

\$~11

*** IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 2345/2015**

Date of judgment: 19th August, 2015

SAT NARAYAN KAUSHIK Petitioner
Through : Mr. Shankar Raju , Advocate with Mr.
Nilansh Gaur, Advocate.

Versus

COMMISSIONER OF POLICE AND ORS. Respondents
Through : Ms. Aayushi Gupta and Mr. Arun
Panwar, Advocates for Mr. Raman
Duggal, Standing Counsel for GNCTD.

**CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL**

G.S.SISTANI, J.

1. Aggrieved by the order of the Central Administrative Tribunal, Principal Bench, New Delhi dated 05.12.2014 in Original Application No. 4349/2010, the petitioner has filed the present writ petition under Article 226 of the Constitution of India for setting aside the aforesaid order and for issuing necessary directions to the respondents.
2. The brief facts of the case are that the petitioner, who was an Assistant Sub Inspector (ASI) (Ministerial) in Delhi Police, was issued the following charge sheet against him on 08.07.2008:

“On 26.02.2008, at about 10.30 AM while Sh. B.P. Jain, ACP/Security was briefing the office staff regarding transportation of record and other articles of offices of 8th, 9th and 10th Bn. Pitam Pura lines to Main Security Lines, ASI (Min.) Sat Narain No. 2770/D (PIS No. 28800510) posted as HAG/ 8th Bn. reported there. The ASI was asked as to why he did not attend the office in time, to which he replied that he would not come before 10.15 AM and ACP

can take action against him whatever he likes. The ASI started misbehaving. Thereafter, the ASI gave a slap to the ACP in the presence of other office staff and went to gallery calling him names. Sh. B.P. Jain, ACP brought the facts into the notice of Sh. Rishi Pal, Addl. DCP/ Security (SG) who ordered for the ASI to appear in his O.R. on 27.02.2008. SI R.P. Tyagi, Hd. Clerk, 8th Bn. personally informed the ASI regarding his O.R. before Addl. DCP/ Security (SG) but the ASI retorted that he was having blood pressure and would not talk to anyone and he went home.”

The above said act on the part of ASI (Ministerial) Sat Narain No. 2770/D amounts to gross misconduct, indiscipline and unbecoming of a member of a disciplined force, which rendered him liable for departmental action.

3. The Inquiry Officer (IO) in his report dated 28.11.2008 concluded that the charges are substantiated. Thereafter, the disciplinary authority vide order dated 02.07.2009 dismissed the petitioner from service. The appeal preferred by the Petitioner was rejected by the Joint Commissioner of Police vide order dated 11.11.2009.
4. Mr. Shankar Raju, Counsel for the petitioner argued that the order passed by the Central Administrative Tribunal is unjust, illegal, arbitrary and against the principles of natural justice. The disciplinary authorities were not justified in holding the petitioner guilty and the order passed by the Tribunal is bad in law.
5. The counsel for the petitioner further argued that while it is a fact that some altercation took place, it was not entirely the fault of the petitioner but it all happened as the religious sentiments of the petitioner had been hurt by the remarks of the ACP. However, even if it is held that the petitioner did misbehave, the incident of slapping is also not clearly proved as there was difference in the testimonies of the witnesses who had witnessed the incident. Furthermore, the location of the slapping

incident by the witnesses was also established differently. It is thus argued that even if it is concluded that the petitioner misbehaved with the ACP, that should not result into the punishment of dismissal from service.

6. In this regard, the counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court in ***Ram Krishan v. Union of India and others***, reported in **(1995) 6 SCC 157** , wherein the Hon'ble Supreme Court observed asunder:

“11. It is next to be seen whether imposition of the punishment of dismissal from service is proportionate to the gravity of the imputation. When abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of abusive language. No strait-jacket formula could be evolved in adjudging whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts. What was the nature of the abusive language used by the appellant was not stated.

12. On the facts and circumstances of the case, we are of the considered view that the imposition of punishment of dismissal from service is harsh and disproportionate to the gravity of charge imputed to the delinquent constable. Accordingly, we set aside the dismissal order. We hold that imposition of stoppage of two increments with cumulative effect would be an appropriate punishment. So, we direct the disciplinary authority to impose that punishment. However, since the appellant himself is responsible for the initiation of the proceedings, we find that he is not entitled to back wages; but, all other consequential benefits would be available to him.”

7. It was further argued by the counsel for the petitioner that the decision of competent authorities to remove the petitioner from service is against the spirit of Rule 8 and 10 of Delhi Police (Punishment & Appeal Rules, 1980). As the Rules provide that the penalty aforementioned can only be

imposed in cases of grave misconduct and continued misconduct indicating incorrigibility and complete unfitness for police servants. It was also contended that the punishment of dismissal from the service awarded to the petitioner was totally unjust, unfair, inequitable and arbitrary.

8. Per contra, Ms. Aayushi Gupta, learned counsel for the respondents submitted that the disciplinary enquiry initiated against the petitioner was as per law and the punishment awarded is just and proper. It was contended that since the disciplinary authority, appellate authority, revisional authority and the Central Administrative Tribunal, New Delhi rejected the representation/appeal, this Court shall not interfere with the orders passed by the authorities as well.
9. The learned counsel for the respondents submitted that on the fateful day, the petitioner came late to the office which was duly admitted by the petitioner. The counsel also submits that it has also been overwhelmingly proved from the evidence of PWs 1, 2, 5, 6, 9 and 10 that the petitioner did misbehave. Even the slapping incident is corroborated by PWs 1, 2, 3, 5 and 10.
10. The counsel for the respondent further clarified that considering the gross misconduct on the part of the petitioner, the disciplinary authority felt that the petitioner deserved exemplary punishment so that no other member of the disciplined force like Delhi Police can think of such indiscipline and disobey the orders of superiors.
11. By the perusal of the pleadings and the orders passed by all the authorities including the learned Tribunal. The following questions of law arise for consideration:-
 - (a) Whether the punishment of dismissal from service is grossly disproportionate to the alleged acts of misconduct can be awarded to

an employee of the police organisation as government departments/organizations are supposed to be model employees?

(b) Whether the major penalty of dismissal from service inflicted on the appellant is grossly disproportionate to the misconduct alleged against him and, is it totally unjust, unfair and inequitable as contended?

(c) Whether the punishment imposed is in breach of the relevant Rules 8 and 10 of the Delhi Police (Punishment and Appeal Rules, 1980) which provide that the penalty aforementioned can be imposed only in cases of grave misconduct and continued misconduct indicating incorrigibility and complete unfitness for police servants?

12. After taking consideration of the orders passed by the disciplinary authorities and the Central Administrative Tribunal, it has been proved from the records that the domestic enquiry has been conducted properly and the principles of natural justice have been strictly followed. There is no denial of reasonable opportunity. We, therefore, hold that the findings are based on evidence and are not liable to be interfered with. We also hold that disciplinary action initiated against the appellant is in accordance with the rules and regulations and not vitiated by any mala fides. However, we find that there is merit and substance in regard to the next contention i.e. punishment is totally disproportionate to the proved misconduct of the appellant. It was contended that the punishment order passed is against the statutory provisions of Rule 8 and 10 of the Delhi Police (Punishment & Appeal, Rules 1980).

13. Rule 8 (a) and 10 of the Delhi Police (Punishment & Appeal Rules 1980) reads as under:

"Rule 8. Principles for inflicting penalties :

(a) Dismissal/Removal - the punishment of dismissal or removal from service shall be awarded for the act of grave misconduct rendering him unfit for police service.

X X X

"Rule 10. Maintenance of discipline - The previous record of an officer, against whom charges have been proved, if shows continued misconduct indicating incorrigibility and complete unfitness for police service, the punishment awarded shall ordinarily be dismissal from service. When complete unfitness for police service is not established, but unfitness for a particular rank is proved, the punishment shall normally be reduction in rank."

X X X

14. In the instant case, the petitioner had misbehaved with his senior and is liable to be punished. The sole question which arises is whether the penalty of dismissal in the present case is just and proper? The two rules discussed above provided that penalty of dismissal can be imposed only in cases, if grave misconduct or continued misconduct indicating incorrigibility and complete unfitness for police service.

15. In ***Bhagat Ram v. State of H.P., reported in (1983) 2 SCC 442*** Hon'ble Supreme Court observed as under:

"...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..."

16. 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.”

17. 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."

18. 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.
19. 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.”

20. Thus, after considering all the principles laid down in the aforesaid judgments, we are of the view that the present one is a case wherein we are satisfied that the punishment of dismissal from service imposed on the petitioner is excessive and disproportionate. In our considered view, it is also one which was not permissible to be imposed as per the Service

Rules. Moreover, an important fact which was not considered by the learned Tribunal is that the petitioner got provoked as the ACP spoke sarcastically, due to which the petitioner reacted and misbehaved. Therefore, we are of the view that a considerable time period has elapsed and the petitioner is 53 years of age with family responsibilities. Petitioner has served his duties with utmost sincerity for a period of approximately 29 years with the blemish-free career. Therefore, we deem it proper to set aside the punishment of dismissal from service and instead the petitioner shall be punished with the penalty of compulsory retirement from service. The petitioner shall not be entitled to any service benefits from 02.07.2009 till the date of this order i.e. 19.08.2015.

21. Consequently, the writ petition is disposed of in the aforesaid terms with no order as to costs.

G. S. SISTANI, J

SANGITA DHINGRA SEHGAL, J

AUGUST 19, 2015

SC