



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 26.08.2022

% Judgment delivered on: 22.09.2022

+ W.P.(C) 6940/2007

AJAY KUMAR

..... Petitioner

Through: Mr. Shanker Raju, Mr. Nilansh Gaur,
Mr. Rajesh Sachdeva, Advocates.

versus

UOI & ORS.

..... Respondents

Through: Mr.Sushil Kumar Pandey, Sr.Panel
Counsel with Mr. Kuldeep Singh,
Advocate for UoI.
Mr. Sameer Vashisht, ASC for
GNCTD with Ms.Sanjana Nangia,
Advocate for Respondents No.2 to 5.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The present petition is arising out of an order passed by the Central Administrative Tribunal (CAT) dated 01.08.2006 in O.A No. 2675/2004, titled *Ex-SI Ajay Kumar v. Union of India and Ors.*

2. The facts of the case reveal that the Petitioner before this Court was serving on the post of Sub Inspector with the Delhi Police and was subjected to disciplinary enquiry. The departmental enquiry was initiated against him



under the provisions of Delhi Police (Punishment and Appeal) Rules, 1980 vide order dated 02.04.2002 for committing grave misconduct and unbecoming of a Government servant. He was charge-sheeted for violating Section 3 of the Central Civil Services (Conduct) Rules. The alleged incident which resulted in departmental enquiry reveals that while the Petitioner was posted in VI Bat. DAP, he developed illicit relations with one Mrs. Meenu Sharma w/o Sh. Ram Saran Sharma, R/o 380, Shastri Nagar, Delhi. It is alleged that Mrs. Meenu Sharma left the house with the daughter on 17.05.2000 and the matter was reported to Police Station Sarai Rohilla and it was suspected that she has gone with Sub Inspector Ajay Kumar i.e. the Petitioner. She was produced in the Police Station on 18.05.2001 by the Petitioner.

3. The facts of the case reveal that the Petitioner broke open the lock of House No. G-9, Jagat Puri and lived in the house for approximately three months with Mrs. Meenu Sharma and her daughter Akriti. The said house was under the ownership of one Baljeet Singh who had locked the house and left with his family in December 2000 for some unknown place. A theft took place in the said house and the matter was reported to the Police. On the request of local residents, the house was re-locked on 04.04.2001. It is alleged that that the Petitioner started residing in the house along with Meenu Sharma. The Petitioner was placed under suspension by an order dated 28.06.2002 and was reinstated on 26.12.2002.

4. Mr. Ram Saran Sharma who is the husband of Mrs. Meenu Sharma filed a complaint on 01.08.2001 for registration of FIR under Sections 120B, 363, 498, 506 IPC and also requested to initiate departmental enquiry



against the Petitioner. The said complaint of Mr. Ram Saran Sharma was enquired into by the Deputy Commissioner of Police, DAP 6th Bn. and he gave a clean chit to the Petitioner on 07.08.2001. The matter was again considered by the Department. It is pertinent to note that the aforesaid so called enquiry was not a departmental enquiry but was an internal enquiry conducted in the matter, and finally the department resolved to initiate departmental enquiry against the Petitioner on 02.04.2002. The summary of imputation of misconduct as per the charge sheet issued to the Petitioner is reproduced hereinbelow:

"It is alleged SI Ajay Singh No. D/3628 posted at DAP Vith Bn. He developed illicit relations with Mrs. Meenu Sharma r/o 380 Shastri Nagar Delhi. On 17th May 2001 Meenu left her house with her daughter. The matter was reported to PS Sarai Rohilla as it was suspected that she has gone with SI Ajay Singh. On 18th May 2001 SI Ajay Singh produced her in the PS. It is further alleged that SI Ajay Singh broke open the lock of House No. G-9, Jagat Puri and lived there for approx. three months with Mrs. Meenu Sharma and her daughter Akriti. The said house belongs to one Baljeet Singh who had locked the house and left with his family in Dec. 2000 for the unknown place. In the month of April, 2001 a theft took place in the said house, matter was reported to police and the call was marked to SI Ashwani Kumar D/3692 PS Preet Vihar. SI Ashwani Kumar came to attend the theft call at G-9 Jagat Puri, since no complainant was available the call was kept pending. On the request of local residents house was re-locked & key was kept in the police station for safe custody vide DD No. 28-A dt. 14.4.01. Mrs Meenu is still living with SI Ajay Singh.

The above act on the part of SI Ajay Singh No. D/3628 amounts to grave misconduct and is unbecoming of a govt. servant of u/s 3 of CCS Conduct Rule, rendering him liable for departmental action under the provision of Delhi Police (Punishment & Appeal) Rules, 1980."



5. The Petitioner immediately submitted a representation on 23.12.2002 stating that the so-called alleged misconduct has been looked into by Deputy Commissioner of Police in a preliminary enquiry and he has been exonerated and, therefore, a second enquiry is not permissible in law. The Petitioner in those circumstances preferred an Original Application i.e. O.A. No. 519/2003 before the Tribunal and the Tribunal by an order dated 07.03.2003 has disposed of the Original Application at motion hearing stage itself directing the disciplinary authority to pass a reasoned order vis-à-vis the contention of the Petitioner regarding the issue of double jeopardy.

6. By an Order dated 07.04.2003, the disciplinary authority rejected the contention of the Petitioner holding that the proceedings against the Petitioner are not hit by double jeopardy. On 03.06.2003, the Enquiry Officer found that charges against the Petitioner stood proven beyond reasonable doubt. During the pendency of the departmental proceedings, the Petitioner had filed OA No. 953/2003, in which the interim orders had been passed to continue the Departmental Enquiry/ Proceedings against the Petitioner.

7. While the second Original Application was pending before the Tribunal, the departmental enquiry continued in the matter and the Tribunal has disposed of the Original Application 953/2003 with the liberty to the Petitioner to approach the Tribunal after conclusion of the departmental enquiry proceedings.

8. The disciplinary authority has passed an order of dismissal from service, dismissing the Petitioner on 24.10.2003 and the Petitioner thereafter preferred an appeal against the order of dismissal which was dismissed by



the Appellate Authority on 24.12.2003. Finally the Petitioner preferred an Original Application, i.e. O.A. No. 2675/2004 against the order of dismissal and the Tribunal has dismissed the Original Application filed by the Petitioner and the same is under challenge before this Court.

9. Paragraphs 24 to 33 of the order passed by the Tribunal are reproduced as under:

“24. Small deviation here or there cannot vitiate the orders so long the main allegation is proved against the delinquent. We cannot forget that in a departmental enquiry, it is on preponderance of probability that a person can be punished. In any case, in the present case, there is sufficient evidence against the applicant to prove the main charge against the applicant and Hon’ble Supreme Court has repeatedly held that so long there is some evidence, Courts should not interfere in the matter nor courts should reappreciate the evidence in judicial review. It is only the deficiency in decision making process which can be looked into a judicial review and not the decision itself. At this juncture, it would be relevant to quote the judgment of Hon’ble Supreme Court in the case of Chairman and Managing Director, United Commercial Bank & Ors. Vs. P.C. Kakkar, reported in 2003 (2) SCALE 42, wherein it was held as follows:

"The Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in the Wednesbury's case the Court would not get into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is



limited to the deficiency in decision-making process and not the decision"

Similarly, in Union of India & Ors. Vs. Narain Singh reported in AISLJ 2002 (3) 151, it was held that once charges of a grave nature are proved, the other points are not relevant and Court cannot interfere in the quantum of penalty. It was categorically held that Court must not lightly interfere with sentences passed, after a properly conducted enquiry, where the guilt is proved. Specially, reference was made to military, para-military or police services where it was held that reduction of sentence would be a retrograde step so far as discipline of these services is concerned. There are any number of judgments on this point that so long there is some evidence available before the authorities, it is for them to decide as to what punishment should be given in the said circumstances. In Union of India Vs. Parma Nanda reported in AIR 1989 SC 1185, it was held that Tribunal cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter. The Tribunal cannot interfere with the finding of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse.

25. In the instant case, after looking at the evidence which has come on record, we are satisfied that the finding given by the Inquiry Officer can neither be stated to be arbitrary nor perverse. Therefore, we cannot interfere in this case even if some statements are said to be contradictory by the applicant.

26. Counsel for the applicant had strenuously argued that since Akriti was a minor, her evidence could not have been taken into consideration. To substantiate his argument, he had relied on the judgments referred to in Para 9. However, on perusal of those judgments, we find that even in the case of Dattu Ramrao Sakhare & Ors. Vs. State of Maharashtra, Hon'ble Supreme Court did not totally rule out the evidence of child witness. On the contrary, it was held that "if a child witness is found competent to depose to the facts and reliable one, such evidence could be the basis of conviction. In other words, even in the



absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof". It was thus held that the evidence of a child witness and credibility thereof would depend upon the circumstances of each case. It was also noted by Hon'ble Supreme Court in the above said case that the learned Trial Judge recorded his reasons and found that Sarubai was a competent witness and her evidence is unblemished. The High Court also accepted the evidence of Sarubai as reliable one. Therefore, Hon'ble Supreme Court did not disagree with the observations made by the courts below as regards the evidence of Sarbai, the minor child.

27. As far as the case of State of Bihar Vs. Kapil Singh, etc. is concerned, it is noticed that the facts are absolutely different inasmuch as the child therein was taken to the police station by the Investigation Officer on 19.6.1961 but she failed to disclose the names of the thieves, whom she had seen inside the house and who had committed the murder of Rohini Kuer in her presence. It was only on 21 or 22.6.1961 i.e. after 3 days confinement in police station that police alleged the said child disclosed the names of three culprits. Therefore, naturally a doubt came in the mind of the court because had the child known the true names or could identify the persons, she would have stated so or tried to describe them at the first instance. Therefore, the said case was decided in the peculiar facts of that case. The Court also gave more reasons as to why her evidence could not be relied upon, therefore, that judgment does not advance the case of the applicant. In the case of Orsu Venkat Rao Vs. State of Andhra Pradesh also, the children were not examined at the earliest opportunity and there was evidence leading to the inference of suppression of earliest version of the child witnesses rendering entire prosecution case as vulnerable and doubtful. There was a definite finding recorded by the Court that evidence of child witness failed to inspire confidence. Therefore, that case would also not be applicable in the present case before us. Moreover, it has to be kept in mind that all the three cases as mentioned above are criminal cases



where a duty is cast on the State to prove the guilt of accused beyond and shadow of doubt whereas in a departmental inquiry the rule is only preponderance of probability. Therefore, the same strict sense of evidence is not required to be proved in a departmental inquiry, as is required in a criminal case.

28. Apart from above, it is also relevant to note, that in this case, Mrs. Menu Sharma had filed writ petition before Hon'ble High Court of Delhi seeking a direction that her daughter Akriti should not be called as a court witness in the departmental inquiry. However, after hearing both the parties, Hon'ble High Court of Delhi was pleased to pass an order dated 26.2.2003 allowing Kr. Akriti, to appear in the DE as court witness. However, directions were given to get the date fixed before 1.3.2003 as school of Akriti was to open on 1.3.2003 so that her studies are not hampered. The writ petition filed by Smt. Meenu Sharma bearing No. 983 of 2003 was, in fact, dismissed on 26.2.2003 by giving permission to the child to appear as witness before the departmental inquiry. Of course, the child was directed to be accompanied for the said inquiry by Mrs. Tamili Wad (Advocate), who was appointed as Local Commissioner by the Court so as to ensure that the cross examination is conducted within reasonable parameters and the child is not subjected to untrammelled questions. Therefore, in this case, the child was allowed to appear as a court witness on the directions of Hon'ble High Court of Delhi. All this is clearly mentioned in the Inquiry Officer's report at page 69 of the paper book. Moreover, after looking at the statement given by daughter Akriti, we are satisfied that she fully understood the questions and gave' statement voluntarily without any pressure from any side. She was aged 13 and is student of a convent school in Shimla, therefore, she is not a naive child. In these circumstance, it is not open to the applicant to suggest that Kr. Akriti's statement cannot be taken into consideration by the authorities.

29. We also have to keep in mind that in this case Smt. Meenu Sharma's own brothers, her husband and daughter given almost the same facts barring few facts which were seen only by the daughter Akriti which corroborates the story and full picture



has emerged out how Shri. Ajay was having illicit relations with Mrs/ Menu Sharma and was even staying with her in G-9 Jagatpuri after breaking the lock of the said house. It is definitely a grave misconduct as it involves moral turpitude and we see no reason as to why Mrs. Menu Sharma's own brothers, husband and daughter, all would speak against her. Moreover, no justification has been given by Mrs. Meenu Sharma in her statement to show as to why all these persons would speak against her. Therefore, the Inquiry Officer as well as the authorities have rightly taken into consideration the statement made by Kr. Akriti which has totally exposed her mother's relationship with Ajay Kumar i.e. the applicant herein and the statement of Reema Suri, who is absolutely an independent witness who has narrated how Ajay Kumar had brought another lady and child and lived in G-9 Jagat Puri even though one Veena Singh claimed to be his real wife.

30. In view of above, the contention of counsel for applicant that child statement could not have been taken into consideration is without any merit. The same is accordingly rejected.

31. The last point raised by the counsel for applicant was regarding double jeopardy. Once again, we find no force even in this contention because earlier when reports were given by the brothers of Meenu Sharma or her husband, the reports were given by the officers on the basis of statement made by Mrs. Meenu Sharma, who had stated that she had left her matrimonial home on her own and Ajay Kumar had no role in it but at that stage no thorough inquiry was done in the whole matter whereas now a proper inquiry was initiated where evidence came on record to prove the involvement of applicant with Mrs. Meenu Sharma on the basis of which he has been given the punishment, therefore, the contention is rejected.

32. We are also satisfied that as far as possible, full opportunity was given to the applicant to defend himself in the inquiry, which is evident from the fact that initially applicant was not even participating in the inquiry and orders were already passed to proceed ex parte but still when applicant appeared



before the Inquiry Officer and demanded the documents, Inquiry Officer allowed him to join the inquiry. He was given the opportunity to cross examine all the witnesses except Smt. Reema Suri but that was not possible because she refused to attend the inquiry despite service of summons on 7-8 times. Therefore, it was in those circumstances that as per Rule 16(3) of the Delhi Police(Punishment and Appeal) Rules, 1980, her statement which was duly signed by her and counter signed by Inspector Pratima Sharma Singh was taken on record. This procedure is very much in accordance with the rules, therefore, we find no illegality in the procedure adopted by the respondents.

33. In view of above, we find no good ground to interfere in this case. The same is accordingly dismissed. No order as to costs.”

10. Learned counsel for the Petitioner has vehemently argued before this Court that the entire departmental enquiry stands vitiated and findings are perverse findings and, therefore, he is entitled for reinstatement in service along with all consequential benefits. He has vehemently argued before this Court that there is a violation of Rule 15(2) of the Delhi Police (Punishment and Appeal) Rules, 1980 as initiation of disciplinary proceedings requires prior approval of the Assistant Commissioner of Police and the same was not done in the present case.

11. He has vehemently argued that the statement of Meenu Sharma was not recorded during the disciplinary proceedings, and based upon the statement of Mr. Ashok Kumar Chauhan, PW-3 and brother of Ms. Meenu Sharma as well as Mr. Ram Saran Sharma, husband of Meenu Sharma, the misconduct has been proved.

12. Learned counsel has vehemently argued before this Court that it is on the basis of the statements of the interested witnesses the misconduct has



been proved, and by no stretch of imagination, could the Petitioner have been dismissed from service in the method and manner it has been done. Learned counsel for the Petitioner has argued before this Court that the daughter of Meenu Sharma (Aakriti Sharma) has simply made a statement that her mother was residing with the officer and based upon the statement of Aakriti Sharma who was a child witness, by no stretch of imagination, the misconduct could have been proved in the method and manner it has been done.

13. Learned counsel for the Petitioner, after arguing the matter at length has argued before this Court that even if it is an admitted fact that the Petitioner has resided with the lady for some time, both were adults living consensually and there being no complaint by Ms. Meenu Sharma against the Petitioner, he could not have been punished in the method and manner it has been done and the punishment awarded is shockingly disproportionate to the guilt of the charged official.

14. Learned counsel for the Respondent, on the ground of quantum of punishment was fair enough in stating before this Court, on instructions that the punishment is certainly disproportionate to the misconduct committed by the charged official, and the matter can be remanded back to the disciplinary authority to award a lesser punishment keeping in view the past track record of the official as well as other factors.

15. He was fair enough in stating before this Court that after quashing the punishment order and the order passed by the disciplinary authority/ revisional authority the matter be remanded back to the disciplinary authority to pass a fresh order in respect of the quantum of punishment as



dismissal/ removal are certainly shockingly disproportionate to the alleged misconduct which has been proved in the departmental enquiry.

16. This Court, in the light of the statement made by learned counsel for the Respondent, is of the opinion that the order passed by the disciplinary authority dated 24.10.2003, the order passed by the Appellate Authority dated 24.12.2003 and the Impugned order dated 01.08.2006 deserves to be set aside and are hereby set aside. The matter is remanded back to the disciplinary authority to pass a fresh order based upon the enquiry report within a period of 30 days from today and the disciplinary authority shall be free to pass any order of punishment except for inflicting the punishment of dismissal or removal from service keeping in view the statement made on behalf of the Respondents.

17. It is made clear that the matter is being remanded back to the disciplinary authority only on the point of quantum of punishment and this Court has not observed anything on the merits of the case.

18. The petition stands disposed of with the aforesaid directions.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

SEPTEMBER 22, 2022