

R-63

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

Date of Decision: December 22, 2015

+ W.P.(C) 5253/2002

N. MISHRA

..... Petitioner

Through: Mr. Ashok Mathur, Advocate

versus

RURAL ELECTRIFICATION CORPORATION LTD. & ORS.

..... Respondents

Through: Mr. D.S. Chauhan, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

%

Petitioner was employed as Deputy Chief (Economics) with first respondent. Vide order of 7th June, 2002 (*Annexure-G*), Disciplinary Authority while relying upon Inquiry Officer's Report of 3rd December, 2001 (*Annexure-D*) inflicted major penalty of reduction to a lower stage in the time scale of pay of Deputy Director and his salary was reduced to the minimum of applicable scale of pay with immediate effect till the date of his retirement i.e. 31st October, 2002. In addition, it was further directed that the amount claimed by petitioner on account of Leave Travel Concession (henceforth referred to as 'LTC') for the block year

1994-97 in question would be recovered from him.

The first Charge against petitioner was of obtaining LTC claim for the block year 1994-97 in respect of one of his daughter, who was employed.

The second Charge against petitioner was regarding availing medical reimbursement facilities in respect of the same daughter, who was employed.

The third Charge against petitioner was that the same very daughter was declared a dependent family member although she was fruitfully employed.

The fourth Charge against petitioner was of availing travel allowance in respect of that very daughter, who was employed.

The fifth Charge against petitioner was that one of incorrectly mentioning the date and mode of travel while availing the LTC claim.

At the hearing, learned counsel for petitioner submitted that his daughter- *Meena* was working against a leave vacancy and since her assignment was temporary and because her income was not more than the prescribed ceiling, so LTC in respect of *Ms. Meena* was also claimed. It was submitted by learned counsel for petitioner that same was the stand in respect of second and third Charge of availing medical facilities in respect of petitioner's daughter- *Meena*. Learned counsel for petitioner further submitted that on the fourth Charge of availing the travel allowance in respect of his daughter, petitioner has not been found guilty. Regarding the fifth Charge, it was submitted by learned counsel for petitioner that LTC was claimed by petitioner in respect of his daughter- *Meena* because she was actually dependent upon petitioner and regarding

the mode of travel, it was submitted that date of departure was inadvertently given by petitioner and in any case, penalty awarded is wholly disproportionate to the alleged misconduct and to submit so, reliance was placed by petitioner's counsel upon Apex Court's decision in *Chennai Metropolitan Water Supply & Sewage Board & ors. Vs. T.T. Murali Babu* (2014) 4 SCC 108.

Learned counsel for respondent supported the impugned order and specifically pointed out that there is a certificate from the school Principal where petitioner's daughter was employed, which indicated that petitioner's daughter- *Ms. Meena* was getting consolidated pay which was more than the prescribed ceiling and so, the charges stand proved against petitioner and so, this petition deserves dismissal.

Upon hearing and on perusal of the impugned order, Inquiry Officer's report, (*which spells out the facts in detail and so facts are not recapitulated herein*) material on record and decision cited, I find that doctrine of proportionality, as reiterated by the Apex Court in *Chennai Metropolitan (supra)*, is as under:-

“19. The doctrine of proportionality is, thus, well recognised concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision-maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review.

20. *One of the tests to be applied while dealing with the question of quantum of punishment would be: Would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment.*

21. *In a case like the present one where the misconduct of the delinquent was unauthorised absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reasons for his absence by stating that he did not have intention nor desired to W.P.(C) 6134/2002 Page 8 of 8 disobey the order of higher authority or violate any of the Company's rules and regulations but the reason was purely personal and beyond his control and, as a matter of fact, he sent his resignation which was not accepted, the order of removal cannot be held to be justified, since in our judgment, no reasonable employer would have imposed extreme punishment of removal in like circumstances. The punishment is not only unduly harsh but grossly in excess to the allegations.”*

Applying the dictum of Apex Court in *Chennai Metropolitan (supra)* to the facts of the instant case, I find that the penalty awarded to petitioner is wholly disproportionate to the misconduct and is accordingly substituted with the penalty of recordable censure, which be entered in petitioner's service record.

With aforesaid modification, this petition is disposed of while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

DECEMBER 22, 2015

r