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IN THE HIGH COURT OF DELHI AT NEW DELHI

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DECIDED ON: 08.01.2016

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W.P. (C) 2409/2006

CONSTABLE B.B.SHARMA

..... Petitioner

Through: Mr. Alok Gupta, Advocate.

versus

UOI

..... Respondent

Through: Ms. Barkha Babbar, Advocate for UOI.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

S.RAVINDRA BHAT, J. (ORAL)

1. The petitioner is aggrieved by the penalty of withholding of one increment with cumulative effect imposed upon him for an alleged misconduct. The petitioner was working as Constable in the Central Industrial Security Force ("CISF"). At that time, he was posted in Murar, Gwalior, Madhya Pradesh. The CISF issued an order on 19.06.2002 detailing personnel for QRT course scheduled to be held at the Recruits Training Centre, CISF, Barwaha. A pre-training course was to be undergone by all those presently in Saket. It is stated that the names of the personnel detailed for the course was enhanced in 2002. The petitioner stated that he was suffering from abdominal pain and that he was examined in a Civil Hospital by one Dr. S.R. Sharma. On the basis of the Certificate issued by the said Doctor who recommended seven days bed rest on account of

suspected Hepatitis, the petitioner did not join. The CISF suspected that the petitioner was malingering and using the pretext of Hepatitis in order to escape the detailment. It claims to have conducted his examination through a review board which according to the CISF pronounced that the petitioner was not suffering from Hepatitis. Departmental proceedings were initiated against the petitioner which culminated in a finding of guilt by the Enquiry Officer. The petitioner was imposed the penalty of withholding of one increment for a period of one year with cumulative effect which was also to have effect in the future. The petitioner appealed against this order; on 16.12.2004, the appeal was rejected. Apparently, the petitioner had approached this Court earlier in writ proceedings and was asked to exhaust departmental remedies. Therefore, he filed an appeal.

2. It is argued that the findings of the departmental enquiry are perverse. Learned counsel points out that the finding that the illness was an excuse to avoid the reporting for training was premised upon an assumption that the petitioner was not examined and that the Doctor did not agree that he was ill. Learned counsel points out that the Physician Dr. S.R. Sharma clearly stated that he had examined the petitioner on 21.06.2002. He had also verified the OPD Ticket in that regard and supported the contention that he was suffering from abdominal pain and loose motion and on examination of the abdomen he expressed doubt as to the possibility of suffering from Hepatitis. The said Doctor advised stool and urine test because of the hot season and also advised bed rest for seven days. The said Doctor refuted the serum bilirubin test prepared and produced by the CISF at the behest of one Dr. S.N. Tripathi who is said to have examined the petitioner along with two other Doctors of the Medical Board.

3. Learned counsel relied upon the statement of Dr. S.N. Tripathi, member of the Review Medical Board who on examination stated that though he was the member of the District Medical Board, he did not conduct the clinical examination as one other Dr. R.P. Sharma was the Medical Specialist. It is pointed out that in the light of these circumstances, the findings of the Enquiry Officer are not based upon any credible material both as to the alleged evidence certified by the Medical Board as well as the allegation that he had feigned illness because the Doctor who had examined him in the first instance did confirm that he had a medical problem and had advised rest for seven days.

4. Counsel for the respondent Ms. Barkha Babbar contends that the finding of fact rendered by the Enquiry Officer should not be interfered with. She submits that the petitioner was clearly intimated in the roll call that he would have to report for training. Deliberately, and in order to avoid the directive, he came out with the excuse of illness. The Medical Board which examined the petitioner had around the same time, i.e., on 22.06.2002 clearly stated that he was not ill. All these aspects were considered both by the disciplinary authority and the appellate authority. Consequently, this would not be an appropriate case for interfering with the factual findings and setting aside the penalty which is not otherwise severe or grave.

5. The Court has had the benefit of examining the original records including the records of the CISF. During the course of enquiry, the Doctor who was suspected not to have examined the petitioner clearly stated that he did. The records also brings out that the said Dr. S.R. Sharma was employed in the Civil Hospital. He clearly stated that the reasons why serum bilirubin shoot up during certain seasons and also stated why he

advised 7 days bed rest. Given these circumstances, which cannot be doubted, the Enquiry Officer's findings based entirely on a reading of the Medical Board's opinion, in this Court's view was unfounded. This Court also notes certain interesting features, i.e., that during the course of the same enquiry, the member of the Medical Board who supposedly conducted examination clearly stated that he had not clinically examined the petitioner (i.e. Dr. R.P. Sharma). The second interesting feature is Dr. S.R. Sharma's statement to the effect that the pathology samples and report were not procured from the petitioner. This appears to be somewhat based on facts - the original examination report of the Medical Board (which is in handwriting) claims to record the blood parameters (serum bilirubum levels direct, indirect and total). However, interestingly, the said report is written in one handwriting with a particular ball point pen; that pen appears to have been used by the three members while signing it. However, the serum bilirubum parameters were left blank and filled later with ink pen. This conformed to the serum bilirubum parameters which appear in the photocopy of the Jain Pathology Laboratory's report, placed on the record. In view of the statement of Dr. S.R. Sharma and the statement of Dr. S.N. Tripathi that no clinical examination of the petitioner was in fact conducted by the Board, the Court is of the opinion that the inference is inescapable that the CISF or its officials somehow drove the situation to "fix the petitioner" for alleged misconduct which was never actually committed.

6. Another feature which this Court cannot ignore is that during the course of enquiry, the petitioner had asked for the production of the roll call register but he was denied the same. The CISF had stated that in the roll call, the petitioner's name existed, yet it neither produced it nor acceded to

the petitioner's request for its production in the course of the enquiry belying the entire charge.

7. In view of the above, this Court has no doubt that the charge and the findings were perverse and based upon malice at the behest of some superior officers. Consequently, the order of the disciplinary authority, appellate authority and the revisional authority are hereby quashed. The writ petitioner is entitled to all consequential benefits including restoration of his increments and consequently pay fixation with differential pay. These amounts shall be calculated and released to the petitioner within eight weeks. The petitioner shall also be entitled to costs quantified @ ₹50,000/- in the circumstances of the case. The Court further directs that the CISF shall ensure an enquiry against the concerned officers, i.e., Commanding Officer who brought the charge and accordingly fix responsibility. It shall also ensure that the amounts directed as costs shall be recovered from the pay of that Commanding officer.

8. The writ petition is allowed in the above terms.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

JANUARY 08, 2016
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