

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.5215 OF 2002

ORDER

This writ petition is filed seeking the following relief:

“to issue an appropriate writ, order or direction more particularly one in the nature of a writ of Mandamus or any other writ or order of similar nature calling for the records relating to the order passed by the 2nd respondent in No.15014/AD-III/MAJ-20/99/PSM/2K/956, dated 4.5.2000 which was confirmed by the 3rd respondent in No.V-11014/43/2K/L&RNo.V-11014/49/LC/DOS/SWS/2K/1306, dated 25.4.2001 and declare the same as void, illegal and in violation of principles of natural justice and consequently direct the respondents to reinstate the petitioner into service with all service benefits available to the petitioner in the interest of justice and equality.”

Heard Sri Pottigari Sridhar Reddy, learned counsel appearing for the petitioner and Sri K.Lakshman, learned Assistant Solicitor General appearing for the respondents.

It is the case of the petitioner that he was appointed as a Constable in CISF Unit on 23.04.1985 and he was discharging his duties as such. While so, in the month of August, 1999, due to domestic problems, he absented from 28.08.1999 to 20.1.2000 on the ground that his wife was admitted in the hospital with severe back pain and he had to assist her. Hence, charge memo dated 2.11.1999 was issued to him and

the petitioner submitted his explanation. Being not satisfied with the explanation submitted by him, the respondents have appointed the Enquiry Officer and the Enquiry Officer, after conducting detailed enquiry, had held that the charges levelled against the petitioner were proved. Based on the said report, the disciplinary authority had passed an order of removal on 4.5.2000. Aggrieved by the same, the petitioner preferred an appeal before the appellate authority. The appellate authority while rejecting the appeal, confirmed the order passed by the disciplinary authority *vide* order dated 6.9.2000. Thereafter, the petitioner filed revision before the 4th respondent, which was also rejected *vide* order dated 25.4.2001. Hence, the writ petition.

Learned counsel appearing for the petitioner contends that the Enquiry Officer had not taken into consideration the medical certificates produced by the petitioner to the effect that his wife was suffering from illness; that without appreciating these facts, the Enquiry Officer has held that the charges leveled against the petitioner were proved; that no opportunity was given to the petitioner in the enquiry; that the removal order passed by the respondents is shockingly disproportionate to the charges levelled against the petitioner; and that the disciplinary authority ought to have considered

the long length of service rendered by the petitioner, and imposed the lesser punishment. In support of his contention, he placed reliance on the judgment of the Apex Court in *Ranjit Thakur vs. Union of India and others*¹, wherein it was held as under:

“Re: contention (d):Judicial review generally speaking, is not directed against a decision, but is directed against the “decision making process”. The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court Martial. 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. Irrationality and perversity are recognized grounds of judicial review. In *Council of Civil Service Union v. Minister for the Civil Service* (1984) 3 WLR 1174 (HL) Lord Diplock said:

“...Judicial Review has I think, developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which

¹ AIR 1987 SC 2386

administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognized in the administrative law of several of our fellow members of the European Economic Community...."

In *Bhagat Ram v. State of Himachal Pradesh*, AIR 1983 SC 454 (at p 460) this Court held:

"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 Art.14 of the Constitution."

The point to note and emphasise is that all powers have legal limits.

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".

Learned Assistant Solicitor General appearing for the respondents contends that every opportunity was given to the petitioner in the enquiry; that the disciplinary authority has rightly imposed the punishment of removal after following the due process of law; and that no illegality or irregularity has

been committed by the respondents; that there are no merits in the writ petition and the same is liable to be dismissed.

Having considered the rival submissions made by the learned counsel on either side and in view of the law laid down by the Apex Court in *Ranjit Thakur v. Union of India* (cited supra), this Court is of the view that the punishment of removal imposed against the petitioner is shockingly disproportionate to the charges levelled against him. Further, in entire career of the petitioner, except the present charge, no other allegations were levelled against him, that too absenteeism only for the circumstances beyond his control.

Accordingly, the Writ Petition is allowed. The removal order passed by the disciplinary authority dated 4.5.2000, the order passed by the appellate authority dated 6.9.2000, and the order passed by the revisional authority dated 25.4.2001, are set aside. The matter is remanded to the revisional authority to consider and pass appropriate orders and impose any punishment other than the dismissal or removal by applying the proportionality theory. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

26th October, 2018
rkk

