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

% **Date of Decision: 13th January, 2021**

+ **W.P. (C) 470/2021**

RAJU KOLLA Petitioner
Through: Mr. Abhishek Kaushik, Advocate

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Farman Ali, Mr. Syed Husain
Adil Taqvi and Mr. Athar
Farooquei, Advocates for R/UOI

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

ASHA MENON, J: (Oral)

CM No.1216/2021

Exemption allowed, subject to all just exceptions.

W.P.(C) 470/2021 & CM No.1215/2021

1. The petition has been heard by way of video conferencing.
2. The petitioner is an Ex-constable of the Central Industrial Security Force (for short, 'CISF') and challenges the various orders arising out of the disciplinary action initiated against him, culminating in his dismissal from service.
3. The petitioner was posted at the Plant Company, CISF Unit,

NALCO, Damanjodi, Odisha and was assigned duties for the night shift on 25th September, 2017 from 2100 hours to 0500 hours on 26th September, 2017 at EIL Store backside. At the time he had reported for duty to the Control-Room for briefing, he was found to be drunk. He was medically examined at the NALCO Hospital, Damanjodi where the doctor observed “*Alcoholic Smell, drunken gait, pupil dilated and Speech Slurred*”. Consequently, disciplinary action was initiated against him vide Memorandum dated 20th October, 2017. The two Articles of Charge framed against the petitioner were as follows: -

ARTICLE OF CHARGE-I

"That, No. 092550403 Constable/GD Raju Kolla of 'Plant' Company, CISF Unit NALCO Damanjodi who was detailed for night shift duty on 25.09.2017 from 2100 Hrs. on 25.09.2017 to 0500 Hrs on 26.09.2017 at EIL store back side was found in drunken condition when he reported for briefing of night shift duty personnel. This act on the part of No. 092550403 Constable/GD Raju Kolla tantamounts to gross indiscipline, unbecoming of a member of Armed Force of the Union. Hence, the charge.

ARTICLE OF CHARGE-II

"That, No. 092550403 Constable/GD Raju Kolla of 'Plant' Company, CISF Unit NALCO Damanjodi has been awarded with 01 Major punishment U/R-36 & 06 Nos. of Petty Punishment under rule 38 of CISF Rules 2001 (Amended Rules 2003) in the past by the disciplinary authorities for his various misconduct and indisciplined acts. Yet No. 092550403 Constable/GD Raju Kolla failed to improve his conduct and remained incorrigible. Hence, the Charge."

4. After the Inquiry, the Disciplinary Authority/Senior Commandant, CISF vide order dated 13th March, 2018 directed removal of the petitioner from service. The petitioner preferred an appeal under Rule 46(1)(ii) of the CISF Rules, 2001 (as amended in 2003), which was dismissed by the Deputy Inspector General vide order dated 30th August, 2018. The petitioner preferred a revision petition, once again under Rule 54(1)(a) of the CISF Rules, but the same was rejected by the Inspector General vide the order dated 1st March, 2019. The mercy petition was also dismissed by the Director General vide order dated 20th August, 2019. Hence the present petition.

5. Sh. Abhishek Kaushik, learned counsel appearing on behalf of the petitioner contended that the Disciplinary Authority had not proceeded in the right manner as the defence of the petitioner had been completely overlooked as he had explained that he was suffering from spinal problem and was prescribed heavy medication. The learned counsel also submitted that the doctor who had recorded the observation in the OPD was never offered for cross-examination. The learned counsel further submitted that if this observation of the doctor was to be accepted, then the charge had been framed erroneously as it should have then read that he was found smelling of alcohol and not drunk. According to learned counsel, drunkenness could have been established only with the blood test. Since there was no blood sample drawn, there was no conclusive evidence that the petitioner was drunk.

6. The argument of the learned counsel for the petitioner cannot be accepted in the light of the fact that eight witnesses had been examined

during the inquiry proceedings and their testimonies supported the observation of the doctor that the petitioner was not only smelling of alcohol but had a drunken gait. The petitioner did not produce any evidence to prove his defence that he was under any kind of medication and that too which resulted in similar effect.

7. With regard to the second charge, the learned counsel for the petitioner contended that all those punishments meted out to the petitioner were petty punishments which he could not have challenged because they were immediately given effect to. Therefore, it was improper for the Disciplinary Authority to have considered those punishments to establish that the petitioner was a habitual offender. There is no force in this argument inasmuch as when the Articles of Charge had been so framed, referring to the previous punishments, the petitioner could have shown that they were unjustified and that it was improper to consider him to be an errant officer.

8. Moreover, from the Articles of Charge, it is clear that a major punishment had also been imposed upon the petitioner. This is recorded at page 40 of the e-paperbook and is reproduced hereinbelow for ready reference: -

"Reduction of pay by two stages from Rs. 28400 to Rs. 26800 in the pay matrix level-3 for a period of two years with further direction that he will earn increments of pay during the period of reduction and that on expiry of this period the reduction will not have the effect of postponing his future increments of pay"

9. The learned counsel for the petitioner next contended that the

punishment was disproportionate to the mis-demeanour of the petitioner, who was only 30 years of age and in his nine years of service with the CISF had served at Naxalite Prone areas. The learned counsel urged us to consider these factors and reduce the punishment.

10. The Supreme Court had dealt with the question of proportionality of punishment in *Om Kumar v. Union of India* (2001) 2 SCC 386, *Union of India v. G. Ganayutham* (1997) 7 SCC 463 and *Union of India v. Dwarka Prasad Tiwari* (2006) 10 SCC 388. Quoting with approval its previous decision in *Dwarka Prasad Tiwari (supra)*, the Supreme Court reiterated that the Court would interfere with the punishment imposed pursuant to disciplinary proceedings only if it was so disproportionate that it shocked the conscience of the court. The observations are reproduced below for ready reference: -

“25. In Dwarka Prasad Tiwari, it has been held that unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/tribunal, there is no scope for interference. When a member of the disciplined force deviates to such an extent from the discipline and behaves in an untoward manner which is not conceived of, it is difficult to hold that the punishment of dismissal as has been imposed is disproportionate and shocking to the judicial conscience.”

11. In the background of the facts of the case at hand, we do not find that the punishment meted out to the petitioner is disproportionate to his mis-demeanour. It cannot be overlooked that the petitioner was a member of a disciplined Force and was actually reporting to duty for a night shift where he was required to be on high alert and to probably use firearms in

case of necessity. It cannot also be overlooked, as has been recorded in the Articles of Charge-II, that the petitioner when deployed at the night shift duty on 7th June, 2017 from 2100 hours to 0500 hours on 8th June, 2017, at Watch Tower-04, “*was found under intoxicated condition with a liquor bottle inside Watch Tower-04*”, for which the respondents ought to have removed the petitioner from service. Rather, the respondents seem to have given him one chance when they imposed a punishment of reduction of pay by two stages without cumulative effect as reproduced hereinabove. Within three months of this incident and within a month of the imposition of this punishment on 30th August, 2017, the petitioner reported for duty on 25th September, 2017 for a night shift after consuming alcohol with unsteady gait and slurred speech. The petitioner seems to have cocked a snook at the respondents.

12. We thus find no merit in the present petition.

13. Dismissed.

14. The judgment be uploaded on the website forthwith. Copy of the judgment be also forwarded to the learned counsel through e-mail.

ASHA MENON, J

MANMOHAN, J

JANUARY 13, 2021/s