

REPORTABLE

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

+ W.P. (C) No.2709 of 2003

% Reserved on: 30th August, 2011
Pronounced on: 30th September, 2011

H.D. BHATT

. . . PETITIONER

Through: Mr. Arvind Kumar Shukla,
Advocate with Ms. Sweta
Rani, Advocate.

VERSUS

UNION OF INDIA & OTHERS

. . .RESPONDENTS

Through: Mr. Sachin Datta, Advocate
with Mr. Abhimanyu Kumar,
Advocate.

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE M.L. MEHTA

1. Whether Reporters of Local newspapers 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.

1. The petitioner was appointed as a Salesman/Storekeeper/Accounts Clerk in the Air Force Canteen at Air Force Station, Race Course, New Delhi in May, 1986 and was working in that position at the relevant

time as well. In 1997, he was elected as President of All Indian Defence Civilian Canteen Employees Union. According to him, after assuming this position of President on behalf of his Union, he has raised many grievances on various issues with the management of canteen, which was not liked by the respondents. In April, 1998, the petitioner was elected as Secretary General of All Indian Defence Civilian Canteen Employees Union.

2. An ugly incident happened on 28.11.1998 when another employee, one Ms. Gurvinder Kaur (hereinafter referred to as 'the complainant') wanted to send a letter to the petitioner, which he refused to accept. It seems that as a result, some quarrel ensued between both of them which resulted into scuffle and both of them slapped and hit each other. According to the complainant, she was sexually harassed. Manager of the canteen summoned Air Force Police and thereafter the local Police. The petitioner was taken to the Police Station. According to the petitioner, to give quietus to the entire controversy and particularly, when he was threatened to dire consequences, he submitted his apology. He was assured, at the same time, that no further

action will be taken and this will put to an end to the entire matter. Police also dropped the case on the complainant withdrawing her complaint.

3. Two days thereafter, however, the petitioner was called by Canteen Officer Sqn. Ldr. Raman Kapoor and was asked to give in writing this the incident. After preliminary facts findings, the petitioner was served with show cause notice/Chargesheet dated 03.12.1998 and was also placed under suspension. In the said Chargesheet, following charges were leveled against the petitioner:

"On 28 Nov. 98, while working as LDC of Air Force Canteen, New Delhi, while on duty, verbally insulted and physically assaulted Ms. Gurvinder Kaur, LDC of the said canteen in the office premises, thereby publically outraging the modesty and human dignity of a fellow woman employees."

4. The petitioner submitted his reply to the same, *inter alia*, contending that the charge was not correct and it was the complainant who had physically assaulted him and in any case, the matter had been compromised. He also demanded certain documents. Inquiry Officer was appointed, who proceeded with the inquiry and recorded the statement of the complainant as PW-1. Three more witnesses, viz., Mr.

V.P.S. Bhasin (PW-2), Mr. G.K. Vij (PW-3) and Mr. U.S. Bajwa (PW-4) were examined. All these witnesses were examined in the absence of the petitioner, as he did not appear in the Inquiry on 06.01.1999 and 07.01.1999 when the statements of these witnesses were examined. Some more witnesses were examined subsequently. As per the petitioner during this period, the petitioner kept on demanding certain documents, which request was negated by the Disciplinary Authority time and again. As the petitioner was not satisfied with the procedure adopted by the Inquiry Officer, he filed Writ Petition (Civil) No.2417 of 1999, which was dismissed as premature. Thereafter, inquiry was concluded and as per the Inquiry Officer, charges stood proved against the petitioner. On the basis thereof, orders dated 16.06.1999, passed by the Chief Administrative Officer dismissing the petitioner from his service. The petitioner filed appeal thereagainst, which was also dismissed.

5. Thereafter, the petitioner filed W.P.(C) N.3618 of 2000 in this Court challenging the dismissal order. This petition was transferred to Central Administrative Tribunal (hereinafter

referred to as 'the Tribunal') and was assigned as T.A. No.15 of 2002. Vide orders dated 03.06.2002, the Tribunal dismissed the said T.A. He sought review of the order, which was also dismissed by the Tribunal on 19.12.2002. Challenging these orders of the Tribunal, the instant writ petition is filed.

6. We have stated the facts in brief because of the reason that in this writ petition, show cause notice was issued on 15.05.2003 limited to the question of proportionality of punishment awarded to the petitioner and thereafter Rule D.B. was issued confining to the aforesaid aspect. Therefore, the only issue pertains to the proportionality of the punishment of dismissal awarded to the petitioner. For this reason we have narrated those facts which led to the incident and the actual charge levelled against the petitioner, which would be relevant for deciding the question of punishment.
7. Learned counsel for the petitioner submitted that the petitioner was harassed by the management because of his Union activities, as the management wanted to teach him a

lesson. It was further submitted that the issue was amicably settled with the complainant, after the petitioner was called upon to submit his apology and assurance was given that no further action will be taken. For this reason, even the complainant withdrew her complaint.

8. Another aspect which is highlighted by the learned counsel was that the complainant was equally at fault, who had given severe beating to the petitioner. It was further pleaded that the petitioner had unblemished record of more than 12 years right from his appointment since 1986 till 03.12.1998 when the petitioner inflicted with the impugned punishment. On that basis he argued that the punishment of dismissal was disproportionate and the petitioner deserved a lenient treatment.
9. We have gone through the inquiry record including the statement of the complainant recorded before the Inquiry Officer from this point of view. No doubt, there has been scuffles between the two of them, which started when the complainant wanted to deliver official letter to the petitioner and the petitioner refused to accept the same and abused

the complainant. It is also a matter of record that on being abused, it is the complainant who first resorted to the violence by slapping the petitioner and thereafter it was 'free for the two' as both started slapping and hitting each other. However, what becomes damaging qua the petitioner is that when he was quarreling and fighting with a female colleague, he lost the sense of decency. Not only he used derogatory/insulting languages to the complainant when she had gone to deliver the letter to him, he trespassed the limits of decency by resorting to kind of physical violence not expected from an employee qua his female colleague. Moreover, it has come in the statement of the complainant that he held the complainant from the front from below her shirt collar while the palm of his hand was touching her breast. It is at this stage, she had slapped the petitioner few times. This behaviour of the petitioner makes his misconduct quite serious. Penalty of dismissal, for such an act of misconduct cannot be treated as disproportionate to the nature of charge.

10. It is established principle that while sitting in judicial review over the disciplinary matters, the Courts are not supposed to

act as an appellate authority. The quantum of punishment, that is to be given to a particular employee is the discretion of the Disciplinary Authority, which can be gone into by the Appellate Authority within the Department. Courts are not supposed to interfere with such a discretion, insofar as quantum of penalty is concerned. Only in exceptional circumstances in which it can be interfered with is, when the Court finds the penalty to be shockingly disproportionate to the charge. This principle is well ingrained in various judgments of the Apex Court. Purpose would be served by referring to few of them.

11. In the case of ***B.C. Chaturvedi v. Union of India***, (1996)

ILLJ 1231(SC), the Apex Court observed as follows:

"18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately would the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and

rare cases, impose appropriate punishment with cogent reasons in support thereof.”

12. This principle of not interfering with the punishment awarded by the employer unless the same is found to be shocking disproportionate to the proved charges has been consistently followed in series of decisions by the Apex Court such as, ***U.P. State Road Transport Corporation and Ors. V. Mahesh Kumar Mishra and Ors.***, (2000) ILLJ 111 (SC), ***Regional Manager, UPSRTC, Etawah and Ors. v. Hoti Lal and Anr.***, (2003) IILLJ 267 (SC), ***Chairman and Managing Director, United Commercial Bank and Ors. v. P.C. Kakkar***, (2003) IILLJ 181 (SC), ***Union of India v. P. Chandra Mouli***, (2003) 10 SCC 196, ***Govt. of India and Anr. v. George Philip***, AIR 2007 SCW 379.
13. To be fair to the petitioner, we may also record that there is a slight shift in the aforesaid approach of the Supreme Court in couple of judgments. In the case of ***V.S.P. v Goparaji Sri Prabhakara Hari Babu***, (2008) IILLJ 645 (SC), it was observed that Court ordinarily ought not to disturb the penalty where procedural requirements have been complied

with by the departmental authority but the principle of proportionality can be invoked in appropriate cases.

14. In the case of ***State of Gujarat v. Gajanand M. Dalwadi***, (2008) 1 SCC 716, the Apex Court observed that the Tribunal is not an appellate authority, its jurisdiction was also limited. It could not have ordinarily interfered with the quantum of punishment unless it was held to be wholly disproportionate to the imputation of charges.
15. In the case of ***State of M.P. v. Hazarilal***, (2008) IILJ 715 (SC), the Apex Court, observing that the legal parameters of judicial review have undergone a change and that Wednesbury principle of unreasonableness has been replaced by doctrine of proportionality, interfered with the punishment by the Government of its employee upon finding that the same was disproportionate to the conduct which led to the conviction of the employee.
16. We may also place on record that in a recent judgment in the case of ***State Bank of Bikaner & Jaipur v. Nemi***

Chand Nalwaya, (2011) 4 SCC 584, the Supreme Court again applied the principle of proportionality.

17. Even when we apply the Wednesbury principle of unreasonableness, we are of the opinion that it is not a case where the disciplinary authority/appellate authority exercises the discretion unreasonably having regard to the gravity of the charge.
18. Having regard to the seriousness of the charge which amounts to outraging the modesty of a woman, we do not find any excruciating circumstances which are strong enough to shock the conscience. The punishment imposed upon the petitioner commensurate with the gravity of the charge does not call for any interference. As a result, this writ petition is dismissed.

No costs.

(A.K. SIKRI)
JUDGE

(M.L. MEHTA)
JUDGE

SEPTEMBER 30, 2011/pmc