

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

Decided on: 14.03.2013

+ **W.P.(C) No.6158/2002**

EX. CONSTABLE SHIV CHAND (901321718)

..... Petitioner

Through Mr. Shekhar Kumar, Adv.

Versus

UNION OF INDIA & ORS

..... Respondents

Through Mr. Ankur Chibber, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

1. The Petitioner challenges his dismissal pursuant to an enquiry held by his employer, the Central Reserve Police Force ("CRPF"), in respect of an alleged misconduct which occurred sometime in the end of January, 2000. The Petitioner joined the service of the CRPF in 1990.

2. The Respondent CRPF served Articles of Charges which levelled three allegations. The relevant extract of the Memorandum of Charges containing the Articles of Charges dated 19.5.2000 is extracted below:

"ARTICLE -I

That No.901321718 Ct. Shiv Chand while posted and functioning as protection/escort duty of OC D/3 Bn CRPF visited Guwahati Municipal Corporation (GMC) check gate Khannapara with his Coy CC for checking the naka party on 27/1/2000 and reportedly manhandled the check gate employee of GMC check gate without obtaining any orders from his superior. He again visited the GMC check gate on 30/1/2000 and 31/1/2000 on seeing the CRPF men the check gate employee left/run away from the check gate fearing for the incident of 27/1/2000 and made allegation that Rs.20,000/- was stolen from their un-locked cash box/drawer on 30/1/2000 and demanded Rs.2,000/- per week on 31/1/2000. Thus he has committed neglect of duty/remissness in the discharge of his duty/other misconduct or misbehaviour in his capacity as a member of the force which is punishable under section 11(1) of CRPF Act, 1949.

ARTICLE –II

That the said No.901321718 Ct. Shiv Chand, while posted and functioning as escort duty of OC D/3 Bn on 1/2/2000 he left the Coy location in the civil ambassador car which was provided to the Coy OC for his conveyance for law and order duties by state police, without taking any permission from the competent authority and to leave his relative at Bus stand through the GMC check gate and parked the car near the check gate where he was taken into custody by civil police. On enquiring the identity by civil police he did not give the correct identity and subsequently the civil police registered a police case No.26/2000 U/S 394 IPC on 1/2/2000. Thereafter, he was produced before the CJM and further sent to jail for judicial custody /remand. Thus he has committed disobedience of orders/neglect of duty /remissness in the discharge of his duty/other misconduct or misbehaviour in his capacity as a member of the force which is punishable U/S 11(1) of CRPF Act, 1949.

ARTICLE –III

That the said No.901321718 Ct. Shiv Chand while posted in D/3 Bn on 1/2/2000 he was involved in a civil case No.2/2000 U/S 384 IPC and 26/2000 U/S 394 IPC and remained in Judicial Custody wef 1/2/2000 to 12/3/2000 and reported in D/3 Bn on 13/3/2000 (FN) as he was released on bail. Thus he has committed disobedience of orders/neglect of duty/remissness in the discharge of his duty/other misconduct or misbehaviour in his capacity as a member of the force which is punishable U/S 11(1) of CRPF Act 1949.”

3. The Petitioner entered the plea of not guilty. Subsequently, a departmental enquiry was held by Mr. Manoj Dubey who was appointed as enquiry officer by the disciplinary authority. After recording the evidence of the witnesses and consequent submissions of the parties, including defence of the Petitioner, the inquiry officer in his report held the Petitioner guilty in respect of the second and third charges. As regards the more serious charge of the Petitioner having indulged in the misconduct of assaulting a third party and robbing him of Rs.20,000/-, the inquiry officer was of the opinion that the charges had not been proved.

4. The findings of the Inquiry officer were accepted by the disciplinary authority, but he nevertheless proceeded to issue the impugned order of dismissal of the Petitioner on 10.10.2000 after appreciating the findings in respect of the other two charges. The disciplinary authority was of the opinion that since charge No.2 with regard to unauthorised removal of the vehicle for private use and giving a false name had been proved, coupled with the proof with

regard to the Petitioner's detention for the period 1.2.2000 to 12.3.2000, there was no need for the Petitioner to continue in service. The penalty of dismissal was consequently imposed on 10.10.2000.

5. The Petitioner appealed against this order before the concerned authority i.e. Deputy Inspector General of Police, on 30.10.2000 but his appeal was turned down by the order dated 30.3.2001.

6. It is argued on behalf of the Petitioner, by his counsel Mr. Shekhar Kumar, that the impugned dismissal order is unsustainable in law. Learned counsel highlighted the fact that having accepted the finding in respect of Article-I – which was the most serious and heinous crime – the charges in respect of Article-III really went hand in hand with that charge. Counsel highlighted the fact that the incident of alleged assault and robbery for which the Petitioner was kept in detention had not been proved. Once the departmental authority was of the opinion that the assault and robbery had not been proved, they should not have given any importance to the period of detention.

7. Counsel highlighted the fact that unlike CCS (CCA) Rules, particularly Rule 10(2)(a), which mandates drastic consequences in the nature of automatic suspension whenever a public servant is detained, there is no corresponding service condition in CRPF Act or Rules.

8. Learned counsel highlighted that the Petitioner's case stands on a superior footing because; although the criminal court had duly acquitted him since the prosecution failed to prove his guilt beyond

reasonable doubt, the departmental authorities, who were not required to conform to any such stringent standard, nevertheless also exonerated him, in respect of the more serious charge contemplated in Article-I of the charge sheet, which had also led to the petitioner's detention in police custody.

9. Learned counsel for the Petitioner, therefore, stated that the findings in regard to Article-II ought not to have biased the disciplinary authority.

10. It is sought to be urged by the learned counsel that the findings recorded in respect of charge-II in so far as the enquiry officer was of the opinion that the Petitioner gave a false name is concerned is based on no evidence. Learned counsel relied upon the deposition of witnesses before the enquiry officer and stated that the concerned individual or police officer to whom he reported to have given a false identity did not even participate and depose in the proceedings.

11. The witnesses who spoke about this incident did so merely on hearsay. Learned counsel stated that as far as the charge of unauthorised removal and use of the vehicle for private purpose is concerned, the respondents relied only on the testimony of the Assistant Commandant which was denied by the Petitioner.

12. Counsel further stated that there was no documentary evidence. It was stated that having regard to these facts, findings on the second charge too were on an extremely strong ground and could be termed to be based on no evidence.

13. In view of the above submissions, learned counsel for the Petitioner submitted that the order of dismissal is untenable and has to be set aside. Counsel argued in the alternate that even if this Court were to agree with the findings of the first part of the second charge, i.e., unauthorised use of vehicle for personal need, dismissal is too extreme a penalty for that misconduct. It was submitted on behalf of the Petitioner that under the circumstances, doctrine of proportionality would apply in the present case since the punishment was harsh and oppressive.

14. Counsel relied upon the two decisions of the Division Benches of this Court in *Ex H.C. Rajender Singh vs. Union of India & Ors.* 143 (2007) DLT 197 (DB) and *Cement Corporation of India Ltd. vs. M.L. Aggarwal and Anr.* 149 (2008) 291 (DB).

15. Learned counsel for the respondents highlighted that Rule 102 of the CRPF Rules requires that in the event of silence, the relevant condition under the CCS(CCA) Rules would be applicable to the members of the force. Even so, at the highest, the Petitioner would have been deemed to be under suspension after expiration of 48 hours of his detention. There could not have been any other consequence in view of the finding with regard to the main incident that necessitated his detention. This Court is also conscious of the fact that the Petitioner's conduct was not blameworthy as is evident from the subsequent development, i.e. his acquittal from the charges levelled against him under Section 384 and 394 IPC by the competent criminal court.

16. Learned counsel for the respondents submitted that the findings of the disciplinary authority ought not to be interfered with once the enquiry officer had considered the materials on record and appreciated the depositions of the witnesses. Learned counsel emphasised that even though the first charge had not been proved, the fact remained that the Petitioner was under detention for 41 days. It was argued that the question of proportionality should not be gone into by the Court, especially in view of the circumstance that the Petitioner unauthorisedly removed the vehicle. He could not support his defence made during the enquiry proceedings about being permitted to take out the vehicle for his own private use.

17. In these circumstances once the charges, even if some of them, were proved, the authority in question is deemed to have considered the impact of the evidence while imposing the penalty.

18. The above discussion would reveal that as far as the first charge of the Petitioner being involved or responsible for assault and robbery is concerned, even the enquiry officer was of the opinion that there was no material. This finding of the enquiry officer was accepted by the disciplinary authority. Such being the case, in the opinion of the Court, the Petitioner's detention for a period of about 41 days was intrinsically linked with the allegations made in the Charge-I. In other words, the cause for the Petitioner's detention precisely was the charge or allegation that formed the content of the first article of charge i.e. assault and robbery. As a matter of fact, there is no doubt that the Petitioner did undergo detention. However, in a sense, this

was not of his own volition. Under the circumstances, the Petitioner was kept in detention pending trial. Surely, the Petitioner could not be faulted for that. Especially in view of the findings with regard to his culpability under charge No.1, this Court is of the opinion that the action for the Petitioner's detention being intrinsically linked with the content of charge No.1, the authorities should have taken note of the fact that he stood absolved of the more serious charge and, therefore, even if he was under detention, that by itself could not under the circumstances, lead to an inference of misconduct.

19. In this context, the Court is mindful of the fact that even according to Rule 102 of the CRPF Rules, which makes the CCS (CCA) Rules applicable in respect of matters for which there is no express provision in the CRPF rules; at the highest, the Petitioner would have suffered a deemed suspension by virtue of application of Rule 10(2)(a) of the CCS Rules. In these circumstances, the impugned order, in so far as it holds the Petitioner guilty of the third charge, requires to be, and is accordingly, set aside.

20. As far as the second charge is concerned the Court notices at the outset that it is really split into two components. The first pertains to the Petitioner unauthorisedly taking the vehicle for personal use. The Petitioner's word was considered against that of the Assistant Commandant. The latter deposed that the Petitioner was not authorised to take the car for personal use. He also deposed that there was no log entry in support of the Petitioner's claim that he was permitted to take out the car. In these circumstances, the findings of

the enquiry officer that were endorsed by the disciplinary authority with regard to unauthorised use of the vehicle cannot be said to be without evidence or unreasonable. That finding is, therefore, upheld.

21. As regards the second component of the second charge i.e. giving the false identity or name to the local police or civil authority, no corroboration of the allegations were made out during the enquiry. The person or the policeman to whom he is alleged to have given his false identity or impersonated did not depose during the enquiry. Even his name is not known. In these circumstances, the deposition of the witness who spoke against the Petitioner was based on pure hearsay. Consequently, the second part of the Charge No.2 could not be said to have been proved. The findings are accordingly based on no evidence.

22. Based on the above discussion, the Court notices that out of all the three charges only one part of the second charge can be said to have been reasonably proved by the Respondent against the Petitioner. This pertains to his unauthorised use of the vehicle.

23. Now, the Petitioner's counsel argues that the imposition of the extreme penalty of dismissal for such a reduced misconduct, which, having regard to the overall conspectus of circumstances, is extremely disproportionate. He also relies upon the authority of two Division Benches in this regard.

24. The respondents, on the other hand, contend that this Court should not consider the penalty as it were sitting as a court of appeal, and should leave it to the discretion of the disciplinary authority.

25. The question of proportionality of an administrative or disciplinary order has been the subject matter of discussion in several judgments. In *B.C. Chaturvedi vs Union of India* (1995) 6 SCC 749, the Supreme Court stated that acting under any review jurisdiction, the Courts can review the question of penalty but should be extremely circumspect and spare in the use of its power. The Supreme Court also stated that in the event the findings or conclusion of a penal order in a given case is found to be shockingly disproportionate, the Court should ordinarily remit the matter for consideration by the concerned administrative authority or decision maker. This type of reasoning appears to have been followed in subsequent rulings i.e. *Om Kumar & Ors. vs. Union of India* AIR 2000 SC 3689.

26. There are also cases where Courts have exercised discretion under Article 226 of the Constitution, and having regard to the given facts and circumstances of the case, substituted the penalties, after finding the penalty to be excessive or shockingly disproportionate.

27. The Supreme Court appears to have applied the principle of proportionality, after articulating it as a relevant public law standard, in *Ranjit Thakur v. Union of India and Others*, [1987] 4 SCC 611 where the question of proportionality in awarding punishment under the Army Act was in issue. It was observed that:

"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 to the offence 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 the 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 from correction. Irrationality and perversity are recognised grounds of judicial review."

Earlier, in *Bhagat Ram v. State of Himachal Pradesh*, [1983] 2 SCC 442 the Court held that:

"It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution."

The subsequent decision of the Supreme Court, in *B.C. Chaturvedi Vs. Union of India and Ors.* (1995) 6 SCO 749 indicated a somewhat different approach, suggesting that whenever the penalty is disproportionate, the Courts must normally remit the matter to the employer, for reconsideration of the issue, holding that:

"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 mould 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"

Yet, this Court observes that a reading of subsequent decisions of the Supreme Court indicate that there is no inflexible rule that whenever a penalty in disciplinary proceedings are found to be shockingly disproportionate, the Courts have to necessarily remit the question for reconsideration by the administrative or disciplinary authority. Thus, in *Dev Singh vs. Punjab Tourism Development Corporation Ltd & Anr.* 2003 (8) SCC 9, the Court held:

"Applying the said principles laid down by this Court in the cases noted hereinabove, we see that in this case the appellant has been serving the respondent Corporation for nearly 20 years with unblemished service, before the present charge of misconduct was levelled against him. The charge itself shows that what was alleged against the appellant was misplacement of a file and there is no allegation whatsoever that this file was either misplaced by the appellant deliberately or for any collateral consideration. A reading of the charge-sheet shows that the misplacement alleged was not motivated by any ulterior consideration and at the most could be an act of negligence, consequent to which the appellant was unable to trace the file again. The disciplinary authority while considering the quantum of punishment came to the conclusion that the misconduct of the nature alleged against the appellant should be viewed very seriously to prevent such actions in future, whereby important and sensitive records could be lost or removed or destroyed by the employee under whose custody the records are

kept. Therefore, he was of the opinion that a deterrent punishment was called for, forgetting for a moment that no such allegation of misplacing of important or sensitive record was made in the instant case against the appellant and what he was charged of was misplacement of a file, important or sensitiveness of which was not mentioned in the charge-sheet. Therefore, in our opinion, the disciplinary authority was guided by certain facts which were not on record, even otherwise, we are of the opinion that when the Service Bye-Laws applicable to the Corporation under Service Bye-law 17 provide various minor punishments, we fail to appreciate why only maximum punishment available under the said Bye-laws should be awarded on the facts of the present case. We think the punishment of dismissal for mere misplacement of a file without any ulterior motive is too harsh a punishment which is totally disproportionate to the misconduct alleged and the same certainly shocks our judicial conscience. Hence, having considered the basis on which the punishment of dismissal was imposed on the appellant and the facts and circumstances of this case, we think to avoid further prolonged litigation it would be appropriate if we modify the punishment ourselves. On the said basis, while upholding the finding of misconduct against the appellant, we think it appropriate that the appellant be imposed a punishment of withholding of one increment including stoppage at the efficiency bar in substitution of the punishment of dismissal awarded by the disciplinary authority. We further direct that the appellant will not be entitled to any back wages for the period of suspension. However, he will be entitled to the subsistence allowance payable up to the date of the dismissal order."

In *Kailash Nath Gupta vs. Enquiry Officer (R.K. Rai), Allahabad Bank and Ors.* (2003 (9) SCC 480), the Court again adopted a similar approach:

"In the background of what has been stated above, one thing is clear that the power of interference with the quantum of punishment is extremely limited. But when relevant factors are not taken note of, which have some bearing on the quantum of punishment, certainly the Court can direct reconsideration or in an appropriate case to shorten litigation, indicate the punishment to be awarded. It is stated that there was no occasion in the long past service indicating either irregularity or misconduct of the appellant except the charges which were the subject-matter of his removal from service. The stand of the appellant as indicated above is that though small advances may have become irrecoverable, there is nothing to indicate that the appellant had misappropriated any money or had committed any act of fraud. If any loss has been caused to the Bank (which he quantifies at about Rs.46,000) that can be recovered from the appellant. As the reading of the various articles of charges go to show, at the most there is some procedural irregularity which cannot be termed to be negligence to warrant the extreme punishment of dismissal from service."

Likewise, in *Union of India and Ors. vs. M.A. Jaleel Khan*, (1999 SCC (L & S) Cases 637), the Court had held:

"5. The learned counsel appearing for the respondent submitted that the act of the appellate authority in enhancing the punishment without giving a reasonable opportunity to the respondent cannot be sustained. He also submitted that for refusing to vacate the accommodation allotted to the railway servant, the authorities cannot invoke the Service Rules.

6. We have considered the submission of the counsel on both sides and also appreciated the facts of this case. We have seen earlier that the respondent had given a solemn undertaking to vacate the premises when the main

allottee vacated the same. Notwithstanding such solemn undertaking, the refusal to vacate the premises when the main allottee vacated the accommodation cannot be appreciated or encouraged. The authorities are, therefore, right in initiating disciplinary proceedings on the facts of this case. However, the punishment imposed by the appellate authority by issuing notice to enhance the punishment given by the disciplinary authority requires some consideration. The disciplinary authority, after taking into consideration the facts and circumstances concerning the charge, has imposed the punishment as noticed above. The appellate authority in the appeal filed by the respondent has issued notice for enhancing the punishment. No doubt the appellate authority has jurisdiction to issue such a notice but the question is whether the facts and circumstances of the case warrant such enhancement of the punishment. On the facts, we are of the view that the enhanced punishment given by the appellate authority dismissing the respondent is too harsh and, therefore, we set aside the order of the appellate authority to that extent and restore the punishment imposed by the disciplinary authority."

28. This Court is of the opinion that in the present case, having regard to the nature of the charges levelled, which, taken cumulatively, were of grave and serious character, on the one hand and ultimately what was finally established, on the other hand, imposition of penalty of dismissal upon the Petitioner was in the overall conspectus of circumstances, shockingly disproportionate. The decision maker i.e. the disciplinary authority in this case, while imposing that penalty, was influenced by the fact that the third charge was in effect an independent allegation. The penalty was also premised on the opinion that second limb of charge No.2 i.e. using a

false identity, as well as the misconduct alleged in charge No.3 had been proved. As discussed by this Court in previous portions of this judgment, the second limb of the second charge could not be said to have been proved; there was no evidence in support of it. Similarly, as far as Charge No.3 is concerned, factually the Petitioner was in detention. However, that was not his fault or his volition. Allegations of criminal misbehaviour had been made which necessitated his detention. No condition apart from Rule 10(2)(a) of the CCS (CCA) Rules was shown to the Court stating that detention of such kind would be viewed in such serious manner as warranted dismissal. Thus, the Court is aware of the fact that when the disciplinary authority decided to impose extreme penalty of dismissal, it was on the premise that Charge No.2 and Charge No.3 have been proved. That not being the case, the penalty of dismissal, in the opinion of the Court, in respect of the charge proved i.e. taking the vehicle without proper authorisation, is too severe and disproportionate.

29. Having regard to the overall conspectus of circumstances in this case i.e. Petitioner's admitted tenure of employment of 10 years and the fact that he has been out of employment for the last 13 years, and findings recorded previously in this judgment about the nature of charges in the extent of which they were proved, this Court is of the opinion that the penalty of dismissal is required to be appropriately substituted with lesser punishment. In these circumstances, it is directed that the said penalty should be substituted with a punishment of stoppage of three increments without cumulative effect. The

Petitioner is also entitled to continuity of service. The penalty of dismissal is, therefore, set aside and one of stoppage of three increments without cumulative effect, is substituted in its place.

30. The Petitioner shall be reinstated to the service with effect from the date of dismissal while also giving effect to the substituted penalty. In other words, the respondents shall give effect to the penalty of stoppage of three increments and suitably fit the Petitioner in the pay-scale at the appropriate stage, in view of his continuity in service. Further, having regard to the overall circumstances of the case, the arrears of salary and backwages etc. are confined to the extent of one third of the arrears for the period that the Petitioner was out of employment. The same shall be paid to him within eight weeks from today. The Respondents are also directed to issue proper posting order and pay fixation order, having regard to the judgment of this court within the said period.

31. The writ petition is allowed in the above terms. No costs.

S. RAVINDRA BHAT
(JUDGE)

SUDERSHAN KUMAR MISRA
(JUDGE)

MARCH 14, 2013

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