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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : July 13, 2016

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W.P.(C) 5535/2014

ANIL KUMAR

..... Petitioner

Represented by: Mr.Mohar Singh, Advocate with
Mr.Sidharth, Advocate

versus

UNION OF INDIA & ANR.

..... Respondents

Represented by: Mr.Vikas Mahajan, CGSC with
Ms.Saroj Bidawat and Mr.Amit
Mehta, Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

1. Punishment has to be tampered with mercy. An unjust sentence causes more harm than good. The person punished feels cheated and those who see the sentence imposed develop hatred for the system.
2. You hurt me and I will hurt you. If I cannot hurt you myself, I demand that you should be hurt by others, are concepts of punishment i.e. retribution which have no place in civil society. The idea expressed by Sir James Stephen in the 19th century, when he said : *'it is highly desirable that criminals should be hated, that the punishment should be so contrived as to give expression to that hatred, and to justify by gratifying a healthy natural*

sentiment', is also irrelevant today. The philosophy of Socrates and Hobhouse who questioned whether the infliction of evil upon anyone can ever be in itself good finds acceptability. It is well recognized even otherwise the concept of retribution with object of punishment, implies relationship between the severity of punishment and the degree of guilt.

3. In the background of the philosophy of law above noted we proceed to note the facts.

4. The record produced before us establishes through the testimony of the 11 prosecution witnesses that on August 31, 2013 Insp.(Min.) S.N.Chakraborty of the 152nd Bn. BSF was slapped thrice by the petitioner in his office room.

5. The adjutant Dy.Comdt.Rajesh had deputed Insp.(Min.) S.N.Chakraborty to prepare the movement orders for the personnel going on leave.

6. The testimony of the prosecution witnesses when read with conjunction with the testimony of the two defence witnesses would evince that Insp.(Min.) S.N.Chakraborty was a brusque person and his manner of speaking was not only curt but a little offensive. The petitioner was suffering from Neuro Spinal ailment and for which he was under medical treatment. He had sought and had been granted an appointment by the Director General, BSF. The petitioner had applied for leave to go home which was sanctioned and he was awaiting the clearance to leave the battalion to catch a train. The train had to depart at 16:50 Hrs. The petitioner had a confirmed reservation for Delhi by Sealdah Rajdhani train which he had booked in the Tatkal quota on the morning of August 30,

2013. The necessary formalities and the leave certificate had not been prepared by Insp.(Min.) S.N.Chakraborty who was slapped by the petitioner. Even past noon S.N.Chakraborty had not prepared the papers. Time was running out for the petitioner. The train had to be boarded by 16:50 Hours.

7. It is in this background that assault by the petitioner, who slapped Insp.(Min.) S.N.Chakraborty 3 times has to be weighed in the context of the penalty of dismissal from service inflicted upon the petitioner. Conscious of the fact that in the past four minor penalties of having committed an offence of absenting without leave once, for having allegedly taken away leave documents along with note sheet and for committing mistakes in private connectivity telephone of VIP and on one occasion using intimidatory language with the Dy.Commandant in an interview were inflicted upon the petitioner we are of the firm opinion even factoring the past record, given the backdrop in which the petitioner slapped Insp.(Min.) S.N.Chakraborty, the penalty of dismissal from service inflicted upon the petitioner is grossly disproportionate to the gravity of the wrong.

8. The petition is allowed. The penalty of dismissal inflicted is set aside.

9. Maintaining the conviction we direct petitioner to be reinstated in service and do not permit any penalty to be imposed for the reason we are denying back wages fully to the petitioner and also declaring that the period post-service being terminated which is September 10, 2013 till reinstatement would not be counted in service for purposes of increment but otherwise would be counted in service for all other purposes i.e. continuity of service, and this would be sufficient penalty upon the petitioner who loses his

increments for all times to come i.e. akin to a penalty of permanent forfeiture of two increments as also no pay for the period in question.

10. Compliance be made with the decision within four weeks of receipt of certified copy of the order in the office of the Competent Authority.

11. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

JULY 13, 2016
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