



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order : 18th July, 2022**

+ W.P.(C) 1292/2008
SURESH CHAND SANKHLA Petitioner
Through: Mr. Satish Kumar, Advocate

versus

D.T.T.D.C. & ORS Respondents
Through: Mr. Rajeev Chhetri, Mr. Vikrant
Yadav and Mr. Rajesh Chhetri,
Advocates

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition under Articles 226 and 227 of the Constitution of India has been filed on behalf of the petitioner seeking following reliefs:-

"a. Calling for the records of the case from the respondent corporation;

b. Calling for the records of the proceedings against respondent No.3, 4 and 5;

c. Quash the departmental proceedings held ex-parte against the petitioner;



d. Quash the impugned order dated 30.11.2007 dismissing the petitioner from service;

e. Direct the respondent No.1 to reinstate the petitioner in service with full benefits;

f. Direct initiation of criminal case and departmental proceedings against respondents No.3, 4 and 5..."

2. Learned counsel appearing on behalf of the petitioner submitted that the petitioner was appointed on the permanent post of Junior Salesman in the respondent No. 1 corporation on 19th August 1991 and had served the said corporation up to the date of his dismissal from service vide impugned order dated 30th November 2007. During his tenure of more than 16 years the petitioner was posted at Indian-Made Foreign Liquor (IMFL, in short) Shops situated at Chandni Chowk, Vishnu Garden, South Patel Nagar and Rajinder Nagar and lastly at Vasant Vihar, Delhi.

3. It is submitted that the respondent corporation issued Memorandum of Charge to the petitioner on 23rd May 2001 under Rule 3 of CCS (CCA) Rules read with Rule 11.1 of the Delhi Tourism Transportation Development Corporation Ltd. Staff Service Rules, 1986. Thereafter, vide notice dated 7th August 2001 the Enquiry Officer (hereinafter referred to as "the EO" in short) directed the petitioner to appear before him on 17th August 2001.

4. It is submitted that on 17th August 2001, the EO directed the petitioner to nominate his defense Assistant by 27th August 2001, to examine the documents by 30th August 2001, to submit the list of defense



documents, and to submit the list of defense witnesses by 10th September 2001. The EO further directed the petitioner to intimate the compliance of the above said directions to him by 3rd September 2001. It is submitted that the above said directions itself are illegal and violative of principles of natural justice since the petitioner was not in a position to take the abovesaid steps without first nominating the legal assistant and taking his help on its approval.

5. It is submitted that vide letter dated 23rd August 2001, the petitioner requested the Disciplinary Authority and to the EO to stay the departmental proceedings till the decision of the pending criminal case. However, the said requests were not acceded to despite several representations made in this regard. It is submitted that the respondent no. 1 and 2 did not stay the proceedings and concluded the entire hearing on one date i.e. on 22nd October 2001 and submitted his report to the Disciplinary Authority. A copy of the said report was also forwarded to the petitioner vide letter dated 6th December 2001, directing the petitioner to make representation on the said report within 15 days. In the interregnum, the petitioner approached the High Court by way of a writ petition, wherein interim order was passed in his favour. Upon vacation of the interim order, the respondent corporation passed the impugned order on 30th November 2007, dismissing the petitioner from service.

6. It is submitted that neither the Respondent No. 1 nor the Respondent No.2 invited any representation on the findings nor the disciplinary authority gave opportunity to the petitioner to submit his view on the report nor the disciplinary authority served any notice on the



petitioner intimating him the action proposed to be taken inviting his views therefore the impugned order has been passed in gross violation of the principles of natural justice and is thus illegal and liable to be set aside.

7. It is thus submitted that the impugned order of dismissal passed by the respondent on the grounds that the impugned order has been passed in violation of the principal of natural justice, it has been passed in violation of the well-established procedures and that it is collusive and discriminatory.

8. *Per Contra*, learned counsel for the Respondents submitted that the memorandum of article of charges along with the statement of imputation of charge, list of documents and list of witnesses as per the procedure laid down under Rule 14 of the CCS (CCA) Rules and the same was supplied to the petitioner granting him an opportunity to rebut the same. However, the petitioner failed to make any representation and allegations against him were proved substantially beyond doubt and therefore, the instant petition is liable to be reject at the threshold.

9. It is further submitted that the petitioner has also not preferred an appeal against the order dated 30th November 2007 before the appropriate authority and therefore, the present writ petition is not maintainable since the petitioner has not exhausted all the remedies available to him wherein the next appellate authority being the Board of Director to which the disciplinary authority is subordinate to as provided under Rule 12.9 of Staff Services Rules 1986 read with Sub Rule (ii) of Rule 24 of the CCS



(CCA) Rules.

10. It is also submitted that the findings of the inquiry are in fact based on both documentary and oral evidence and the same were properly analysed and evaluated also provided the petitioner an opportunity to defend himself at every stage of the inquiry. It is further denied that the conspiracy was hatched amongst the respondents to dismiss the petitioner. The respondent submits that the entire inquiry proceedings were conducted in accordance with Rule 14 of the CCS (CCA) Rules.

11. Heard learned counsels for the parties and perused the record.

12. This Court has also perused the CCS (CCA) Rules as well as the Rules under Delhi Tourism Transportation Development Corporation Ltd. Staff Service Rules, 1986.

13. According to the Constitution Bench decision in the case of *Managing Director, ECIL v. B. Karunakar*, (1993) 4 SCC 727, an accused officer is entitled to represent to the disciplinary authority where the findings in the inquiry report are against him. It will not therefore stand to reason that when the findings are in favor of the accused officer, but they are proposed to be overturned by the Disciplinary Authority then no opportunity should be granted. According to the *Karunakar's case* and as recently held by this Court in the case of *Avinash Chander v. AAI*, 2022 SCC OnLine Del 1843, disciplinary enquiry is divided into two stages. The first stage ends when the Disciplinary Authority arrives at its conclusions based on evidence, inquiry officer's report and the delinquent employee's reply to it. The second stage begins when the Disciplinary



Authority decides to impose penalty based on its conclusions. The principles of natural justice would warrant that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved then that report must be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer.

14. For a better appreciation of the case at hand, it is pertinent to reproduce the operative portion of the Impugned Order dated 30th November 2007, which reads as under:

"WHEREAS I have carefully gone through the entire records of the disciplinary proceedings against Shri.S.C.Sankhla, Juniuro Salesman, including the report of Inquiry Officer and the evidence adduced before him based on which his findings have been given.

Shri S.C.Sankhla, Junior Salesman while being posted at Vasant Vihar IMFL vend in the year 1998 committed gross misconduct in so far as he while managing the cash counter was responsible for fraudulent and unauthorized shortage of cash amounting to Rs.9,71,498/- instead of depositing at the shop. It is obvious that the officials the officials was guilty of misappropriation of the amount generated on account of sales of liquor totaling Rs. 9,71,498/-. I have noted the contents of the inquiry report wherein the Inquiry Officer, after recording proper evidence and affording due opportunity to Shri S.C.Sankhla to adduce defense in his evidence after evaluating all the evidence so adduced, has concluded that shortage amount of cash/stock amounting to rs.9,71,498/- stands proved and which has been attributed to Shr.S.C.Sankhla, Junior Salesman,. The admission of the guilt on the part of Shri S.C.Sankhla is also evident from the fact that Shri S.C.Sankhla, Jr.Salesman had deposited the



amount in three installments with the Corporation vide cash receipt No.10874 dated 26.10.98, CRNo.10875 dated 22.10.98 and CRNo. 10876 dated 26.10.98. Even though the above shortage has been made good, I am of the considered view that the officials who have committed such gross misconduct does not deserve to continue in the service of the Corporation.

NOW THEREFORE, I , being the disciplinary authority hereby impose a major penalty of dismissal from service against Sh.S.C.Sankhla."

15. The Hon'ble Supreme Court in a plethora of cases including ***Hind Construction & Engineering v. Their Workmen*** AIR 1965 SC 917, ***Management of the Federation of Indian Chambers of Commerce v. Their Workmen*** (1972) 1 SCC 763, and recently in the case of ***Union of India & Anr. v. R K Sharma*** (Civil Appeal No. 4059/2015; decided on 30th June 2022) has held that the Courts ought to interfere in apt circumstances to ensure that the punishment meted out to a public sector employee for a violation of the applicable service laws/rules is not disproportionate to the infraction committed. The doctrine of proportionality is thus employed to examine whether the penalty that is imposed upon the concerned individual is congruent with the charges brought against the delinquent employee.

16. In the case of ***Ranjit Thakur v. Union of India*** (1987) 4 SCC 611, the Hon'ble Supreme Court has held that the doctrine of proportionality while exercising the powers of judicial review is meant to ensure that if the quantum of sentence/punishment is in defiance of logic, then the same would not be immune from interference of the Court.



“25. ... The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the [quantum of] sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review.”

17. Again, in the case of **Dev Singh v. Punjab Tourism Development Corpn. Ltd., (2003) 8 SCC 9**, the Hon'ble Supreme Court, held as under:

“6. ... a court sitting in appeal against a punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on penalty, however, if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court, then the court would appropriately mould the relief either by directing the disciplinary/appropriate authority to reconsider the penalty imposed or to shorten the litigation it may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof. It is also clear from the abovenoted judgments of this Court, if the punishment imposed by the disciplinary authority is totally disproportionate to the misconduct proved against the delinquent officer, then the court would interfere in such a case.”

18. Subsequently, in the landmark case of **Jai Bhagwan v. Commr. of Police, (2013) 11 SCC 187**, the Hon'ble Supreme Court held that:

"10. What is the appropriate quantum of punishment to be awarded to a delinquent is a matter that primarily rests in the discretion of the disciplinary authority. An authority sitting in appeal over any such order of punishment is by all means entitled to examine the issue regarding the quantum of punishment as much as it is entitled to examine whether the charges have been satisfactorily proved. But when any such order is challenged before a Service Tribunal or the High



Court the exercise of discretion by the competent authority in determining and awarding punishment is generally respected except where the same is found to be so outrageously disproportionate to the gravity of the misconduct that the Court considers it be arbitrary in that it is wholly unreasonable. The superior courts and the Tribunal invoke the doctrine of proportionality which has been gradually accepted as one of the facets of judicial review. A punishment that is so excessive or disproportionate to the offence as to shock the conscience of the Court is seen as unacceptable even when courts are slow and generally reluctant to interfere with the quantum of punishment. The law on the subject is well settled by a series of decisions rendered by this Court."

19. Recently in the case of ***Union of India v. Ram Karan, (2022) 1 SCC 373***, the Hon'ble Supreme Court held that:

"24. Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the court, normally the disciplinary authority or the appellate authority should be directed to reconsider the question of imposition of penalty. The scope of judicial review on the quantum of punishment is available but with a limited scope. It is only when the penalty imposed appears to be shockingly disproportionate to the nature of misconduct that the courts would frown upon. Even in such a case, after setting aside the penalty order, it is to be left to the disciplinary/appellate authority to take a call and it is not for the court to substitute its decision by prescribing the quantum of punishment. However, it is only in rare and exceptional cases where the court might to shorten the litigation may think of substituting its own view as to the quantum of punishment in place of punishment awarded by the competent authority that too after assigning cogent reasons.

25. The principles have been culled out by a three-Judge Bench of this Court way back in B.C. Chaturvedi v. Union of India [B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749:



1996 SCC (L&S) 80] wherein it was observed as under: (SCC p. 762, para 18)

“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.”

20. The principle that emanates from the aforesaid caselaws is that ordinarily, the scope of judicial review in service matters is to be restricted. Interference with the punishment should only be made where the same is shocking to the conscience of the Court. As goes the jurisprudence of judicial review, irrationality, and perversity, are recognised grounds of judicial review. This Court has given anxious thought to the quantum of punishment granted by the Disciplinary Authority.



21. It is also a settled law that major penalty such as dismissal from service should not be routinely inflicted on an employee and should be awarded only in the rarest of rare cases. In the instant case, the show cause notice was issued not for a major penalty. The petitioner, as is evident from the Article of charge, was not charged for misappropriation rather for negligence on duty. In the instant case, moreover, the amount has already been repaid by the petitioner in instalments as has been admitted by the respondent.

22. This Court is accordingly satisfied that the punishment of dismissal from service is too harsh, grossly disproportionate, and not commensurate with the nature of the charge pressed against the respondent. This Court, therefore, is of the view that the ends of justice would have been adequately met by imposing some penalty of the lesser gravity upon the petitioner.

23. This Court is equally conscious of the fact that in the ordinary course, this Court could remit the matter back to the disciplinary authority for passing a fresh order of punishment considered proper, but that course is being deliberately avoided in the instant case.

24. The misconduct attributed to the petitioner and his dismissal from service goes back to the year 2007. A remand at this distant point of time, after a spell of 15 years, is likely to lead to further delay and litigation on the subject which is not in the interest of either of the parties. Instead, this Court is inclined to invoke its power under Article 226 of the Constitution as well as under Section 151 of the Code of Civil Procedure, keeping in



mind the doctrine of proportionality and with a view to do justice between the parties.

25. In the totality of these circumstances, the respondent Corporation is accordingly directed to reinstate the petitioner with all consequential benefits. However, it is made clear that, in accordance with the principle of “no work, no wages”, no back wages/arrears are required to be paid to the petitioner for the period during which he has not rendered his services i.e., from the date of his dismissal until the date of reinstatement.

26. Accordingly, the instant writ petition stands allowed in the aforesaid terms. Pending applications, if any, also stand disposed of.

27. The judgment be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JULY 18, 2022

Dy/@k