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

Reserved on: 12.02.2019

Pronounced on: 12.03.2019

+ W.P.(C) 2408/2012

RAM NARAIN

..... Petitioner

Through: Ms. Manisha Singh, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Rajesh Gogna, CGSC with Ms.L. Gangmai, Advocate for R-1.

Mr. Amitesh Kumar, Ms. Binisa Mohanty and Ms. Priti Kumari, Advocates for R-2 & R-3.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Vide the present petition, the petitioner seeks direction thereby quashing memo dated 12.04.2005, order dated 17.05.2004 passed by the disciplinary authority and appellate order dated 09.05.2011. Consequently, directing the respondents to reinstate the petitioner with all consequential benefits.

2. In the alternative, to pay the pensionary benefits to the petitioner with effect from 17.05.2004.

3. The brief facts of the case are that the petitioner was initially

appointed as Stenographer Grade III on 25.08.1980 and was promoted to the post of Stenographer Grade II on 29.09.1986, through DPC. The Petitioner and Dr. K.K. Sidh had a history of acrimonious relation as the petitioner used to oppose to Dr.Sidh and his associates regarding illegal activities and thus had made several complaints against them. Respondent no.2 was fully aware of the relations between the petitioner and Dr. Sidh which are evident from the official notings at pg 16-17 of the petition. However, on 06.11.1989, at about 11:00 a.m., when the petitioner was passing through the narrow corridor near the Stenographer's room, he met Dr. Sidh, who was coming from the opposite side. Due to the paucity of space, the petitioner requested Dr.Sidh to make way for him. On this, Dr.Sidh got infuriated and not only abused the petitioner but also slapped the petitioner, who on provocation from Dr.Sidh, slapped him back which resulted in a scuffle. Accordingly, the petitioner made a complaint on the same day about the incident of assault by Dr.Sidh, to the Administrative Officer which is annexed as Annexure P-2. But, without taking any cognizance of petitioner's complaint, Respondent no.2 suspended the petitioner with immediate effect, on the complaint lodged by Dr.Sidh against him. On 15/17th November, 1989, the petitioner was issued an order stating that before deciding the quantum of the punishment,

petitioner to show cause as to why penal action should not be taken against him. Vide letter dated 18.08.1990, the petitioner objected that no action is being taken on his complaint. The petitioner also objected to Dr.K.L Dhar and Mr. Ranjit Sinha being made member of the inquiry committee since they were prejudice against him who had once made complaints against these two officers to the Chairman, in connection with the malpractices of Housing Society as well as certain other administrative lapses. However, the disciplinary authority did not take any action.

4. On 21.08.1991, the petitioner was shocked to receive an order of compulsorily retirement from service w.e.f. 21.08.1991. On receipt of the same, the Petitioner filed appeal before the appellate authority and the same was rejected vide order dated 19.08.1992. Being aggrieved, the petitioner filed writ petition before this Court vide W.P (C) No.2872/1996 and the same was allowed vide its judgement dated 23.09.2002 and directed reinstatement of petitioner with all consequential benefits. The respondents filed an appeal, against the said judgement being LPA No.818/2002 and vide its judgement dated 14.10.2003, the Division Bench of this Court modified the order passed in the writ petition thereby the respondents were granted liberty to proceed with the inquiry against the petitioner, after considering

the representation of the petitioner against the enquiry report. During the pendency of appeal, enquiry report was provided to the Petitioner. The respondents issued Memo dated 12.04.2004 to the petitioner to show cause as to why the penalty of compulsory retirement from service should not be imposed upon him. Finally, vide order dated 17.05.2004, the disciplinary authority imposed the penalty of compulsory retirement on the petitioner. But by taking lenient view, it was decided to pay back wages to the petitioner, from the date of suspension till the date of issue of order mentioned above. However, it is directed that the period of suspension will not count towards pensionary benefits. Being aggrieved, the petitioner preferred an appeal against the order dated 17.05.2004, however, the same was rejected by an authority lower than the statutory appellate authority, the Chairman. Having no alternative left, the petitioner filed another writ petition before this Court, being W.P (C) No.20994/2005 challenging inter alia the order dated 17.05.2004 and 13.09.2004. The said writ petition was disposed of by this Court vide order dated 25.07.2007, directing the respondents to decide the appeal of the petitioner in accordance with law. However, the respondents rejected the appeal of the petitioner by a cryptic and non-speaking order dated 10.09.2007. The petitioner filed another writ

petition being W.P.(C) 9391/2007 and the same was disposed of vide order dated 23.02.2011 thereby quashed the Appellate order dated 10.09.2007. Consequently, directed the respondents to reconsider the matter afresh, in view of the submissions made by the petitioner.

5. Learned counsel appearing for the petitioner submits that order dated 09.05.2011 of respondent no.2 pursuant to this court's order dated 23.02.2011, mischievously and deliberately did not deal with the submissions of the petitioner and merely reiterates the old stand of the respondents. Thus, the respondents failed to appreciate the fact that it was Dr.Sidh who had first slapped the petitioner, which only provoked the petitioner to slap him in return. Even the prosecution witness only saw a scuffle and did not see the petitioner slapping Dr.Sidh which is evident from the deposition of sole prosecution witness T.K. Majumdar. The enquiry report wrongly disbelieved the testimony of defence eye-witness, Mr.Daulat Ram, who had seen Dr.Sidh slapping the petitioner. The testimony of the said witness is un-impeached as he was not cross-examined by Dr.Sidh. The ey-witnesses named by Dr.Sidh in his complaint were never examined. However, the disciplinary proceedings were biased and discriminatory in as much as no action was taken on the complaint of the petitioner while

prosecuting the petitioner on the complaint of Dr.Sidh.

6. Learned counsel further submitted that even otherwise the punishment meted out to the petitioner is extremely harsh and disproportionate to the offence. The respondents ignored the fact that the incident in question of alleged misconduct was on account of provocation, long standing inimical relation between the parties and that the petitioner, was not otherwise, a habitual offender.

7. Learned counsel for the petitioner has relied upon the case of ***Ex. Constable/GD BS Mann vs. UOI & Ors***, decided on 24.09.2014 in W.P.(C) 3824/2010 by this court whereby it is held that before imposing a severe penalty of removal from service, one must keep in mind the effects of the same as it may deprive a person of his livelihood. Besides, graver the charge or likely penalty, the more would be the need to treat cautiously and meticulously in appreciation of evidence.

8. In similar facts, in the case of ***Daya Shanker Rai vs. Union of India & Ors***, decided on 19.08.2015 in W.P.(C) 3747/2013 passed by this court wherein a junior officer, on being provoked, was accused of misbehaving with the superior authority and held that where authorities have ample discretion in the matter of imposing penalty then for quantifying the

punishment on charges of misconduct, it is necessary that they must take into account the magnitude of the misconduct, circumstance and the manner in which it was committed.

9. He further relied upon the case of *Wazir Singh Mour vs. Union of India: 2013(3) AD (Delhi) 411*, wherein it has been held by Division Bench of this court that while deciding quantum of punishment, such factors which mitigate the quantum of penalty or are relevant to determine the quantum of the penalty also needs to be factored. Further held that if the wrong lacks a moral turpitude, the same would be a mitigating factor.

10. Learned counsel for the petitioner further submitted that in case this court upholds the order of compulsory retirement passed against the petitioner, may not be denied pension from the date of his dismissal, for the reason that it is expressly mentioned in the second last paragraph of the order dated 17.05.2004 that the disciplinary authority was inclined to take a lenient view in the matter. The compassion has been taken forward in the last paragraph of the order by directing that for the entire period of suspension, till the present order was passed, the petitioner would be paid back wages. However, the last line of the order, directing the period in question not to be counted towards pensionary benefits, has taken away everything.

Disciplinary authority, while directing so, overlooked the fact that the benefit of compassion in the form of compulsory retirement resulting in entitlement to pension was taken away.

11. Learned counsel for petitioner further submitted that in case of dismissal an employee is entitled to compassionate allowance. Moreover, vide judgement dated 23.09.2002 in W.P (C) No.2872/1996, this court had set aside the suspension of the petitioner. Even otherwise, as per CCS Pension Rules, an employee against whom penalty of compulsory retirement is passed is entitled to receive pension, unless the same has been denied by the competent authority by a separate order. In the present case, no order for forfeiture of pension of the petitioner has been issued by the competent authority. Thus the present petition deserved to be allowed.

12. On the other hand, learned counsel appearing on behalf of the respondent nos.2 & 3 submitted that on 06.11.1989, Dr.K.K. Sidh, Assistant Director, ICSSR submitted a complaint dated 06.11.1989 stating as under:

*“While passing through the gallery today, Shri Ram Narain first hit me through his elbow and when I objected he gave blows over my face. It was only through the intervention of Dr. Majumdar that I have been saved. Later on he came into my room and threatened me before Dr. Saun, Miss Alka, Mrs. Sara John to see me outside office.
Administration is requested to kindly provide necessary*

protection to me.”

13. Thereafter, since the disciplinary proceedings against the petitioner was contemplated, the ICSSR in exercise of its power conferred under SR-61 issued an order dated 06.11.1989 whereby the petitioner was placed under suspension with immediate effect. Thereafter, Administrative Officer, ICSSR, issued a chargesheet dated 15/17.11.1989 to the petitioner and subsequently, Member Secretary, ICSSR on 25.09.1990 constituted an enquiry committee to enquire into the charges framed against the petitioner. The enquiry committee after taking documentary and oral evidence submitted its report concluding that the petitioner had physically assaulted Dr.K.K. Sid in the corridor of the office on 06.11.1989 at about 11:00 a.m.

14. Consequently, the punishment was imposed upon the petitioner. He challenged the same by various petitions as mentioned above. Finally order dated 14.10.2003 was passed by the Division Bench in LPA No.818/2002 as under:

“We direct reinstatement of the respondent No. 2 with liberty to the appellant to proceed with the inquiry by placing respondent No. 2 under suspension and continuing with the inquiry from the stage of furnishing him with the report. (We may not that during the pendency of the appeal; the report of the inquiry has been furnished). The appellant would consider the representation of Respondent No. 2 against the inquiry

report, which he would be entitled to make within three weeks from today. If the Respondent No. 2 succeeds and is directed to reinstated, the appellant would decide as to what benefits the respondent No. 2 would be entitled to and in what manner the period of suspension should be treated as a consequence of reinstatement.”

15. The petitioner and the respondents herein have approached the Hon'ble Supreme Court of India by filing SLP (Civil) No.2501/2004 and 1639/2004 respectively which were dismissed vide order dated 03.02.2004.

16. Learned counsel further submitted that in pursuance of the directions of the Division Bench, the petitioner submitted his representation dated 03.11.2003 to the enquiry committee report. Thereafter, the said representation of the petitioner was considered by the disciplinary authority and vide its memorandum dated 12.04.2004 rejected the representation and issued a show cause notice by liberty to the petitioner as to why the penalty of compulsory retirement from service should not be imposed upon him. The disciplinary authority while rejecting the representation dated 03.11.2003 and issuing show cause to the petitioner, noted and observed that considering all the materials on record including the evidences of witnesses recorded during inquiry, the inquiry report, as also representation and the submission made by the petitioner at the hearing on 19.02.2004 with regard to the charge levelled against him, the disciplinary authority found that it is

anomaly proved that he had slapped Dr.K.K. Sidh, Assistant Director, ICSSR.

17. Dr.T.K. Majumdar, a witness in the proceedings, had stated in his deposition that he saw the petitioner giving blows to Dr.K.K. Sidh. Accordingly, he intervened and physically separated. The enquiry officer also considered the evidence of Mr.Daulat Ram, who deposed in the said proceedings as a defence witness on behalf of the petitioner. However, his evidence was not found credible by the inquiry officer. Therefore, after examining the evidences of Dr.T.K. Mazumdar and Mr.Daulat Ram independently, the disciplinary authority has concluded that the findings of the inquiry officer in this context are justified and correct. The disciplinary authority was of the view that such conduct of slapping an officer in the office premises is a grave misconduct. If such instances are tolerated within the office premises, it will seriously affect the maintenance of discipline and office decorum. Persons committing such grave misconduct cannot be allowed to continue in the services of the organisation. The Disciplinary Authority has, therefore, rejected the representation dated 03.11.2003 made by the petitioner. The Disciplinary Authority, after considering all the facts and circumstances of the case, is of the opinion that the petitioner deserves

the punishment of dismissal from service, but has provisionally decided to impose only the penalty of compulsory retirement.

18. It is further stated that in compliance with the provisions of SR-64 of the ICSSR (Service) Regulations, 1970, the petitioner was given an opportunity to show cause as to why the penalty of compulsory retirement from service should not be imposed. To this effect, the petitioner gave his explanation dated 20.04.2004 stating that the misconduct, if any, was only on account of the sudden provocation from Dr. K K Sidh, but pleaded that the punishment proposed to be imposed on him was unduly harsh and highly disproportionate to his alleged misconduct. The relevant portion of petitioner's explanation dated 20.04.2004 is as under:

"1. That the proposed punishment is unduly harsh and highly disproportionate to the misconduct alleged against me.

2.

3. That the misconduct, if any, (on the assumption without admitting) is only on account of the sudden provocation in the form of KK Sidh taking the first step slapping me in connection with the Housing Society dispute. The return slap, if any, was not planned deliberately and conscious act, it was on the spur of the moment as an immediate result of provocation.

4. That, the alleged misconduct did not emanate from any discharge of official duty, but, it was only in the context of the long drawn struggle in the matter of the Housing Society membership, wherein, taking undue advantage of the position, the officer in question was behaving high

handedly. The undersigned only voice the grievance of the aggrieved members, at which, the whole incident has been planted on me.”

19. Learned counsel further submitted that even in his explanation to the show cause notice submitted on 20.04.2014, the petitioner once again admitted of having slapped Dr. K. K. Sidh, in the office premises, but pleaded that the punishment proposed to be imposed was unduly harsh and highly disproportionate to the misconduct alleged against him. He further pleaded that he still had 9 ½ years’ service left and under the changed circumstances, he was willing to serve the Council.

20. Learned counsel appearing on behalf of the respondents further submitted that in addition to the incident with Dr. K. K. Sidh in the year 1988, the petitioner had physically assaulted Shri KL Khera, the then Assistant Director, ICSSR, in the office premises for which he was issued a charge sheet and upon his tendering an unqualified apology and giving a written assurance of good conduct in future, the petitioner was issued a warning asking him to refrain from nefarious activities. Thus, it is grossly unbecoming of an employee of an organisation to physically assault any employee, what to speak of a senior officer that too within the office premises itself and irrespective of the same, it also amounts to a criminal

misconduct. Keeping in view the magnitude of the criminal misconduct committed by the petitioner, the respondents have compulsorily retired from the services. Though he was not entitled to any back wages and deserves to be dismissed from service for grave misconduct, yet keeping in view his age, he was paid back wages from 06.11.1989 till the date of issue of the order. It is made clear that period from 06.11.1989 till the date of issue of this order will, however, not count towards pensionary benefits. It is pertinent to mention here that pursuant to direction dated 23.02.2011, the appellate authority passed a detailed reasoned order dated 09.05.2011 and dismissed the appeal filed by the petitioner.

21. Learned counsel appearing on behalf of the respondent Nos. 2 and 3 further submitted that the petitioner was paid back wages of ₹12,08,952 from 06.11.1989 till 17.05.2004 in terms of the order dated 17.05.2004 as a full and final settlement of his dues from ICSSR with an undertaking that the petitioner would not be eligible for pensionary or any other benefits from the ICSSR. True copy of the receipt dated 10.06.2004 is annexed and marked as annexure R-2 which is as under:-

“I have received Cheque No. 848581, dated 9.2004, for an amount of ₹ 12,08,952/- (Rupees Twelve Lakhs Eight Thousand Nine Hundred & Fifty Two only) towards full and final settlement of my dues from the Indian Council of Social

Science Research, New Delhi. I have further noted that I would not be eligible for pensionary and or any other benefits from the ICSSR.”

22. I have heard the learned counsel for the parties.

23. In case of ***Baikuntha Nath Das vs. Chief District Medical Officer: (1992) 2 SCC 299*** whereby the Hon’ble Supreme Court has held that an order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour. The principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. The Court would not examine the matter as an appellate court, it may interfere if satisfied that the order is passed mala fide or that it is based on no evidence or it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

24. In case of ***Sub-Divisional Officer, Konch vs. Maharaj Singh: 2003 (9) SCC 191*** whereby the Supreme Court has held that the jurisdiction of the High Court under Article 226 is a supervisory one and not an appellate one, and as such the Court would not be justified in reappreciating the evidence adduced in a disciplinary proceeding to alter the findings of the enquiring authority.

25. In case of *Union of India and Ors. Vs. P. Chandra Mouli and Ors.:* **2003 (10) SCC 196** whereby the Hon'ble Supreme Court has held that once the charge against a delinquent is established, the quantum of punishment is for the employer to decide and the court ordinarily would not interfere with the order on the quantum of punishment once the court comes to a conclusion that there has been no infirmity with the procedure.

26. In case of *State of UP vs. Sheo Shanker Lal Srivastava & Ors:* **2006 (3) SCC 276** whereby the Hon'ble Supreme Court has held that doctrine of proportionality can be invoked only under certain situations. The Court shall be very slow in interfering with the quantum of punishment, unless it is found to be shocking to one's conscience.

27. In *B.C. Chaturvedi vs. Union of India & Ors.:* **(1995) 6 SCC 749** whereby it is held that a judicial review is not an appeal from a decision but a review of the manner in which the decision is made. The power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules prescribing the mode of inquiry or where the

conclusion or finding reached by the disciplinary authority is based on no evidence.

28. It is pertinent to mention here that whenever there were any violations of the procedure or of natural justice, the petitioner time and again approached this Court and accordingly, got the orders in his favour. Pursuant to the directions passed by this Court in the Writ Petition discussed above filed by the petitioner, the proper opportunities were granted and only thereafter, the Disciplinary Authority and the Appellate Authority passed the impugned orders. Moreover, before the incident in question in the year 1988, the petitioner had physically assaulted Shri K.L. Khera, the then Asstt. Director, ICSSR, in the office premises for which he was issued a charge-sheet and upon his tendering an unqualified apology and giving a written assurance of good conduct in future, the petitioner was issued a warning asking him to refrain from nefarious activities. Despite he slapped to Dr. K. K. Sidh as admitted by the petitioner but there is no evidence on record that Dr. K. K. Sidh slapped the petitioner and in reiteration of that he slapped to Dr. K. K. Sidh. Even if it is presumed that the Dr. K.K. Sidh had slapped the petitioner then petitioner instead of slapping in turn ought to make complaint to the concerned authority. Even as per the admission of the petitioner, he

has admitted that on 06.11.1989, when the petitioner was passing through the narrow corridor near the stenographers room, he met Dr. Sidh, who was coming from the opposite side. Due to narrow space, the petitioner requested Dr. Sidh to make way for him. Dr. Sidh was a senior officer whereas the petitioner is on the lower rank. Therefore, there was no reason to ask Dr. Sidh to make way for him. Thus, it proves that the petitioner had created a cause and slapped Dr. Sidh.

29. Keeping in view the past conduct and the incident in question, no leniency is required to be granted in favour of the petitioner. Moreover, he had settled the issue with the respondent by taking amount of ₹ 12,08,952/- as mentioned above as full and final settlement. I note, regarding the pensionary benefits, the competent authority has passed specific order to this effect whereby it is stated that the petitioner shall not be liable for the pensionary benefits in view of the misconduct committed.

30. In view of the above discussion and settled law, I find no merit in the present petition.

31. The same is, accordingly, dismissed with no order as to costs.

(SURESH KUMAR KAIT)
JUDGE

March 12, 2019/ab/rd