenged is that evidence of defence witnesses was entirely ignored

by the Inquiring Authority as well as Disciplinary Authority. It may be noticed that the Inquiring Authority as well as Disciplinary Authority have considered the statements of defence witnesses and have not found them worthy of credence. After going through the same, we are of the view that same has been rightly rejected. Considering the material on record, charges against the petitioner are satisfactorily proved.

10. As regards contention of petitioner in treating him at par with co-charged official Manmohan Khanna is concerned, it is held in **Balbir Chand Vs. Food Corporation of India : (1997) 2 LLJ 879 SC** that even if a co-delinquent is given lesser punishment, it cannot be a ground for interference. In any event, considering the charges proved against petitioner, he cannot claim parity with co-charged official. Charges proved against petitioner are of a more serious nature. As per charges proved against him, petitioner has taken the judicial record to a private photocopier for its unauthorized copying for personal gain. The court file was also found at the photocopier shop. Petitioner being a permanent Court Attendant was aware of statutory provisions and Rules that no part of judicial record was supposed to be taken out of court building/premises without permission /approval. A Court Attendant carries important files from Court to Registry as well as to the concerned Branch and vice versa. By taking the file outside the court, he has lost confidence and faith of employer. Petitioner is guilty of serious misconduct. The charges proved against co-charged official Manmohan Khanna are that without verifying facts stated by petitioner that file was required by the Hon'ble Judge, he issued a slip for requisition of the file and after

receipt of file, he did not place it before the Hon'ble Judge. His case is that under the bonafide belief that judicial file was requisitioned by the Judge he requisitioned the same through petitioner. He is exonerated of charge that he gave the judicial record to petitioner for its unauthorized copying. He is also exonerated of the charge that he facilitated removal of judicial record. Petitioner cannot claim parity with him as regards punishment. The contention raised in this regard is rejected.

11. The other contention raised is that punishment of removal from service is excessive and the same be reduced. It is now well settled that the High Court in exercise of power under Article 226 of the Constitution of India does not interfere with the quantum of punishment unless there exists sufficient reasons thereof. The punishment imposed by the Disciplinary Authority, unless shocking to the conscience of the court, cannot be subjected to judicial review as has been held in **State of Meghalaya Vs. Mecker Singh N Marak (supra)**.

12. In **Chairman and Managing Director, United Commercial Bank and Ors. v P.C. Kakkar (supra)** scope of interference by High Court in the quantum of punishment has been dealt with. It is held that interference by High Court is not called for unless the punishment is so shockingly disproportionate so as to shock the conscience of the court. Various judgments of Supreme Court in the above context have been discussed in the said case. After discussing the same, Supreme Court held as under:-

“.....the Court should not interfere with the administrator's decision unless it was illogical or suffers from

procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in the Wednesbury's case (supra) the court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision."

13. As noted above, charges proved against petitioner are grave in nature as compared to co-official Mr Manmohan Khanna. Twice, petitioner has made representations to Disciplinary Authority for reducing punishment and, twice, the same have been rejected. Petitioner has committed serious misconduct. He has lost confidence reposed in him by the High Court. Taking into account facts and circumstances of the case, no interference of this court is required in the punishment imposed upon the petitioner.

Petition stands dismissed. There is no order as to costs.

VEENA BIRBAL, J.

BADAR DURREZ AHMED, J.

December 9, 2009
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