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

Date of Decision: 28.11.2019

+ **W.P.(C) 10458/2019**

HC HEMENDER PAL Petitioner
Through: **Mr. Nasir Ahmed, Advocate**
with **Mr. Mohd. Muzahir**
Husain, Advocate.

versus

GOVT. OF NCT OF DELHI AND OTHERS Respondents
Through: **Mrs. Avnish Ahlawat, Standing**
Counsel with Ms. Palak
Rohmetra, Advocate and Ms.
Laveena Arora, Advocate.

CORAM:
HON'BLE MR. JUSTICE G.S. SISTANI
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI, J. (ORAL)

The petitioner, who is a retired Head Constable (Executive) of Delhi Police is aggrieved by order dated 15.09.2017 made by the Central Administrative Tribunal (CAT), Principal Bench, New Delhi ('Tribunal' for short) in O.A. No.3455/2014 whereby the O.A. filed by the petitioner has been dismissed. By doing so, the Tribunal has

upheld the penalty of forfeiture of two years approved service permanently for the purpose of his further promotion and seniority, imposed upon the petitioner after conclusion of a Departmental Inquiry conducted by the respondents.

2. Briefly, the petitioner was appointed as Constable (Executive) in Delhi Police on 27.08.1982; and was subsequently promoted to Head Constable; and was thereafter also selected for further promotion to the post of Assistant Sub-Inspector (ASI). The petitioner's promotion to ASI however was not confirmed by reason of a Department Inquiry initiated against him as detailed hereinafter.

3. On 30.03.2005, the petitioner was transferred to the security unit and appointed in the Accounts Branch of the Security Cell for assisting in the distribution of 40% arrears to members of the staff arising from the recommendations of the 6th Pay Commission, for which the calculation of the amount so payable were to be made by the Pay & Accounts Office of the Delhi Police.

4. According to the petitioner, the officers in the Accounts Branch were pressurised to calculate and disburse arrears before Diwali in the year 2008 inspite of requests being made by the accounts officers, including the petitioner, that such pressure to calculate and distribute arrears may result in the possibility of mistakes being made in calculations. However, according to the petitioner, the senior officers kept-up the pressure; and arrears so payable were calculated and paid to more than 6,000 employees by bank transfers before the Diwali of 2008.

5. Some time in the year 2009, however upon complaints having been received earlier, an enquiry was conducted and it was found that 26 employees had received 'double arrears' through Axis Bank; but once the bank was alerted, the excess arrears paid were withdrawn from the bank accounts of such employees; and thereby no loss was caused to the exchequer. According to the petitioner, the double payment was a result of a technical mistake on the part of the bank and the petitioner and his other associates had no role to play in it.

6. Be that as it may, on 06.01.2009 the petitioner was transferred from the Security Cell alongwith some other employees and was subsequently relieved on 29.01.2009 by the Police Headquarters while other employees remained there. The petitioner further contends that one Head Constable Shri Bhagwan was also served a show cause notice by the respondent on the allegation that while he was posted in the Accounts Branch of the Security Cell, he had acted so as to make double arrears payable to certain staff members. The said Shri Bhagwan had responded to say firstly, that double arrears came to be paid by reason of huge pressure to complete the work of calculating arrears before Diwali and the acute shortage of staff as well as infrastructure like computers etc; and secondly, that since the excess amount paid had already been recovered by the bank, there was no loss to the exchequer. Thereupon, according to the petitioner, the said Shri Bhagwan was only issued a 'censure'. It is further contended by the petitioner that similar punishment of 'censure' was also meted-out to a Woman Head Constable (Min) Savita and a Woman Head Constable (Min) Poonam was only issued a 'warning'.

7. However, in spite of the reply given by the petitioner to show cause notice dated 16.03.2010 for the same allegations, a Departmental Inquiry was ordered against him on 23.01.2013 and a memorandum of charge was issued on 30.08.2013, to which the petitioner replied on 09.09.2013. Upon conclusion of the Departmental Inquiry, on 11.04.2014 the respondents held the petitioner guilty of the charges and the punishment of forfeiture of two years approved service permanently for purposes of further promotion and seniority was imposed. An appeal filed by the petitioner against the said order on 09.05.2014 before the competent authority *i.e.* Joint Commissioner of Police was also dismissed on 19.06.2014. Thereafter, petitioner filed O.A. No.3455/2014 before the Tribunal on 08.09.2014, which was dismissed vide impugned order dated 15.09.2017, which is challenged by way of the present petition.

8. In the impugned order, the Tribunal has given the following essential reasoning for dismissing the O.A. as recorded in paras 3, 4 and 6 which are extracted below:-

"3. The only ground, which has been urged during the course of the arguments, is that the similarly situated persons, who were also deployed along with the applicant, have been awarded lesser punishment or no punishment and in some cases only a warning was issued, whereas the applicant has been awarded the aforesaid punishment. His further contention is that it was an inadvertent mistake and due to heavy workload.

4. The applicant refers to an information received by him under Right to Information Act, 2005 dated 22.08.2014 (Annexure A-15), which indicates that HC Shri Bhagwan No.3172/Sec was awarded the punishment of censure,

W/HC (Min.) Poonam No.5004/Sec was awarded written warning and W/HC (Min) Savita No.1007/DAP was awarded censure. Reference is also made to the similar orders in respect to other officials, who were awarded either censure or warning."

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"6. We have carefully perused the impugned orders passed by the disciplinary and appellate authorities. Both the orders are based upon the findings of the inquiry officer. There is no challenge to the inquiry report in the present O.A., nor has any infirmity in the findings of the inquiry officer been pointed out. It is settled principle of law that the Tribunal or the Courts while exercising power of judicial review can only examine the process of awarding the punishment and does not sit in appeal over the findings or the orders passed by the authorities. Since neither any violation of principles of natural justice or any legal infirmity has been pointed out in the impugned orders, this Tribunal cannot interfere in the impugned orders."

9. We have heard learned counsel for the parties, perused the record and considered the matter carefully.

10. It is noticed that a document which lists the persons who were in the Accounts Branch at the time of payment/drawal of arrears, being in continuation of Office Order No.15470/Acctt.Br.(SI-Pay) dated 29.09.2009, and which is part of the record, reads as under:-

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<i>Sl. No.</i>	<i>Rank, Name and Number</i>	<i>Supervisory/dealing</i>
<i>1.</i>	<i>Inspr. Sarup Singh, Accountant</i>	<i>Supervisory officer</i>
<i>2.</i>	<i>SI Ved Singh No.D/61</i>	<i>Supervisory officer/SI Pay.</i>
<i>3.</i>	<i>W/HC Poonam</i>	<i>Dealing Clerk Lower-</i>

	No.5004/Sec. Ct. Rakesh No.1600/Sec.	I from Constabulary No.1000 to 2000
4.	HC Siri Bhagwan No. 3172/Sec.	Dealing Clerk Lower- II from Constabulary No. 2001t to 3000
4.	W/HC Savita No.1007/DAP HC Haminder Pal No.4097/Sec.	Dealing Clerk Lower- III from Constabulary No.3001 to 6000
5.	W/HC Ranu No.61/Sec. Ct. Hoshier Singh, 5635/Sec.	Dealing Clerk New Pension Scheme and Misc. (Others remaining constabulary Nos.)
6.	HC Bhim Singh No.3643/Sec.	Dealing Clerk Upper Subordinates

Out of 26 Police Personnel as intimated, recovery of excess payment of 20 Police Personnel have already been made, the recovery statement is enclosed herewith. During scrutiny of record it was found that name of 3 Police personnel are mentioned wrongly. Remaining 3 Police Personnel were transferred to other Distt./Unit, request have already made to concerned Districts/Unit for their recovery which is as under:

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11. Other things apart, it is noticed that petitioner HC Haminder Pal was assigned as “Dealing Clerk Lower-III from Constabulary No.3001 to 6000” and was therefore evidently only one of the several officers/personnel who were engaged in calculating the 40% arrears payable by reason of recommendations of the 6th Pay Commission to the employees of the Delhi Police. As is evident from the table extracted above, W/HC Savita was also alongwith the petitioner performing the same task and dealing with the same constabulary

numbers. It is also evident that SI Ved Singh, Insp. Sarup Singh/ Accountant were supervising the process of calculating the arrears which subsequently came to be paid through banking channels; and excess arrears paid were also recovered, thereby resulting in no loss to the exchequer.

12. As per the information obtained by the petitioner under the Right to Information Act 2005, it is not disputed by the respondents that W/HC Savita, who was doing the same task alongwith the petitioner, was only awarded a 'censure'. In the charge memo issued to the petitioner, it is alleged that the petitioner also drew double arrears for himself in the process of calculating arrears payable to others, which W/HC Savita did not do; and this appears to have been cited as an aggravating circumstance. However, we do not see any incremental or aggravating factor in that. The reason is that, as evident from the table extracted above, HC Hemender Pal and W/HC Savita were allocated the task of calculating arrears for police officers with constabulary Nos.3001-6000, and it so happened that HC Hemender Pal had constabulary No.4097, which was therefore part of the constabulary numbers allocated to the two of them; whereas, W/HC Savita had constabulary No.1007, which happened to fall among the constabulary numbers allocated to another team of two police officers W/HC Poonam and Ct. Rakesh. Accordingly, without there being anything more culpable on the part of the petitioner, while W/HC Savita was awarded a 'censure', the petitioner has been awarded a far more severe punishment of permanent forfeiture of two years approved service. As per the RTI response, which is not denied by the

respondents, HC Shri Bhagwan received a 'censure'; whereas W/HC Poonam was issued a 'warning', although each of the aforesaid officials had faced Departmental Inquiry on essentially the same allegations.

13. There is therefore an evident disparity in the punishment meted-out to the petitioner vis-a-vis that imposed upon the other officials charged with the same or similar wrong-doing, arising from the same matter.

14. While the Tribunal notes that there was no challenge in the O.A to the enquiry report, that in our view, would not dissuade us from reviewing the punishment awarded to the petitioner. Insofar as the Tribunal notes that while exercising the powers of judicial review, the Tribunal and the courts can only examine the process of awarding punishment and do not sit in appeal over the findings or orders passed by the Departmental Inquiry, we are afraid, we do not agree.

15. In exercise of the power of judicial review, especially under Article 226 of the Constitution, this court is well within its remit to correct any palpable inequity or legal fallacy in the punishment awarded. In the present case, widely different punishments have been meted-out to persons who faced Departmental Inquiry in relation to the same or similar wrong-doing, which negates the concept of equality before the law.

16. In the circumstances, while not upsetting the finding as regards the articles of charge against the petitioner, we are inclined to reduce the punishment awarded to the petitioner from permanent forfeiture of two years approved service to 'censure', as has been awarded to other

persons who were similarly situate.

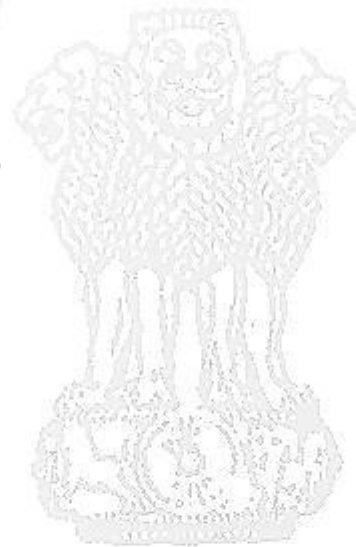
17. Impugned order dated 15.09.2017 is set-aside to the above extent. The writ petition is disposed of in the above terms; without however, any order as to costs.

ANUP JAIRAM BHAMBHANI, J

G.S.SISTANI, J

NOVEMBER 28, 2019

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