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

% **Decided on: 09.12.2015**

+ W.P.(C) 4484/2012

LOKENDER KUMAR TYAGI ..... Petitioner

Through: Mr.Saurabh Ahuja, Advocate

versus

UNION OF INDIA AND ORS. .... Respondents

Through: Mr.Abhay Prakash Sahay, CGSC  
with Mr.Krishan Nandan Kumar, GP.

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MS. JUSTICE DEEPA SHARMA**

**MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)**

1. The petitioner is aggrieved by an order imposing the penalty of compulsory retirement. At the relevant time he was working as KOT NCO in the 5<sup>th</sup> Reserved Battalion, Ghaziabad of the Central Industrial Security Force (CISF).

2. The petitioner was charged with misconduct for demanding and accepting ₹400/- from one Constable Ranjan Kumar as money to favour him whilst depositing a cracked/broken magazine. The charge in essence was that the complainant Ranjan Kumar was issued with a magazine and that after its use, the complainant sought to deposit it in the armoury but at that stage the petitioner demanded money – by way of a bribe – to keep silent about the alleged omission in taking proper

care of the magazine. In short, the allegation was that he extorted the sum of ₹400/- which was paid by the said complainant. The charge sheet and imputations were issued on 09.12.2009; subsequently, an enquiry officer was appointed who after recording the depositions and submissions of various witnesses and hearing the submissions of the parties including the petitioner forwarded his report to the disciplinary authority on 30.04.2010.

3. In the course of the enquiry, the complainant Ranjan Kumar recorded his statement as PW1; PW2 Constable Sube Singh who lent ₹100/- to PW1 Ranjan Kumar corroborated the version to that extent; PW4 constable Upender Kumar substantially corroborated the statement of the complainant; he witnessed the demand of ₹400/- by the petitioner, the inability of the complainant PW1 to pay it and his later approaching the quarter guard borrowing the amount from PW2 and thereafter paying ₹400/- to the petitioner. The enquiry officer also examined Court Witness no.1 Sub Inspector R.P.Pandey who deposed that according to the procedure not only was the damage to an arm entered in the register by the armourer and signed by NCO but it had also reported to the higher authority i.e. officer Incharge of the court at the earliest – “as early as possible”. The petitioner did not produce any witness but instead blamed Constable Ranjan Kumar for having caused damage to the magazine and in a cover up attempt falsely implicating him (the petitioner).

4. The enquiry report was accepted by the disciplinary authority who by an order dated 15.06.2010 and its corrigendum dated

18.06.2010 directed imposition of penalty of reduction of pay by one stage in the time scale of one year with immediate effect. The petitioner appealed on 13.07.2010, but during the pendency of the appeal attempted to withdraw it. The appellate authority, however exercising what it termed as powers under Rule 52 of the CISF Rules, issued notice of enhancement of penalty to compulsory retirement. The notice was issued on 15.07.2011. The petitioner represented against this contending that (a) since the appeal was sought to be withdrawn, the appellate authority did not possess jurisdiction to enhance the penalty and (b) that penalty of compulsory retirement in the circumstances of the case was excessive and disproportionate. Nevertheless, the penalty was enhanced to compulsory retirement. The petitioner did not prefer any further appeal and instead chose to approach this Court.

5. Learned counsel argued that considering the entirety of the circumstances, the enquiry officer could not have concluded that a demand and payment of illegal gratification or bribe had been proved conclusively. He relied upon the decision of the Supreme Court in *Commissioner of Police vs. Jai Bhagwan* 2011 6 SCC 376 and it was contended that since the charge of demand and payment of illegal gratification requires higher threshold of proof, unless there is clinching evidence in that regard, the employer cannot on the basis of surmises hold that the charged official or delinquent employee is guilty. It was submitted that the alleged incident was not witnessed by anyone and the materials before the authority boiled down to the complainant's word against the petitioner's word. Here it was

emphasized that the inference sought to be drawn from the depositions of PW2 and PW4 that there was a previous demand of ₹400 paid to the petitioner was unwarranted.

6. Learned counsel submitted that the complainant and the said two employees belong to the same unit and hatched a conspiracy to cover up the complainant's lapses by alleging that the petitioner as the KOT NOC had demanded a bribe. It was submitted that even though the incident occurred on 15.10.2009, as a matter of fact, the complaint was lodged with the higher officials only on 19.10.2009 which clearly points to a designed conspiracy. It was next submitted that the enquiry officer, the disciplinary authority and the appellate authority entirely missed most relevant circumstance i.e. that the Loss and Damage Register in fact reflected an entry that a magazine deposited by the KOT NOC (i.e. the petitioner) after use by the complainant was damaged. This was also counter signed by the armourer. The sheer improbability of such demand for a bribe and its fulfillment nevertheless leading to the misdeed being reported, entirely escaped the notice of the enquiry officer.

7. It was thirdly urged that the appellate authority committed an error of law which rendered the impugned penalty order invalid by not granting a hearing to the petitioner at the stage when it decided to enhance the penalty. In support of his submission, learned counsel relied upon the rulings of the Supreme Court in *State Bank of India vs. Ranjit Kumar Chakraborty* 2009 7 SLR 347 and *Lav Nigam vs. Chairman and MD ITI Limited & Others* (2006) 9 440; the later

decision in turn had relied upon the three Judges' ruling in *Punjab National Bank and Others vs. Kunj Bihari Mishra* (1998) 7 SCC 784.

8. It was lastly urged that neither Rule 52 nor Rule 54 of the CISF Rules permitted the appellate authority to adopt the procedure that it actually did. Once the petitioner's request for withdrawal of appeal was accepted, the appellate authority lost jurisdiction over the matter and the penalty imposed attained finality. The question of seeking recourse to the powers under Rule 52 would not have arisen. Moreover, the appellate authority did not fall back upon the power of *suo motu* revision under Rule 54.

9. Learned counsel for the respondents resisted the petition urging that this Court should not interfere with the findings highlighting that the enquiry officer's conclusions were based upon clear circumstantial evidence. It was argued that the Court's jurisdiction to intervene in the disciplinary proceedings is limited to only those cases where there is no evidence or when the penalty is shockingly disproportionate or there is unfairness in the procedure adopted. Learned counsel for the respondents submitted that none of these vitiating factors are apparent from the record. It was argued that so far as the question of natural justice is concerned, the requirements spelt out in Rule 52 of a show cause notice was followed. Learned counsel submitted that the decision of the Supreme Court in *Ranjit Chakraborty's* case (*supra*) was not an apt analogy given the circumstances of this case. So far as *Lav Nigam's* case (*supra*) is concerned, it was submitted that the court merely emphasized the duty of the authority to grant an opportunity to represent against the

penalty sought to be imposed by the authority which disagrees with the findings of an enquiry officer. It was not concerned with the case where the appellate authority appears to enhance the penalty – in context of concurrent acceptance of the enquiry officer's findings by the disciplinary authority.

10. As far as the facts are concerned, the statement of PW1 is not a solitary one. He clearly mentioned that the KOT NOC i.e. the petitioner was Incharge when he reported the damage of the magazine. He also deposed as to the extortion attempt and his telling the petitioner about his inability to pay the amount demanded whereupon the petitioner insisted that he pay up or else face the consequence. He, therefore, deposed that he borrowed the amount from the quarter guard PW2 after which the sum of ₹400/- was paid. The deposition of PW2 corroborated the PW1's statement in all respects so far as borrowing of the amount was concerned. PW2 of course did actually witness the payment. However PW4 was clear in his evidence and corroborated the complainant's statement with respect to payment of ₹400/- to the petitioner. Furthermore, the Court Witness also deposed – contrary to the petitioner's assertion that both the KOT NOC and the Armourer were under an obligation to report to the higher authority about the damage at the earliest. Apparently, that procedure had not been followed. All the circumstances together clearly indicate that upon an application of the rule of preponderance of probabilities the enquiry officer's conclusions were justified. As to the petitioner's defence that the witnesses belong to the same unit and had hatched a conspiracy which was borne out by the fact that the

incident was reported late, the record does not support such an argument. Neither did the petitioner put this to the witnesses who were cross examined by him during the enquiry, nor did he say so in the statement before the enquiry officer at the time he was asked to furnish an explanation. In the circumstances, these are allegations – usually called as “afterthought” which cannot be countenanced.

11. So far as the question of failure of natural justice goes, this Court is of the opinion that reliance upon the decision of *Ranjit Chakraborty's* case (*supra*) is not apt. In that case the primary authority to impose the penalty proposed was not that of the disciplinary authority – rather that officer was lower in rank than the appointing authority. It was in that context that the Supreme Court said that the appointing authority was under a duty to grant reasonable opportunity to the officer before it imposed the higher penalty proposed by the disciplinary authority. Apparently, such opportunity had not been given. In the present case, there is no complaint that the petitioner was not afforded the opportunity that he seeks today. It is a matter of fact that a show cause notice was issued by the appellate authority before enhancing the penalty; he availed of it and furnished a representation. Likewise, the reliance upon *Lav Nigam's* case (*supra*) in the opinion of this Court is misplaced. *Lav Nigam's* case (*supra*) is in that series of decisions of *Kunj Bihari Mishra's* case (*supra*) – a line of decisions whereby the court highlighted the necessity of the disciplinary authority granting an opportunity before imposing a penalty in the event it disagrees with the findings of exoneration rendered by an enquiry officer. The ruling in *Kunj Bihari*

*Mishra's* case (*supra*) can therefore be clearly distinguished. The executive authority i.e. the disciplinary authority duly empowered to impose an appropriate penalty is under a duty to grant opportunity in the situation that the Enquiry Officer's findings which exonerate the delinquent are sought to be reversed. No such eventuality exists in this case. The enquiry officer's findings were accepted by the disciplinary authority – in fact the former held the petitioner to be guilty. It is only on the question of adequacy of punishment that the appellate authority did not agree with the disciplinary authority. For this Rule 52 is clear that the appellate authority can in the given circumstances of the case exercise his powers and enhance it provided opportunity to represent against the enhanced penalty is given.

12. So far as the question of lack of power by the appellate authority is concerned, we are of the opinion that the argument is hyper technical. Taken together, Rules 52 and 54 confer the widest range of power upon the appellate authority to impose what it terms as an adequate penalty. Whilst this power is characterized as appeal when the higher authority is seized of an appeal from an aggrieved employee – in which event the show cause notice is to be given before imposition of an enhanced penalty – revision can be exercised *suo motu* even when the matter has attained finality. It may be said that in the jurisprudential sense, revision is a part of the appellate power – it is available independently and in addition to the appellate authority's powers under Rule 52. The reason is not much far to see. The appellate authority being removed from the immediacy and often times the subjectivity which a disciplinary authority might be

caught up in takes into account the needs of the force and the appropriateness of the measure of penalty in the circumstance of each case. Rule 54 is couched in the widest terms like Rule 52. It too highlights to follow a procedure to issue a show cause notice. In the present case, clearly the power to enhance the punishment whether exercised during the pendency of the appeal or after accepting the withdrawal of the appeal but simultaneously under Rule 54 clearly did exist. Consequently, the submission of the petitioner on this score is unacceptable.

13. For the foregoing reasons, this Court is of the opinion that there is no ground to interfere with the order of compulsory retirement which having regard to the circumstances cannot be called shockingly disproportionate.

14. The writ petition is accordingly dismissed.

**S. RAVINDRA BHAT  
(JUDGE)**

**DEEPA SHARMA  
(JUDGE)**

**DECEMBER 09, 2015**

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