

Court No. - 4

Case :- WRIT - A No. - 17751 of 2019

Petitioner :- Changez Ali

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Birendra Singh, Diwakar Mishra, Mohd. Naushad Ahmad Khan, Syed Irfan Ali

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar, J.

Heard learned counsel for the parties.

By means of present petition filed under Article 226 of the Constitution, petitioner has assailed the order dated 15th March, 2019 passed by the Deputy Inspector General of Police, Railways Lucknow whereby the punishment of removal from service has been imposed upon the petitioner as well as order passed by the appellate authority dismissing the appeal against the order of punishment.

The main plank of the argument advanced by learned counsel for the petitioner is that even earlier when order of removal from service was passed by the disciplinary authority and that came to be challenged before this Court. This Court vide judgment and order dated 30.10.2018 allowed the petition being Writ A No. 16390 of 2017 directing the authority to reconsider the punishment imposed giving due consideration of factors which were legally recognized and relevant to the decision making process as discussed by this Court in its judgment relied upon the authority of Supreme Court in the case of **Prem Nath Bali High Court of Delhi, 2015 16 SCC 415** and **Rajender Kumar v. State of Haryana (2016) 15 SCC 693**. Thus it becomes refer to relevant paragraph of the judgment in the matter as held by the Court while remitting the matter on 30.10.2018 in the writ petition.

"That leaves the Court to solely consider the argument of the punishment being disproportionate and excessive. The principles which must guide the Court in evaluating a submission with respect to quantum of punishment are well settled. This Court is aware that while exercising its powers of judicial review, it does not sit so as to reappreciate evidence or scrutinise the proceedings as if it were exercising appellate powers. The Court would be justified in interfering with the punishment inflicted if it were to shock the conscience of the Court or is found on facts to be wholly disproportionate to the infraction which stands proved. The quantum of punishment which is liable to be imposed is primarily the discretion of the Disciplinary Authority. However, at the same time it is also incumbent upon the

*Disciplinary Authority to apply his mind to all relevant factors including the nature and seriousness of the charge which stands established as well as the entire service record of the employee. The settled position in law in this respect is aptly established from the following observations of the Supreme Court in **Prem Nath Bali v. High Court of Delhi**:-*

20. It is a settled principle of law that once the charges leveled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. *Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the Court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority"*

Equally significant are the following observations of the Supreme Court in **Rajinder Kumar v. State of Haryana**:

"6. It is not in serious dispute that the appellant is a serious patient of tuberculosis. According to the disciplinary authority as well as the appellate authority, the appellant became completely unfit for service in view of the background of the unauthorized absence on many occasions. Once a person is found unfit for service on account of intermittent and unauthorized absence for which the delinquent though has a reasonable explanation, no doubt, there is no point in continuing him in service either by reverting him or by imposing punishments like stoppage of increment, etc. But the question is, whether dismissal is the only option in such situations where an employee is found unfit for service. We have no doubt in our mind that indiscipline of any sort cannot be tolerated at all in a disciplined force. However, in the factual background of the appellant which we have referred to above, the disciplinary authority or at least the appellate authority, should have considered whether a punishment other than dismissal would have been appropriate and whether dismissal is the only punishment available and appropriate in the circumstances. The fact that different punishments are prescribed under the rules shows that there is a discretion vested on the competent authority to decide what should be the proper punishment taking note of the nature of misconduct, its gravity and its impact on the service. Having regard to the facts and circumstances of each case, the disciplinary authority has to take a proper decision on punishment."

Upon a consideration of the aforesaid principles as enunciated by the Supreme Court, this Court finds that in the present case, the Disciplinary Authority has clearly conferred no consideration on factors such as the length of the unauthorised absence, the past service record of the petitioner, the fact that he had rendered long service under the respondents or that prior to this infraction no disciplinary action was ever taken against the petitioner. It is relevant to note that the factual submissions of the learned counsel on this score were not disputed by the learned standing counsel. As was held by the Supreme Court in Rajinder Kumar, the very existence of different categories of punishments under the rules, is indicative of the discretion that is vested in the Disciplinary Authority. Ultimately he must weigh in balance various factors germane to the decision making process and come to hold that dismissal alone is the appropriate punishment. The Disciplinary Authority, in the facts of the present case and is evident from a reading of the impugned order, has clearly not approached the issue from this perspective nor does he appear to have accorded any consideration on factors which have been legally recognised as relevant to the decision making process. In view of the above, the ends of justice would warrant the matter being remanded to the Disciplinary Authority for taking a decision afresh with regard to the quantum of punishment in accordance with law. While doing so the Court clarifies that the remand is solely for

consideration of this aspect and the finding of guilt as reached in the course of enquiry are not interfered with."

Upon reading of the aforesaid observations made by the Court relying upon two authorities the only issue that requires consideration by the authority under the the order of remand was whether dismissal would be only option in the event employee is found unfit for service on account of intermittent unauthorized absence from duty and if, therefore, some other punishment could not be imposed then maximum punishment ought not to have been imposed.

From the findings part of the order dated 15th March, 2019 passed by the disciplinary authority, I find there to be categorical finding recorded to the effect that nine times petitioner had been charged with dereliction in discharge of duty, indiscipline and arrogant behavior and and in all those nine matters petitioner had been awarded minor punishments like censure and other adverse entry and even penalty of recovery and one major penalty was awarded reverting him down two increments in pay. Thus, petitioner having been held guilty nine times in the departmental enquiry with minor punishments and once also for major penalty, the authority decided not to continue him in service as he deserved maximum punishment. Thus he could not offer any explanation to the satisfaction of the authority. The authority accordingly concluded that despite several opportunities afforded to the petitioner he did not improve his conduct and he continued to remain indisciplined and misconduct himself for repeated absence from duty.

In the considered view of the Court, employer is best person to judge the suitability of its employees on one hand and discretion to impose suitable punishment for gross negligence to the extent of impunity at the end of employee on the other. The discretion to impose punishment for removal or dismissal from service in respect of an employee who has been eight times given an opportunity to improve with only minor punishments and yet he remained arrogant and repeated his misconduct, and did not improve and was also awarded even once major penalty down grading him by two increments. Any employee if visited with such punishment repeatedly should have improved upon if he desired to continue in service, but if employee always abused this liberty granted to him by employer in continuing him in

employment, the only option left for the employer was to get rid of such an employee immediately.

Accordingly, I do not find any manifest error, which may warrant interference with the order passed by the authority in maintaining order of removal from service.

Petition lacks merit and is accordingly dismissed.

Order Date :- 21.4.2025

Sanjeev