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

+ **W.P.(C) 7051/2003**

KHUSHI RAM

..... Petitioner

Through: **Mr. Rakesh Dahiya and Mr. Aditya
Dahiya, Advocates.**

versus

UOI & ORS.

..... Respondents

Through: **Mr. Rajesh Kumar, Advocate for R-1.
Mr. Naushad Ahmed Khan,
Advocate for R-2 & 3.**

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **19.07.2018**

The petitioner's challenge in these proceedings is to the order of his removal from the service issued against him by the Delhi Police.

The petitioner was charged with unauthorised absence from his duties for the different periods (on 18 occasions in 1998). A charge-sheet was issued in this regard on 26.03.1999; it was preceded by an "Absentee Notice" dated 08.12.1998 calling upon him to report for duties. The petitioner participated in the departmental proceedings and refuted the charges levelled; he even relied upon testimonies of two different witnesses. After consideration of the materials on

record, the Enquiry Officer returned a finding of guilt. The report dated 24.09.1999 stated that on different periods the petitioner had wilfully absented himself without a prior or due intimation for the cause of his absence or even seeking leave. The petitioner had relied upon two medical certificate of the registered medical practitioner to state that on account of sickness he could not attend his duties. This certificate was issued by the Medical Officer at Rewari. The explanations of the petitioner were rejected on several grounds. It was held that his omission to inform the Delhi Police in advance or even thereafter or to seek leave of absence or even to appear before the Medical Board, rendered his explanation incredulous. Based upon the Enquiry report, a copy of which was furnished to him, the disciplinary authority directed the penalty of removal from service to be imposed upon the petitioner. The petitioner's appeal to the Commissioner of Police was rejected on 31.05.2000.

Learned counsel urges that the petitioner's explanation with regard to his absence from duties was not in any way disputed or adversely commented, which means that the department, in principle, accepted that he was in fact sick for the duration, he could not attend his duties. It was submitted that once the explanation was reasonable, even if there was some dereliction from duties by the petitioner, the imposition of penalty of removal was harsh and excessive. Learned counsel for the respondents submitted that the findings of the disciplinary and the Appellate Authorities are based upon evidence;

the petitioner never supplied any evidence to establish that he had presented himself before the concerned Medical Officer. His reliance upon a certificate of the Medical Officer at Rewari could not be, in the circumstances, accepted as he could have always examined himself before the departmentally designated medical authorities.

We have considered the submissions.

The concurrent orders of the Administrative Authorities imposing a penalty of removal from service were challenged before the Central Administrative Tribunal, which found no cause to differ with the findings. The findings of facts are based upon the materials and evidence led before the concerned Department/Tribunal/Enquiry Officer and the disciplinary authority. These findings cannot be called as patently unreasonable; nor is it a case of “no evidence”. In these circumstances, the misconduct stood proved. The only question is of the nature of the penalty. Here the Court is of the opinion that whilst the opinion of the Delhi Police that removal from service is an appropriate penalty might seem severe, the compulsions of disciplined force, which has to tackle the public and law problems on day-to-day and minute-to-minute basis, cannot be weighed on the golden scale. Given these circumstances, the imposition of penalty of removal from service, *per se*, in the opinion of the Court cannot be held to be disproportionate. The Court is however, equally conscious that the petitioner had rendered about ten years of service and in these circumstances he may not be left with any terminal benefits. It was

informed during the hearing that the petitioner has a large family and needs to support five children. In these circumstances, the respondents are hereby directed to consider the petitioner's case appropriately and reasonably for compassionate allowance under Rule 41(3) of the Central Civil Services (Pension Rules), 1972. The competent authority shall consider the petitioner's case having regard to the petitioner's records and also upon any representation made by him (which he should give to the competent authority within two weeks from today) and decide the same within six weeks of receipt of such representation.

The writ petition is disposed of in the above terms.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JULY 19, 2018

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