

\$~35

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(C) 11074/2015 & C.M.No.28663/2015

SAVINDER KUMAR

..... Petitioner

Through: Mr,Nitin Sharma, proxy counsel for
Mr.Nitesh Kumar, Advocate

versus

UNION OF INDIA AND ORS.

..... Respondent

Through: Ms.Kailash Golami, Advocate with
Insp.Mohd.Isham

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

%

30.11.2015

1. The petitioner is aggrieved by an order imposing the penalty of reduction in pay for one year. He was charged with misconduct by a memorandum dated 15.11.2011. The findings of the enquiry officer were that he was guilty as charged. Consequently, he was imposed the most serious penalty which was reduced in appeal.

2. The brief facts of the case are that the petitioner was at the relevant time deployed as Head Constable at Chennai Airport. On 15.11.2011, he was issued a charge-sheet which alleged *inter alia* that on 5.11.2011 when he was deployed between 5 a.m. to 12 a.m. he was missing and absent from duty at about 10.05 a.m. and that he deposited two unused visitor entry tickets in the KCIC Visitors' counter.

3. In the course of the enquiry, the CISF relied upon the testimonies/statements of five witnesses. The petitioner also led evidence. Based on appreciation of all the materials, the enquiry officer concluded that the charges were established. By the senior

commandant on 27.01.2012, the petitioner was reduced to the lower post of Constable/GD until he was found fit after a period of one year from the date of the order to be restored to the higher post of Head Constable/GD. He appealed; on 02.07.2012 this order was upheld with some minor modifications. Subsequently, in revision, the revisional authority on 14.03.2013 withheld one increment for a period of two years which would have effect of postponing petitioner's future increments of pay.

4. It is urged by the learned counsel that the findings of the enquiry officer are not based on any evidence. He argued that the petitioner's absence from duty was compelled by his need to go out to ease himself and relied upon evidence. He submitted that the petitioner at no stage was found with any article and therefore, the testimony of the witnesses implicating him for second charge, was unfounded.

5. This Court has considered the materials on record. Both the charges levelled against the petitioner in a sense are linked with each other. Undoubtedly, the witnesses who deposed against the petitioner did say that he went out to ease himself around 10.05 a.m. However, at the same time, at least two witnesses stated that instead of returning to his duty assigned he went to KCIC counter. PW4 states that the other personnel followed the petitioner and found that two unused passes had been kept by him. He was almost contemporaneously confronted with these facts. The petitioner, of course, denied the allegations.

6. A careful reading of the record would reveal that the enquiry

officer appreciated all the circumstances – including the denial of the petitioner. His version that he had told one Pawan about his absence and need to ease himself was also taken into account. In these circumstances, it cannot be said that the enquiry officer misappreciated the facts or omitted to take into account any circumstances. In judicial review, the Court does not dawn the role of the officer conducting preliminary enquiry by re-appreciating the material before it unless it is shown that the findings are not based on any material at all or that the findings are of such a kind as to be described as a decision which no reasonable man can take under similar circumstances or there are clear indications of malafide and illegality. In the absence of any of these conditions, the Court would not interfere with what are initially findings of fact.

7. So far as penalty imposed in this case is concerned, the Court notices that it was progressively reduced—from the initial reduction in rank effectively for two years, it now stands at withholding of one increment with the effect of postponing future increments to pay. Taking all the facts into consideration, this Court is of the view that there is no scope to interfere with the findings under Article 226 of the Constitution of India.

8. The writ petition is consequently dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

NOVEMBER 30, 2015/rb