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

+ W.P.(C) 4631/2016

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Judgment dated 28th July, 2016

UNION OF INDIA

..... Petitioner

Through : Ms. Monika Arora, Advocate with Mr.
Kushal Kumar, Advocate.

versus

SATPAL SINGH AND ORS.

..... Respondents

Through : Ms. Garima Shukla, Advocate for
respondent no.1.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S. MEHTA

G.S.SISTANI, J (ORAL)

CM No. 19269/2016

Exemption allowed subject to all just exceptions.

The application stands disposed of.

CM No. 19270/2016

For the reasons stated in the application, the delay of 80 days in filing the present application is condoned.

The application is allowed and disposed of.

W.P.(C) 4631/2016 and CM No. 19268/2016 (Stay)

1. Present writ petition has been filed by the petitioner under Article 226/227 of the Constitution of India seeking to challenge the order dated 31.10.2015 passed by Central Administrative Tribunal (hereinafter referred to as '*the Tribunal*') in OA No.1070/2010, whereby the OA filed by the respondent no. 1 was allowed by the Tribunal. The Tribunal

vide order dated 31.10.2015 has modified the order of punishment from removal from service to penalty of “Censure” as provided under Rule 9(i) of the Gramin Dak Sevak (Conduct and Employment) Rules, 2001.

2. The brief facts of the case are that the respondent No.1 was working as Gramin Dak Sevak. The respondent No.1 was served with the Memorandum of charges dated 25/08/2007, under the provisions of Gramin Dak Sevak (Conduct and Employment) Rules, 2001, (in short ‘2001 Rules’), the following articles of charge were framed:-

Article – I

“That above Shri Satpal Singh Gramin Dak Sevak Kurawa Branch Post office, while working as Mail Deliverer after availing leave from dated 30.03.2007 to 08.04.2007 did not assume charge on 09.04.2007 at Kurawa Branch Post office and without any information continuously remained absent upto 16.04.2007. Due to it the delivery work suffered badly.

Thus he violated the provisions of DG P&T letter No.43/15/65-Pen dated 7 June 1968 and violated rule 7 of Gramin Dak Sevak (Employment and Conduct) Rules 2001 and instruction issued time to time and Rule 21.”

Article –II

“That the above Shri Satpal Singh Gramin Dak Sevak Mail deliverer Kurawa Branch Post office on 09.04.2007, he went to Khatoli Sub Post Office with his son and abused and misbehaved with Shri K. D. Sharma Mail Overseer.

Thus due to the said act it is alleged that Shri Satpal Singh violated the provision of Rule 21 of Gramin Dak Sevak (Employment and Conduct) Rules 2001.”

3. Disciplinary Enquiry was initiated against the respondent No.1, after the inquiry officer conducted the disciplinary enquiry and submitted his report on 28/11/2007. It was held that department could not prove the first article of charge; however, the second article of charge was proved against the respondent No.1. The report of the enquiry authority was duly communicated to the respondent no. 1 vide letter dated 26/04/2008. On 06/05/2008, respondent No.1 submitted his representation against the enquiry report. The Disciplinary Authority after due consideration and examination of all the facts, enquiry report and representation submitted by the respondent No.1, imposed punishment of removal from services upon the respondent No.1, vide order dated 02/07/2008. On 20/07/2008, the respondent No.1 filed an appeal before the competent Appellate Authority, i.e. Sr. Superintendent of Post Offices, Muzaffarnagar Division. The Appellate Authority refused to interfere with the order of the Disciplinary Authority, vide order dated 19/12/2008. Thereafter, respondent No.1 approached the Tribunal by filing the OA No.1070/2010. The Tribunal, vide order dated 09/12/2010, partly allowed the OA and set aside the orders of the Disciplinary Authority and Appellate Authority; and further directed the Disciplinary Authority to pass a fresh speaking order imposing any penalty other than dismissal or removal from service with a further direction to reinstate the respondent No.1 forthwith, if he has not crossed the age of superannuation. The said order was challenged by the respondent no. 2/ Secretary, Ministry of Communication and IT, Government of India

before this court in Writ Petition (Civil) No.1653/2011. This court, vide order dated 11/01/2013, quashed the order dated 09/12/2010 passed by the Tribunal and remanded the matter back to the Tribunal for reconsideration and pass a fresh decision with reference to the proportionality of the penalty which the respondent must suffer.

4. The Tribunal, vide order dated 31.10.2015 impugned before us, has modified the order of punishment to penalty of “Censure” as provided under Rule 9(i) of the Gramin Dak Sevak (Conduct and Employment) Rules, 2001. At this stage, it would be useful to reproduce the observations made by the Tribunal in para 10 and 11 of the impugned judgment:

“10. Having regard to the aforesaid position and the applicant having retired in the meantime on attaining the age of superannuation on 31.12.2011, we are of the view that the punishment of removal from service is shockingly disproportionate to the gravity of misconduct proved against the applicant. On normal circumstances, having held so, we would have remitted the matter to the Disciplinary Authority for passing an appropriate order, which in this case we are not inclined to do so as no purpose would be served by doing so as the submission advanced by the learned counsel is that only punishment available to be imposed on the applicant in this case is “Censure” under Rule 9 (i).

11. Hence, the order of penalty imposed on the application is substituted penalty of “Censure” as provided under Rule 9 (1) of the aforesaid Rules. The applicant having already attained the age of superannuation, there is no question to take him back in service. We are, however, of the view that the interest of justice would be served if the respondents are directed to pay 25% of the emoluments from the date of his removal from the service to the date of his retirement which the applicant

would have earned per month if he had worked for five hours a day, having regard to the revised emoluments as per the 6th Pay Commission report. Apart from that, if the applicant is entitled to any other retiral benefits, the same shall also be extended to him. If the applicant has not been paid his emoluments from 01.01.2006 till the date of removal from service, the same shall be paid to him.”

(Emphasis Supplied)

5. Learned counsel for the petitioner submits that the Tribunal has erred in coming to conclusion that the punishment meted out to the respondent No.1 is glaringly disproportionate to the allegations against him.
6. Learned counsel for the petitioner submits that misbehaviour with a administrative personnel by his subordinate can, in no case, be allowed in order to enable smooth functioning and survival of any Department. Thus it is justified under the law, in the interest of the department, to check reoccurrence of such incidents in future through severe punitive action like removal or dismissal of the subordinate official.
7. Learned counsel for the petitioner submits that the Tribunal has failed to take into consideration that serious articles of charge which was framed against respondent No.1. Learned counsel also submitted that Tribunal has failed to take into account that one of the conditions for appointment of Sevak is as contained in Note II (iii) i.e., the compulsory conditions of alternate independent source of income preferably derived from landed property or immovable assets as a pre-condition for employment as Sevak and shall also maintain the same after his employment as Sevak and thus it cannot be said that the respondent would be left with no source of income in case he is dismissed from service.
8. Learned counsel for the petitioner further submits that the Tribunal failed to appreciate that the punishment has to be granted as prescribed in the

Rules and punishment of removal from service was most appropriate.

9. Learned counsel for respondent No.1 submits that she is appearing in the matter as she noticed the matter in the cause list. She submits that there is no infirmity or impropriety in the impugned order passed by the Tribunal which would require interference under Article 226 of the Constitution of India. She also submits that the respondent no. 1 has already suffered for more than 9 years and has now superannuated and he does not have a large source of income. She further submits that 75% of the emoluments of the respondent No.1 have already been deducted.
10. We have considered the rival submissions made by learned counsel for the parties and perused the record and the impugned order.
11. We may notice that the first Article of Charge against respondent No.1 was not proved. However, as the second Article of Charge was proved, wherein the respondent No.1 along with his son went to Khatoli Post Office and abused and misbehaved with one, Sh. K. D. Sharma, Mail Overseer. It is pertinent to note that there was no allegation of physical assault by the respondent No.1 or his son with Sh. K. D. Sharma. The disciplinary authority held the respondent No.1 guilty and he was removed from the service and the said removal order was also upheld by the appellant authority which led to filing of an OA which was allowed.
12. We have, in the circumstances of the case, pondered over the question as to what penalty ought to have been imposed upon the respondent No.1. Rule 9 of the 2001 Rules, which provides for the nature of penalties, reads as under:-

“9. Nature of penalties :- The following penalties may for good and sufficient reasons and as hereinafter provided be imposed on a Sevak by the appointing authority namely :-

(i) Censure;

(ii) Debarring of a Sevak from appearing in the recruitment examination for the post of postman and/or from being considered for recruitment as Postal Asstts/Sorting Asstts. for a period of one year or two years or for a period not exceeding three years;

(iii) Debarring of a Sevak from being considered for recruitment to Group 'D' for a period not exceeding three years;

(iv) Recovery from Time Related Continuity Allowance of the loss caused to the Government by negligence or breach of orders;

(v) Removal from employment which shall not be a disqualification for future employment;

(vi) Dismissal from employment which shall ordinarily be a disqualification for future employment.”

The punishment of removal or dismissal from employment in our view is not commensurate to the articles of charge against the respondent no.1.

13. Keeping into consideration, the gravity of the second Article of Charge, in our view, the Tribunal has correctly interfered on the quantum of punishment. We may note that 75% of the pay of the respondent No.1 has been deducted and only 25% of his emoluments have been allowed.
14. The law on interference on quantum of punishment is no longer *res integra*. It is settled law that the courts, though generally must leave the discretion to the disciplinary authority, but at the same time should interfere if the punishment imposed is so disproportionate to the offence as to shock the conscience of the court. In the case of **S.R. Tiwari v. Union of India**, reported at (2013) 6 SCC 602, the Supreme Court held

as under:

*“24. The question of interference on the quantum of punishment has been considered by this Court in a catena of judgments and it was 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. In *Ranjit Thakur v. Union of India* [*Ranjit Thakur v. Union of India*, (1987) 4 SCC 611 : 1988 SCC (L&S) 1 : (1987) 5 ATC 113 : AIR 1987 SC 2386], this Court observed as under:*

“25. 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 an 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.

27. In the present case the punishment is so strikingly disproportionate as to call for and justify interference. It cannot be allowed to remain uncorrected in judicial review.”

(emphasis supplied)

(See also Union of India v. G. Ganayutham [(1997) 7 SCC 463 : 1997 SCC (L&S) 1806 : AIR 1997 SC 3387], State of U.P. v. J.P. Saraswat [(2011) 4 SCC 545 : (2011) 1 SCC (L&S) 718], Chandra Kumar Chopra v. Union of India [(2012) 6 SCC 369 : (2012) 2 SCC (L&S) 152] and High Court of Patna v. Pandey Gajendra Prasad [(2012) 6 SCC 357 : (2012) 2 SCC (L&S) 140 : AIR 2012 SC 2319].)

25. In *B.C. Chaturvedi v. Union of India* [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44 : AIR 1996 SC 484], this Court after examining its various earlier decisions observed that in exercise of the power of judicial review, the court cannot “normally” substitute its own conclusion or penalty. However, if the penalty imposed by an authority “shocks the conscience” of the court, it would appropriately mould the relief either directing the authority to reconsider the penalty imposed and in exceptional and rare cases, in order to shorten the litigation, itself impose appropriate punishment with cogent reasons in support thereof. While examining the issue of proportionality, the court can also consider the circumstances under which the misconduct was committed. In a given case, the prevailing circumstances might have forced the accused to act in a certain manner though he had not intended to do so. The court may further examine the effect, if the order is set aside or substituted by some other penalty. However, it is only in very rare cases that the court might, to shorten the litigation, think of substituting its own view as to the quantum of punishment in place of punishment awarded by the competent authority.

26. In *V. Ramana v. A.P. SRTC* [(2005) 7 SCC 338 : 2006 SCC (L&S) 69 : AIR 2005 SC 3417], this Court considered the scope of judicial review as to the quantum of punishment is permissible only if it is found that it is not commensurate with the gravity of the charges and if the Court comes to the conclusion that the scope of judicial review as to the quantum of punishment is permissible only if it is found to be “shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards

27. In *State of Meghalaya v. Mecken Singh N. Marak* [(2008) 7 SCC 580 : (2008) 2 SCC (L&S) 431 : AIR 2008 SC 2862] this Court observed that:

“13. ... A court or a tribunal while dealing with the quantum of punishment has to record reasons as to why

it felt that the punishment is not commensurate with the proved charges.

14. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. ... The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review.”

(See also A.P. SRTC v. P. Jayaram Reddy [(2009) 2 SCC 681 : (2009) 1 SCC (L&S) 529].)

28. The role of the court in the matter of departmental proceedings is very limited and the court cannot substitute its own views or findings by replacing the findings arrived at by the authority on detailed appreciation of the evidence on record. In the matter of imposition of sentence, the scope for interference by the court is very limited and restricted to exceptional cases. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. The court has to record reasons as to why the punishment is disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice. (Vide Union of India v. Bodupalli Gopalaswami [(2011) 13 SCC 553 : (2012) 2 SCC (L&S) 94] and Sanjay Kumar Singh v. Union of India [(2011) 14 SCC 692 : AIR 2012 SC 1783].)

29. In Union of India v. R.K. Sharma [(2001) 9 SCC 592 : 2002 SCC (Cri) 767 : AIR 2001 SC 3053] , this Court explained the observations made in Ranjit Thakur [Ranjit Thakur v. Union of India, (1987) 4 SCC 611 : 1988 SCC (L&S) 1 : (1987) 5 ATC 113 : AIR 1987 SC 2386] observing that if the charge was ridiculous, the punishment was harsh or strikingly disproportionate it would warrant interference. However, the said observations in Ranjit Thakur [Ranjit

Thakur v. Union of India, (1987) 4 SCC 611 : 1988 SCC (L&S) 1 : (1987) 5 ATC 113 : AIR 1987 SC 2386] are not to be taken to mean that a court can, while exercising the power of judicial review, interfere with the punishment merely because it considers the punishment to be disproportionate. It was held that only in extreme cases, which on their face, show perversity or irrationality, there could be judicial review and courts should not interfere merely on compassionate grounds.

(Emphasis Supplied)

15. In the present case, applying the above principles, in our view, the punishment imposed was wholly disproportionate in respect of the offence/ charge which stood proved against the respondent no. 1. The Tribunal rightly reduced the punishment to censure.
16. We do not find any infirmity in the order passed by the Tribunal which would require us to interfere in the proceedings under Article 226 of the Constitution of India. No ground is made out to entertain this petition.
17. The writ petition and the application are dismissed accordingly.

G.S.SISTANI, J

I.S. MEHTA, J

JULY 28, 2016

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