

R-41

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

Date of Decision: December 22, 2015

+ W.P.(C) 7166/2001

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)

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Vide order of 21st March, 2001 (*Annexure-D*), the Disciplinary Authority while relying upon Inquiry Officer's Report of 28th November, 2000 holds that all the four charges stood proved against petitioner, who was then Deputy Chief (Economics) with the first respondent and major penalty of reduction of lower stage is awarded i.e. pay of petitioner was reduced to the minimum of the scale of pay i.e. ₹14,625/- to ₹12,000/- in the time scale of pay of ₹12,000-375-16,500 with immediate effect till 31st October, 2002 or the date of his retirement, whichever is earlier.

It was also directed that petitioner will not earn increment of pay during the period of reduction, which had the effect of postponing his future increments of pay. It was clarified by the Disciplinary Authority that the penalty will hold good even if petitioner switches from CDA

scale of pay to DA scale of pay.

The four charges, on which petitioner was tried, are as under-

“(i) Article-I

It is concluded that the integrity of Shri Mishra is not beyond doubt. The act of Shri Mishra is that of unbecoming of a public servant. He expressed dishonesty for obtaining loan from the Corporation for marriage of Miss Leena and therefore his act has been subverse of discipline and good behavior. The charges leveled against Shri Mishra in Article-I and the statement of imputation of misconduct are proved except that of prejudicial to the interest of the Corporation.

(ii) Article-II

Shri Mishra could not maintain absolute integrity and his act exhibited dishonestly. His act was prejudicial to the interests of the Corporation and his behavior subverse of good discipline. All the charges leveled against Shri Mishra under Article-II are proved.

(iii) Article-III

The charges of not maintaining absolute integrity and unbecoming of a public servant are established by his confessional statement made in his deposition dated 8.9.2000.”

(iv) Article-IV

Shri Mishra has not maintained absolute integrity and acted in a manner unbecoming of a public servant and subversive of good discipline or behavior. The charges framed under Article-IV are proved.”

Petitioner's statutory appeal against the aforesaid Disciplinary Authority's order of 21st March, 2001 (*Annexure-D*) stands dismissed vide impugned order of 23rd May, 2001 (*Annexure-E*).

At the hearing, learned counsel for petitioner submitted that petitioner had taken loan for marriage of his daughter- *Ms. Leena* in June, 1999 and due to some unavoidable circumstances, marriage of Leena could not take place in June, 1999 and instead thereof, petitioner had to marry his another daughter- *Meena* on 5th July, 1999 and the said loan was utilized in the marriage of other daughter but it was repaid. It was pointed out by learned counsel for petitioner that confessional statement of 8th September, 2000 of petitioner does not disclose any dishonesty and in any case, the loans taken were duly repaid in time. Lastly, it was submitted that the major penalty awarded to petitioner is wholly disproportionate to the alleged misconduct. To submit so, reliance was placed 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 submitted that the penalty awarded to petitioner is befitting one 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 the 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.”

In the facts and circumstances of this case and in light of the dictum of Apex Court in *Chennai Metropolitan (supra)*, the penalty imposed upon petitioner is found to be not commensurate with the misconduct and so, it is substituted with the penalty of recordable censure, which should be entered in his 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

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