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

+ W.P.(C) 3688/2012

% **Judgment dated 10.07.2012**

PANKAJ KUMAR TIWARI Petitioner
Through: Mr.Sanjay K. Dubey and Ms.S. Singh,
Advocates

versus

ARMY COLLEGE OF MEDICAL SCIENCES & ORS..... Respondent
Through: Mr.Mukul Talwar and Mr.Sradhanand
Mohapatra for, Adv. for Delhi University.
Col. R.Balasubramaniam and Mr.Santosh
Kumar, Advs for respondent nos.1 & 3

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Petitioner has filed the present writ petition under Article 226 of the Constitution of India, seeking issuance of a writ of mandamus or certiorari or any other order or direction to respondents to quash the rustication order dated 12.05.2012 issued by respondent no.1. Petitioner also seeks direction to respondents to allow the petitioner to attend the classes, stay in hostel and appear in the examinations.
2. Rule. With the consent of counsel for the parties, present petition is set down for final hearing and disposal. The necessary facts to be noticed for disposal of this petition are that petitioner had appeared in the Common Entrance Test for MBBS Course for the academic year 2008-09. On being successful, the petitioner was granted admission to the respondent no.1, college. According to the writ petition, the petitioner appeared and successfully cleared all his papers / semesters for the First to Third Professional MBBS course. Petitioner claims himself to be a

sincere student, having no antecedents of any type of indiscipline. The petitioner is also one of the five students from the ACMS (respondent no.1), who has been selected by the Indian Council of Medical Research for Research Project and has been given a stipend of Rs.10,000/- for two months research work. The petitioner has also attended Indo-US Emergency Medicine Summit and the Airway and Ventilation Workshop, Workshop on Research Methodology conducted at the National Institute of Pathology ICMR and is also a pro-active member of National Medicos Organization. The petitioner has also attended several health check up camps organized by NMO and won prizes in Medical quiz and elocution. The petitioner has also pledged donation of his body after death to the Armed Forces Organ Retrieval and Transplantation Authority and has also organized collective pledge for blood donation by 126 students of the college and he is also a volunteer blood donor. It is also stated that the petitioner is pro-active in Elocution, poem recitation and debate and won the prizes in Pulse 2009, Pulse 2010 in college day 2009 and 2010 and also attended work-shop on Theatre of Oppressed at University college of Medical Sciences and participated in skit/ dramas in college days in 2010. On 01.04.2012 on account of Mr.Prabhat Kumar Singh refusing to part with the study instrument, which was to be shared by four students, the petitioner requested Mr.Prabhat Kumar Singh for the said instrument, which request was declined, both students entered into a fight which resulted in injuries on both the students. The little finger of the right hand of the petitioner was fractured and there were some scratch marks on the face of the petitioner; and Mr.Prabhat Kumar Singh dislocated his left thumb. Mr.Prabhat Kumar Singh reported the matter to the police and thereafter a Disciplinary Committee was appointed by the college, detailed findings of the disciplinary Committee have been placed on

record. On the basis of the finding of the disciplinary committee and the opinion of the Disciplinary committee, the Dean of the college passed an order of punishment by which the petitioner was rusticated for a period of three months. It is this order of rustication which is the subject matter of challenge in these proceedings.

3. Counsel for the petitioner has placed reliance on the finding of the Disciplinary Committee, according to which the petitioner had requested for the instrument from Mr.Prabhat Kumar Singh during lunch time on 01.04.2012, Mr.Prabhat Kumar Singh had promised to give the instrument by 5:00 p.m. through Mr.Gautam Mukherjee of 2009 MBBS batch. The instrument was not given by Mr.Prabhat Kumar Singh to a person sent by the petitioner at the time fixed on the pretext that he had given the same to the girl students, whereas the instrument was in fact with him in his room, which the petitioner learnt on enquiry from the girl students of his batch. The petitioner confronted Mr.Prabhat Kumar Singh who instead of regretting the incident for not returning the instrument provoked the petitioner to fight by aggressively closing with him and using phrases such as 'you talk too much' and 'come out of college I will see you'. In defence, the petitioner had gently pushed Mr.Prabhat Kumar Singh after which Mr.Prabhat Kumar Singh had torn the petitioner's Kurta and scratched his face and as a result of which a fight broke out. On the one hand, while the petitioner had decided not to disclose this incident to any other person in order to avoid the matter being precipitated, Mr.Prabhat Kumar Singh on the other hand got the medico legal case done in spite of counselling that the matter should be resolved in college and the college authorities should take action rather than having long adverse effect on the career of both the students. It has been observed that the petitioner wanted to get the matter sorted out by the college, but he was forced by

the circumstances to get a medico legal case because Mr.Prabhat Kumar Singh had already got the medico examination carried out. The disciplinary committee has also noticed that in spite of repeated efforts by the members of faculty, students, wardens and police, Mr.Prabhat Kumar Singh did not agree to compromise and he was adamant even after knowing fully well the long term adverse effect it would have to his career and the career of the petitioner. The committee also noticed that the police was aware about the past track record of Mr.Prabhat Kumar Singh and the remarks so made by the police party, incharge on seeing Mr.Prabhat Kumar Singh getting involved in the police case for the third time were such that would not behove a medical student of the college. It was also noticed by the Disciplinary Committee that Mr.Prabhat Kumar Singh has shown disregard to the college discipline on numerous occasions and ample opportunities in the past have been granted to him, but he has shown no improvement, he has also been involved in a theft cum assault affray case, impersonation, feigned suicide attempt and now in an assault and affray case. In the words of the Committee the petitioner has been a disciplined student, the only probable indiscipline noticed was the loss of his identity card at a Railway platform along with his purse and ATM card and none-else. The petitioner had availed of the scholarship. While Mr.Prabhat Kumar Singh had also availed of the same scholarship for the duration of rustication from college on the basis of duplicate copies of recommendations for scholarship in the training branch, whereas there were no duplicate copies of recommendations for scholarship in training branch in respect of Mr.Prabhat Kumar Singh. The disciplinary committee in its opinion has also opined that Mr.Prabhat Kumar Singh never had a friendly relationship with the petitioner and he had grudges in the past and Mr.Prabhat Kumar Singh had covertly harassed the petitioner

by promising to give the instrument, but physically did not give the same on one pretext or the other. It has further been opined that when he has been confronted with the instrument issue he provoked the petitioner by closing near him, threatening him, and initiated the fight by tearing his kurta and after the fight went to the Base Hospital to get the Medico Legal case done. His attitude was extremely adamant, it seems he wanted to drag the petitioner to Court and spoil his career. It was found that Mr.Prabhat Kumar Singh was continuously on the wrong side of the law and was an indisciplined student. The rustication for impersonation did not materially affect Mr.Prabhat Kumar Singh; and he was able to appear in the examination and availed of scholarship; and after getting involved in indisciplined acts in the past he has mastered the art of manipulating his indisciplined acts to present himself as a victim. He did not have any guilt or remorse that fights like the present does not behove future doctors and his act of dragging police into the college has tarnished the image of the college. The opinion with regard to the petitioner reads as under:

“8. Mr.Pankaj Kumar Tiwari has been a disciplined student who has been forced into fight by provocation and covert harassment by Mr.Prabhat Kumar Singh in self defence. He has no history of indiscipline and has always abided by rules and regulations of the college. After fight also the individual had tried to inform college authorities and wanted matter be resolved in college because he had faith that justice will be meted by college authorities and his career should not be adversely affected and image of institute not tarnished. He went for medico legal case because Mr.Prabhat Kumar Singh had got medico legal case initiated and if he did not, he feared that he would be looked upon as culprit in spite of being a victim. The individual was remorseful that such fight has taken place and police had to come in the college.

9. The fight has resulted in grievous injuries to both

students. Such students of indisciplines are not acceptable and does not behove future doctors. Both students needs to be punished.”

4. While recommending the punishment, the petitioner was rusticated for a period of six months. Taking into account the track record of the petitioner, the Dean of the college had passed an order of punishment for a period of three months.
5. Counsel for the petitioner while strongly placing reliance on the finding of the disciplinary committee, submits that the fight was initiated by Mr.Prabhat Kumar Singh. It was Mr.Prabhat Kumar Singh, who did not hand over the instrument to the petitioner. Counsel further submits that the record of the college and the observations of the Police would show that Mr.Prabhat Kumar Singh was involved in various instances of indiscipline, including forgery and Mr.Prabhat Kumar Singh was fully aware that he had no future and with a view to drag the petitioner and knowing fully well that the petitioner’s career would suffer, he initiated the fight. Counsel also submits that the findings of the disciplinary committee and the opinion of the disciplinary committee, do not match with the order of the punishment, which has been awarded to the petitioner. It is submitted that the punishment which has been awarded is not commensurate to the acts of indiscipline, which has been carried out by the petitioner, who is an extremely disciplined student and has taken part not only in academics but also in extra-curricular activities, which have been narrated above; as he is an asset to the institution and in case the order of rustication is not set aside, it would leave a scar on the career of the petitioner.
6. Counsel for the respondent on the other hand has laid stress on the fact that respondent no.1 is amongst the best colleges of the country and any

act of indiscipline cannot be condoned. It is submitted that in case acts of indiscipline are not dealt with seriously and any act of leniency is shown, it would tarnish the image of the college and further indiscipline would be perpetuated by the other students as well. Counsel further submits that the punishment of six months was decreased to three months, having regard to the conduct of the petitioner.

7. The matter was taken up for hearing on 09.07.2012 and thereafter was adjourned for today i.e. 10.07.2012, to enable counsel for the respondent to ascertain the attendance of the petitioner, as the petitioner had submitted that in case the order is not set aside, petitioner will not be able to meet the attendance criteria, which would result in loss of a year.
8. Counsel for the respondent submits that in case the petitioner attends all his classes in October and November, petitioner will be able to make up the attendance criteria.
9. Counsel for the petitioner submits that he has already suffered for two months. He had to leave the hostel; and he is a son of ex-serviceman and the period of punishment / rustication should be modified to the period already undergone, which is two months. The rustication may be effected up to day. He further submits that petitioner is willing to give an undertaking that he will maintain proper discipline in the college.
10. I have heard counsel for the parties and carefully perused the report of the disciplinary committee, the opinion of the disciplinary committee and the findings. I have also perused the evidence of the witnesses, who had appeared before the disciplinary committee. The disciplinary committee has very fairly carefully and meticulously gone into the entire incident. Based on the observations of the disciplinary committee, it is crystal clear that it is Mr.Prabhat Kumar Singh, who had initiated the entire incident. The findings of the disciplinary committee suggest that petitioner had

pushed Mr.Prabhat Kumar Singh in defence as Mr.Prabhat Kumar Singh had come aggressively close to the petitioner and used harsh language against him. The conduct of Mr.Prabhat Kumar Singh and the fact that he was not on friendly terms with the petitioner and had a grudge in the past with the petitioner, gives enough reason to believe that Prabhat Kumar Singh had stage managed this fight in order to put the petitioner into trouble, knowing fully well that his career was already in jeopardy, in view of his past mis-deeds, which are evident from the observations of the police party, who had visited the college and also the fact that he has been rusticated twice including for forging documents and for impersonation. The effect of the observations of the disciplinary committee shows that Mr.Prabhat Kumar Singh wanted to provoke the petitioner into a fight, so that his career would be affected. It was Mr.Prabhat Kumar Singh, who was to share the instrument with the petitioner and two other students and Mr.Prabhat Kumar Singh had decided not to part with the instrument, which finding has been returned. Having regard to the finding returned by the disciplinary committee, I am of the view that the petitioner has already suffered enough and moreso in regard to the fact that the petitioner, who was present in court on 09.07.2012, when the matter was taken up and listed for today, has also professed deep regret towards the incident between him and Mr.Prabhat Kumar Singh.

11. At this point it would be relevant to consider the question as to whether the punishment meted out to the petitioner was arbitrary and / not commensurate to the offence committed. The principles relating to judicial review of punishment imposed as a part of the decision making process have been explained in **Ranjit Thakur Vs. UOI** (1987) 4 SCC 611, where this court interfered with the punishment imposed by the court martial on the ground that it was strikingly disproportionate to the gravity

of offence on the following reasons:

“25. Judicial review generally speaking, is not directed against the decision, but is directed against the ‘decision making process’. The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is otherwise, within the exclusive province of Court Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune for correction. Irrationality and perversity are recognized grounds of judicial review.”

12. In regard to question of proportionality, it may also be profitable to refer to the decision in **Bhagat Ram Vs. State of H.P.** (1983) 2 SCC 442. , where it has been opined that penalty imposed must be commensurate with the gravity of the misconduct and any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution. In a more recent judgment, **Chairman-cum-Managing Director, Coal India Ltd. & Anr. V. Mukul Kumar Choudhary & Ors.** [AIR 2010 SC 75], the Apex Court adverted to the concept of the doctrine of proportionality and eventually opined that the imposition of punishment is subject to judicial intervention if the same is exercised in a manner which is out of proportion to the fault. If the award of punishment is grossly in excess of the allegations made, it cannot claim immunity and makes itself amenable for interference under the limited scope of judicial review. As observed by the SC in “Chandra Kumar Chopra v. UOI” [2012

(5) SCALE 384], the test to be applied while dealing with the question of proportionality is whether a reasonable employer would have imposed such punishment in like circumstances. The question that has to be studiously addressed is whether the punishment imposed is really arbitrary or an outrageous defiance of logic so as to be called irrational and perverse warranting interference in exercise of the power of judicial review. It is undoubted that the primary obligation of a member of the Armed Forces is to maintain discipline in all aspects and as such while deciding the issue of proportionality, regard has to be not only given to the nature of rank and the disciplined conduct expected, but also to the facts and circumstances leading up to the incident.

13. In light of the settled law and also in view of the observations of the Disciplinary Committee as also the submissions made by counsel for the petitioner, I am of the view that the petitioner has already suffered the consequences of his action and his personal conduct shows his remorse for the unfortunate incident. Accordingly the order of rustication is modified and the period of rustication would be up to 09.07.2012 and the result of the term examination will be declared.
14. Counsel for the respondent submits that in case the petitioner regularly attends the classes there would be no shortage of attendance and in case of any shortage, the request of the petitioner will be considered sympathetically by the Dean of the College. Counsel for the petitioner submits that on account of regret expressed by the petitioner and taking into consideration his achievements in the past and that he is an asset to the institution, this incident of rustication should not find mention in his character certificate.
15. Taking into consideration the past conduct of the petitioner and his achievements, i.e. (i) the petitioner is also one of the five students from

the ACMS (respondent no.1), who has been selected by the Indian Council of Medical Research for Research Project and has been given a stipend of Rs.10,000/- for two months research work; (ii) the petitioner has also attended Indo-US Emergency Medicine Summit and the Airway and Ventilation Workshop, Workshop on Research Methodology conducted at the National Institute of Pathology ICMR and is also a pro-active member of National Medicos Organization; (iii) the petitioner has also attended several health check up camps organized by NMO and won prizes in Medical quiz and elocution; (iv) the petitioner has also pledged donation of his body after death to the Armed Forces Organ Retrieval and Transplantation Authority and has also organized collective pledge for blood donation by 126 students of the college and he is also a volunteer blood donor; and (v) the petitioner is pro-active in Elocution, poem recitation and debate and won the prizes in Pulse 2009, Pulse 2010 in college day 2009 and 2010 and also attended work-shop on Theatre of Oppressed at University college of Medical Sciences and participated in skit/ dramas in college days in 2010, it is a fit case where the incident of rustication should not find mention in his Character Certificate. Writ petition is disposed of accordingly.

CM.No.7738/2012

16. In view of order passed in the writ petition, application stands dismissed.

G.S.SISTANI, J

JULY 10, 2012

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