

\$~6

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision: April 13, 2015

+

W.P.(C) 19874/2004

AJMER SINGH

..... Petitioner

Represented by: Mr.R.K.Saini, Advocate with
Mr.Ayush Arora, Ms.Aastha
Chopra, Advocate

versus

UOI

..... Respondent

Represented by: Ms.Arati Bansal, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (ORAL)

1. The only point urged at the hearing of the writ petition is that the penalty of compulsory retirement (which entitles the writ petitioner to receive pension) is grossly disproportionate to the gravity of the wrong. The extended limb of the argument is that for the same wrong others, such as HC Ramesh Sharma, Ct.Munshi Ram and Ct.Babu were inflicted with a punishment of either withholding increments or reduction by stages in the time scale of pay.

2. At the outset we may note that HC Ramesh Sharma,, Ct.Munshi Ram and Ct.Babu were held guilty in different incidents and have no commonality on facts with the indictment of the petitioner.

3. That a sum of ₹380/- was recovered from the possession of the petitioner when he completed duty at gate No.10 at 13:00 hrs. at the Weigh Bridge of NAPP Narora on March 19, 2003 is not disputed by the petitioner. He also does not dispute that office instructions required him not to carry,

while on duty, a sum exceeding ₹10/- and record in the General Diary any amount in excess of the same which he was carrying.

4. The full contours of the indictment are to be found in the Statement of Imputation to the charge. Translated it reads as under:-

“On 19.03.2003, at 5.00 AM, No.761320153 Ajmer Singh was posted at Gate No.10 till 1300 hours at weigh bridge in the first shift. When after expiry of his duty hours, the said member of the force was going towards main gate, the Inspector asked HC/GD Ajmer Singh to stop, as they have to search them. But Member of Force Ajmer Singh refused to be searched and said that his duty is over and as such he will not allow to search. Thereafter, the Member of Force Ajmer Singh reached Scrap Yard, via M R Workshop, B A Store, lifted a wooden piece and said do not come near him and continued to walk upto LPG plant via Loco Gate and at about 1350 hours, he was brought at Gate No.10 and where during search he took out a packet of paper kept behind his back and below his belt and handed over the same to Sumer Singh. Shri Sumer Singh opened the said packet in the presence of all present and ground an amount of ₹380/-, seven notes of ₹50/- and three notes of ₹10/- were found, whereas the Member of the Force had declared ₹10/- in the declaration register. Thus, a sum of ₹370/- was found from the person of the Member of Force unauthorisedly. In this connection, a complaint was registered in the Rojnamcha No.578 on 19.3.2003 at 1415 hours and a seizure report was also prepared. In this connection, clear instructions have been issued vide order No.IEC/17099/CISF/GR/INT/99-178 dated 16.6.1999 that no member of the force shall keep more than ₹10/- with him during his duty. It has also been mentioned that in case any member keeps more than ₹10/- he should declare the same in the declaration register. In terms of this order, Ajmer Singh declared ₹10/- at the time of his duty the details of which have been given in the declaration register at Sl.No.6. Thus, seizure of ₹370/- in excess than the amount declared is unauthorized and gross violation of the discipline and orders of the force.”

5. Insp.Desu Ram, the officer who had searched the petitioner has

deposed as per the charge and the Statement of Imputation as witness No.1. He has been supported in his testimony by SI Sumer Singh PW-2. ASI Loknath PW-4, Ct.Komal Singh PW-5 and Ct.P.A.Gani Rajak PW-6 have corroborated the recovery of money; folded in a polythene and hidden beneath the belt which the petitioner was wearing while on duty.

6. The conduct of the petitioner as indicated in the Statement of Imputation of not only resisting the search but lifting a piece of wooden stick and saying 'do not come near me' and walking away is relevant. The threatening posture adopted by the petitioner proves that he knew that he was carrying ill-gotton money and if detected would have to suffer the consequence.

7. The stand of the petitioner regarding the incident has been explained in his reply to the charge memo. We reproduce the same. It reads as under:-

“ On 18.3.2003, my duty hours were from 5.00 hours to 17.00 hours at Head Work Well No.C. On that date, it was Holi festival.... After completing my duty, I came to my barrack. I took off my uniform and celebrated Holi in civil dress with my colleagues. After celebrating Holi, I came to my barrack and due to excessive holi colours at my ear and eyes, I took off my holi civil dress and I had ₹370/- in my civil dress which I put in my left pocket thinking that I would keep the money in my almirah after taking bath and washing clothes but before proceeding for duty. Thereafter, I went for taking bath and washing civil dress. When I returned from both room, I forgot to take out my money from uniform. On 19.3.2003, my duty started in 1st shift from 500 to 1300 hrs and I wore the same uniform and proceeded for duty. I signed the duty register. I found that my duty was at Weight Bridge. I had ₹10/- in my right pocket, which I had kept the previous day. I declared the same sum of ₹10/- in the register. Thereafter, I went to weight bridge for duty. Around 1000 hours, when the Tea Boy came, I searched my left pocket of uniform for taking out coupons and found that I had ₹370/- in the said pocket which I was supposed to keep in my almirah but I forgot to do so, which money

belonged to me I could not tell shift incharge or company commander because I had already performed more than 5 hrs work by then and nobody would believed me. I therefore, kept the entire money (i.e.Rs.10/- in left pocket and ₹370/- in right pocket) in the pocket of pant below belt in white paper, apprehending that I may be searched. After completing my duty and after handing over charge to my reliever, I proceeded to my unit line. Around 1315 hrs. when I reached near Car parking OM&S, Mr.Desu Ram Inspector called me to stop. He wants to search me. I stopped as per his orders I resisted to be searched at Choraha and I requested him that if he wants to search, let us go to main gate. However, Inspector Desu Ram insisted that he would search there itself. Si I proceeded to main gate. Inspector Desu Ram and SI Sumer Singh followed me. When I reached surplus store via BA store and MR shop, and went towards main gate, SI Sumer Singh told me, why are you going there, you go to Gate No.10. While going through Scrap Yard to Gate No.10, my legs came on one piece of wooden which I took and three at a secured place. I had not taken piece of wood either for hitting or for any other purpose. I reached old LPG plant through scrap yard. There I was gheraoed by 10/12 persons. In the meanwhile Asst.Commandant R.S.Raghwa also came there. He asked me to go to Gate No.10. I went to Gate No.10. I went to Gate No.10. They searched my person and they found ₹380/- in my pocket, which belonged to me. I did not take any money from anybody during my duty. The money which was seized from my person belonged to me. If I have taken money from anybody, the same may be inquired. In view of the above, the applicant prays that justice be bestowed upon him.”

8. Suffice it to state that the explanation is a hog-wash. If the petitioner was carrying ₹370/- in excess with him unintentionally and as per the circumstances explained by the petitioner he had nothing to hide and nothing prevented him from making an entry in the daily diary that by mistake he was carrying with him ₹370/- in excess. He could have volunteered such explanation on the day of the incident to PW-1 and not threaten him with an assault by picking up a wooden stick.

9. It is not a case, as pleaded by learned counsel for the petitioner, that the petitioner has committed a technical offence i.e. of breaching the office order directing force personnel on duty not to carry with them more than ₹10/- and record said fact in the daily diary.

10. Direct proof of taking bribe, unless it is a case of trap, can seldom be proved.

11. The facts of the instant case speak for themselves. The guilty mind of the petitioner is evinced by his conduct by refusing to be searched and picking up a stick and threatening to assault PW-1.

12. We note that the petitioner has served for twenty seven years. Taking said service into account the penalty of compulsory retirement, which entitles the petitioner to receive pension, has been inflicted.

13. Decisions cited by learned counsel for the petitioner on parity are 1986 Lab.I.C.1250 T.R.Parihar vs. State of J&K & Ors., and an unreported decision of the Supreme Court, copy whereof supplied to us bears no date, but disposes of CA No.1334/2013 Rajendra Yadav vs.State of M.P. & Ors., are clearly distinguishable. Said decisions deal with parity in punishment of co-delinquent who have participated in the same incident.

14. As noted above, the three persons with whom petitioner claims parity were not involved in the same incident. That those people were visited with penalty of stoppage of pay or reduction in the time scale of pay would not make petitioner's case equivalent to them for the reason there is no evidence that such persons also adopted threatening postures by picking up sticks and threatened to beat the superior officer who wanted to carry out a personal search.

15. The decision reported as (1987) 4 SCC 611 Ranjit Thakur vs. Union of India & Ors., simply holds that a sentence should not be vindictive and

unduly harsh. It should not be disproportionate that it shocks the conscious of the Court.

16. We do not find the penalty levied upon the petitioner to be shockingly disproportionate. That the petitioner was caught first time with ill-gotton money does not mean that for the first time ill-gotton wealth was accumulated by the petitioner. Accumulators of ill-gotton money are always caught ones and not twice over.

17. Noting that petitioner's twenty seven years service has influence the disciplinary authority to pass the penalty of compulsory retirement which entitles the writ petitioner to receive pensionary benefits, we dismiss the writ petition.

18. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

APRIL 13, 2015
skb