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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 21.02.2019

Pronounced on: 22.04.2019

+ W.P.(C) 8335/2017

SUNIL KUMAR SAXENA

..... Petitioner

Through Mr.Parveen Kumar, Adv.

versus

EXPORT INSPECTION COUNCIL & ORS Respondents

Through Mr.L.R. Khatana, Adv. for R-1 to 4.
Mr.Rakesh Kumar, CGSC for UOI.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Vide the present petition, the petitioner has made following prayers:

(I) Quash the illegal, arbitrary & shockingly prejudice punishment order dated 02.11.2015 (Annexure P-1) of removal of the petitioner from the service.

(II) Quash the illegal, arbitrary & shockingly prejudice punishment order dated 14.02.2017 dismissing the appeal and imposing punishment of Compulsory Retirement (Annexure P-2).

(III) Issue order for back wages with all consequential benefits

entitled being on regular duty with 12% interest w.e.f. 02.11.2015.

(IV) Declare the malafide suspension w.e.f. 29.10.2012 and thereafter continuous suspension of the petitioner beyond three months, illegal and order to make full payment of all consequential benefits with 12 % interest.

2. The brief facts of the case are that the respondent no.2 appointed the petitioner on 25.01.1980 for the post of Peon. On 26.02.2012, an incident happened at the petitioner's office which involved a minor scuffle between a) Shri Deepak Shekhar and b) Shri Praveen Sakhuja. On 29.10.2012, a suspension order was received by the petitioner citing the ongoing disciplinary proceedings and till the punishment order of removal from service dated 02.01.2015 was received by the petitioner, his suspension was neither reviewed or revoked. Respondent no.2 had summoned the petitioner as witness in the inquiry against the attacker Shri Praveen Sakhuja, dismissing him in September 2012 and in October 2012, the petitioner was suspended from service for conspiring and connivance with the attacker.

3. Learned counsel appearing on behalf of the petitioner submitted that Deepak Shekhar (victim) arrived in the office around 7 pm, without the knowledge of the petitioner. Shri Praveen Sakhuja (attacker; physically

handicapped) confronted and asked him to make an entry in the Visitor's Register which led to an argument and a scuffle between the two.

4. Respondent no.2 served suspension order dated 29.10.2012 to the petitioner, citing the disciplinary proceedings against him. On 08.01.2013, the petitioner was summoned for recording his statement regarding the incident on 22.02.2012 and the same was recorded which is marked as Annexure P-17. Manoj Kumar (Assistant Director) summoned for recording his statement, in which he admitted that he got a call from Deepak Shekhar that he will visit office, but he did not know the exact timing of coming and he had not shared the same with anybody in the office.

5. Learned counsel further submitted that respondent no.2 dismissed Praveen Sakhuja vide punishment order dated 25.09.2013, but there was no mention about the apparent conspiracy between the petitioner and Praveen Sakhuja. The said respondent prepared charge sheet dated 30.10.2012 without providing statement of Shri Manoj Kumar Gupta, AD and charged the petitioner of conspiring a plan against the victim. As corroborative evidence, mute CCTV footage was cited in which the petitioner keeps looking as a mute spectator and does not intervene, according to respondent no.2. The said respondent withheld most of the prosecution documentation

and list of the witnesses and without providing the same to the petitioner, he was asked to submit his defence within 10 days. After formal representations, some documents were given but respondent no.2 stated that the statement of Manoj Kumar Gupta will be made available to the petitioner only 3 days in advance. The petitioner filed his reply to the charge sheet on 02.01.2014. Thereafter respondent no.2 appointed Shri Rajiv Raizada, Additional Director as Inquiry officer and Pramod Siwach as Presiding Officer. Later on, respondent no.2 replaced Rajiv Raizada on the ground of his retirement while appointing another retired officer of more than 70 years of age namely Inder Singh as Inquiry Officer to which the petitioner continuously protested vide many representations as it flouted Rule 11(2) of the Rules 1978. On 18.05.2015, regular inquiry commenced wherein Deepak Shekhar (victim) appeared as prosecution witness SW-1 and confirmed that he entered office without making entry in visitor's register and admitted that the petitioner never misbehaved with him. Manoj Kumar Gupta was examined as SW-2 and in his statement, there was no mention of the involvement of the petitioner.

6. Learned counsel for the petitioner further submits that on 15.06.2015, the petitioner was examined in person and the IO turned down the

petitioner's request to examine Manoj Kumar Gupta as defence witness citing that the Charged Officer did not ask for defence documents within specified time. However, the Presiding Officer submitted his brief dated 22.06.2017 wherein he prescribed that the petitioner actively conspired and connived with Shri Praveen Sakhuja. The respondent office served the petitioner letter dated 05.08.2015 along with the inquiry officer's findings wherein charges were proved against the petitioner. Accordingly, the petitioner submitted his comments and after considering the same, punishment of removal was imposed upon the petitioner vide order dated 02.11.2015. He submitted his appeal dated 17.12.2015 and the same was disposed of on 14.02.2017 by the appellate authority by modifying the punishment from removal to compulsory retirement.

7. It is argued that respondent no.2 suspended the petitioner without citing reason, however, citing just the ongoing disciplinary proceedings and did not review the suspension order till the final termination order dated 02.11.2015. Respondent no.2 neither reviewed nor prescribed the misconduct of the petitioner within three months, thereby flouting Rule 10 of CCS Rules, 1965.

8. It is further submitted that the CCTV footage on the basis of which the petitioner was suspended, respondent no.2 cited that the petitioner was looking at the incident like a mute spectator, cannot be considered as evidence as the footage was mute and the respondents fraudulently concocted emotions on basis of which action was taken against the petitioner, whereas no specific incident/act of planning and conspiracy were seen on the CCTV video to support the incident. Moreover, the charge-sheet is not based on legally recognized evidence and unfit for use in subsequent references. Respondent no.2 placed himself in the Disciplinary Authority to apply coercion to mould the inquiry in a pre-planned manner and respondent no.2, on receiving objection from the petitioner regarding illegal appointment of Inquiry Authority by order dated 05.03.2015, cut the subsistence allowance of the petitioner by 50%.

9. It is further submitted that the Export Inspection Agency Employee Rules 1978 prescribed appointment of public servant as Inquiry Authority whereas Shri Inder Singh, appointed by respondent no.2 is a retired officer of more than 70 years, resulting in a biased, illegal inquiry. Thus the present petition deserves to be allowed.

10. On the other hand, learned counsel for the respondents submits that Shri Praveen Sakhuja (attacker) filed a similar W.P.(C) 1156/2016 on similar grounds and with a similar prayer, which was dismissed by this Court on 11.08.2016 and cost of ₹ 7,000/- was imposed upon the petitioner therein.

11. He further submits that the petitioner has sought to challenge the authority of the inquiry officer at this belated stage though the said objection was turned down at the initial stage itself and the petitioner had continued to participate in the departmental inquiry. The appointment of the Inquiry Officer was made in accordance with the provisions of law and Shri Praveen Sakhuja had also in a similar manner challenged the same in another writ petition being W.P.(C) 6148/2012 but when this court was not inclined to issue notice in the writ petition, he withdrew the same and disciplinary proceedings were concluded by the same IO.

12. He further submitted that Shri Deepak Shekhar (victim) was the former In-charge (Head) of the Export Inspection Agency (EIA) and the petitioner or Praveen Sakhuja had no authority to question his visit to said agency, which in fact, was with prior intimation to a senior officer of the agency, namely; Manoj Kumar Gupta (A.D.).

13. Moreover, the relevant documents were supplied to the petitioner in accordance with the law by giving proper hearing and the petitioner participated through the departmental proceedings, therefore, there is no issue left which can be raised by the petitioner. He submits that a detailed removal order dated 02.11.2015 has been passed by the disciplinary authority whereby the petitioner was removed from service. Thereafter in order dated 14.02.2017 passed by the appellate authority, his removal order was modified and imposed penalty of compulsory retirement.

14. Learned counsel further submits that when the disciplinary authority and the appellate authority have considered the case of the petitioner in length, this Court should not interfere with the orders passed by the respondents. Thus the present petition deserves to be dismissed.

15. I have heard learned counsel for the parties and perused the material available on record.

16. Regarding the suspension order dated 29.10.2012 which continued beyond three months. The petitioner did not challenge the said order before this court and continued participating in the disciplinary proceedings which was finally concluded vide punishment order dated 02.11.2015 whereby the petitioner was removed from service. Challenging the suspension order at

this stage is belated and hit by delay and latches. Moreover, the said order has been merged in final order dated 02.11.2015.

17. On the issue of appointment of the inquiry officer, who is a retired officer and is more than 70 years of age. In the rule, it is stated that the person should not be more than 70 years of age but if the person is in a sound mind and having good health, there is no embargo that such person cannot be appointed as inquiry officer. Moreover, on this issue also, the petitioner did not come before the court at the appropriate stage, therefore, on this issue also, the petition is hit by delay and latches.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. During the departmental inquiry, the CCTV footage was shown to the petitioner whereby it is established that the petitioner was looking at the incident like a mute spectator. If there was an altercation going on in the office and that is between the former employee and present employee of the department, it is at least the moral duty of the employee present there to intervene and get them apart from fighting. As per the conclusion of the inquiry officer, there was no movement of the petitioner and saw the incident like a mute spectator.

24. Moreover, Shri Praveen Sakhuja (attacker) filed a similar writ petition vide W.P.(C) No.1156/2016 on similar grounds and with a similar prayer,

which was dismissed by this court on 11.08.2016 with cost of ₹7,000/- upon the petitioner therein.

25. In addition to above, the appointment of the inquiry officer was challenged by Shri Praveen Sakhuja in W.P.(C) No. 6168/2012 and when this court was not inclined to issue notice in the writ petition, he had withdrawn the same and disciplinary proceedings were concluded by the same IO.

26. It is not out of place to mention here that Shri Deepak Shekhar (victim) was the former incharge (head) of the Export Promotion Agency and the petitioner or Shri Praveen Sakhuja had no authority to question his visit to said agency which infact, was with prior intimation to a senior officer of the agency namely Shri Manoj Kumar Gupta, AD.

27. The relevant documents were supplied to the petitioner in accordance with law by giving proper hearing and the petitioner was participated through departmental proceedings, therefore, there is no issue left which requires interference of this court.

28. The detailed removal order dated 02.11.2015 has been passed by the disciplinary authority whereby the petitioner was removed from service. Thereafter vide order dated 14.02.2017, the appellate authority modified the

said order and imposed penalty of compulsory retirement which is in any sense not a punishment to the petitioner.

29. It is pertinent to mention here that on the issues discussed above, the petitioner filed the present petition of 106 pages with Annexures 33 (Total 394 pages). The grounds made in the present petition are A to JJJJJJ (140 grounds). With lot of difficulty, this court could get the facts and issues raised in the present petition by going through the whole petition, which is with repetitious, without sequence and with irrelevant facts, however, have been ignored by this court while dictating the judgment.

30. Keeping in view the facts and law discussed above, I find no ground to interfere in the order passed by the authority concerned.

31. Accordingly, the present petition is dismissed with no order as to costs.

(SURESH KUMAR KAIT)
JUDGE

APRIL 22, 2019
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