

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P. (C.) No. 3727/2010**
% **Date of Decision:18.08.2010**

GOVT. OF NCT OF DELHI & ORS. Petitioners
Through: Mrs. Avnish Ahlawat, Mr.Nitesh Kumar
Singh, Mrs. Simran Singh, Advs.

VERSUS

EX. H.C. RADHEY SHYAM Respondent
Through Mr.Sourabh Ahuja, Adv.

CORAM:
HON'BLE MR. JUSTICE PRADEED NANDRAJOG
HON'BLE MR. JUSTICE MOOL CHAND GARG

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?

MOOL CHAND GARG, J.*(Oral).*

1. The petitioner has come before this Court by filing this writ petition aggrieved from the order passed by the Central Administrative Tribunal (hereinafter referred to as "the Tribunal") dated 15.01.2010 whereby the Tribunal has converted the punishment of removal from service awarded to the respondent to that of compulsory retirement despite the fact that such punishment is not prescribed under the Delhi Police (Punishment and Appeal) Rules, 1980.

2. In the present case, admittedly, a charge sheet was served upon the respondent on 16.02.2004 containing the allegation that the respondent was negligent and had shown dereliction and carelessness in discharge of his official duties inasmuch as he had been absent unauthorizedly for 5 days during August, 2003; 31 days during October and thereafter, had been remaining absent w.e.f.

25.11.2003. After the proposal to hold a regular departmental inquiry was conveyed to him, though he joined briefly, but again started absenting himself. The inquiry officer found that the charges stood substantiated. In fact, the respondent had not even fully co-operated in the inquiry and had been attending the proceedings only on occasions. The finding of the inquiry officer was accepted, the disciplinary authority, who had passed the penalty of removal from service. The appellate authority rejected the appeal. Respondent then appeared before the Tribunal.

3. The Tribunal has shown misplaced sympathy with the respondent probably persuaded by the arguments addressed by the counsel for the respondent that the respondent who had put up almost 28 years of service was being deprived of pension by the punishment imposed upon him even though as per the CCS(CCA) Rules, a person who served even for 10 years would have been entitled for claiming proportionate pension, holding that reliance by the disciplinary authority upon the past conduct of the respondent was not justified, took upon itself to convert the penalty of removal from service to that of compulsory retirement and also gave directions to the petitioner to grant the respondent benefit of pension taking note of completed years of service. Relevant observations made by the Tribunal are reproduced for the sake of reference:

“11. The CCS (CCA) Rules which govern service of Central Government Officers refer to compulsory retirement as a punishment admissible to be imposed on an erring officer, vide Rule XI (vii). It is a major penalty, but the person concerned is not being pushed to penury. We do not think a person who served the Delhi Police, should after his departure from service, after decades is to be let to begging. Therefore, we are inclined to order that the punishment of dismissal is to be substituted as one of compulsory retirement from service.

12. We declare that the penalty advice given by the disciplinary authority, as upheld by the appellate authority will stand set aside. Instead the penalty will be compulsory retirement from service from the date of order of Annexure A-3. Resultantly applicant would be entitled to the benefit of pension, taking notice of the completed years of service.

13. Follow up orders incorporating these directions are to be passed by the 2nd respondent. Arrears are to be paid within three months from today. We make no order as to costs."

4. Aggrieved from the aforesaid order, the petitioner submits that the order passed by the Tribunal is wrong on facts as well as in law. It is submitted that observations made by the Tribunal that the past conduct of the respondent could not have been considered by the disciplinary authority while imposing the punishment was not correct. In this regard it has also been submitted that the record of the respondent goes to show that he was frequently absenting from duty for which he had been awarded punishment of censure on 03.02.1994 for being willfully and unauthorizedly absent from duties for a period of 217 days; was awarded another censure of 03.05.1994 when he did not report for duty one day and 23 hours; he was also awarded a third censure on 07.07.1999 when he willfully remained absent from 16.01.1999 to 17.01.1999, 17.02.1999 to 22.02.1999 and from 14.03.1999 to 29.03.1999 as such another censure was awarded to him on 22.07.2000.

5. On 24.04.2003, the respondent was awarded a major punishment of forfeiture of five years approved service permanently entailing reduction in his pay scale from ` 4560/- p.m. to ` 4135/- p.m. for unauthorizedly remaining absent from duty for a period of 16 months. The position continued inasmuch as in 2004 also the respondent remained absent for the departmental inquiry was initiated and finally, the charges stood proved and the punishment of dismissing him from service was taken by the disciplinary authority after affording opportunity of personal hearing to the respondent in the orderly room. It is submitted that infliction of past penalties prior to order passed in this case are matter of record and respondent is fully aware of it. It has also been submitted that the order dated 15.01.2010 passed by the Tribunal is even otherwise perverse inasmuch as instead of asking the disciplinary authority/appellate

authority to pass appropriate orders on punishment to be awarded to the respondent, the Tribunal taken upon itself to convert the penalty of removal from service to that of compulsory retirement which is contrary to settled law.

6. We find ourselves in agreement with the learned counsel for the petitioner that the Tribunal has gone wrong in converting the punishment of removal to compulsory retirement in the facts of this case. It is well settled that unauthorized absence for long period by an employee itself is a serious misconduct which may call for punishment of extreme penalty of dismissal from service. This we find is also the view taken by the Apex Court in the case of Delhi Transport Corporation Vs. Sardar Singh, (2004) 7 SCC 574.

7. In another case, where the facts were exactly similar to the case in hand, the punishment of removal was interfered with by a Single Judge of the Rajasthan High Court, upheld by a Division Bench, the Apex Court dealing with the said case reported as State of Rajasthan & Anr. Vs. Mohammed Ayub Naz, JT 2006 (1) SC 162 did not find favour with the aforesaid approach of the Hon'ble Judges of the High Court and set aside the judgment of the learned Single Judge as well as that of the Division Bench by making following observations:-

"9. Absenteeism from office for prolong period of time without prior permission by the Government servants has become a principle cause of indiscipline which have greatly affected various Government Services. In order to mitigate the rampant absenteeism and willful absence from service without intimation to the Government, the Government of Rajasthan inserted Rule 86(3) in the Rajasthan Service Rules which contemplated that if a Government servant remains willfully absent for a period exceeding one month and if the charge of willful absence from duty is proved against him, he may be removed from service. In the instant case, opportunity was given to the respondent to contest the disciplinary proceedings. He also attended the enquiry. After going through the records, the learned Single Judge held that the admitted fact of absence was borne out from the record and that the respondent himself has admitted that he was absent for about 3 years. After holding so, the learned Single Judge committed a grave error that the respondent can

be deemed to have retired after seeking of service of 20 years with all retiral benefits which may be available to him. In our opinion, the impugned order of removal from service is the only proper punishment to be awarded to the respondent herein who was willfully absent for 3 years without intimation to the Government. The facts and circumstances and the admission made by the respondent would clearly go to show that Rule 86(3) of the Rajasthan Service Rules is proved against him and, therefore, he may be removed from service."

8. We also find that even if there was anything wrong with the disciplinary authority in having taken into consideration the past conduct of the respondent, nothing prevented the Tribunal to look into the past conduct and if that would have been looked into, the Tribunal would not have come to a conclusion arrived at in the impugned order.

9. It is well settled that the authority which is required to review the act of the disciplinary authority/appellate authority can take into consideration the past conduct so as to reach to a conclusion as to whether the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of the charges proved, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness, expected and discipline required to be maintained, and the department/establishment which the delinquent person concerned works.

10. We have already discussed the past conduct of the respondent which goes to show that the respondent not only suffered punishment on other counts but suffered at least four censure on account of unauthorized absence in the past. We are, therefore, of the considered view that in the facts of this case the impugned judgment delivered by the Tribunal cannot be sustained. Accordingly, we set aside the impugned order passed by the Tribunal dated 15.01.2010 in O.A. No.1449/2007 and dismiss the O.A. Consequently, the punishment imposed upon the respondent by the disciplinary

authority as confirmed by the appellate authority of the petitioner is upheld.

11. The writ petition is allowed with no order as to costs.

CM No. 7448/2010 (Stay)

Interim order, if any, stand vacated.

Application stands disposed of.

MOOL CHAND GARG, J.

AUGUST 18, 2010

anb/dc

PRADEED NANDRAJOG, J.