



2024:DHC:8910-DB



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

+ **W.P.(C) 9786/2019**

MANOJ KUMAR

.....Petitioner

Through: **Mr. Rajesh Chauhan, Adv.**

versus

GOVT. OF NCTD THROUGH THE

COMMISSIONER OF POLICE AND ORS.Respondents

Through: **Mr. Ashish K. Dixit, CGSC,**
with Mr. Shivam Tiwari, Ms. Urmila
Sharma, Ms. Deepika Kalra and Ms. Venni
Kakkar, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER (ORAL)

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18.11.2024

C. HARI SHANKAR, J.

1. The impugned order passed by the Tribunal reads thus:

“Heard Mr. Sachin Chauhan, counsel for applicant and Mr. Amit Anand, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In this OA, the applicant has prayed for the following reliefs:

“(i) To quash and set aside order 20.4.2012 whereby a extreme punishment of dismissal from service was imposed upon the applicant and order dated 24.07.2012 whereby the statutory appeal of the applicant is rejected by the Appellate Authority and to further direct the respondent to reinstate the applicant back in service with all consequential benefit including seniority & promotion and pay and allowance.

(ii) To set aside the findings of the Enquiry Officer.
Or/and

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(iii) Any other relief which this Hon'ble court deems fit and proper may also be awarded to the applicant."

3. The relevant facts of the case are that a departmental enquiry was initiated against the applicant for being wilfully and unauthorizedly absent. He had also remained absent for 639 days and during the said absentee period, absentee notices were issued and earlier also he remained absent wilfully and unauthorizedly on 87 different occasions.

4. Along with the article of charge, statement of imputation of misconduct, list of documents and list of witnesses were furnished to the applicant. As the applicant filed his reply to the charge memo., an Inquiry Officer was appointed. The Inquiry Officer conducted the departmental enquiry and examining PW 1 to PW 4 as per the procedural rules and also after providing adequate opportunity to the applicant in view of the principles of natural justice. The applicant filed his defence statement which was also taken into account by the inquiry officer. After discussing the entire evidence and the defence raised by the applicant, the inquiry officer concluded that the charge level against the applicant was stood proved. Inquiry report was furnished to the applicant and applicant filed his representation against the inquiry report. The disciplinary authority after considering the entire evidence on record, the findings of the inquiry report and the representation against the same, and also giving an opportunity to the applicant to appear in person on 24.02.12 and 02.03.12 in the orderly room, imposed a penalty of dismissal on the applicant with immediate effect vide order dated 20.04.2012. The appeal filed by the applicant was considered by the appellate authority and by detailed order rejected the appeal vide order dated 24.07.2012.

5. The counsel for the applicant vehemently submitted that the applicant had 21 years of un-blemished qualifying service before the departmental enquiry was started for unauthorised absence and that in view of the said fact the imposition of penalty of dismissal is grossly disproportionate. The counsel for the respondents submitted that the applicant is habitual in being absent and his unauthorised absence was wilful as well and the respondents police force require utmost discipline as such the imposition of penalty is not disproportionate. The counsel for the applicant has relied upon a judgment of the Hon'ble High Court of Delhi dated 13.08.2015 in the case of **Vinod Kumar Vs. The Commissioner of Police & Ors¹** in support of his case. But however, the judgment of the Hon'ble High Court is based on the facts in that particular case.



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6. But, however, it is well settled that the penalty imposed by the statutory authorities cannot be rightly interfered with by the Tribunal unless the penalty imposed is grossly disproportionate.

7. In view of the facts of the case narrated above and in view of the law laid down by Hon'ble Apex Court and in view of the fact that the counsel for the applicant has not brought to our notice violation of any procedural rules or principles of natural justice, the OA is devoid of merit.

8. Accordingly, OA is dismissed. No order as to costs."

2. The order is completely unreasoned. It cannot sustain in law.

3. Accordingly, the impugned order is quashed and set aside and the matter is remanded to the Tribunal for decision afresh.

4. In order to expedite matters, both parties are directed to appear before the Tribunal on 5 December 2024.

5. The petition is allowed to the aforesaid extent.

C. HARI SHANKAR, J.

ANOOP KUMAR MENDIRATTA, J.

NOVEMBER 18, 2024/dsn

Click here to check corrigendum, if any