

\$~9

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

+ W.P.(C) 9569/2015

GYANENDER

..... Petitioner

Through: Mr L.R. Khatana, Adv.

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr Manish Mohan, CGSC, UOI and
Mr Shivam Chanana and Ms Pooja Mishra, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **21.12.2015**

The petitioner's grievance is that while detained in Annual Range Classification (ARC), he was found absent from the firing range with the service pistol but without prior permission of the Competent Authority. After holding an enquiry, this charge was held to have been proved and he was dismissed from service. The petitioner's appeal and further revision were unsuccessful. Therefore, he has approached this Court.

The respondents state that the enquiry held clearly established that the petitioner left the firing range without informing or taking permission from his senior officers and the same constitutes a grave misconduct warranting the extreme penalty of dismissal. The petitioner's explanation was that he was informed—while the firing

exercise was going on—that his child was seriously ill and was vomiting blood.

This Court is of the opinion that given the nature of the findings, it cannot be said that the petitioner was not guilty. It is not disputed that he left the firing range without permission. At the same time, the Enquiry Officer has not recorded any adverse findings with respect to the petitioner's explanation that his son was seriously unwell. In fact, this explanation was furnished by him at the very outset and has been repeated in the orders of Disciplinary Authority as well as the Appellate Authority who have even recorded that the petitioner was blessed with a child after 16 years of marriage. The respondent-Authorities have noted that on seven previous occasions, the petitioner was awarded with some penalties—six of them were minor and one was major (reduction of pay to the minimum scale of pay for two years with cumulative effect).

This Court is of the opinion that even though the petitioner's conduct is blameworthy, given the circumstances he was placed in the CISF could have condoned it and imposed a less harsh penalty. In that sense, the penalty is disproportionate and has acted in an oppressive manner. Having regard to these circumstances, the impugned penalty of dismissal from service is set aside. The respondents are hereby directed to pass a speaking order substituting the said penalty with some other penalty—possibly even a major penalty, but short of dismissal/removal. The entire exercise shall be carried out within eight weeks from today. An appropriate order reinstating the petitioner into the services and also treating the period of his absence

in terms of Rule 54 of FRSR shall be made either granting or refusing him arrears of salary, but in any case, granting continuity and other service benefits.

The writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

DECEMBER 21, 2015

bg