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

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Date of Judgment: 28th March, 2017

+ **W.P. (C) 6930/2009**

U.O.I.

..... Petitioner

Through Mr.V.S.R.Krishna, Adv.

versus

RAJESH KUMAR MEENA

..... Respondent

Through Ms.Meenu Mainee, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE VINOD GOEL

G.S.SISTANI, J. (ORAL)

1. Rule D.B. in this matter was issued on 08.09.2009.
2. Challenge in this writ petition is to the order passed by the Central Administrative Tribunal (hereinafter referred to as the '*Tribunal*') dated 12.05.2008 by which an OA No. 2186/2006 filed by the respondent herein was allowed as the Tribunal reached the conclusion that the departmental enquiry had not been conducted as per law, and proportionality of punishment with regard to the misconduct had not been properly examined by the disciplinary authority and the appellate authority. Consequently, a direction was issued to reinstate the respondent and his period of absence from 25.09.1999 till the date of

reporting to duty be regularized and he should be treated in service being the period as spent on duty for all purposes except back-wages.

3. Mr.Krishna, learned counsel for the petitioner submits that the order of the Tribunal is based on totally wrong appreciation of facts. It is submitted that in paragraph 9 of the impugned order, the Tribunal had noted that the applicant (respondent herein) had taken permission only for 4 days leave (from 21.09.1999 to 24.09.1999) and remained absent thereafter from 25.09.1999 without taking permission from the competent authority. The Tribunal had also noted that when the respondent turned up for duty on 31.03.2000 he was given duty on 04.04.2000, but once again he did not join the duty. Taking these factors into account the Tribunal observed that since the respondent did not join the duty, he continued to remain on unauthorized absence.
4. Learned counsel submits that once such an observation had been made, the final directions which have been passed could not have been passed, as the order would become self-contradictory in nature. After reaching such a conclusion, the findings of the disciplinary authority and the appellate authority could not have been faulted.
5. With regard to proportionality of the punishment, Mr.Krishna submits that it has been repeatedly held by the Supreme Court that courts should not ordinarily interfere with regard to the proportionality of punishment and the matter should have been remanded back to the disciplinary authority to take a fresh look into the matter at best. Counsel further submits that the unauthorized absence cannot be

condoned, as it has a direct impact on all the workmen serving in the organization and would lead to gross indiscipline.

6. *Per contra*, Ms.Mainee, learned counsel for the respondent, submits that the petitioner has not been able to show any ground which would require interference by this Court in the proceedings under Article 226 of the Constitution of India. She submits that the respondent was prevented from joining his duty for valid and cogent reasons, as both his daughter and wife were unwell and subsequently, his wife died in the year 2003 which would show that his absence was for genuine reasons. She further submits that having regard to the fact that the respondent was working only as a 'Porter', he cannot be expected that he would have made an application with supporting documents, especially when he was going through a rough patch.
7. Learned counsel submits that the respondent would have no objection if the court interferes with the impugned order to the extent of the observation with regard to proportionality of the punishment, but a lenient view should be taken in the matter, more particularly, in view of the fact that he could not join his duty on account of illness in his family.
8. We have heard the learned counsels for the parties and given our thoughtful consideration to the matter.
9. Brief background to be noticed are that the respondent herein, at the relevant time, was working as 'Porter' at Sikandarpur Railway Station and had applied for four days leave commencing from 21.09.1999, but

rather than reporting back on duty on 25.09.1999, he continued to be absent. While being absent, he was served with a chargesheet dated 03.02.2000 for imposition of a major penalty. Thereafter, the respondent reported for duty on 31.03.2000 and was allowed to join duty by the Assistant Operating Manager, Allahabad on 04.04.2000. The respondent again failed to report for duty and reported only on 22.04.2000 for enquiry.

10. The enquiry officer gave his report that the charges stood proved and accordingly, the disciplinary authority passed the penalty order dated 24.05.2000 imposing the penalty of removal from service. The respondent preferred an appeal which was dismissed on 27.07.2000. This led to the filing of the first O.A. 2953/2001 before the Tribunal; which in turn, vide order dated 13.08.2002, remanded the matter back for fresh orders. Accordingly, the disciplinary authority after giving an opportunity of personal hearing to the respondent (which was not availed by him) passed order dated 09.04.2003 once again awarding the penalty of removal from service. The relevant portion of the order reads as under:

“2. From a perusal of the entire record, it is seen that the case setup by you suffers from serious infirmities, in as much as, the continuous submission of PMCs of your daughter from 21.9.99 to 16.10.99 and that of your wife immediately thereafter from 17.10.99 to 22.12.99 and again from 23.12.99 to 30.2.2000 inspires no confidence regarding their authenticity, apart from the serious flaw and contradictory nature of averments in the PMC and the statement/stand taken by you to the effect that your wife suffered premature abortion in the 6th month of pregnancy when infact the PMC submitted by you states that your wife

was treated for T.B. Thus, the entire case setup by you falls and seems to be concocted and fabricated for the purposes of coveringup [sic] your lapse of remaining on unauthorized absence for long period without intimation.”

(Emphasis Supplied)

11. The respondent then preferred an appeal, which was not being decided and therefore, he approached the Tribunal a second time in O.A. 3069/2004. The OA was allowed by order dated 24.12.2004 directing the appellate authority to pass an order thereon. Accordingly, the appellate authority passed a reasoned order dated 12.09.2005, the relevant portion of which reads as under:

“In so far as the case setup by the employee for his unauthorized absence from 25.9.99 to 30.3.2000 is concerned, the same suffers from glaring inconsistencies, in as much as, the employee has taken the stand in the appeal that his wife fell seriously ill and he had, therefore, proceeded on 4 days sanctioned leave and remained at his native place due to illness of his wife, whereas originally when he turnedup [sic] for duty, he had shown and submitted the P.M.C. of the illness of his daughter from 21.9.99 to 16.10.99 and thereafter of his wife allegedly suffering from premature abortion of 6th month from 17.10.99 to 22.12.99 and again from 23.12.99 to 30.3.2000. In the P.M.C. of his wife, the ailment and treatment was shown to be that of T.B. and not of premature abortion of 6th month, as alleged by him. Thus, the materials on record create strong doubt on the authenticity of his case and inspire no confidence in his story.”

(Emphasis Supplied)

12. Aggrieved, the respondent filed the third O.A.2186/2006 before the Tribunal, which has been allowed and has led to the filing of the present writ petition.

13. From the orders of the disciplinary authority and the appellate authority, it is clear that both the authorities had applied their mind upon the defence put forth by the respondent herein and found it to be unsatisfactory as not inspiring confidence. Further, the period of absence of the respondent is not in dispute. Yet, the Tribunal quashed the orders on the ground that the case of the respondent was not taken into account and properly enquired into. In our view, the Tribunal has ventured into an area where the evidence before the enquiry officer has been re-appreciated. The same is by no means permissible in law [See *North Delhi Municipal Corporation v. Qaiser Javed & Anr.*, MANU/DE/0662/2017 (paragraphs 31 and 32) and *Union of India v. P. Gunasekaran*, (2015) 2 SCC 610 (paragraph 12 and 13)].
14. The next aspect to be considered is that of proportionality of the penalty imposed upon the respondent. It would be useful to reproduce the observation of the Supreme Court in the case of *S.R. Tewari v. Union of India*, (2013) 6 SCC 602, which read 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 (1987) 4 SCC 611, 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.

x x x x

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 AIR 1997 SC 3387, State of U.P. v. J.P. Saraswat (2011) 4 SCC 545, Chandra Kumar Chopra v. Union of India (2012) 6 SCC 369 and High Court of Patna v. Pandey Gajendra Prasad AIR 2012 SC 2319.)

25. In B.C. Chaturvedi v. Union of India 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* 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." In a normal course, if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority to reconsider the penalty imposed. However, in order to shorten the litigation, in exceptional and rare cases, the court itself can impose appropriate punishment by recording cogent reasons in support thereof.

27. In *State of Meghalaya v. Mecken Singh N. Marak* 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 and Sanjay Kumar Singh v. Union of India AIR 2012 SC 1783.)

29. In *Union of India v. R.K. Sharma* AIR 2001 SC 3053, this Court explained the observations made in *Ranjit Thakur* 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* 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. We may also refer to the judgments of the Apex Court in ***Kendriya Vidyalaya Sangathan v. J. Hussain*, (2013) 10 SCC 106** and ***Chief Executive Officer, Krishna District Cooperative Central Bank Ltd. and Ors. v. K. Hanumantha Rao and Ors.*, (2017) 2 SCC 528.**
16. In the present case, the matter pertains to the year 2000 and has travelled to the Tribunal on three occasions. The respondent was a mere porter having put in numerous years of service and the unauthorized absence was an isolated incident allegedly owing to the ill-health of the family members of the respondent. In this background, the original penalty imposed of removal from service seems to be

wholly disproportionate to the charges proved against the respondent and thus, shocks the conscience of this Court. In order to shorten litigation, the ends of justice would be met if the punishment awarded to the respondent is modified and the order of the disciplinary authority and the appellate authority are upheld. Accordingly, the order of the Tribunal is quashed, however, the penalty imposed upon the respondent would be modified to one of compulsorily retirement from the date of the order of the disciplinary authority.

17. We may make it clear that the respondent would not be entitled to any back-wages and any other benefits. He would also not be entitled to any subsistence allowance, if it had not been claimed earlier. Since the matter has been pending since the year 2000, we hope that the petitioner would deal with the same expeditiously.
18. The writ petition is accordingly disposed of.
19. No costs.

G. S. SISTANI, J.

VINOD GOEL, J.

MARCH 28, 2017

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