

Court No. - 2

Case :- WRIT - A No. - 31426 of 2007

Petitioner :- Shri Ram Ojha

Respondent :- Director General Railway Protection Force And Others

Counsel for Petitioner :- Sanjay Kumar Om

Counsel for Respondent :- Govind Saran,Dhananjay
Awasthi,Kaushlesh Pratap Singh,S.C.

Hon'ble Suneet Kumar,J.

Heard Sri Sanjay Kumar Om, learned counsel for the petitioner and Sri Dhananjay Awasthi, learned counsel appearing for the respondent.

Petitioner, a constable in Railway Protection Special Force, came to be terminated vide order dated 22 April 1986, which was duly affirmed in revision vide order dated 7.6.1989. The order of dismissal came to be challenged in a petition being Writ Petition No. 6808 of 1993, which came to be decided by judgement and order dated 23.02.2005. The operative portion of the order is extracted:

*"In view of the aforesaid fact, the Court feels that the punishment of removal, which has been awarded against the petitioner, is not commensurate to the offence committed by the petitioner because there is no finding to the effect that the petitioner is a habitual absentee without any sanction of leave. But as it is well settled that the High Court under Article 226 of the Constitution of India cannot be reappraise the evidence and the evidence recorded by the quasi judicial authorities and cannot substitute the punishment in spite of the fact that the court comes to the conclusion that the punishment which has been awarded to the person concerned is excessive and not necessary to the offence committed. In a case of **B.C. Chaturvedi vs. Union of India** 1995 (6) SCC page 749, (the three Judges Hon'ble Bench) the question posed for consideration was as to whether the High Court/Tribunal can direct the authorities to re-consider the punishment with cogent reason in support thereof or reconsider themselves to shorten the litigation. In this case para 18 the Court has observed as under-*

"Para 18- A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power

to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

Thus, the present case is one of the case where the Court is satisfied that the punishment of removal from service imposed on the petitioner is highly excess and disproportionate and in view of the aforesaid fact, the orders passed by the respondent Nos. 1, 2 and 3 dated 31.7.1986, 22.4.1986 and 7.6.1989 (Annexures 5, 7 and 8) respectively are hereby quashed. The matter is remitted back to the disciplinary authority to pass the appropriate orders in view of the observation made above and will take a decision if possible, within a period of six months from the date of production of certified copy of this order before him."

Pursuant thereof, the impugned order dated 22 March 2006 came to be passed by the third respondent-Commanding Officer, Railway Protection Special Force, Gorakhpur, whereby, penalty of removal from service was substituted by compulsory retirement w.e.f. the date of dismissal i.e. 12 August 1986. which has been affirmed in appeal and revision.

The order passed by the disciplinary authority, and the orders affirming it in appeal/revision is under challenge.

Learned counsel for the petitioner has sought to argue the matter on merits pertaining to the facts before the enquiry officer. It is, further, urged that the quantum of punishment imposing compulsory retirement is not commensurate to the guilt. The allegation against the petitioner was of overstaying of leave for 177 days beyond the sanctioned leave. It is urged that a lesser punishment would have sufficed.

Learned counsel for the respondent submits that it is not open for the petitioner to raise question of facts that stands concluded in the earlier round of litigation, the matter was remitted to the disciplinary authority only on the question of quantum of punishment. It is not in dispute that the petitioner is a member of disciplined force and overstayal of leave by a member of the force is a gross misconduct. The authorities have taken a lenient view by substituting the punishment of removal from service with compulsory retirement.

Learned counsel for the petitioner failed to point out any illegality, infirmity or perversity in the impugned order.

The writ petition is, accordingly, dismissed.

At this stage, it is informed by the learned counsel for the petitioner that pursuant to impugned order, pension and post retiral dues admissible to the petitioner has not been released. This fact is being refuted by learned counsel for the respondent.

Be that as it may, it will be open to the petitioner to represent the matter before the competent authority for pension and other post retiral dues it admissible and due under the Rules provided the same has not been released. In the event, such a representation is made before the competent authority, the same shall be considered within two months from the date of filing of this order alongwith copy of the writ petition.

Order Date :- 15.5.2019

Mukesh Kr.