

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

Judgment Reserved on July 11, 2013

Judgment Delivered on July 17, 2013

+ W.P.(C) 586/2011

UNION OF INDIA & ORS. Petitioners

Represented by: Ms. Richa Kapoor, Advocate

versus

DARSHANA DEVI Respondents

Represented by: Ms. Manpreet Kaur, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The writ petition has been filed by the Union of India through Secretary, Ministry of Defence and its functionaries challenging the order dated September 21, 2010 passed in Original Application No.1237/2010 whereby the Tribunal had modified the penalty of 'removal from service' imposed on the respondent to that of reduction to lower time scale of pay for a period of three years with cumulative effect, to be operated from July 26, 1999 by reinstating the respondent in service with effect from July 27, 1997 with all consequences except back wages within a period of two months.

2. The relevant facts are, the respondent was appointed as Ward Sahayika in Army Hospital (R&R Delhi Cantt.) on November 12, 1990 in the pay scale of ₹775-1025. The terms of appointment stipulated that the respondent would be on probation for a period of

two years.

3. On September 07, 1991 a show cause notice was issued to the respondent seeking her reply as to why her services be not terminated in the light of complaint received from the Sister-in-charge A-8 Ward for the following misconduct:

- Rude behaviour towards patient during night duty in A-8 Ward
- Absent for three to four hours during night duty
- Took bath in the pantry against orders
- Found pilfering milk of patients and adding water
- Not mended ways despite counselling

4. The respondent submitted reply to the show cause notice on August 20, 1991. Simultaneously she filed an Original Application No.2272/1991 before the Tribunal, which, vide its interim order dated October 01, 1991 stayed the termination (An order which was never passed). The said Original Application was withdrawn by the respondent to pursue the matter with the competent authority. It is alleged, that the respondent again disrespected her senior officers. Two complaints of insubordination by Lt. Col. (Mrs.M.Shanta Kumar and Lt. Col. V.Lakhanpal) were made on April 06, 1994 and June 03, 1995 respectively.

5. Disciplinary proceedings were initiated against the respondent for (i) wilful insubordination and disobedience in performance of duties, (ii) abusive language and throwing table on nursing officer (iii) neglecting duties.

6. After recording evidence the Inquiry Officer concluded as under:-

“(a) Article-I : Smt.Darshana Devi, the charged govt. servant is found not guilty of the charge contained in article-I. However, she is found guilty of behaving in an insubordinate manner with Lt.Cpl. V.Lakhanpal, while she was on duty in the operation theatre on 03 Jun 95.

(b) Article-II : Smt. Darshana Devi, the charged govt. servant is found guilty of the charge.

(c) Article-III : Smt. Darshana Devi, the charged govt. servant is found not guilty of the charge.”

7. After following the procedure laid down under the Rules the disciplinary authority vide its order dated July 26, 1997 imposed a penalty of ‘removal from service’ on the respondent. The appeal against the order of the disciplinary authority was also dismissed on June 03, 1999.

8. The respondent filed an Original Application No.104/2001 against the order dated June 03, 1999. Suffice would it be to state that the Tribunal had quashed the order of the Appellate Authority directing it to decide the appeal afresh. Accordingly the Appellate Authority decided the appeal afresh vide order dated June 24, 2002. Writ Petition No.5502/2002 was filed by the respondent challenging the order of the Tribunal in Original Application No.104/2001. The same was dismissed with a direction to challenge the order of the Appellate Authority dated June 22, 2002. In fact a further Original Application No.1832/2008 was filed before the Tribunal, by the respondent which was disposed of directing the petitioners herein to decide the appeal by way of a speaking order. The reasoned order was passed by the Appellate Authority on December 07, 2009.

9. It is this order of December 07, 2009 which was impugned by the respondent in the Original Application No.12137/2010 before the Tribunal. The Tribunal had allowed the Original Application in the manner specified in para 1 of this judgment. It may be necessary to state here that the Tribunal in para 17 of the impugned order inter alia observed that the Tribunal is not precluded from going into the proportionality of the punishment in an exceptional case if the same shocks the conscience.

10. Ms. Richa Kapoor, learned counsel appearing for the petitioner would contend that the Tribunal has erred in interfering with the penalty imposed on the respondent. According to her the charges which have been proved by the Inquiry Officer against the respondent are serious enough to impose the penalty of 'removal from service'.

11. Per contra Ms.Manpreet Kaur, appearing for the respondent would submit that the Inquiry Officer had held partially proved Article I, only to the extent that the respondent was found guilty of behaving in an insubordinate manner with Lt.Col.V.Lakhanpal, and Article II. The said finding would not entail a penalty of removal from service. She relies on para 18 of the impugned order wherein the Tribunal holds the words constituting 'abusive language' have not reflected in the charge and in the absence of the same the severity of the charge is mitigated.

12. We have considered the submissions of the learned counsel for the parties.

13. The Tribunal in para 17 proceeds on a premise that it can go into the proportionality of the punishment in an exceptional case.

The law as propounded by the Supreme Court is quite well-settled. In (2001) 9 SCC 592 Union of India v. R.K.Sharma the Supreme Court has held that the punishment should not be merely disproportionate but should be strikingly disproportionate to warrant interference by the High Court under Article 226 of the Constitution and it was only in an extreme case where on the face of it there is perversity or irrationality that there can be judicial review under Article 226 or Article 227 or Article 32 of the Constitution of India. The aforesaid view in R.K.Sharma's case (supra) has been reiterated by the Supreme Court in the case reported as (2011) 10 SCC 244 Commandant, 22nd Battalion, Central Reserve Police Force Srinagar c/o 56/APO & Ors. v. Surender Kumar wherein the Supreme Court was dealing with a case where the respondent was working as a Constable in the Central Reserve Police Force, it was alleged against him that while he was detailed with vehicle No.25 to carry patrolling party he left the vehicle unattended and absented himself without permission of his superior officer and reported on his own after 20 minutes. It was also alleged that while he was on duty he consumed illicit alcohol and in an inebriated state of mind misbehaved with his superior officer. The Division Bench of the High Court vide the impugned order directed the CRPF to reconsider the nature and quantum of punishment awarded to the respondent and accordingly grant him consequential benefits. The Supreme Court has in para 14 has held as under:-

“14. The Division Bench of the High Court, in our considered opinion, should have looked into the acts of indiscipline proved against the respondent for which he has been sentenced to imprisonment and then decided whether the

dismissal of the respondent from service was disproportionate to the gravity of acts of indiscipline. As we have already held, the acts of indiscipline for which the respondent had been sentenced to imprisonment were serious and grave for a disciplined force. Therefore, the competent authority was right in imposing the punishment of dismissal from service.”

14. In the case in hand the charges which have been framed against the respondent are for indiscipline conduct. The findings of the Inquiry Officer have not been interfered with by the Tribunal. The Inquiry Officer proves that the respondent was found guilty of behaving in a insubordinate manner with Lt.Col.V.Lakhanpal while she was on duty in the operation theatre on June 03, 1995 (Part of Article-I). It is also proved by the Inquiry Officer that the respondent has used the abusive language and throwing of table on nursing officer (Article-II).

15. The charges as proved are of very serious nature which show total indiscipline on the part of the respondent who was working in an Army Hospital which caters the needs of the Army personnel. She was on probation. If this was her behaviour as a probationer one wonders what it would be upon confirmation. It is expected of a person working in a hospital to be considerate, helpful, disciplined, full of compassion with a moto of service. Unfortunately the proved charges shows otherwise. The penalty of ‘removal from service’ in the given facts surely does not shock the conscience. It is proportionate to the finding of guilt in so far as Article I (partially) and Article II. We are of the view that the Tribunal had totally erred in interfering with the penalty imposed on the respondent and

thereby modifying the penalty of removal into the one of reduction to lower time scale of pay for a period of three years with cumulative effect with effect from July 26, 1999. Such a conclusion is not justified and the same is liable to be set aside. We do so accordingly.

16. We allow the writ petition and dismiss the Original Application No.1237/2010 filed by the respondent before the Principal Bench of Central Administrative Tribunal.

17. No costs.

(V.KAMESWAR RAO)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

JULY 17, 2013
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