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

Date of Decision: 12.10.2021

+ **W.P.(C) 11714/2021 & CM APPL. 36205/2021**

PRADEEP KUMAR Petitioner
Through **Mr.Aabhas Kshetarpal, Adv.**

versus

UNION OF INDIA & ORS. Respondents
Through **Mr.Vikram Jetly, CGSC.**

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed by the petitioner challenging the order dated 20.02.2019 passed by the Assistant Inspector General/Disciplinary Authority, Central Industrial Security Force (hereinafter referred to as 'CISF'), directing removal of the petitioner from service with immediate effect; the order dated 23.04.2019 passed by the Deputy Inspector General, CISF, dismissing the appeal of the petitioner against the above order of removal from service; and the order dated 24.09.2019 passed by the Inspector General/APS-II, CISF, APS-II HQRS, Bangalore dismissing the revision petition filed by the petitioner against the order confirming petitioner's removal from service.

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Signed By: SHALOO

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Location: 

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2. The petitioner was charged with the following charge:

“ **Charge No.1**

Force No.110411974 Ex.A.S.I./Exe. Pradeep Kumar, C.I.S.F. Unit ASG, Shirdi Airport, was deputed on duty on 3.10.2018 from 2100 Hrs. Till 0600 Hrs., on 04.10.2018, on night duty with 9mm Pistol (being Regn. No.186864) & 30 rounds of ammunition on Explosion Works Supervision Duty Post. The said force member was found under the influence of liquor at about 2100 Hrs. during the duty hours, and he was not in a position to perform his duty in proper manner. Hence, there is a charge against the said A.S.I./Exe. Pradeep Kumar that he reported on duty with arms (9mm Pistol) after consuming liquor, which shows grave negligence towards duty, irresponsible attitude and indiscipline on his part.”

3. As the petitioner denied the charge, a departmental enquiry was initiated by appointing an Inquiry Officer. The Inquiry Officer found the above charge to be proved against the petitioner whereupon, the Disciplinary Authority, after considering the representation made by the petitioner against the enquiry report, found the petitioner guilty of the charge as framed and ordered removal of the petitioner from service.

4. As noted hereinabove, the petitioner's appeal and revision thereagainst were dismissed by the order(s) dated 23.04.2019 and 24.09.2019, respectively.

5. The learned counsel for the petitioner submits that while the petitioner does not challenge the findings of the Inquiry Officer, the

penalty of removal from service is highly disproportionate to the charge framed against the petitioner. He submits that the petitioner had joined the CISF in the year 2011 as an Assistant Sub-Inspector. The petitioner has always maintained good character and had no adverse remarks against him. The impugned infraction is the only instance of dereliction of duty by the petitioner. Even in the present instance, barring finding that the petitioner had consumed liquor, there is no allegation of the petitioner having created any ruckus, having misbehaved, or having resisted the authority in such state. He submits that therefore, the petitioner should have been dealt with leniently.

6. He places reliance on the following judgments in support of his submissions:

- i) ***Jai Bagwan vs. Commissioner of Police & Ors.***, (2013) 11 SCC 187;
- ii) ***Tapash Chandra Roy vs. State of Assam & Ors.***, (2017) 5 Gauhati Law Reports 3;
- iii) ***Ex. Constable Shashi Dutt Sharma vs. Union of India & Ors.*** 2012 SCC OnLine Del 4076;
- iv) ***Ex. Constable Driver Girwar Singh Tomar No.913126828 vs. Union of India & Ors.***, 2007 OnLine All 1308.

7. On the other hand, the learned counsel for the respondents submits that the charge against the petitioner is extremely grave and

therefore, the penalty cannot be said to be disproportionate. In support of his submission, he places reliance on the judgment dated 13.01.2021 of this Court in W.P. (C) No.470/2021 titled **Raju Kolla vs. Union of India & Ors.**

8. We have considered the submissions made by the learned counsels for the parties.

9. The charge found against the petitioner to be proved is that while being deputed on duty on 03.10.2018, he was found to be under influence of liquor. The petitioner at that point had been issued a 9mm pistol and 30 rounds of ammunition and was posted at Explosion Works Supervision Duty Post.

10. The above charge is extremely grave. The same clearly reflects gross indiscipline on part of the petitioner. The petitioner is a member of a disciplined force and was posted at a sensitive post in night duty with arms and ammunition. The mere fact that under influence of liquor, he did not actually misuse the firearm or misbehaved, cannot absolve the petitioner of his misconduct.

11. In **Union of India & Ors. vs. Diler Singh**, (2016) 13 SCC 71, the Supreme Court has held that unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court, there is no scope for interference. When a member of the disciplined force deviates to such an extent from the discipline, it is difficult to hold that punishment of dismissal is disproportionate or shocking to the judicial conscience.

12. In *Union of India & Ors. vs. Lt. Col. Kuldeep*, (2019) 10 SCC 449, the Supreme Court reiterated that though the Tribunal/Court is competent and empowered to interfere with the punishment awarded by the appropriate authority in any departmental action on the ground of the same being excessive or disproportionate to the misconduct proved against the delinquent officer, however, exercise of such power is circumscribed and can be invoked only in exceptional and rare cases, when the punishment awarded by the Disciplinary Authority shocks the conscience of the Tribunal/Court or is so unreasonable that no reasonable person could have taken such an action. The Tribunal/Court cannot act as a court of appeal and substitute its own view and findings by replacing the subjective satisfaction arrived at by the competent authority in the backdrop of the evidence on record.

13. The above position of law has been reiterated by the Supreme Court in *State of Tamil Nadu & Anr. vs. N. Mangayarkarasi & Ors.*, (2019) 15 SCC 515 and by this Court in *Raju Kolla* (supra).

14. In *Tapash Chandra Roy* (supra) and in *Ex. Constable Driver Girwar Singh Tomar* (supra), the officer concerned was found to be intoxicated while not being on duty. The said judgments therefore, are clearly distinguishable on facts inasmuch as the petitioner here was found intoxicated while on duty at a sensitive post.

15. In *Shashi Dutt Sharma* (supra), the officer in question was not found to be armed. This judgment is also, therefore, clearly distinguishable on facts.

16. In *Jai Bhagwan Goyal* (supra), the Supreme Court had, in fact, reiterated that the appropriate quantum of punishment to be awarded to a delinquent is a matter that primarily rests in the discretion of the Disciplinary Authority. The Doctrine of proportionality is invoked only where the punishment is so excessive or disproportionate to the offence so as to shock the conscience of the Court. It was only in the facts of that case that the Court found that the punishment awarded was disproportionate to the nature of misconduct alleged.

17. In the present case, as noted hereinabove, the charge against the petitioner is of a grave nature and we do not find the penalty imposed on the petitioner to be disproportionate.

18. We, therefore, find no merit in the present petition. The same is dismissed. There shall be no order as to cost.

NAVIN CHAWLA, J

MANMOHAN, J

OCTOBER 12, 2021
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