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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 14.09.2022

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W.P.(C) 586/2017

KAMLESH PRASAD

..... Petitioner

Through: Mr.Arvind Kumar & Mr.Devian
Sharma, Advs. with petitioner in person.

Versus

DISTRICT & SESSION JUDGE, DELHI & ANR Respondents

Through: Ms.Avnish Ahlawat, SC, GNCTD
with Mr.N.K.Singh, Ms.Palak Rohmetra,
Ms.Laavanya Kaushik & Ms.Aliza Alam, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The petitioner has approached this Court assailing the order dated 20.02.2006 vide which he has been dismissed from service after rendering about 20 years of service with the respondents. The petitioner also assails the consequential order dated 10.08.2009 vide which his service appeal has been rejected as also the order dated 15.03.2013 rejecting his mercy petition.
2. The petitioner was appointed as a Peon in the year 1986 with the respondents. On 21.09.2004, while the petitioner was discharging his duties as peon in the Court of the learned MACT, Karkardooma



Courts, a complaint against him was made by Shri Shiv Raj Bhat, Civil Nazir attached with the said Court alleging therein that the petitioner had abused and threatened him. It was further alleged that even in the past, the petitioner had been misbehaving with him and other staff members attached with the Court.

3. Based on this complaint, a preliminary inquiry was held which was followed by a departmental inquiry against the petitioner under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. During the inquiry, two witnesses including the complainant were examined by the respondent. The petitioner, however, neither led any evidence nor cross-examined the witnesses examined by the respondent and simply stated that the charge levelled against him was vague as the same did not contain any particulars of the time and place of the incident and was solely based on a false complaint made by Shri Shiv Raj Bhat on account of his past differences with the petitioner when they were earlier posted together.
4. Based on the evidence led by the respondent, the inquiry officer, vide his report dated 07.01.2006, held the petitioner guilty of misbehaviour and misconduct with the court staff as also with one of the Presiding Officers. The petitioner was then served with a memorandum dated 20.01.2006 under Rule 15 (2) of the CCS (CCA) Rules, 1965 and was granted an opportunity to submit his representation against the inquiry report. Pursuant thereto, the petitioner, vide his representation dated 02.02.2006 stated that he was not given any opportunity to defend his case or appoint a legal practitioner. He further alleged that since the witnesses in the inquiry were senior officers of the department, the



same was held with a biased mind. The respondent, finding no merit in the petitioner's representation, passed the impugned order dated 20.02.2006, dismissing him from service.

5. The petitioner then preferred an appeal and a mercy petition, both of which were also rejected leading to the filing of the present petition.
6. The primary contention of Mr. Arvind Kumar, learned counsel for the petitioner is that the impugned order is liable to be set aside as the petitioner has been held guilty of misconduct and misbehaviour on the basis of a vague and non-specific motivated complaint made by Shri Shiv Raj Bhat. He submits that in order to lead credence to his false complaint, Shri Shiv Raj Bhat also referred to an earlier incident of 1993 despite being well aware that the inquiry in the said matter had already been closed. He further submits that even during the inquiry, the petitioner was never provided with adequate opportunity to defend himself and was also declined an opportunity of personal hearing by the disciplinary authority who failed to appreciate that the petitioner was falsely implicated by Shri Shiv Raj Bhat. Without prejudice to his aforesaid submissions, Mr. Kumar finally submits that the penalty of dismissal imposed on the petitioner, which was based on a false and vague complaint was shockingly disproportionate especially taking into account his long service of 20 years. He, therefore, prays that the penalty of dismissal be modified to that of compulsory retirement so that the petitioner, who is aged about 60 years and has no source of livelihood, can sustain himself and at least live a life of dignity by receiving his terminal benefits.



7. On the other hand, Ms. Avnish Ahlawat, learned counsel for the respondents, seeks to defend the impugned order by contending that the petitioner was a habitual offender who had, on earlier occasions also, indulged in acts of misbehaving with officers and had, in fact, received repeated warnings from the Presiding Officers. She further submits that the petitioner's plea that he was not granted sufficient opportunity to represent himself is wholly misconceived as the petitioner had been granted repeated opportunities to represent himself, but he, instead of availing of those opportunities, chose to move frivolous applications, which were rightly rejected. After some arguments, she concedes that there is no prior adverse entry in the petitioner's record and that after due consideration, no action was taken against the petitioner in respect of the earlier incident of 1993 referred to by Shri Shiv Raj Bhat in his complaint. She, therefore, prays that the writ petition be dismissed.
8. Having considered the submissions of learned counsel for the parties and perused the record, even though, I do not find any reason to interfere either with the findings arrived at by the inquiry officer in his report dated 07.01.2006 or with the conclusion of the disciplinary authority that the petitioner had misbehaved with Shri Shiv Raj Bhat, the fact remains that the inquiry was initiated against the petitioner on the basis of a complaint of a co-employee. The complaint made by Shri Shiv Raj Bhat was conspicuously silent regarding the time and place of the alleged incident when the petitioner is alleged to have threatened and abused him.



9. It has been contended by the petitioner that the complaint filed by Shri Shiv Raj Bhat was filed with the sole intent to harass him and settle scores with him on account of their past differences when they were working together between 1993-1996. Even though, nothing has been brought on record by the petitioner to substantiate this plea, it needs to be noted that the matter relating to the alleged misbehaviour of the petitioner in 1993 was closed without any action being initiated against him. It is noteworthy that there is no prior adverse entry in the petitioner's service record. In the light of this position, even though the petitioner's action of misbehaving with a co-employee or other officials of the Court staff cannot be condoned, the penalty of dismissal imposed on him is evidently shockingly disproportionate as it deprives him of all the benefits of his 20 years of blemishless service.
10. Having found that the penalty imposed on the petitioner is disproportionate, what next. Should the matter be remanded back to the respondents for reconsideration of penalty or whether this Court should take upon itself to modify the penalty, is the moot question in the present case. At this stage, it may be apposite to note that in 2017, when the writ petition was listed for preliminary consideration, this Court had considered the aspect of modifying the penalty of dismissal to that of compulsory retirement. The order dated 14.02.2017 reads as under-

“At joint request of the parties, list for further proceedings on 5th May, 2017 in order that the respondent may obtain certain instructions of change of punishment from dismissal from services to compulsory



retirement for the petitioner, and of course this is without prejudice to respective rights of the parties in this writ petition if the same is to be decided on merits.”

11. Reference may also be made to the order dated 05.05.2017, wherein this Court, while issuing notice in the present petition had taken note of the respondent's plea that as per District Courts Establishment (Appointment & Conditions of Service) Rules, 2012 there was no power with the disciplinary authority to modify its earlier order of dismissal. The order dated 05.05.2017 reads as under-

“Pursuant to the last order, Mr. Prashant Sivarajan, learned counsel appearing for the respondents state, as per his instructions. Rules or Guidelines available in the CCS/CCA Rules, 1965 or the Delhi District Court (Appointment and Conditions of Service) Rules, 2012, does not empower the disciplinary authority to revoke or modify its earlier order of dismissal. Further no past precedence are available to show that the disciplinary authority can modify the punishment from dismissal, to the compulsory retirement on its own motion. In other words, the punishment cannot be revoked / modify.

Heard learned counsel for the petitioner.

Notice. Mr. Prasant Sivarajan, Adv. accepts notice for the respondents. Let counter-affidavit be filed within six weeks. Rejoinder thereto be filed within four weeks thereafter.”

12. Undoubtedly, the Courts should normally refrain from modifying the penalty imposed by the employer, however, it is equally well settled that there is no absolute bar on the Court to modify the penalty in exercise of its writ jurisdiction under Article 226 of the Constitution



of India. In a situation, if the Court finds that remand of a matter to the disciplinary authority will cause further inordinate delay and will not be in the interest of justice, the Court can take upon itself to modify the penalty order. At this stage, reference may be made to a decision of the Division Bench in ***Delhi Transport Corporation vs. Jagdish Chander (2019) SCC Online Del 7531***, wherein the Court, while taking into account the fact that the petitioner therein had been removed after rendering long service on account of a misconduct which did not involve any moral turpitude, had upheld the decision of the Tribunal to modify the penalty of dismissal to that of compulsory retirement. The relevant extracts of the said decision read as under-

“5. The submission of learned counsel for the petitioner is that the misconduct of the respondent was grave. There can be no doubt about the aforesaid proposition. However, the misconduct did not involve moral turpitude, and the respondent was not punished on account of any serious criminal conduct such as corruption or on account of his involvement in a serious crime. That being the position, the punishment inflicted upon him of removal from service was certainly disproportionate in the context of the facts.

6. It is well settled that pension is not a bounty, and is only deferred payment for service rendered. It is not in dispute that the respondent had qualifying service to entitle him to pension.

7. By a mere stroke of a pen, infliction of punishment of removal from service, had the effect of taking away the respondents hard earned pension over 24 years. Compulsory Retirement is also one of the punishments prescribed under the Disciplinary Rules. Infliction of the said punishment would have the desired effect of reigning in the indiscipline demonstrated by the respondent, as well as not depriving him of his hard earned pension,



which he earned by rendering service for more than 24 years without any blemish.

8. Considering the fact that the Tribunal has granted the said balanced relief to the respondent, in exercise of our discretionary jurisdiction under Article 226 of the Constitution, we are not inclined to interfere with the impugned order.”

13. Reference may also be made to the following extracts from the decision of a Division Bench in ***Punjab National Bank vs. M.L. Bansal (2018) SCC Online Del 11385***, wherein the decision of the learned Single Judge in modifying the penalty was upheld:

“14. In the light of the aforesaid circumstances, when we examined the impugned judgment, we find that the learned Single Judge was fully conscious of the fact that the Court should in the ordinary course remit the matter back to the Disciplinary Authority for passing a fresh order of penalty but keeping in view the time period which had already elapsed since the respondent's removal from service and only with an aim to shorten litigation for a senior citizen who had served the Bank for almost 29 year, had taken upon him the task of modifying the penalty of removal from service to compulsory retirement. The only effect of the modified penalty in the evening of his life, would be to at least get some retiral benefits

15. We may now refer to the decisions relied upon by the learned counsel for the Appellant and find that in so far as the decision in Chief Executive Officer, Krishna District Co-operative Central Bank Ltd. v. K. Hanumantha Rao, 2017 (152) FLR 131 concerned, the same relates to case where the Apex Court after considering the nature of misconduct, had opined that in the facts of those cases, the penalty imposed by the Disciplinary Authority could not be held to be disproportionate and had, therefore, set aside the decisions of the High Court, allowing the writ petitions on the premise that the penalty was disproportionate.



16. In so far as the decision in the case of *Life Insurance Corporation of India v. S.Vasanthi*, (2014) 9 SCC 315 is concerned, on which heavy reliance has been placed by learned counsel for the appellant, we find that the said decision reiterates the well settled legal position that Court cannot assume the function of Disciplinary/Department Authorities to decide the quantum of punishment.

17. On the other hand, we find that the decision in the case of *Allahabad Bank v. Krishna Narayan Tewari*, 2017 (1) SCALE 89 relied upon by the respondent, which deals with a case wherein the High Court, after finding that the inquiry and the order passed by the Disciplinary Authority as also by the Appellate Authority was vitiated, had exercised its power of judicial review in directing the release of the retiral benefits of the employee instead of remanding back the matter for a fresh inquiry. We find that the Apex Court, while dealing with the aforesaid situation had observed that there may be situations where because of a long time lag or such other supervening situations, where the writ Court considers it as unfair harassment or otherwise unnecessary to direct a fresh inquiry or fresh order by the Competent Authority, it may pass a considerable order itself. Thus we have no hesitation in rejecting the contention of the learned counsel for the appellant that in no circumstances should the Court substitute the penalty imposed on the employees.

18. At this stage, we may also note that in *Jai Bhagwan v. Commr. of Police*, 2013 (8) SCALE 392 and *S.R. Tewari v. Union of India*, 2013 (7) SCALE 417, the Apex Court had substituted the penalty imposed on the employees, keeping in view the long period of time which had elapsed from the date of imposition of penalty.

19. In the light of the settled legal position and having considered the facts of the present case, we find absolutely no reason to defer with the course of action adopted by the learned Single Judge. In our view, in the light of the admitted position that the charge against the respondent related to procedural irregularities committed by him in



the year 1994 and that too when he was only part of the hierarchy of officers, which was responsible for processing the loan proposal, the learned Single Judge was justified in modifying the penalty imposed on the respondent by taking into consideration respondent's 29 years of almost blemishless service as also the fact that the penalty order related to the year 2015, in no case can the Court interfere with the quantum of penalty. In our opinion, the justification to exercise of such a power by the High Court, cannot be put in a straight jacket formula and would necessarily depend upon the facts of each case.

20. In our considered opinion, in the facts of the present case, the remand of the matter back to the appellant at this belated stage for re-consideration of the penalty to be imposed on the respondent when he is already in the evening of his life, is not at all warranted.”

14. The petitioner, in the present case, is already reaching the age of 60 years and was terminated almost 17 years ago and that too, on the charge of a verbal altercation with his co-employee, which has been held to be misconduct and in my view, rightly so. The fact however remains that the charge against the petitioner does not involve any moral turpitude. Remand of the matter to the respondents at this belated stage, when the petitioner has already suffered for the last 17 years without any source of income is likely to lead to further delay, which will cause irreparable hardship to the petitioner, who, it is claimed, is without any source of income for the last many years and has therefore has been living at the mercy of his friends and relatives. Moreover, as noted hereinabove, this Court had in February, 2017, already given this option to respondents to modify the penalty to compulsory retirement, which option the respondents had failed to



exercise on the ground that in terms of the District Courts Establishment (Appointment & Conditions of Service) Rules, 2012, there was no power with the Disciplinary Authority to modify its earlier order of dismissal.

15.I am, therefore, of the considered view, that this is one of the rare cases where this Court ought to exercise its extraordinary jurisdiction to substitute the penalty of dismissal by that of compulsory retirement.

16.In the light of the aforesaid, the writ petition is partly allowed by directing that the penalty of dismissal imposed on the petitioner will stand modified by that of compulsory retirement. The respondents will release all the terminal benefits of the petitioner within a period of three months by treating him as having been compulsory retired from service with effect from 20.02.2006 i.e., the date of his dismissal from service.

17.The writ petition is, accordingly, disposed of with the aforesaid directions.

REKHA PALLI, J

SEPTEMBER 14, 2022

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