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

Reserved on: 17.12.2015

Decided on : 11.02.2016

+ W.P.(C) 13317/2009

EX. CONSTABLE RAM KARAN

..... Petitioner

Through: Mr Ashok Agrawal and Ms Sridevi
Panikkar, Advs.

versus

UOI &ORS

..... Respondents

Through: Dr AshwaniBhardwaj, Adv.,
Mr B.K. Rout, Pairvi Officer, and Mr S.S. Sejwal,
Law Officer, CRPF

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MS. JUSTICE DEEPA SHARMA (JUDGMENT)

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1. The writ petitioner has impugned the order of the Disciplinary Authority dated 14.07.2004, ordering his removal from service. The competent authorities also dismissed his appeal and revision against the said order.

2. The petitioner, a constable, was working with the Central Reserve Police Force (CRPF) and was given temporary/attachment duty with Group Centre, Pinjore, Haryana. He took his wife for treatment at CRPF Hospital, Group Centre, Pinjore as she was suffering with gynecological problems. Her treatment continued at the CRPF Group Hospital at Pinjore under Dr.Abdul Nazir, SMO, GC, CRPF Hospital, Pinjore. For her further

treatment, she was referred to specialist in Kalka Civil Hospital, Pinjore on 11.09.2003. On 12.09.2003, at about 11.00-11.30 AM, she went to Dr. Abdul Nazir for certification of her medical bill, which was needed for submission of application for refund of bill amount. It was alleged that doctors of CRPF Hospitals had experienced, that the patients who were referred to Civil Hospital for treatment were not purchasing the expensive medicines though their bills included them; in other words, some cases of false reimbursement claims were detected. In order to curb this malpractice, the doctors decided to check the drug purchased against that bill before making endorsement on it. When the petitioner's wife Savita Devi, visited Dr. Abdul Nazir on 12.09.2003 at 11.00-11.30 AM she had the prescribed drug which had been previously purchased with prescription, the bill and her OPD book. Dr. Abdul Nazir found that one expensive drug i.e., *Augmentin* was not among those shown to him. He noted it down in her OPD book. Savita returned to her house and informed her husband (the petitioner) of the fact that doctor had refused to certify the bill in the absence of one of the drugs shown to him. He then again came to the CRPF Hospital to meet Dr. Abdul Nazir for endorsement of the bill along with his wife.

3. According CRPF the petitioner and his wife entered into the chamber of Dr. Abdul Nazir and insisted upon the clearance of the bill and when he refused to do so on the ground that *Augmentin* had not been shown to him, the petitioner abused him, hit him and caused injuries to the eye and a cut below the eye, and other injuries as well. On hearing the commotion, Constable Suresh Kumar entered the doctor's chamber and took the petitioner outside. Thereafter, on the complaint of the doctor a charge-sheet was issued to the petitioner for the alleged misconduct. A Departmental Enquiry followed, in which the petitioner participated, was provided

opportunity to cross-examine the witnesses (which he availed). He filed his statement and along with that the statement of his wife and father-in-law. The enquiry officer submitted his report and thereafter the Disciplinary Authority passed the impugned order.

4. The petitioner has challenged the order of the Disciplinary Authority, Appellate Authority and Revisional Authority on the ground that the findings of the Disciplinary Authority are not based on any evidence. The incident had not taken place in the manner stated by the respondent. Mr. Ashok Aggarwal, learned counsel, advanced a two-fold submission; first that the Petitioner could not have hit Dr. Abdul Nazir with his hand, as his arm was fractured and steel plate was implanted with 12 screws. With such an injury, it was not possible for him to hit Dr. Abdul Nazir. He secondly urged that after his wife informed him that Dr. Nazir refused to approve the bill, he accompanied her wife with the drug to the hospital. He sat outside Dr. Nazir's room and his wife entered it alone. He entered the room later, only on hearing the cries of his wife. He saw his wife beating Dr. Nazir with her *chappal* (slipper) and at that time, his hand was on her shoulder. He also noticed that height-measuring instrument had fallen down. Learned counsel contended that these injuries on the person of Dr. Nazir were partly caused by his wife and partly by the height measuring instrument, which had fallen on him. His wife told him that Dr. Nazir had abused her and also touched her inappropriately, and that none of the witnesses had heard or seen him abusing or beating Dr. Nazir.

5. It is further argued by the petitioner that his wife had also lodged a complaint against Dr. Nazir with the police alleging molestation, but no action was taken; she thereafter filed a complaint in the Court under Section 156(3) Cr.P.C. on which cognizance had been taken and the matter is

pending.

6. Mr. Agarwal further argued that there were discrepancies and inconsistencies in the statement of the official witnesses, who deposed that the petitioner was guilty. It was submitted that the version of the prosecution witnesses that the petitioner assaulted the doctor, is unbelievable because a close reading of their deposition clarifies that none of them were with the doctor in his chamber, when the incident happened. It was argued that the other doctor, who supported the prosecution version, was not an eyewitness; she merely had her chamber nearby and concededly came out of it upon hearing the commotion. Learned counsel also argued that the senior most doctor, during his deposition, admitted- contrary to Dr. Nazir's evidence- that no general instructions had been issued, to verify the purchase of individual drugs by patients before sanctioning reimbursement. This, it was urged, falsified the doctor's story and strengthened the petitioner's case of inappropriate advance by the doctor to his wife. Counsel also relied on the statements of the petitioner's wife, made in the course of criminal investigations.

7. The CRPF contends the petitioner concocted the story of his wife's molestation by the doctor, to save himself and there is no truth in it. It is submitted that the petitioner did not produce any evidence to show that at about 12.00 PM on 11.09.2003 his wife had entered alone and that he was sitting outside the room of Dr. Abdul Nazir. It is submitted that this contention of the petitioner is falsified by the fact that his wife herself in her complaint to the police, stated that *she entered the room of Dr. Abdul Nazir along with her husband* and further qualified it by contending that *Dr. Abdul Nazir asked her husband to go out*. It is submitted that the statement of Dr. Abdul Nazir, that both entered his room together is corroborated by

Constable Suresh Tripathi, PW-5 who has clearly stated that he asked both petitioner and his wife to go inside the doctor's chamber when asked by doctor to send in the patient. He also saw witnesses who entered the room of complainant on hearing the shouts of petitioner, and denied having heard cry of wife petitioner. It is further argued on behalf of the respondents that there was enough evidence before the Disciplinary Authority to hold that petitioner had abused and caused injury to Dr. Nazir. Besides the testimony of complainant (Dr. Nazir), other witnesses PW-5 Constable Suresh and Lab Technician Bhupinder Kumar Pathak, who entered the complainant's room, saw the petitioner shouting loudly. Bhupinder, in fact, brought the petitioner out of the room and pacified him. It was submitted that these statements support the doctor's testimony. That Dr. Nazir received injuries in the incident was established not only by his statement but also from the medical documents produced during the enquiry. The petitioner did not dispute this. It was argued that the petitioner had received the fracture in his left arm and had used his right arm for causing injuries, so it cannot be presumed that since he had the fracture he could not have caused injuries.

Findings

8. The depositions of various witnesses reveal that at the time of the incident, three persons were present, i.e the doctor, the petitioner and his wife. The disciplinary authority after examining the enquiry report reached to the following conclusions qua charge:-

"Article-One

9. The statements of all the witnesses and the documents produced prove that accused No.961340413 Constable/Driver Ram Karan, did not show the medicine (AUGMENTIN) prescribed by the Doctor for the treatment of his wife, to Doctor Abdul Nazir, Medical Officer, Group Center Hospital, Pinjour,

which was required for the verification of Bill of the medicines. Accused made undue pressure on the doctor to verify the said Bill. When Dr. Abdul Nazir refused for it, accused Const./Driver Ram Karan misbehaved with him and abused the doctor Nazir and also manhandled him, in which he sustained injuries. The statement of accused that beatings were given to Dr. Abdul Nazir by his wife is wrong and misconceived because he has not produced any witness or evidence in this regard, however the defence witnesses have stated in their statements that when Constable/Driver Ram Karan was in the room of Dr. Abdul Nazir, he was abusing loudly and Dr. Abdul Nazir had sustained injury and swelling on his face. Therefore, Charge of Article-One, levelled against Constable/Driver Ram Karan is found proved beyond any doubt.

Article—Two

10. As per the statements of witnesses and evidence, the accused No. 961340413 Constable/Driver Ram Karan made undue pressure for verifying the bills of medicines prescribed for the treatment of his wife, without showing the medicines purchased by him. When Dr. Abdul Nazir refused to do so, accused misbehaved with the above said Medical Officer and gave him beatings, in which he sustained injuries on his face. Thereafter, to conceal his misconduct, he made a false allegation on his wife's sexual harassment by the above said Medical Officer, but he failed to produce any evidence in this regard. Accused wife had lodged a First Information Report at Police Station Pinjour regarding the act of misbehaviour by Medical Officer Dr. Abdul Nazir with her and after investigations, the S.H.O. Pinjour had stated in his report that the allegation of sexual harassment made by Smt. Savita Devi against Dr. Abdul Nazir is false and baseless. Therefore charge of Article-2 levelled against the accused is also found proved beyond any doubt."

9. The Appellate Authority also observed as under:

“The officer who has conducted the DE has accessed sufficient evidence oral and documentary which clearly prove the appellant on 12.9.2003 about 1200 hrs went along with his wife to Dr.Abdul Nazir in GC, CRPF, Pinjore Hospital, quarreled with said medical officer when the medical officer raised some objection on bill of costly medicine he wanted to verify without producing medicines physically. During quarrel he abused the said medical officer and assaulted him causing injury below his right eye. This has been proved from the statement of No.921620015 Pharmacist Angrej Singh, No.700390475 HC MadhukantJha No.913219123 CT Suresh Kumar, Lady Dr. Sushma Sharma, Dr. L.R. Jena, CMO and also from medical examination report conducted by Dr. Sushma Sharma immediately after the assault. During the course of DE, witnesses No.921620015 Pharmacist Angrej Singh No.913219123 CT Suresh Kumar, appeared hesitant to state the facts perhaps to save the delinquent from punishment. However No.913219123 Ct. Suresh Kumar during the cross examination of PE officer has clearly stated that Ct/Dvr Ram Karan and his wife together entered the chamber of Dr. Abdul Narzir. Ram Karan first followed by his wife (page 102 of DE file). Thus the allegation of Ct/Dvr. Ram Karan that his wife entered the chamber of Doctor, he caused sexual harassment to her and pressed her breast due to which she cried and thereafter he (Ram Karan) on listening the cry entered the chamber is false. Hence there is no substance in the allegation of sexual harassment (Page 102 and 103 of DE file). Lab Technician Bhupender Kumar in his examination by E.O. (page 107) has clearly stated that he has heard Ct. Ram Karan pelting abuses on Dr. Abdul Nazir and was offensive and not ready to come from the chamber of Dr. Abdul Nazir and was forcibly brought out by him. No.921620016 Pharmacist Angrej Singh in his

statement during PE has also stated that he had seen Ct./Dvr. Ram Karan offensive and shouting abuses on Dr. Abdul Nazir, No.700390475 H.C. Madhukant Jha in examination of PE officer (page 115 of DE file) stated that when Ct/Dvr Ram Karan was being taken out of the chamber said Ct/Dvr was kicking Dr. Abdul Nazir and also giving blows by his hand and Dr. Abdul Nazir was defending himself. The allegation of sexual harassment of Smt. Savita Devi wife of ex Ct/Dr Ram Karan by Dr. Abdul Nazir has not been supported by any of the witnesses i.e. No.921620015 Pharmacist Angresh Singh No.700390475 H.C. MadhukantJha No.913219123 Ct. Suresh Kumar, Lady Dr. Sushma Sharma, Dr. L.P. Jena, CMO who were present in the hospital at the time of quarrel. On the contrary No.911243337 Lab Technician Bhupender Kumar Pathak has stated that when he reached the spot on listening quarrel between Ct/Dvr Ram Karan and Dr. Abdul Nazir, Ct/Dvr. Ram Karan was aggressive against Dr. Abdul Nazir and was shouting abusing and telling that his wife is illiterate who does not know about medicine (page 106 and 107 of DE file). Whereas the natural reaction of a person whose wife is sexually harassed should be shout about such sexual harassment and none of the witnesses heard him shouting or describing about sexual harassment and none of the witness heard him shouting or describing about sexual harassment. Thus story of sexual harassment appeared concocted and just an after thought.”

10. That the doctor had earlier refused to certify the bills produced by the petitioner's wife, earlier, because she did not show him *Augmentin*, is an undisputed fact. The evidence on record show that Dr. Nazir made an entry into the OPD book of Savita. This OPD book was, however, taken away by Savita at that time. Dr. Nazir could get the copy of the said entry only when it was produced before him during the police enquiry. Savita's OPD book

supports the testimony of Dr. Abdul Nazir that she did not show *Augmentin* to him when she initially went to him for certification. He conveyed this fact to Dr. Sushma Sharma, PW-2 who had in her deposition, verified this fact. During his conversation with Dr. Sushma he also expressed concern about the irregularities by patients referred to Civil Hospital, who were not purchasing all the prescribed medicines, especially expensive drugs, but making false claims. As a precaution and in order to curtail such malpractice, it was felt that verification of medicines purchased against bills was necessary. The petitioner has nowhere contended that he or his wife had *Augmentin* as required of his wife earlier in the day. He merely stated that his wife was carrying all the available medicines.

11. Undoubtedly, the petitioner's wife Savita, was Dr. Nazir's patient and had consulted him on other previous occasions when he may have examined her. She had not any complained of misbehavior against him. Even earlier, during the day of the incident at 11.00-11.30 AM, when she went with the bill and drugs along with the OPD card, she did not complain about the doctor's misbehavior. It was Dr. Nazir who on his intercom informed the other doctor Dr.Sushma Sharma that the patient (Savita) wished for verification of the bill, did not show him one drug, *Augmentin*. He also noted this in Savita's OPD book. A copy of this document is part of the record of this case, as a document filed along with the closure report of the police in the original complaint preferred by the petitioner's wife.

12. The authorities did not believe the Petitioner's defence that his wife had entered Dr. Nazir's room, that he was first outside the doctor's chamber, during his wife's examination and later entered the room on hearing his wife cry out, in view of the evidence discussed in the orders. His statement is contradicted by the statement of his wife Savita in her complaint (to the

police). In the complaint, she had stated that both of them entered the doctor's room together-although she claims that doctor sent her husband/petitioner out of the room. However, the wife also stated that earlier, she has been subjected to verbal abuse; the doctor had allegedly stated that she was a woman of loose morals. She did not however, depose this during the inquiry; her written statement was on the record, but not taken into account by the Enquiry Officer. These facts, in the opinion of the court, are somewhat significant, because they do point to what possibly could be mitigating circumstances.

13. In a disciplinary enquiry, the strict rules of evidence do not apply. The rule of preponderance is what is followed during the domestic enquiry. The Supreme Court in *Maharashtra State Board of Secondary and Higher Secondary Education K.S. Gandhi and Ors* (1991) 1 SCR 773 stated that strict rules of the Evidence Act, and the standard of proof envisaged contemplated in courts do not apply to departmental proceedings. It is open to the authorities to receive and place on record all the necessary, relevant, cogent and acceptable material facts though not proved strictly in conformity with the Evidence Act. Such material must be germane and relevant to the facts in issue. In a domestic enquiry, therefore, if the Court is satisfied that the Enquiry Officer had considered substantial evidence on record to draw inferences, it cannot held to be a case of "no evidence". If the overall circumstances on record, point towards the guilt of the delinquent, in such cases, it cannot be said that the Enquiry Officer had acted on surmises and conjectures.

14. As discussed above, in the present case, there was sufficient material before the Enquiry Officer, which led him to conclude that the charges against the petitioner stood proved. It is also a settled principle of law that

the Courts under Article 226 of the Constitution do not sit in appellate jurisdiction over the findings of the Disciplinary Authority. Courts are not required to judge whether the conclusion of the Disciplinary Authority is warranted; rather it has to be seen that the decision is based on cogent material on record. Courts are also not empowered to substitute their conclusions to that of Disciplinary Authority where the said Authority acts on the basis of material on record, where the principles of natural justice and prescribed procedure are followed.

15. Learned counsel for the petitioner has argued that the petitioner belongs to a poor family and after his dismissal, he had to work as a casual labourer and that is why he could not approach the Court at the earliest and that he has dependent family, who are leading their life in penury. It is also submitted that in his entire career of 11 years before his dismissal, there was no allegation of misconduct of any type against him and his behavior had all along been outstanding. It is further contended that the penalty in force is shockingly disproportionate to the proven charges, particularly in view of the fact that immediately after the incident he was arrested and kept in confinement from 1.00 PM noon to 10.00 PM and thereafter he was released from the quarter guard jail. It is further contended that the punishment of removal from service is excessive and undoubtedly harsh and disproportionate to the proved charges. It is submitted that the same deserves to be set aside.

16. On the other hand, it is argued on behalf of the respondent that the petitioner had not only beaten a senior doctor, on being asked to show him the whole of the medicine purchased against the bill, endorsement of which was sought by him, but also that his conduct of the petitioner included the filing of a false police complaint through his wife putting false allegations of

outraging her modesty, which were found to be false by police, calls for no leniency and in these circumstance, it cannot be said that the penalty is disproportionate or irrational.

17. The law regarding powers of this Court under Article 226 of the Constitution to review an administrative order is well-settled. While the Court cannot question the decision made by authority, the Courts retain the power of judicial review vis-à-vis the penalty imposed where the facts and circumstances suggest that the penalty is undoubtedly harsh or shockingly disproportionate. If any such condition exists, the Court can either substitute the penalty or send the matter back to the authorities for reconsideration for imposition of appropriate penalty (Ref *B.C. Chaturvedi vs Union of India* (1995) 6 SCC 749). It is also a settled principle of law that punishment has to commensurate to the offence proved and all surrounding circumstances should be taken into consideration. The penalty awarded should not be suggestive of bias. A punishment can be said to be shockingly disproportionate if in the given circumstance of the case a reasonable man could not have imposed such a penalty. Courts have to exercise the power of judicial review of penalty sparingly, but in appropriate cases, the Court is required to exercise such power in order to advance cause of the justice. The Supreme Court in the case of *Deputy Commissioner, KVS and Ors. vs. J. Hussain* (2013) 10 SCC 106 held as under:-

“6. When the charge proved, as happened in the instance case, it is the disciplinary authority with whom lies the discretion to decide as to what kind of punishment is to be imposed. Of course, this discretion has to be examined objectively keeping in mind the nature and gravity of charge. The Disciplinary Authority is to decide a particular penalty specified in the relevant Rules. Host of factors go into the decision

making while exercising such a discretion which include, apart from the nature and gravity of misconduct, past conduct, nature of duties assigned to the delinquent, responsibility of duties assigned to the delinquent, previous penalty, if any, and the discipline required to be maintained in department or establishment where he works, as well as extenuating circumstances, if any exist. The order of the Appellate Authority while having a re-look of the case would, obviously, examine as to whether the punishment imposed by the Disciplinary Authority is reasonable or not. If the Appellate Authority is of the opinion that the case warrants lesser penalty, it can reduce the penalty so imposed by the Disciplinary Authority. Such a power which vests with the Appellate Authority departmentally is ordinarily not available to the Court or a Tribunal. The Court while undertaking judicial review of the matter is not supposed to substitute its own opinion on reappraisal of facts.(See: Union Territory of Dadra & Nagar Haveli vs. GulabhiaM.Lad (2010) 5 SCC 775). In exercise of power of judicial review, however, the Court can interfere with the punishment imposed when it is found to be totally irrational or is outrageous in defiance of logic. This limited scope of judicial review is permissible and interference is available only when punishment is shockingly disproportionate, suggesting lack of good faith. Otherwise, merely because in the opinion of the Court lesser punishment would have been more appropriate, cannot be a ground to interfere with the discretion of the departmental authorities.”

18. From the order of imposition of the penalty, it is apparent that the Disciplinary Authority as well as the Appellate and Revisional Authority were of opinion that the proved charges were grave. The record also reflects that the conduct of the Petitioner's wife in filing a complaint to the police through his wife) was also an important factor which had influenced the

authorities while imposing the penalty of removal from service. This shows that the mind of Disciplinary Authority and the Appellate Authority and the Revisional Authority were swayed considerably by the conduct of the appellant in filing a false police complaint through his wife. When the police failed to take any action on the complaint of Savita Devi, wife of the appellant, she filed an application under Section 156(3) of Cr.P.C. on which the concerned Court had taken the cognizance of the offences against Dr. Abdul Nazir and at the time when penalty was imposed, the said matter was still pending and had not reached to its conclusion.

19. The evidence of PW-5 Suresh shows that on entering into Dr. Nazir's room, he saw both the doctor and the appellant scuffling with each other and they were separated through his intervention. There is nothing on record to show that the appellant had acted in a pre-meditated manner or had planned the whole thing. The incident appears to have occurred at the spur of the moment. Although the court cannot be certain about the circumstance, yet there can be a reasonable doubt as to whether there was anything spoken to the Petitioner's wife, by Dr. Nazir, which led to the scuffle or altercation. Whilst the version about the assault on the petitioner's wife may be doubtful, the statement made to the police that the doctor had expressed something about her character- in the context of her inability to produce the prescribed medication, for verification, is still open to judicial scrutiny in the application under Section 156(3) of Cr.P.C. of his wife.

20. Keeping in view the totality of the circumstances of this case, we are of the view that the penalty of removal from service, especially when the petitioner has clean record of 11 years of previous service, is disproportionate to the proved charges. Given the circumstance of the case, we feel that confinement of petitioner from 1.00 PM noon to 10.00 PM in

quarter guard jail was sufficient punishment. We accordingly order for the reinstatement of the petitioner with immediate effect. The respondents are also directed to treat the period from the date of dismissal till the reinstatement as per the provisions of law. The petitioner is also entitled for salary and other benefits admissible in law. He shall be considered on duty during this period for the purpose of calculation of pensionary benefits. The Petition is allowed in the above terms. No costs.

**DEEPA SHARMA
(JUDGE)**

**S. RAVINDRA BHAT
(JUDGE)**

**FEBRUARY 11, 2016
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