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

+ **W.P.(C) 1986/2017**

ASHOK DHAMA

..... Petitioner

Through : Ms.Saahila Lamba and Mr.T.S.Dagar,
Advts.

versus

UNION OF INDIA AND ORS

..... Respondents

Through : Mr.Jagjit Singh, sr.standing counsel
with Mr.Preet Singh, Mr.Sukh Dev
Singh and Ms.Kiran Kaushik, Advts.

CORAM:

HON'BLE MS. JUSTICE INDIRA BANERJEE

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

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03.03.2017

1. In this writ petition the petitioner has challenged an order dated 29th June, 2016 passed by the Disciplinary Authority whereby the petitioner has been awarded the punishment of compulsory retirement and an order dated 30th November, 2016 passed by the Appellate Authority rejecting his appeal from the order of the Disciplinary Authority.
2. The charges against the petitioner are indeed serious. The charges are as follows:

“1. On 25.07.2015 during duty hours between 16:00 hours to 24:00 hours, you extorted Rs.3250/- illegally from Constable/RPSF/6th Bn Kuldeep Yadav who was on duty alongwith you by creating pressure upon him.

2. On 31/08/2015/01.09.2015 you were deployed along with Constable Harphool Singh with arms between 19:00 hours to 6:00 hours for Patrolling duty, you left your colleague alone with arms, assaulted shopkeeper

Jitender Kumar on account of some transaction for money and went outside of your duty beat at Ring Road and threatened him, by putting Govt Pistol on his temple.

3. On 30.09.2015, you snatched Rs.3200/- from one outsider Sh.Manjeet Singh after threatening & beating him.”

3. An inquiry was apparently conducted into the aforesaid charges. The Inquiry Officer found the petitioner guilty of the first and the third charge. The second charge was held partly proved. Except the charge of putting Govt pistol on the temple of a companion, which was not established, all the other charges were established.

4. The petitioner submitted his representation against the report of the inquiry to the Disciplinary Authority. The Disciplinary Authority however, after consideration of the representation of the petitioner, awarded to the petitioner the punishment of compulsory retirement. An appeal therefrom has been rejected.

5. It is well settled that this Court exercising jurisdiction under Article 226 of the Constitution of India does not sit in appeal over findings arrived at in an inquiry. No case of any procedural irregularity or illegality has been made out.

6. It is contended that the Disciplinary Authority violated Rule 155 of the Railway Protection Force Rules, 1987 which provides as follows :

"155. Determination of punishment:

In determining the punishment, the character, previous bad record and punishment of party charged shall not be taken into consideration unless in a case

where they are made subject-matter of a specific charge in the proceeding itself. Offences connoting moral turpitude shall be carefully distinguished from smaller lapses of conduct. It is essential that the punishment shall be inflicted keeping in view the nature of duties expected from the member of the Force and the misconduct by him"

7. On a reading of Rule 155, it is patently clear that, what is prohibited is imposition of penalty for an earlier misconduct, in respect of which disciplinary proceedings have been dropped or closed or lesser punishment imposed. In other words, punishment cannot be imposed or enhanced for past conduct in course of disciplinary action for a subsequent act of misconduct. The gravity of a past conduct would not permit imposition of punishment, which is more stringent than the permitted punishments for the misconduct, that has given rise to the disciplinary proceedings. In other words, punishment that is not provided as per the rules, for an act of misconduct, which has given rise to the disciplinary proceedings, cannot be imposed for any past misconduct, unless the past misconduct is the subject matter of a specific charge in the proceedings, in which the punishment is imposed.

8. However, for the purpose of determining the punishment, which may be awarded for the misconduct, out of the many punishments provided for the misconduct which has been proved, the past conduct of the delinquent employee and other antecedent/related circumstances may be taken into account. To cite an example, if past misconduct, for which penalty of dismissal could have been imposed, is excused or a lesser penalty awarded,

then penalty of dismissal cannot be awarded for the same misconduct in subsequent disciplinary proceedings. However, when there are different punishments prescribed for the same offence, for example, when punishment may be imposed of dismissal or of compulsory retirement with pensionary benefits for the same offence, whether the more stringent punishment of dismissal forfeiting terminal benefits or the lesser punishment of compulsory retirement with terminal benefits should be imposed, may depend on past conduct and other related circumstances. Where the past conduct is free from blemish, and the act of misconduct a one-time aberration a more lenient punishment may be awarded. We do not find any contravention of Rule 155 of the Railway Protection Force Rules, 1987.

9. Since this Court can neither re-examine the evidence nor sit in appeal over inquiry findings and since no case of infringement of any other provision of law has been made out in the grounds pleaded in the writ petition, we do not deem it appropriate to entertain the writ petition, particularly in view of the seriousness of the charges against the petitioner which have been established.

10. The writ petition is rejected.

INDIRA BANERJEE, J

YOGESH KHANNA, J

MARCH 03, 2017/VLD

