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

Judgment Dated: 20th July, 2016

+ **W.P.(C) 3952/2015**

SHIV KARAN SINGH

..... Petitioner

Through: Mr.Shanker Raju, Mr.Nilansh Gaur,
Ms.Himantika Saini Gaur, Advocates.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr.Anuj Aggarwal, Additional
Standing Counsel with Ms.Niti Jain,
Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S.MEHTA

G.S.SISTANI, J (ORAL)

W.P.(C) 3952/2015

1. With the consent of the parties, the writ petition is set down to final hearing and disposal.

2. The petitioner was appointed as a Constable in Delhi Police on 1st August, 1985. He claims that during his entire tenure till the year 2011, he has suffered only one warning to be careful in future in the year 2000 and a penalty of censure on 9th April, 2002. The petitioner claims that he has had an excellent service record. On 13th December, 2011, he was transferred from North-west district to Rashtrapati Bhawan security. The petitioner remained absent for a period of 254 days. On 26th October, 2012, a departmental

inquiry was initiated for remaining absent though on medical grounds. The inquiry officer rendered his report on 9th May, 2013 and held that the charge against the petitioner stood proved. The Disciplinary Authority by an order dated 19th August, 2013, imposed an extreme penalty of dismissal of the petitioner from service. The petitioner claims that this was in violation of Rule 8 (a) and 10 of the Punishment Rules. The OA filed by the petitioner before the Tribunal was dismissed on 23rd March, 2015 which has led to the filing of the present writ petition.

3. Learned counsel for the petitioner submits that the learned Tribunal has failed to consider that the absence of the petitioner was not wilful but on the ground of illness of his mother and thereafter for his own illness. He has strongly urged before this court that the petitioner remained absent on account of his medical reasons as well. Mr. Raju contends that the Medical record was produced on record, however, there is no finding of the Inquiry Officer that the medical record was either forged or fabricated and thus, it cannot be said that his absence was illegal or unauthorized.

4. Counsel has also pointed out to various infirmities in the procedure while conducting the inquiry but after some hearing in the matter, counsel for the petitioner on instructions, submits that he would only restrict his submission and argument on the point of proportionality of the punishment which has been awarded to the petitioner. Counsel submits that the petitioner had an unblemished service record of 28 years of service. Barring a censure and a warning to be careful in future, the petitioner has clean antecedents. It is contended that the petitioner belongs to a rural background and has a family to support besides he has no source of livelihood and that he would not be able to live a life of dignity, in case, he is deprived of his retiral

benefits. Counsel submits that the petitioner is willing to make a submission that, in case, the order of punishment is modified, he would seek voluntary retirement from the date of his dismissal and would not claim any past benefits including his salary from the date of his absence but would only claim pension on the basis of his last drawn pay, when he was performing his duties.

5. Learned counsel for the respondent submits that the absence of the petitioner was wilful. He had acted unbecoming of a member of a disciplined force. He did not apply for leave nor did he communicate to the department. He did not inform the department about his illness or his mother's illness, neither provided the medical certificates. Even otherwise, the medical certificates provided by the petitioner are not for the entire period of petitioner's absence neither the certificates suggest that he was completely bed ridden for the entire period of leave or that he was in any way prevented from informing the department himself or through a family member or relation with regard to his illness. Counsel submits that a bad example would be set, in case, there is any modification in the order of punishment rendered to the petitioner.

6. Counsel for the petitioner on the other hand submits that the petitioner has already suffered enough as the instant case pertains to the year 2012. Counsel has the petitioner has relied upon a decision rendered by this court on 19th August, 2015 in ***W.P.(C) 2345/2015 Sat Narayan Kaushik v. Commissioner of Police and Ors.***, where this court had modified the order of punishment of the petitioner on the ground that the punishment was not commensurate to the gravity of the misconduct.

7. Mr.Raju, learned counsel for the petitioner submits that the judgment rendered by this court has been upheld by the Apex Court by a judgment dated 17th February, 2016 in ***Delhi Police, Through Commissioner of Police and others v. Sat Narayan Kaushik*** reported in ***(2016) 6 SCC 303***. While we find force in the submission of learned counsel for the respondent that a member of a disciplined force like Delhi Police must adhere to rules and an absence without information should not be treated lightly or encouraged, we are also of the view that the petitioner has not been able to convince us that he was prevented either by illness or otherwise to communicate to the department regarding his illness and his absence.

8. We also find no infirmity in the inquiry, however, we may note that the Inquiry Officer has not rendered any finding that the medical record produced by the petitioner was either fabricated or tampered with or fictitious and thus, in the absence of any finding that the petitioner's illness was sham, we are of the view that the punishment awarded to the petitioner is not commensurate to the imputations made against him.

9. In another recent judgment rendered by the Supreme Court in ***Chhel Singh v. M.G.B. Gramin Bank Pali & Ors.*** in ***Civil Appeal No.6018/2014*** decided on 7th July, 2014, it was observed that in the absence of any finding that the medical report submitted was forged, fabricated or obtained for any consideration, it would not be open for the Inquiry Officer or the Disciplinary Authority to disbelieve the Medical Certificate without any valid reason. Para 15 of this judgment reads thus :

“15. From the plain reading of the charges we find that the main allegation is absence from duty from 11.12.89 to 24.10.90 (approximately 10 and ½ months), for which no

prior permission was obtained from the competent authority. In his reply, the appellant has taken the plea that he was seriously ill between 11.12.89 and 24.10.90, which was beyond his control; he never intended to contravene any of the provisions of the service regulations. He submitted the copies of medical certificates issued by Doctors in support of his claim after rejoining the post. The medical reports were submitted after about 24 days. There was no allegation that the appellant's unauthorized absence from duty was wilful and deliberate. The Inquiry Officer has also not held that appellant's absence from duty was wilful and deliberate. It is neither case of the Disciplinary Authority nor the Inquiry Officer that the medical reports submitted by the appellant were forged or fabricated or obtained for any consideration though he was not ill during the said period. In absence of such evidence and finding, it was not open to the Inquiry Officer or the Disciplinary Authority to disbelieve the medical certificates issued by the Doctors without any valid reason and on the ground of 24 days delay.” (emphasis supplied)

10. In the case of **Ram Krishan v. Union of India and ors.** reported in **(1995) 6 SCC 157**, the Supreme Court held as under:

“11. It is next to be seen whether imposition of the punishment of dismissal from service is proportionate to the gravity of the imputation. When abusive language is used by

anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of abusive language. No strait-jacket formula could be evolved in adjudging whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts. What was the nature of the abusive language used by the appellant was not stated.

12. On the facts and circumstances of the case, we are of the considered view that the imposition of punishment of dismissal from service is harsh and disproportionate to the gravity of charge imputed to the delinquent constable. Accordingly, we set aside the dismissal order. We hold that imposition of stoppage of two increments with cumulative effect would be an appropriate punishment. So, we direct the disciplinary authority to impose that punishment. However, since the appellant himself is responsible for the initiation of the proceedings, we find that he is not entitled to back wages; but all other consequential benefits would be available to him.”

11. In the instant case, the petitioner himself remained on leave for a period of 254 days and has been awarded the punishment of dismissal from service. In ***Sat Narayan Kaushik v. Commissioner of Police and Ors. (supra)***, this court has held as under :

“13. Rule 8 (a) and 10 of the Delhi Police (Punishment & Appeal Rules 1980) reads as under:

“Rule 8. Principles for inflicting penalties:

(a)Dismissal/Removal - the punishment of dismissal or removal from service shall be awarded for the act of grave misconduct rendering him unfit for police service.

X X X

"Rule 10. Maintenance of discipline - The previous record of an officer, against whom charges have been proved, if shows continued misconduct indicating incorrigibility and complete unfitness for police service, the punishment awarded shall ordinarily be dismissal from service. When complete unfitness for police service is not established, but unfitness for a particular rank is proved, the punishment shall normally be reduction in rank."

X X X

14. The sole question which arises is whether the penalty of dismissal in the present case is just and proper? The two rules discussed above provided

that penalty of dismissal can be imposed only in cases, if grave misconduct or continued misconduct indicating incorrigibility and complete unfitness for police service.

15. In Bhagat Ram v. State of H.P., reported in (1983) 2 SCC 442 Hon'ble Supreme Court observed as under:

“...It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution...”

16. In Ranjit Thakur v. Union of India and Ors. reported in AIR 1987 SC 2386 the Hon'ble Supreme Court observed in the following words:

“...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 the 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.”

17. In B.C. Chaturvedi v. Union of India reported in (1995) 6 SCC 749, the question posed for consideration before the Hon’ble Supreme Court was as to whether the High Court/Tribunal can direct the authorities to reconsider punishment with cogent reasons in support thereof or reconsider themselves to shorten the litigation. In this case, at para 18, this Court has observed as under: -

"A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose

appropriate punishment with cogent reasons in support thereof."

18. The aforestated principles were canvassed by the Hon'ble Supreme Court in S.R. Tewari Vs. Union of India and another reported in (2013) 6 SCC 602, and 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."

12. Ordinarily, the courts should be slow in interfering with the quantum of punishment and should leave the same to the Disciplinary Authority to decide, however, since we have heard the matter in detail and have examined the fact that during the entire tenure of the petitioner, except for him being awarded a penalty of censure in the year 2002 and a warning in the year 2000, the petitioner had a clean record. Also the petitioner had put in 28 years of service to the department. He belongs to a rural background and has a family to support. There is no finding that the medical record submitted by the petitioner was fabricated, procured, tampered with or that he or his mother was not well. We feel that this is a fit case, where this court should interfere with the quantum of punishment awarded to the petitioner which we are of the view was in excess. It would be useful to refer to para 15 of ***Delhi Police, through Commissioner of Police and ors. v. Sat Narayan Kaushik (supra)*** which reads thus:

“15. Coming to the first two submissions of the learned counsel for the appellant, we are of the view that the High Court, in exercise of its writ jurisdiction, has power to interfere with the quantum of punishment imposed by the appointing authority in an appropriate case provided the High Court has taken into consideration the totality of the facts and circumstances of the case such as nature of charges levelled against the employee, its gravity, seriousness, whether proved and, if so, to what extent, entire service record, work done in the past, remaining tenure of the delinquent left, etc. In other words, it is necessary for the High Court to take these factors into consideration before interfering in the quantum of punishment.”

13. We accordingly, allow the writ petition in part. We modify the order with respect to quantum of sentence from dismissal of the petitioner to compulsory retirement. The petitioner will make an application for compulsory retirement which would be from the date of the order of the dismissal. The petitioner will not be paid salary from the date of his absence. The petitioner agrees that he will not claim any salary from the date of his absence and that he will not claim any promotion or retiral benefits or any other benefit except the pension on the basis of his last drawn salary prior to the period of his leave/absence from service.

14. Consequently, the writ petition is disposed of in the aforestated terms with no order as to costs.

CM No.7058/2015 (stay)

15. In view of the order passed in the writ petition, this application has been rendered infructuous. The same stands disposed of as such.

**G.S.SISTANI
(JUDGE)**

**I.S. MEHTA
(JUDGE)**

JULY 20, 2016/j