

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

+ **RSA No.222/2013**

% **23rd May, 2014**

SH. TEK CHAND Appellant

Through: Mr. Devender Singh Khatana,
Advocate.

Versus

UNION OF INDIA AND ANR. Respondents

Through: Mr. Himanshu Bajaj, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This second appeal is filed under Section 100 of Code of Civil Procedure, 1908 (CPC) against the judgment of the first appellate court dated 2.7.2013 which allowed the appeal filed by the defendant in the suit against the judgment and decree dated 13.4.2012 of the trial court. Trial court by the judgment and decree dated 13.4.2012 while holding the appellant/plaintiff unable to substantiate grounds for setting aside the disciplinary proceedings, thereafter yet held that the punishment imposed of dismissal from services was disproportionate to the chargesheet of not

joining back the duty and hence directed reinstatement of the appellant/plaintiff with the consequential benefits.

2. The first appellate court set aside the judgment of the trial court by referring to the fact that once the case against the appellant/plaintiff was proved before the disciplinary authority of his having wrongly not joined back the services, and consequently he had to be discharged from service, the trial court ought not to have, in a case which was not even pleaded by the appellant/plaintiff of disproportionate punishment, reinstated the appellant/plaintiff in service with all consequential benefits.

3. The relevant observations which have been made by the first appellate court in its impugned judgment dated 2.7.2013 are contained in paras 10 to 12 of the impugned judgment and which read as under:-

“10. The trial court framed the issue no.3 “whether the plaintiff is entitled to the relief of declaration as prayed for?” OPP. While deciding the issue no. 3, the trial court held as under:

“Under this issue it was not denied that he had overstayed. No specific ground has been proved in the case as to how the principles of natural justice have been violated. Vague grounds have been taken that plaintiff was not given opportunity to cross examine the witness and medical certificates were not considered. PW-2 has rather stated he has no documentary evidence to support the illness of the plaintiff or that any riot took place in the area. He had no knowledge of any medical treatment or doctor. It has come in the enquiry report that even despite giving the time plaintiff had not produced the medical documents. The allegations against the enquiry officer that the plaintiff was not allowed to put question to the

witness is also belied from the enquiry proceedings placed before me. Thought it is correct that there was some medical problem with the plaintiff as made out from Ex.PW-1/2A to PW-1/2D which are medical documents but those are not sufficient to deter him from joining the service but may be relevant for the sentence purpose.....Thus in these circumstances, I do not find any defect in the enquiry proceedings and there is no violation of principles of natural justice and the order holding the plaintiff guilty is just and proper.....”

11. As such, while deciding the issue no. 3, the trial court held that the plaintiff failed to prove the grounds on which he challenged the dismissal order. In the appeal, counsel for the plaintiff addressed the arguments to justify the two grounds as mentioned above which were the basis of the suit. But the plaintiff has not challenged the findings given by the trial court to hold that there was no violation of principle of natural justices either by way of cross appeal or the objection. As such, the same have attained finality. Therefore, the plaintiff cannot raise the pleas to this effect. In view of the foregoing discussion, it can be held that the plaintiff has accepted that the defendants have not violated the principle of natural justice while conducting the departmental enquiry.

12. In view of the foregoing findings, the trial court should have dismissed the suit then and there. However, instead to do that, the trial court considered the submission made by the counsel for the plaintiff that the punishment awarded did not commensurate with the gravity of the misconduct. Thereafter, the trial court held that punishment awarded was not justified and set aside the dismissal order and directed re-instatement of the plaintiff, however, awarded the minor penalty of withholding his two increments. Before dealing with the question whether the trial court was justified in setting aside the dismissal order dated 17.10.1991 and directing re-instatment of the plaintiff, the question arises whether the trial court was justified in entertaining and interfering with the quantum of

punishment. As discussed above, the plaintiff challenged the dismissal order only on the two grounds as mentioned above. As discussed above, the trial court held that the plaintiff failed to prove the same. In the entire plaint, it was nowhere the case of the plaintiff that the punishment awarded by the defendants was inappropriate. Therefore, the said plea raised by the plaintiff at the time of final arguments was beyond pleadings. Further, the entire judgment is silent as to the basis and the material available with the trial court to hold so. As such, it can be held that while holding so, the trial court had not only gone beyond the scope of the suit but also had given a finding without any basis. While holding so, the trial court relied upon the judgment passed by the Hon'ble Supreme Court in "Ex Naik Sardar Singh vs. Union of India" reported in 1991 (3) SCC 213 wherein it was held that punishment must be commensurate with the gravity of misconduct and disproportionate severe punishment is arbitrary and is open to the court interference. As discussed above, the plaintiff had not challenged the quantum of the penalty nor it was his case that the penalty did not commensurate with the charges leveled against him, therefore, there was no occasion for applicability of the said judgment in the said suit."

4. It is conceded before me on behalf of the appellant/plaintiff that the appellant/plaintiff did not challenge the findings against him of his being unsuccessful in seeking setting aside of the disciplinary proceedings holding the appellant/plaintiff guilty. Once that is so, and there is no plea which was raised by the appellant/plaintiff of disproportionate punishment, and for which reason no such issue was framed, trial court could not have reinstated the appellant in service effectively by setting aside the dismissal order though it had upheld the dismissal order simultaneously.

5. I may note that the law with respect to interference by the court on the quantum of punishment is well settled and it has been repeatedly held by the Supreme Court that courts cannot substitute the punishment which is imposed by the disciplinary authority unless the punishment shocks the judicial conscience. In my opinion, in the facts of the present case, the punishment imposed could not shock the judicial conscience because an organization cannot function if employees of that organization at their own sweet will do not join the services and stay on extended leaves. In a case such as the present, therefore, I do not find that the first appellate court erred in setting aside the judgment of the trial court which granted relief on ground which was not even pleaded and grant of which relief in fact amounted to setting aside the dismissal order although the trial court held that there was no sufficient ground to set aside the dismissal order.

6. In view of the above, no substantial question of law arises under Section 100 CPC for this appeal to be entertained, and the same is therefore dismissed, leaving the parties to bear their own costs.

MAY 23, 2014
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VALMIKI J. MEHTA, J.