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THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 20.05.2014

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W.P.(C) 3153/2014

DHARMENDER KUMAR SHARMA

..... PETITIONER

VERSUS

THE CHAIRMAN, RAJYA SABHA
SECRETARIAT & ANR

..... RESPONDENTS

ADVOCATES WHO APPEARED IN THIS CASE:

For the Petitioner: Mr. Rahul Sharma, Advocate

For the Respondents: Mr. J.P. Sengh, Sr. Advocate with Ms. Zubeda Begum, Ms. Vaneesa Singh, Mr. Sumeet Batra and Ms. Ankita Gupta, Advocates

CORAM :-

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

CM No.6568/2014 (Exemption)

Allowed subject to just exceptions.

W.P.(C) 3153/2014

1. This a writ petition filed to assail the orders passed by the Disciplinary Authority dated 28.12.2011, and the order passed by the appellate authority dated 15.10.2012, whereby petitioner's appeal against the order of the Disciplinary Authority, stands dismissed.

2. The petitioner, who was at the relevant time, a senior clerk in the Rajya Sabha Secretariat was served with a memorandum dated 19.10.2009, in which, it was alleged that the petitioner had violated Rule 3(1)(i), (ii) and (iii), 3-A(a) & (b) and 15 of the CCS (Conduct) Rules, 1964 (in short Conduct Rules).

2.1 The petitioner, was called upon to show cause as to why disciplinary proceeding should not be initiated against the him for violation of the Conduct Rules. The petitioner was given time till 30.10.2009.

2.2 The petitioner, filed his reply to the said memorandum on 09.11.2009. After a perusal of the reply, the petitioner was served with a chargesheet dated 02.06.2010.

2.3 The chargesheet contained 9 articles of charge. The chargesheet was accompanied by a statement of imputation of misconduct and / or misbehaviour in support of the articles of charges framed against the petitioner. The list of documents relied upon as well as the list of witnesses, was also furnished to the petitioner.

2.4 By order dated 06.07.2010, an Inquiry Officer was appointed. An enquiry was conducted, in which, the petitioner was given due opportunity to participate. The Inquiry Officer submitted his report dated 27.10.2011, to which, objections of the petitioner was called for, after service of enquiry report upon him.

2.5 Admittedly, the petitioner filed his objections, dated 11.11.2011 to the enquiry report. The Disciplinary Authority after deliberating upon the objections and finding returned in the inquiry report, passed the impugned order dated 28.12.2011.

2.6 By virtue of the impugned order, the Disciplinary Authority agreed with the view taken by the Inquiry Officer that out of the nine (9), six (6) articles of charges framed against the petitioner, stood proved.

2.7 To be noted, the articles of charge proved against the petitioner are as follows: Articles I to III; sub-articles (b), (c) and (d) under Article IV to VI; and Article VIII and IX.

2.8 As is obvious, charges which were not proved against the petitioner were sub-article (a) under Articles IV to VI and Article VII.

2.9. Aggrieved by the same, the petitioner filed an appeal. The appeal, as indicated above, was dismissed by respondent no.1 vide order dated 15.10.2012.

3. The captioned petition has been filed to impugn the order of the Disciplinary Authority as well as that of the appellate authority.

4. I have heard the learned counsel for the petitioner.

5. The learned counsel says that the conclusions reached against the petitioner with regard to charges apparently proved against him, are not borne out from the record. His emphasis is, that the conclusions reached by the authorities below are not borne from the evidence brought on record.

6. Briefly, the charges proved against the petitioner can be paraphrased as follows:-

6.1 Under Article I the allegation leveled against the petitioner is that, while working as a Junior Clerk in the Rajya Sabha Secretariat, a car was bought in the name of his wife; a transaction which was not disclosed, and hence, he had violated Rule 18(3) of the Conduct Rules.

6.2 Under Article II, it is broadly alleged that the petitioner while working as a Senior Clerk, ran a parallel travel agency, under the name and style of "Saniya Motors". The allegation, is that, he violated Rule 15(1)(a) of the Conduct Rules.

6.3 Article III adverts to the allegation that the petitioner was found frequently busy, with telephone calls, on his mobile phone, or with maintaining records of his private business and thus, was attending to his private business during office hours. Violation of Rule 3(1)(ii) of the Conduct Rules, was alleged.

6.4 Articles IV to VI can be divided in following sub-articles:-

(b). used discourteous language on 17th and 30th June, 2009 with the Committee Officer;

- (c). threatened the Committee Officer with dire consequences, on 30th June, 2009; and
- (d). lastly, used derogatory and foul language against the Committee Officer, on 6th July, 2009.

6.5 Article VIII charges the petitioner with non-adherence to official direction issued to him on 09.09.2009, to appear before the concerned Civil Surgeon, for medical examination, at Dr. Ram Manohar Lohia Hospital, New Delhi. Non-adherence to official direction was thus, construed as, an act unbecoming of an employee of the Secretariat; which allegedly violated Rule 3(i)(iii) of the Conduct Rules.

6.6 Article IX, which is connected with Article VIII above, imputes false intimation by the petitioner of having visited the Civil Surgeon, whereas he had visited the OPD of Dr. Ram Manohar Lohia Hospital, and thus, had allegedly failed to maintain absolute integrity; an act which was violative of Rule 3(1)(i) of the Conduct Rules.

7. In so far as the charge leveled against the petitioner, relating to failure to disclose the transaction in movable property carried out in the name of his wife is concerned, the petitioner has admitted to the charge leveled against. A finding to that effect has been recorded both by enquiry officer and confirmed by the Disciplinary Authority.

7.1 As regards, article II, which pertains to running a parallel business, the petitioner admits that on the website of Saniya Motors, the official mobile number of the petitioner is displayed. The petitioner's defence is that he is not the proprietor of Saniya Motors, and that, the business is run by his wife. He also states that his brother-in-law is his namesake, and therefore, the confusion.

7.2 In desperation, a further plea is advanced, which is that, the petitioner's relationship with his wife is strained.

7.3 In my opinion, these defences are frivolous in view of the fact that there is no explanation whatsoever as to how the petitioner's official mobile number came to be displayed on the website of Saniya Motors. The fact that the petitioner's brother-in-law was his namesake, does not advance the cause of the petitioner. The petitioner's defence that he had strained relationship with his wife, as indicated above, is a desperate attempt to wriggle out of a difficult situation. Admittedly, no legal proceedings have been filed by the petitioner or his wife pertaining to marital discord. The closest indicator that there is no marital discord (as is sought to be portrayed by the petitioner), is the fact that even an asset which is owned by her, such as the car, appears to have been used by the petitioner, and to facilitate its use, he obtained a parking label of the Rajya Sabha Secretariat. Whether this was to facilitate his direct use of the car or, to enable his wife to gain entry, in her car, to the Rajya Sabha Secretariat, would in substance make no difference, as both ways it would show normality in the petitioner's relationship with his wife. The explanation, thus, given of not maintaining "good terms" with his wife, are not supported by any material; therefore, quite correctly, this explanation has been rejected by the Disciplinary Authority.

7.4 The other articles of charge, which pertain to his being found frequently busy on telephone or with maintaining record of his business, have been proved to the extent that he has been found absent from seat and took leave frequently. It is argued by the counsel for the petitioner, that the allegation pertaining to petitioner, having carried out business during office hours, has not been proved. This is an aspect which can be proved only by using the test of preponderance of probability. The fact that charge pertaining to running a parallel business is proved, coupled with the fact that he was found frequently absent from his seat for couple of hours atleast twice a week during office time, tie-in with the conclusion that the petitioner

was running a parallel business during office hours, for want of a better explanation.

7.5 As far as clauses (b) to (d) of Article IV and VI are concerned, in my view, the finding returned qua them is also unimpeachable as they are based on appreciation of the testimony of witnesses produced before the Inquiry Officer. The findings vis-a-vis this are found at pages 107 and 110 of the paper book. In order to avoid prolixity the same are not extracted in the order.

7.6 This brings me to Articles VIII and IX. The learned counsel for the petitioner has no explanation for the findings returned therein. Admittedly, the petitioner did not visit the concerned Civil Surgeon, and his communication to the office that he had visited the Civil Surgeon, was, decidedly false.

8. In view of the aforesaid, in my opinion, the punishment accords with the charges framed against the petitioner. It is well settled that the court, under Article 226, is not called upon to re-appreciate the evidence in departmental proceedings. This is neither a case of no evidence nor is it a case of perversity. The punishment meted out to the petitioner of compulsory retirement is not unconscionable, leaving almost no scope for interference. [see *Ranjit Thakur Vs. Union of India and Ors., (1987) 4 SCC 611*]. Having regard to the entire gamut of the case, there is no case made out for interference with impugned orders. The captioned petition is, accordingly, dismissed. There shall, however, be no order as to costs.

RAJIV SHAKDHER, J

MAY 20, 2014

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