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

+ W.P.(C) 1354/2015

% *Judgment dated 13th August, 2015*

VINOD KUMAR

..... Petitioner

Through : Mr.Sachin Chauhan, Adv. along with the
petitioner.

versus

THE COMMISSIONER OF POLICE & ORS. Respondents

Through : Mr.Satyakam, ASC for respondents.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. The petitioner has filed the present writ petition under Articles 226/227 of the Constitution of India seeking a direction (i) to quash/set aside the Order dated 15.10.2014 passed by Central Administrative Tribunal (hereinafter referred to as "CAT") IN O.A.No.761/2011; the Order dated 4.9.2009 passed by Deputy Commissioner of Police, III Bn. DAP, whereby punishment of removal from service was imposed upon him; the Order dated 13.1.2010 passed by Special Commissioner of Police, whereby the appeal of the petitioner was rejected; (ii) reinstate him in service with all consequential benefits including seniority, promotion and pay and allowances; (iii) to quash and set aside the order dated 11.8.2008 with regard to initiation of Departmental Enquiry and finding of Enquiry Officer.
2. At this stage, learned counsel for the petitioner on instructions from the

petitioner, who is present in Court, submits that the petitioner does not want to contest the matter on merits and only restricts his submissions to the proportionality of the punishment awarded to him. Counsel further submits on instructions that should the Court deem it appropriate and in case the punishment is converted into compulsory retirement, the petitioner would not claim any interest on his retiral benefits and pension.

3. The necessary facts of this case, as noticed by the learned CAT, are that the petitioner was appointed as a Constable in Delhi Police on 2.5.1986. A department enquiry was initiated against him vide Office Order dated 11.8.2008 under the provisions of Delhi Police (Punishment and Appeal) Rules, 1980, on the charge of wilful and unauthorized absence from official duty. He was issued absentee notices dated 10.1.2007, 23.2.2007, 21.3.2007, 26.4.2007, 4.6.2007, 17.12.2007 and 30.4.2008. A letter dated 18.7.2007 was also sent to the Medical Superintendent, Dr.RML Hospital, New Delhi, to examine the applicant by a Board of Doctors under Sub-Rule (1) of Rule (2) of CCS (Medical Examination) Rules, 1957, to find out if he was mentally sick or otherwise. The petitioner was directed to appear before the Board of Doctors of Dr.RML Hospital on 9.8.2007. Though he received the information on 6.8.2007, he did not turn up before the Board of Doctors. Again letter dated 8.10.2007 was sent to the Medical Superintendent of Dr.RML Hospital to get the petitioner examined by the Board of Doctors to find out if he was mentally sick or otherwise and if he was actually sick, whether he was fit to be retained in Government service or not. The petitioner was directed vide letter dated 17.10.2007 to appear before the Medical Board of RML Hospital on 24.10.2007, but he did not appear before the Medical Board despite receiving the notice. The petitioner, thus, neither responded to the absentee notices nor presented himself before the Board of Doctors

despite two opportunities given to him. The departmental enquiry was thus initiated against him. The summary of allegations, list of witnesses and list of relied upon documents were served upon the applicant at his residence on 25.9.2008 as he was not available in office. He did not join the departmental enquiry, despite receiving notices dated 29.9.2008, 6.10.2008, 13.10.2008, 1.11.2008, 14.11.2008, 19.11.2008, 22.11.2008, 25.11.2008, 1.12.2008 and 4.12.2008. Since the petitioner did not appear before the Enquiry Officer (EO), the departmental enquiry proceedings were concluded ex-parte under the provisions of Rule 18 of Delhi Police (Punishment and Appeal) Rules, 1980, and the EO submitted his findings with the conclusion that the charge framed against the petitioner was fully proved. This enquiry report was served on the petitioner vide letter dated 1.4.2009 for submitting written representation, if any, against the findings of the EO within fifteen days of its receipt. The petitioner received a copy of the finding on 14.4.2009 and submitted his reply/representation against the findings of the EO on 29.4.2009. The disciplinary authority thereafter went through the relevant documents and also heard the applicant on 18.8.2009. Vide order dated 4.9.2009 the petitioner was dismissed from service and his unauthorised absence was also ordered as period not spent on duty. Aggrieved by the aforesaid order an appeal was filed before the appellate authority, which was rejected by an order dated 13.1.2010.

4. Learned counsel for the petitioner submits that the problems of the petitioner began in the year 2005 on account of a severe accident, the other related family problems and his state of depression, which resulted in his loss of interest in his official working. It is claimed that the petitioner sought voluntary retirement in the month of July, 2006, which fact was disputed by the respondents.
5. Learned counsel for the respondent submits that the petitioner had

absented himself for long periods and did not participate in the departmental enquiry at all and, thus, he was rightly held as unfit to be a Constable in a disciplined force.

6. We have heard learned counsel for the parties, carefully examined the impugned Order passed by the Tribunal and find no infirmity as far as the holding of the inquiry and the procedure, which has been followed, are concerned, however, taking into consideration the length of service and the averments made, we find that the punishment awarded to the petitioner is not in commensurate with the gravity of his misconduct.
7. Although ordinarily the Courts would not interfere in the proportionality of the punishment and at best remanded the matter back to the Department to take a view in the matter. We have also find that this is a fit case having regard to the fact that the enquiry pertains to the year 2008 where it would be appropriate to mold the relief to shorten the litigation.
8. It is settled law that while determining the quantum of punishment to be levied past service record should be taken into consideration. It is also to be considered that whether there is any moral turpitude involved and as to what is the nature of wrong. The circumstances enwombing the wrongful act have also to be kept in mind.
9. In ***Ranjit Thakur v. Union of India and Ors.*** reported in ***AIR 1987 SC 2386*** the Hon'ble Supreme Court observed in the following words:

"...But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on the aspect, which is otherwise, within the exclusive province of the Court Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction."

10. In ***B.C. Chaturvedi v. Union of India*** reported in (1995) 6 SCC 749, the question posed for consideration before the Hon'ble Supreme Court was as to whether the High Court/Tribunal can direct the authorities to reconsider punishment with cogent reasons in support thereof or reconsider themselves to shorten the litigation. In this case, at para 18, this Court has observed as under: -

"A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

11. The aforesaid principles were canvassed by the Hon'ble Supreme Court in ***S.R. Tewari Vs. Union of India and another*** reported in (2013) 6 SCC 602, and held that if the punishment awarded is disproportionate to the gravity of the misconduct, it would be arbitrary, and thus, would violate the mandate of Article 14 of the Constitution.
12. In ***G. Seenivasagam v. Inspector General and Ors***, W.P. (C) 1275/2011, similar issue was dealt by this Hon'ble court and observed as under:

"19. What are perverse findings? Findings which no reasonable person would arrive at in view of the evidence led would be

perverse findings. What are findings of fact tainted by law? Findings of fact which ignore relevant evidence are tainted by law.

20. No doubt the testimony of PW-5 proves that the petitioner hit SI Daya Chand but it also proves that SI Daya Chand not only instigated the petitioner by swearing in the name of the petitioner's sister but even assaulted the petitioner and that the petitioner retaliated when he was assaulted by SI Daya Chand. PW-5 has clearly stated that after SI Daya Chand slapped the petitioner and swore at him, the petitioner looked around before retaliating, by slapping SI Daya Chand, and this shows that the petitioner did not act in self defence but paid back SI Daya Chand in the same coins which were used to transact the business by SI Daya Chand.

21. The Inquiry Officer has not highlighted this aspect and nor has the Disciplinary Authority done so. The Appellate Order also so does not deal. We note that the Disciplinary Authority and the Appellate Authority have given reasoned orders. The order dismissing the Revision is a cryptic order.

22. It is settled law that where a person is provoked to retaliate, the nature of the provocation becomes relevant, to be considered on the issue of penalty to be levied and since an extreme penalty of dismissal from service has been inflicted upon the petitioner and as the Authorities below have not taken into account that pertaining to Article 1 of the Charge, which stood technically proved, there was a provocation in the extreme for the petitioner to slap SI Daya Chand, the matter needs a remand for the Authorities to reconsider the penalty to be levied inasmuch as we find a taint in the process of the levy of the penalty, in that, the provocation element pertaining to Article 1 of the Charge has been ignored.”

13. In the case of ***Ex.Asstt. Sub Inspector Kehar Singh v. U.O.I. & ORS.***, W.P.(C) 3421/2001, decided on 18.12.2013, a Division Bench of this Court has held as under:

“13. Ordinarily, after setting aside the penalty of dismissal from service we would have remanded the matter to the Disciplinary Authority requiring a penalty to be imposed, but keeping in view the passage of time, we would prefer to adopt the course chartered by the Supreme Court in the decision reported as (2004) 4 SCC 560

Sh.Bhagwan Lal Arya Vs. Commissioner of Police Delhi & Ors. wherein, on the charge of unauthorized absence penalty of removal from service was opined to be harsh because of the enwombing circumstance of Bhagwan Lal Arya's health becoming his compulsion not to report for work, the penalty levied was quashed and none was levied for the reason the period interregnum removal from service till reinstatement was directed to be treated not to be counted for purposes of service. In other words Bhagwan Lal Arya got no wages from December 31, 1994 till when he was reinstated in the year 2004 pursuant to the order passed by the Supreme Court."

14. Accordingly, the present petition is allowed in part. The undertaking of the petitioner is accepted. The petitioner shall be deemed to have been compulsorily retired w.e.f. 4.9.2009. The petitioner would be entitled to retiral benefits w.e.f. 4.9.2009 and all the benefits of his retirement shall be cleared within four months from today, subject to the petitioner completing all the formalities. The petitioner would not be entitled to claim any interest. It is made clear that the period of absence of the petitioner shall not be considered as the period spent on duty.
15. Writ petition stands disposed of in above terms.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

AUGUST 13, 2015

msr