

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

Decided on: 09.07.2015

+ **W.P.(C) 5574/2013**

GD KARTHIK

.....Petitioner

Through: Mr.V.V.R. Rao, Advocate.

versus

UNION OF INDIA & OTHERS

.....Respondents

Through: Mr.Gaurav Sarin, Sr. Panel Counsel along
with Ms. Veera Angrish and Mr.Ajitesh Kir,
Advocate.

CORAM:

HON'BLE MS. JUSTICE S.RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

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1. With the consent of the parties, the matter is heard finally.
2. The Petitioner is aggrieved by an order of the Respondents (collectively referred to as 'CISF') dated 16.03.2012, whereby he was ordered to be removed from service. He complains that the order is arbitrary and in any event unjustified and disproportionate to the charges leveled against him.
3. At the relevant time, the Petitioner was working as a Constable in the CISF. Apparently, he claims that on 15.07.2011, a complaint was addressed against the Company Commander Shri P.S. Jamwal for physically assaulting him. A Show-Cause Notice was issued asking him to respond as to why disciplinary action should not be taken. In essence, the allegations leveled were that on 14.07.2011, he was deployed on shift duty from 0500 hrs to

1300 hrs at Reception-II of the CBI building and that he had absented himself from the work for 25 minutes. It was further alleged that “he was found coming towards his duty post in an intoxicated condition”. A formal charge-sheet was issued and disciplinary proceedings were commenced after his explanation was rejected. On 05.09.2011, the disciplinary authority i.e. the Assistant Commandant, issued the disciplinary order holding that the charges were proved. He was awarded a penalty of deduction of three days salary. The disciplinary order noted that *“On being medically examined at Safdarjung Hospital the Doctor found him (sic.) smell of alcohol present in breath. This acts (sic.) on the part of individual (sic.) tantamount to a gross misconduct, indiscipline and negligence of duties.”*

4. The disciplinary authority took note of the fact that despite the allegations having been proved, leniency was warranted on account of the young age and future prospects of the petitioner. This order became final and the petitioner who was never suspended prior to initiation of enquiry continued his duties.

5. On 30.09.2011, the disciplinary authority issued a Show-Cause Notice proposing to enhance the penalty. The petitioner’s explanation was called for.

6. The Show-Cause Notice by the Revisional Authority led to further evidence being recorded in the form of depositions of prosecution witnesses, all of whom confirmed that the petitioner was absent from duty for 25 minutes and that his breath smelt of alcohol. The witnesses also unanimously deposed that he was sent to Safdarjung Hospital for medical examination. After considering the same facts, the Revisional Authority, invoking the powers conferred upon him under Rule 54, formed an opinion

that the penalty of withholding three days pay was inadequate and too mild.

7. The Revisional Authority i.e. the Deputy Inspector General recorded as follows:

*“30. Finally I the undersigned under CISF Rules and Regulations 2001 Rule 54 (1)(b) under the mandate of such rules I came to the conclusion that final punishment awarded by the disciplinary authority vide its order CISF/GBS/Dis/ESM/Shaab 2011-1369 dated 05.09.2011 to the charged constable is disproportionate to the offence committed by him and I shall modify the same and by increasing the same punishment of Constable SI No.077241399 S Karthik I award **REMOVAL FROM SERVICE WITH IMMEDIATE EFFECT.**”*

8. The Petitioner’s further appeal against this revisional order enhancing the penalty to removal was dismissed.

9. The Petitioner’s counsel argued that the charges leveled against him were not proved and that the disciplinary proceedings and the order of the Revisional Authority is arbitrary. He also contends that a proper application of the principle of proportionality would mean that the Revisional Authority’s order ought to be set aside and that original disciplinary authority’s order i.e. Commandant has to be restored.

10. Counsel for the Respondent, on the other hand, urges that fair opportunity was granted to the Petitioner who, in the first instance, never disputed the truth and veracity of the facts alleged in the charge-sheet. It is highlighted that the petitioner, in fact, pleaded guilty and accepted the penalty and did not even appeal against it originally. It was only when the Revisional Authority looked into the facts that the question of inadequacy of punishment was properly considered. Even at that stage, the Petitioner was given proper opportunity to lead his evidence and rebut the charges. By

reason of these findings of fact along with the absence of any proven malafides or perversity in the approach adopted, it was submitted that the Revisional Authority's order should not be interfered with by this Court under Article 226 of the Constitution.

11. Learned counsel for the Respondent also contended that the Court should not step into the shoes of the disciplinary or Revisional Authority in such matters and apply the proportionality principle in such cases. In support, learned counsel relied upon the judgment reported as ***Charanjit Lamba v. Commanding Officer, Southern Command & Ors: AIR 2010 SC 2462***. It was submitted that having regard to the total circumspection of circumstances, the Petitioner's argument that the penalty is shockingly disproportionate to the charges proved, cannot be accepted.

12. We have considered the record and the submissions of the parties. Essentially, the allegations against the Petitioner were that he was absent from duties for 25 minutes on the concerned date and that when he returned, he smelt of alcohol. The Petitioner does not deny that he was absent for 25 minutes. His explanation is that he had consumed beer the previous evening; at the same time, he alleges that he was not intoxicated. The Petitioner relies upon the opinion of the doctor who indicated that there was some smell of alcohol but that he was not intoxicated.

13. The Medico Legal Certificate (MLC) issued by the concerned doctor and which was also part of the record as Ex.PW1, clearly records:-

*“smell of alcohol present in breath.
Speech coherent and normal. Gait normal”*

14. It is quite evident that the doctor who examined the Petitioner did not find him in an intoxicated condition; even though the doctor discerned

alcohol in the Petitioner's breath. The Petitioner did not deny being absent from duty for some time- the Respondents alleged it to be 25 minutes.

15. In our opinion, the entire approach of the Revisional Authority that the Petitioner was found in an intoxicated condition proceeds on a misreading of the objective facts which can be gathered from a plain reading of the MLC issued by the doctor. At best, the inferences that could have been drawn from the materials reasonably were that the Petitioner was absent-as alleged, and that he smelt of alcohol. Considering that the doctor clearly stated that his speech and gait were normal, there was no question of his having been in an intoxicated condition, a belief which appears to have influenced the Revisional Authority a great deal in holding that a more severe penalty was warranted.

16. It is well established that the Court while exercising jurisdiction under Article 226 of the Constitution would not ordinarily interfere with findings of fact. The Writ Court cannot substitute itself in the position of the disciplinary authority or appellate authority. Yet, a narrow window has been kept open for the Court i.e. where findings of fact are not warranted from the material on record. Reference may be made to *Union of India v. H.C. Goel* AIR 1964 SC 364 where a Constitution Bench of the Supreme Court laid down the contours of the High Court's jurisdiction under Article 226 with respect to intervention in a decision making body's imposition of penalties on government servants. The Court outlined that an order of dismissal or penalty may be rightly interfered with if it is apparent that the decision is based on no evidence at all.

17. Specifically, with regard to the doctrine of proportionality in *Ranjit Thakur v. Union of India* (1987) 4 SCC 611, it was held as follows

“Judicial review generally speaking, is not directed against a decision, but is directed against the “decision making process”. The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-Martial. 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 an 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. Irrationality and perversity are recognised grounds of judicial review.”

Therefore, while the choice of the punishment to be awarded for an infraction is always the domain of the decision making body, this does not dispense with the need for the sentence to match to offence. In other words, the sentence must as far as possible, be the logical conclusion of the proved offence. In ***Union of India v. G. Ganayutham*** AIR 1997 SC 3387 the Court cited Lord Diplock in ***R. v. Goldstein***, (1983) 1 WLR 151, where he had famously likened disproportionate punishment to “using a sledge-hammer to crack a nut”. In ***Bhagat Ram v. State of Himachal Pradesh***, [1983] 2 SCC 442, the Court held that:

"It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution."

The scope of interference, therefore, though limited posits itself when the punishment is grossly in excess of the allegations made. Such

punishment which is not commensurate with the wrong committed cannot claim immunity and will be amenable to judicial review.

18. It follows that the ultimate decision in each of these cases of proportionality will turn on the facts of each given situation. The judgment in ***Charanjit Lamba*** (*supra*) is therefore unfortunately of little assistance to the Respondent save for reiterating the same principle ***Ranjit Thakur*** (*supra*) enunciated. In ***Charanjit Lamba***, the Court had held that, with regard to the facts of the case, i.e. where a Major in the Indian Army had made a false claim for payment of transfer charges for household luggage and car, knowing well that he was not legally entitled to the same, the penalty of removal was not disproportionate. Though this is an example of a case where the doctrine of proportionality was not invoked, the Supreme Court has also, in several other cases, ***Ranjit Thakur*** (*supra*) being one of them, pressed the doctrine into service, where orders of the disciplinary authority or appellate authority were “shockingly disproportionate” The principle of proportionality is therefore a tool whereby the Court may choose to interfere with a decision of the disciplinary body if there exists a fundamental flaw in the appreciation of the facts which constitute the offence.

19. The Courts have to be slow in interfering with penalty orders in dismissal or disciplinary cases. Yet, it is not unknown where judicial intervention has been approved. In *Dev Singh vs. Punjab Tourism Development Corporation Ltd & Anr.* 2003 (8) SCC 9, the Court held:

"Applying the said principles laid down by this Court in the cases noted hereinabove, we see that in this case the appellant has been serving the respondent Corporation for nearly 20

years with unblemished service, before the present charge of misconduct was levelled against him. The charge itself shows that what was alleged against the appellant was misplacement of a file and there is no allegation whatsoever that this file was either misplaced by the appellant deliberately or for any collateral consideration. A reading of the charge-sheet shows that the misplacement alleged was not motivated by any ulterior consideration and at the most could be an act of negligence, consequent to which the appellant was unable to trace the file again. The disciplinary authority while considering the quantum of punishment came to the conclusion that the misconduct of the nature alleged against the appellant should be viewed very seriously to prevent such actions in future, whereby important and sensitive records could be lost or removed or destroyed by the employee under whose custody the records are kept. Therefore, he was of the opinion that a deterrent punishment was called for, forgetting for a moment that no such allegation of misplacing of important or sensitive record was made in the instant case against the appellant and what he was charged of was misplacement of a file, important or sensitiveness of which was not mentioned in the charge-sheet. Therefore, in our opinion, the disciplinary authority was guided by certain facts which were not on record, even otherwise, we are of the opinion that when the Service Bye-Laws applicable to the Corporation under Service Bye-law 17 provide various minor punishments, we fail to appreciate why only maximum punishment available under the said Bye-laws should be awarded on the facts of the present case. We think the punishment of dismissal for mere misplacement of a file without any ulterior motive is too harsh a punishment which is totally disproportionate to the misconduct alleged and the same certainly shocks our judicial conscience. Hence, having considered the basis on which the punishment of dismissal was imposed on the appellant and the facts and circumstances of this case, we think to avoid further prolonged litigation it would be appropriate if we modify the punishment ourselves. On the said basis, while upholding the finding of misconduct against the appellant, we think it appropriate that the appellant be

imposed a punishment of withholding of one increment including stoppage at the efficiency bar in substitution of the punishment of dismissal awarded by the disciplinary authority. We further direct that the appellant will not be entitled to any back wages for the period of suspension. However, he will be entitled to the subsistence allowance payable up to the date of the dismissal order."

In **Kailash Nath Gupta vs. Enquiry Officer (R.K. Rai), Allahabad Bank and Ors.** (2003) 9 SCC 480, the Court again adopted a similar approach:

"In the background of what has been stated above, one thing is clear that the power of interference with the quantum of punishment is extremely limited. But when relevant factors are not taken note of, which have some bearing on the quantum of punishment, certainly the Court can direct reconsideration or in an appropriate case to shorten litigation, indicate the punishment to be awarded. It is stated that there was no occasion in the long past service indicating either irregularity or misconduct of the appellant except the charges which were the subject-matter of his removal from service. The stand of the appellant as indicated above is that though small advances may have become irrecoverable, there is nothing to indicate that the appellant had misappropriated any money or had committed any act of fraud. If any loss has been caused to the Bank (which he quantifies at about Rs.46,000) that can be recovered from the appellant. As the reading of the various articles of charges go to show, at the most there is some procedural irregularity which cannot be termed to be negligence to warrant the extreme punishment of dismissal from service."

Likewise, in **Union of India and Ors. v. M.A. Jaleel Khan,** 1999 SCC (L & S) Cases 637, the Court had held:

"5. The learned counsel appearing for the respondent submitted that the act of the appellate authority in enhancing the punishment without giving a reasonable opportunity to the respondent cannot be sustained. He also submitted that for

refusing to vacate the accommodation allotted to the railway servant, the authorities cannot invoke the Service Rules.

6. We have considered the submission of the counsel on both sides and also appreciated the facts of this case. We have seen earlier that the respondent had given a solemn undertaking to vacate the premises when the main allottee vacated the same. Notwithstanding such solemn undertaking, the refusal to vacate the premises when the main allottee vacated the accommodation cannot be appreciated or encouraged. The authorities are, therefore, right in initiating disciplinary proceedings on the facts of this case. However, the punishment imposed by the appellate authority by issuing notice to enhance the punishment given by the disciplinary authority requires some consideration. The disciplinary authority, after taking into consideration the facts and circumstances concerning the charge, has imposed the punishment as noticed above. The appellate authority in the appeal filed by the respondent has issued notice for enhancing the punishment. No doubt the appellate authority has jurisdiction to issue such a notice but the question is whether the facts and circumstances of the case warrant such enhancement of the punishment. On the facts, we are of the view that the enhanced punishment given by the appellate authority dismissing the respondent is too harsh and, therefore, we set aside the order of the appellate authority to that extent and restore the punishment imposed by the disciplinary authority."

20. In the present instance, the fact that the Revisional Authority did not take the totality of facts into account i.e. the charge on investigation had not been made out, is a clear indication that there was non-application of mind to the material findings. At the same time, this Court cannot be oblivious to the other facts i.e. the Petitioner's absence as alleged and that he was smelling of alcohol when found in the premises.

21. In these circumstances, we are of the opinion that the penalty of

removal is unwarranted-both on account of misappropriation of facts and also on account of proportionality. The matter is accordingly remitted to the Revisional Authority to pass appropriate orders on the question of suitable penalty to be imposed on the Petitioner, having regard to the above authorities cited and the discussion in the foregoing paragraphs. After giving opportunity as appropriate in the circumstances of the case, the order shall be made as expeditiously as possible within three months and directly communicated to the petitioner.

21. The writ petition is allowed in above terms.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

JULY 09, 2015
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