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

+ **W.P.(C) 2751/2014**

MALKIT SINGH

..... Petitioner

Through: Mr Puneet Agarwal and Mr Dalveer
Kaur, Advs.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr Vikas Mahajan, CGSC and
Mr Rohan Gupta, Advs.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% 01.12.2015

The petitioner is aggrieved by the order of removal culminating from the departmental enquiry against him.

The brief facts are that the petitioner joined the Central Reserve Force (CRPF) on 17.09.1974 as a Constable. Sometime in 1998, he moved an application seeking voluntary retirement. Since he was asked to produce his educational certificates and other documents relating to his date of birth; he relied upon his School Leaving Certificate. These documents were sought to be verified and the report received by the CRPF from the Government High School, Salana (Fatehgarh Sahib) Punjab, was that such old records were not traceable. Pursuant to an administrative review, the petitioner was asked to continue in service till the age of superannuation.

Subsequently, on 05.01.2001, the CRPF alleged that the petitioner was guilty of misconduct as he had produced a fake educational certificate stating that he had passed 8th standard at the time of his enlistment in the CRPF. The enquiry resulted in an adverse report dated 20.05.2001. This ultimately resulted in the petitioner's removal from service in July, 2001. The petitioner's appeal and subsequently revision to higher authorities were of no consequence. His pleas were rejected.

On the previous date of hearing, this Court on 28.07.2015, after considering all the circumstances, required the respondents to explore the possibility of imposing the penalty of compulsory retirement given that he had completed 28 years service. Counsel for the respondents expressed the CRPF's inability to do so.

We have heard the counsel for the parties. The petitioner's submission is that during his entire career, there was no blemish and that no penalty had been imposed on him. His inability to produce authentic records at the time of his employment should have been duly verified at the relevant stage and not resulted in a consequence almost three decades later and that too such a drastic one. Counsel for the respondents submitted that furnishing fake documents is a serious offence and the gravity of the misconduct was such that the imposition of penalty of removal, although on the basis of belated action, cannot be faulted. He submitted that even though by and large the petitioner's career was faultless, nevertheless, he had been imposed penalty of reversion for six months.

This Court has considered the submissions. In one sense,

although unwittingly, the petitioner has brought the penalty upon himself when he apparently sought voluntary retirement. His entirely innocuous request resulted in a rather elaborate enquiry into his date of birth. What really impelled the CRPF to enquire into the genuineness of the document or the date of birth claimed by him, which apparently had been accepted for 28 years, remains a mystery. Whatever be the reason, the forces which were subsequently unleashed virtually consumed the petitioner; the certificate which he initially furnished turned to be a fake one.

Whilst the Court cannot accept the submission that furnishing of the certificate in question was innocent or that it was genuine given the nature of the finding, what can be surely taken note of are two circumstances, i.e., i) all along the CRPF was satisfied that the petitioner's certificate was valid till he sought voluntary retirement; ii) that it sought its verification for some unknown reasons, mainly, to satisfy some procedural formalities.

The gravity of misconduct and punishment imposed by the Authority must be judged by the application of the doctrine of proportionality. The Courts are circumspect in interfering with the penalties on the ground of their being disproportionate—largely such intervention is called for only if it is “shockingly disproportionate”. The important element in this case and a rather unusual one which appears from the facts—is that the CRPF, to some extent, has to share the blame in this case. If it had followed the normal protocols and verified the petitioner's date of birth in the certificate in due time, the penalty imposed could well have been characterized as proportionate.

However, it was initially satisfied with the materials furnished to it and chose to verify the same only at the fag end of the petitioner's career. It is in that sense that imposition of this extreme penalty for an act committed 28 years prior is entirely disproportionate. As the petitioner rightly contends this has the effect of entirely effacing his career and not only imposing a blot on it, but also, at one stroke, forfeiting all his service benefits. The persons imposed with penalty of removal are not entitled to either pension or other pensionary benefits.

In these circumstances, this Court has no hesitation to hold that the penalty of removal was, in the circumstances, disproportionate. The respondents are directed to substitute it with the penalty of compulsory retirement. The CRPF shall pass appropriate orders to this effect within 10 weeks from today. The petitioner's terminal benefits shall also be disbursed within the said period. Likewise, his pension fixation shall be carried out by a separate order.

The writ petition is allowed in the above terms.

Dasti.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

DECEMBER 01, 2015

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