



2024:DHC:7065



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

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Date of Decision: 16th August, 2024

+ W.P.(C) 12998/2019

NARENDRA PRASAD RAI

.....Petitioner

Through: Mr. N.S. Dalal, Ms. Nidhi Dalal, Mr.
Alok Kumar, Ms. Rachana Dalal, Ms. Sweta
Kadyan and Mr. Karan Mann, Advocates

versus

VICE-CHAIRMAN, DELHI AGRICULTURAL MARKETING
BOARD AND ANR.Respondents

Through: Mrs. Avnish Ahlawat, Standing
Counsel, DAMB with Mr. N.K. Singh, Ms.
Laavanya Kaushik, Ms. Aliza Alam and Mr.
Mohnish Sehrawat, Advocates

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred by the Petitioner under Article 226 of the Constitution of India seeking quashing of the penalty order dated 06.10.2009 passed by Respondent No.1 coupled with a direction to pay all consequential benefits, claiming parity with Rajender Singh, against whom disciplinary proceedings were initiated on similar charges and which culminated into the same penalty as awarded to the Petitioner.

2. Brief facts to the extent necessary are that Anti-Corruption Branch of the Government of NCT of Delhi conducted a raid on 16.09.2000 at Tikri, Khampur Border Check Post of Azadpur Mandi, upon receipt of an anonymous complaint. During the raid, three employees of Agricultural



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Produce Market Committee ('APMC'), namely, Mr. Sushil Kumar, Mr. B.S. Khari and Mr. Indu Bhushan were arrested for allegedly accepting bribe from truck drivers. According to the Respondents, the *modus operandi* of the three delinquent employees was that slips were issued on payment of nominal amounts varying between Rs.20/- to Rs.100/-, which enabled the truck drivers to jump the queues instead of waiting for hours in the long queues. As per the allegations, part of the bribe money went to the superior officers, which included the Petitioner, who was the Deputy Secretary, APMC and one Rajender Singh, who was the Assistant Secretary-I. Criminal proceedings were instituted against the three arrested persons and a sum of Rs.540/- was recovered from the custody of one of them. Respondents initiated departmental proceedings against all the three.

3. It is averred in the petition that Petitioner and Rajender were not arrayed as accused in the criminal proceedings but disciplinary proceedings were instituted against them based on the disclosure statements of Mr. Sushil Kumar, Mr. B.S. Khari and Mr. Indu Bhushan. In the charge-memorandum served on the Petitioner, it was alleged that as a part of the conspiracy, he received part of the bribe amount collected by Mr. Sushil Kumar, Mr. B.S. Khari and Mr. Indu Bhushan and after a detailed inquiry, the charge was held to be proved by the Inquiry Officer ('IO'). IO's report was placed before the Disciplinary Authority, which accepted the report and vide order dated 06.10.2009 imposed the penalty of reduction to a lower stage in time scale of pay for a period of 05 years with cumulative effect with a further direction that Petitioner will not earn increments of pay during the period of the said reduction and the reduction will have the effect of postponing his future increments.



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4. Petitioner avers that the disciplinary proceedings initiated against Rajender Singh pursuant to charge memorandum dated 06.06.2003 culminated into the same penalty as imposed on the Petitioner. Rajender Singh filed writ petition being W.P.(C) No.635/2012 in this Court assailing the penalty imposed on him. The writ petition was allowed vide judgement dated 29.01.2014, reported as ***Rajender Singh v. Govt. of NCT of Delhi & Anr., 2014 SCC OnLine Del 446***, setting aside the orders of the Disciplinary Authority and the Appellate Authority with all consequential reliefs, pertinently on the ground that the charge of having indulged in conspiracy could sustain only if co-conspirators were also found guilty but once the co-conspirators Mr. Sushil Kumar, Mr. B.S. Khari and Mr. Indu Bhushan were acquitted by the criminal court and exonerated in the disciplinary proceedings, Rajender Singh could not be held guilty of conspiracy. Petitioner states that after the judgement was passed in case of Rajender Singh, Petitioner made a representation to the Respondents dated 13.02.2014, seeking parity with Rajender Singh and praying for quashing of the penalty order and grant of all consequential reliefs. This was followed by reminders dated 04.07.2014 and 03.02.2016, but there was no response. On 31.07.2016, Petitioner retired on superannuation and thereafter filed the present petition.

5. Learned counsel for the Petitioner submits that disciplinary proceedings were initiated against the Petitioner and Rajender Singh levelling same allegations and importantly, premised on a charge of conspiracy. Both were awarded the same penalty and therefore, once the Co-ordinate Bench of this Court has set aside the penalty imposed on Rajender Singh in ***Rajender Singh (supra)***, there is no reason why the



penalty imposed on the Petitioner be not set aside at par with Rajender Singh. To buttress the argument that law recognizes parity between co-delinquents with respect to punishments awarded, where the allegations are the same and/or where they are part of the same transactions, reliance is placed by Mr. Dalal on the judgments of the Supreme Court in *Man Singh v. State of Haryana and Others*, (2008) 12 SCC 331 and *Rajendra Yadav v. State of Madhya Pradesh and Others*, (2013) 3 SCC 73.

6. Mrs. Avnish Ahlawat, learned Standing Counsel for the Respondents submits that no parity can be claimed by the Petitioner since he was a Senior Officer of the rank of Deputy Secretary and it was his responsibility to ensure that the employees working under him do not indulge in malpractices such as accepting bribes. It is, however, not disputed that the charges against Rajender Singh and the Petitioner were the same and both were awarded the same penalty.

7. Heard learned counsels for the parties and examined their contentions.

8. Before proceeding further, it is necessary to note the undisputed facts: (a) Petitioner and Rajender Singh were never arrayed as accused in the criminal proceedings; (b) insofar as disciplinary proceedings are concerned, the allegations against both were the same involving conspiracy and accepting bribe; (c) the three accused Mr. Sushil Kumar, Mr. B.S. Khari and Mr. Indu Bhushan, who were arrested during raid and on whose disclosure statements disciplinary proceedings were initiated against the Petitioner and Rajender Singh were acquitted by the Trial Court in the criminal proceedings and were also exonerated in the disciplinary proceedings; and (d) in *Rajender Singh (supra)*, this Court set aside the penalty awarded to Rajender Singh, basis the acquittal of the 3 alleged co-conspirators in



criminal trial and exoneration in the departmental inquiry.

9. There is merit in the contention of learned counsel for the Petitioner that if the charges levelled against and the penalty awarded to Rajender Singh are the same as that of the Petitioner, Petitioner is entitled to the same treatment and on the parity principle, the penalty awarded to the Petitioner deserves to be set aside. Reading of the judgement of the Co-ordinate Bench in **Rajender Singh (supra)**, shows that the Court had interfered on the ground that charge of conspiracy can only sustain if co-conspirators are also found guilty and thus where co-conspirators have been acquitted, charge of conspiracy cannot sustain against the remaining person, alleged to be a part of the conspiracy. [Ref.: **Topandas v. State of Bombay, 1955 SCC OnLine SC 33**]. Therefore, once the allegation against the Petitioner was of having indulged in conspiracy and the co-conspirators Mr. Sushil Kumar, Mr. B.S. Khari and Mr. Indu Bhushan have been acquitted in the criminal trial followed by exoneration by the Disciplinary Authority and penalty against Rajender Singh has been set aside, a differential treatment cannot be meted out to the Petitioner. Relevant paragraphs of the judgement of this Court in **Rajender Singh (supra)**, are as under:-

“8. Having regard to the charge framed against the petitioner, which was of having indulged in conspiracy, it is quite clear that the said charge can only sustain if, the co-conspirators are also found guilty. On the same set of facts and evidence, the co-conspirators Mr. Sushil Kumar, Mr. B.S. Khari and Mr. Indu Bhushan have been acquitted by the criminal court, followed by exoneration by the disciplinary authority. There is also merit in the submission of the petitioner that, the petitioner, cannot be held guilty of the charge of conspiracy if the co-conspirators are acquitted.

8.1 In these circumstances all that can be said based on the record and the evidence presently available is: that, though, the petitioner may have been guilty of dereliction of duty, there is no charge of conspiracy



made out against him. The petitioner, in the disciplinary proceedings, has been charged with conspiracy, and not with dereliction of duty. In these circumstances, the writ petition would have to be allowed and the impugned orders will have to be set aside. It is ordered accordingly. The petitioner will get all consequential reliefs due to him, pursuant to the order of punishment having been set aside.”

10. It is a well-recognised principle in service jurisprudence that similarly placed co-delinquents ought to be given parity in the punishments imposed. In this context, I may refer to the judgment of the Supreme Court in **Rajendra Yadav (supra)**, wherein the Supreme Court held that a comparatively lighter punishment on the co-delinquent and harsher punishment of dismissal on the other will be unsustainable, if both are involved in the same incidents. Relevant passages from the judgment are as under:-

“8. We have gone through the inquiry report placed before us in respect of the appellant as well as Constable Arjun Pathak. The inquiry clearly reveals the role of Arjun Pathak. It was Arjun Pathak who had demanded and received the money, though the tacit approval of the appellant was proved in the inquiry. The charge levelled against Arjun Pathak was more serious than the one charged against the appellant. Both the appellants and other two persons as well as Arjun Pathak were involved in the same incident. After having found that Arjun Pathak had a more serious role and, in fact, it was he who had demanded and received the money, he was inflicted comparatively a lighter punishment. At the same time, the appellant who had played a passive role was inflicted with a more serious punishment of dismissal from service which, in our view, cannot be sustained.

9. The doctrine of equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The disciplinary authority cannot impose punishment which is disproportionate i.e. lesser punishment for serious offences and stringent punishment for lesser offences.



10. The principle stated above is seen applied in a few judgments of this Court. The earliest one is *DG of Police v. G. Dasayan* [(1998) 2 SCC 407 : 1998 SCC (L&S) 557] wherein one Dasayan, a police constable, along with two other constables and one Head Constable were charged for the same acts of misconduct. The disciplinary authority exonerated two other constables, but imposed the punishment of dismissal from service on Dasayan and that of compulsory retirement on the Head Constable. This Court, in order to meet the ends of justice, substituted the order of compulsory retirement in place of the order of dismissal from service on Dasayan, applying the principle of parity in punishment among co-delinquents. This Court held that it may, otherwise, violate Article 14 of the Constitution of India.

11. In *Shaileshkumar Harshadbhai Shah* case [(2006) 6 SCC 548 : 2006 SCC (L&S) 1486] the workman was dismissed from service for proved misconduct. However, few other workmen, against whom there were identical allegations, were allowed to avail of the benefit of voluntary retirement scheme. In such circumstances, this Court directed that the workman also be treated on the same footing and be given the benefit of voluntary retirement from service from the month on which the others were given the benefit.

12. We are of the view that the principle laid down in the abovementioned judgments would also apply to the facts of the present case. We have already indicated that the action of the disciplinary authority imposing a comparatively lighter punishment on the co-delinquent Arjun Pathak and at the same time, harsher punishment on the appellant cannot be permitted in law, since they were all involved in the same incident. Consequently, we are inclined to allow the appeal by setting aside the punishment of dismissal from service imposed on the appellant and order that he be reinstated in service forthwith. The appellant is, therefore, to be reinstated from the date on which Arjun Pathak was reinstated and be given all consequential benefits as were given to Arjun Pathak. Ordered accordingly. However, there will be no order as to costs.”

11. In *Man Singh (supra)*, the Supreme Court emphasised on the requirement of fair play even while awarding penalties and relevant passages are as follows:-

“20. We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair-minded authority could ever



have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equals have to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of “fair play” and reasonableness.

21. We have, therefore, examined the case of the appellant in the light of the established doctrine of equality and fair play. The principle is the same, namely, that there should be no discrimination between the appellant and HC Vijay Pal as regards the criteria of punishment of similar nature in departmental proceedings. The appellant and HC Vijay Pal were both similarly situated, in fact, HC Vijay Pal was the real culprit who, besides departmental proceedings, was an accused in the excise case filed against him by the excise staff of Andhra Pradesh for violating the excise prohibition orders operating in the State. The appellate authority exonerated HC Vijay Pal mainly on the ground of his acquittal by the criminal court in the excise case and after exoneration, he has been promoted to the higher post, whereas the appeal and the revision filed by the appellant against the order of punishment have been rejected on technical ground that he has not exercised proper and effective control over HC Vijay Pal at the time of commission of the excise offence by him in the State of Andhra Pradesh. The order of the disciplinary authority would reveal that for the last about three decades the appellant has served in the Police Department of Haryana in different capacities with unblemished record of service.

22. In the backdrop of the abovementioned facts and circumstances of the case, we are of the view that the order of the disciplinary authority imposing punishment upon the appellant for exhibiting slackness in the discharge of duties during his visit to Hyderabad when HC Vijay Pal was found involved in excise offence, as also the orders of the appellate and revisional authorities confirming the said order are unfair, arbitrary, unreasonable, unjustified and also against the doctrine of equality. The High Court has failed to appreciate and consider the precise legal questions raised by the appellant before it and dismissed the second appeal by an unreasoned judgment. The judgment of the High Court, therefore, confirming the judgments and decrees of the first appellate court and that of the trial court is not sustainable. The appellant deserves to be treated equally in the matter of departmental punishment initiated against him for the acts of omissions and commissions vis-à-vis HC Vijay Pal, the driver of the vehicle.”



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12. From a conspectus of the aforementioned judgments, it is clear as day that doctrine of equality enshrined in Article 14 of the Constitution of India is not an abstract doctrine and is applicable to all equally placed, even if they are held guilty. There can be no cavil to the settled law that awarding punishments is the domain of the Disciplinary Authority and ordinarily, the Court while exercising jurisdiction of judicial review under Article 226 of the Constitution of India would interfere in rare cases and one such carve out is where there is disparity in the treatment of co-delinquents. It is a settled proposition of law that there ought to be parity in treating the co-delinquents in an inquiry relating to the same incident and/or allegations of connivance.

13. In light of the aforesaid judgments, Petitioner is entitled to parity with Rajender Singh and in these circumstances, the writ petition is allowed setting aside the order dated 06.10.2009, whereby penalty was awarded to the Petitioner and holding that Petitioner will be entitled to all consequential reliefs due to him as per law.

14. Petition stands disposed of in the aforesaid terms.

JYOTI SINGH, J

AUGUST 16, 2024/kks/shivam