

R-98

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

Date of Decision: December 16, 2015

+ W.P.(C) 6134/2002

JAY SHANKAR PANDEY Petitioner

Through: Mr. Sumit Kumar, Advocate

versus

RAJYA SABHA SECRETARIATE Respondent

Through: Ms. Zubeda Begum, Ms. Sana
Ansari & Ms. Vanessa Singh,
Advocates

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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1. Vide Memorandum of 5th/8th May, 2000, an inquiry was initiated against petitioner on the allegations of misconduct and misbehavior. Vide Memorandum of 10th May, 2000 (*Annexure-5*) adverse entries in the Annual Confidential Report (*henceforth referred to as the 'ACR'*) for the year 1999 were conveyed to petitioner, whereas vide Memorandum of 1st August, 2000 (*Annexure P-8*), petitioner's Representation against the adverse entries in the ACR was dismissed.

2. Vide order of 4th December, 2001 (*Annexure P-15*), the Disciplinary Authority after considering the Inquiry Report and the written Representation of petitioner had agreed with the findings of the Inquiry Officer and had ordered that a minor penalty of withholding one

increment for a period of two years without cumulative effect be imposed on petitioner. Vide impugned order of 1st May, 2002 (*Annexure P-17*), petitioner's appeal against Disciplinary Authority's order of 4th December, 2001 (*Annexure P-15*), stands dismissed.

3. In this petition, quashing of the afore-noted Memorandums and orders is sought by petitioner, who was working as a Translator in the office of respondent. The departmental inquiry against petitioner proceeded on twin charges. Since petitioner has been already exonerated on the first charge, therefore, it is not required to be dealt with.

4. The second charge against petitioner was that he is in the habit of criticizing and passing derogatory remarks against his superior officers and is also in the habit of arguing with the colleagues and superior officers in the Translation Section and that petitioner uses undesirable and intemperate language even in the presence of female members of the Translation Section. The precise charge against petitioner is that his aforesaid conduct amounts to acting in an undisciplined manner and against the office decorum, which is unbecoming of a member of staff of the Secretariat and thereby violating Rule 3 (1) (iii) of CCS Conduct Rules.

5. In the Inquiry, reliance was placed upon Chief Editor's Note of 19th April, 2000 and Note of 1st May and 3rd May, 2000 of the Editor, Editing (Hindi). The four witnesses, who had deposed during the Inquiry were Translators- *Smt. Sarita Sharma, Smt. Mala Mason, Smt. Poonam Wadhawan and Smt. Nirupa Belwal*. Petitioner in his defence had got examined eight witnesses, out of whom six witnesses were senior to petitioner in the same rank and two were his colleagues. The Inquiry

Officer in his Report of 16th October, 2001 (*Annexure P-13*) had exonerated petitioner of the first charge but had found him guilty on the second charge. The finding returned by the Inquiry Officer is as under:-

“In the light of evidence brought on record, it has been established that Charged Officer is in the habit of passing adverse remarks against senior officers. Though Charged Officer got the opportunity to cross-examine the State Witnesses to clear the charges labeled on this account but Charged Officer only cross-examined SW-1 and SW-IV. During cross-examination, Charged Officer put a pointed question to SW-1- “May I know who are these seniors against whom I pass remarks”. SW-1 replied “Chief Editor and Editor-in-Charge”, Charged Officer did not put any such question to SW-IV during cross-examination. Perhaps just to avoid self-embarrassment so that nothing goes on record.

Similarly during cross-examination by Presenting Officer statement of DW-IV is significant. DW-IV stated that “What Charged Officer wants to say he says very clearly. It is upto him whether it is wrong or right but what he has to say he says.”

I, therefore, hold that this charge against Charged Officer is sustainable.”

6. The Appellate Authority has concurred with the Disciplinary Authority and had upheld the afore-noted penalty imposed upon petitioner.

7. The challenge to the impugned Memorandums and the orders by learned counsel for petitioner is solely on the ground that evidence on record does not support the findings returned by the Inquiry Officer. To contend so, attention of this Court was drawn to the deposition of *Smt.*

Sarita Sharma (SW-1) to submit that regarding specific incidents of 6th April, 2000 and 18th April, 2000, this witness had not deposed anything against petitioner. It was pointed out that witness- *Smt. Poonam Wadhwan (SW-III)* had deposed only to the extent that petitioner was under the impression that the Editor-in-Charge favours the witnesses and her *chamchas* and the deposition of *Smt. Poonam Wadhawan (SW-III)* is not sufficient to substantiate the charge against petitioner. It was pointed out by learned counsel for petitioner that the copies of relied upon documents i.e. the Chief Editor's Note of 19th April, 2000 and the Notes of 1st May, 2000 and 3rd May, 2000 of Editor, Editing (Hindi) have not been supplied to petitioner. However, it was not disputed by petitioner's counsel that petitioner was permitted to inspect the said record, which infact is the basis of Articles of Charge.

8. It was contended by learned counsel for petitioner that the evidence led by petitioner has not been considered by the Inquiry Officer and the very initiation of inquiry against petitioner was motivated because the respondent was aggrieved, as petitioner had not attended the office on 21st and 22nd, April, 2000 despite being told to do so. It was submitted there were holidays on these two dates and petitioner had not received any instruction to attend the office for urgent work on these two dates. Lastly, it was submitted by learned counsel for petitioner that although it was the case of respondent that petitioner had used derogatory remarks against *Smt. Sarita Sharma (SW-1)* but she has not deposed to this effect and had gone on record to say that petitioner had used derogatory remarks against Chief Editor but the Chief Editor had not come forward to depose against petitioner and so, there was no justification whatsoever to impose penalty

upon petitioner and it deserves to be set aside. Learned counsel for petitioner relied upon decision in *Anant R. Kulkarni Vs. Y.P. Education Society & ors.* (2013) 6 SCC 515 to contend that the charges should be specific, definite and giving details of the incident which formed the basis of charges and no inquiry can be sustained on vague charges.

9. Learned counsel for respondent supported the impugned orders and Memorandums and submitted that the evidence of *Smt. Poonam Wadhawan (SW-III)* fully supports the charge against petitioner and she had not been cross-examined at all. It was pointed out that the evidence of respondent's witnesses cannot be labeled to be vague because it has come in the evidence of witnesses that petitioner used to pass indecent comments and there is no cross-examination of witnesses on this aspect. It was submitted on behalf of respondent that petitioner cannot be allowed to challenge the adverse ACRs as well as the Inquiry Report by filing one petition and that the evidence on record fully justifies the penalty imposed upon petitioner and therefore, this petition deserves dismissal. To highlight the scope of judicial review in matters like the instant one, reliance was placed by learned counsel for respondent upon decision in *Union of India Vs. P. Gunasekaran* (2015) 2 SCC 610.

10. Upon considering the submissions advanced by both the sides and on perusal of impugned orders, Memorandums, material on record and decisions cited, I find that though specific allegations of misconduct on 6th April, 2000 and 18th April, 2000 does not stand proved from the evidence on record but the charge of petitioner using intemperate language in the presence of female members in the translation section stands substantiated from the deposition of witness- *Smt. Poonam*

Wadhawan (SW-III). The relevant extract of deposition of aforesaid witness is as under:-

“When we are taking meals he says “Teen Bakriyan Chaara Char Rahi Hen”. It can be treated as intimidation or threat. He used derogatory words and language against seniors when he is angry and when the seniors are not in the room.”

12. Pertinently, deposition of this witness remains unchallenged. In the face of deposition of this witness - *Smt. Poonam Wadhawan (SW-III)*, I find that evidence led by petitioner giving a clean chit to him, has been rightly not relied upon by the Inquiry Officer, as there is no reason to disbelieve witness- *Smt. Nirupa Belwal (SW-IV)*, who had categorically deposed in her evidence that petitioner used to pass indecent comments. There is no cross-examination as to what were those indecent comments, when and in whose presence these comments were passed. The allegations of petitioner passing indecent comments stands substantiated not only from the evidence of *Nirupa Belwal (SW-IV)* but from evidence of *Smt. Poonam Wadhawan (SW-III)*, who had categorically spelt out the nature of indecent comments, as noted herein above.

13. In the considered opinion of this Court, the evidence on record substantially substantiates the charge against petitioner. The allegation of petitioner being victimized for not attending duties on 21st and 22nd April, 2000 is a half baked defence taken by petitioner, which merits no acceptance. Regarding the adverse entry in petitioner's ACR, I find that there is no justification to expunge the adverse entry in petitioner's ACR about his misconduct towards his seniors and female staff. As per

Memorandum (Annexure-5), oral warnings to petitioner had not yielded any result. In any case, taking into consideration the fact that the charge against petitioner does not stand fully proved but stands substantially proved, I find that penalty imposed upon petitioner is disproportionate to the proved misconduct of petitioner. On the proportionality aspect, the pertinent observations of Apex Court in *Chennai Metropolitan Water Supply & Sewage Board & ors. Vs. T.T. Murali Babu* (2014) 4 SCC 108 are 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

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.”

14. In the facts and circumstances of this case, the penalty imposed upon petitioner is substituted with the penalty of recordable censure, which should be entered in his service record. However, the challenge of petitioner to adverse entries in ACR is concerned, I find no justification to expunge them. To the aforesaid extent, the penalty awarded to petitioner is modified and this petition is disposed of while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

DECEMBER 16, 2015

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