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

Date of Decision: 22.07.2024

+ W.P.(C) 5563/2018
NARENDER SINGH

.....Petitioner

Through: Mr. Ankur Chhibber and Mr. Nikunj
Arora, Advs.

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Ms. Avshreya Pratap Singh, SPC with
Mr.Vidur Dwivedi & Ms. Usha
Jamnal, Advs.

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+ W.P.(C) 9318/2018
DHANANJAY YADAV

.....Petitioner

Through: Mr. Ankur Chhibber and Mr. Nikunj
Arora, Advs.

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Mr. Mukul Singh, CGSC with Ms. Ira
Singh, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

REKHA PALLI, J (ORAL)

1. The present petitions have been filed under Article 226 of the Constitution of India by two Constables (General Duty) who were serving in



Central Industrial Security Force [“CISF”] both seeking quashing of orders dated 26.08.2017 vide which they have been removed from service. The petitioners also seek quashing of the orders rejecting their appeals as also their revision petitions. Consequently, the petitioners seek reinstatement in service with all consequential benefits.

2. The brief factual matrix as emerging from the record is that in 2017, both the petitioners were posted at NTPC, Navi Nagar, Aurangabad and were on 12.01.2017 deployed for quarter guard security duty between 1200 hours to 1500 hours. While Narender Singh, the petitioner in W.P.(C) 5563/2018, was stationed at the Morcha located on the first floor of the unit quarter guard, Dhananjay Yadav, the petitioner in W.P.(C) 9318/2018, was deputed at the lower Morcha located on the ground floor thereof. At 1240 hour on 12.01.2017 while they were discharging their respective duties, they saw Ex. Constable Balbir Singh who was deputed on quarter guard duty in the Morcha between 09.00 hours to 12.00 hours coming out of the barracks and indiscriminately firing on the ground floor of the Morcha with his fire arm. It is the petitioner’s case that upon realising that Balbir Singh was attacking personnel/officers in the unit, they blew whistles to inform other members of the unit. Amidst the resultant commotion, the petitioners claim that they stood stationed at their post, while Assistant Commandant Ajit Toppo, who was the unit Commander as also Inspector Ajit Kumar Gupta who was the Company Commander despite being present on the site, remained silent and failed to give any instructions. They, in fact, contend that Assistant Commandant Ajit Toppo on hearing the fire shots closed the door of his office and HC (GD) R.B. Singh, the Guard Commander along with other constables who were stationed on the ground floor of the Morcha



with walkie talkies ran away from the place of incident. It was later discovered that four personnel died in this unfortunate occurrence of firing by Ex-Constable Balbir Singh.

3. Based on this incident, the respondents issued charge memorandums not only to the two petitioners but also to Assistant Commandant Ajit Toppo, Company Commander/Inspector Ajit Kumar Gupta and Head Constable (GD) R.B. Singh. Separate departmental inquiries were held against all the five personnel/officers in which it clearly came out that Assistant Commandant Ajit Toppo, Company Commander/Inspector Ajit Kumar Gupta and Head Constable R.B. Singh had, instead of taking charge of the situation either closed the door of their office from inside or fled from the spot. Based on the findings of the inquiries, while both the petitioners were removed from service, a penalty of stoppage of one increment and two increments was imposed on Assistant Commandant Ajit Toppo and Inspector Ajit Kumar Gupta respectively. HC R.B. Singh, who was the guard Commander of the unit, was imposed the penalty of compulsory retirement and is stated to be drawing service pension.

4. Being aggrieved, the petitioners preferred statutory appeals and revision which were both dismissed leading to the filing of the present petitions.

5. In support of the petitions, the learned counsel for the petitioners submits that the petitioners had acted with utmost diligence and took all possible steps to inform their superior officers about the firing by Ex-Constable Balbir Singh but have still been awarded the extreme penalty of



removal from service. He submits that the respondents have treated the petitioners in the most discriminatory manner by imposing the penalty of removal on them, while Assistant Commandant, Ajit Toppo and Company Commander/Inspector Ajit Kumar Gupta have been retained in service and Head Constable R.B. Singh has been compulsorily retired with pensionary benefits, even though they were all senior to the petitioners and had failed to provide necessary instructions to pacify the situation. In support of his plea that the penalty awarded to the petitioners was discriminatory and liable to be set aside, he seeks to place reliance on a decision of the Apex Court in ***Rajender Yadav vs. State of Madhya Pradesh & Ors.* [(2013) 3 SCC 73]** as also on a decision of this Court in ***Virender Singh Chankot vs. Union of India & Ors.* [2019 SCC OnLine Del 11498]**. He, therefore, prays that taking into account the long blemishless service of the petitioners and the lesser punishment awarded to their seniors in respect of the same incident, the impugned penalty orders be set aside and respondents be directed to modify the penalty imposed on the petitioners in such a manner so that they do not lose their job.

6. On the other hand, learned counsel for the respondents seeks dismissal of the writ petitions by contending that the respondents have acted fairly by awarding punishment by taking into account the role assigned to each of the personnel/officers deployed at the site. She therefore, contends that no interference is called for with the penalty imposed on the petitioners who had exhibited cowardice in not stopping Ex-Constable Balbir Singh.

7. However, after some arguments, she does not deny that Assistant Commandant Ajit Toppo, instead of issuing any directions to the men under his command had closed the door of his office from inside. Similarly, there



is no denial to the fact that Inspector Ajit Kumar Gupta as also Head Constable R.B. Singh left the spot while the firing was ongoing and they were still imposed lesser punishment than the petitioners.

8. Having considered the submissions of the learned counsel for the parties and pursued the record, what emerges is that the parties are *ad idem* that while the petitioners who were serving as Constable (GD) and were, at the time of the unfortunate incident of firing, discharging guard duty on the two floors of the Morcha, there were at least three superior officers namely Assistant Commandant Ajit Topo, Inspector Ajit Kumar Gupta and Head Constable R.B. Singh present at the site. There is also no denial to the fact that these three superior officers either left the spot unattended, or locked their office from inside leaving the two petitioners and other force personnel to take care of the untoward situation created on account of Ex. Constable Balbir Singh firing indiscriminately. Despite their superior officers failing to issue any instructions, the petitioners remained at the spot. In the light of this admitted factual position, we are of the view that though the petitioners, being trained soldiers, who were equipped with the necessary bullet proof vest and helmet, were bound to take all possible steps to control the situation, there is merit in their plea that the penalty imposed on them was shockingly disproportionate. The three other personnel/officers, in our opinion, had a higher onus to take charge of the situation as undoubtedly it is for the Unit Commander along with his Company Commander and Guard Commander to lead their men from the front. Once the Assistant Commander locked himself in the room and the other two Commanders left the site, the petitioners who still remained stationed, could not have been given the gravest punishment of removal from service. The petitioners are



therefore correct in urging that discriminatory treatment has been meted out to them.

9. In this regard, we deem it appropriate to refer to the following observations of the Apex Court in **Rajender Yadav** (supra) as contained in paragraph nos. 8-10 of its decision. The same reads 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 b 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**² 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.”*



10. Reference may also be made to the decision in ***Virender Singh Chankot*** (supra) wherein the Co-ordinate Bench observed as under:-

“22. The CAT also appears to have overlooked the legal position as regards the discriminatory treatment meted out to a charged official vis -à-vis another charged officer, when the charges for which the charge- sheet are similar and have arisen out of the same event. In the present case, as already noticed, although the preliminary enquiry fastened responsibility on the EE, he was let off with a "recordable warning", whereas major penalty proceedings were initiated against the Petitioner. In the facts narrated hereinbefore, it is plain that the four pages of the tender document of M/s. Rajaram Contractor went missing during the time that the EE handed over the papers to Mr. Dua, UDC. The essential responsibility at this stage for the safe custody of the paper was obviously on the EE, and not on the Petitioner, as is also evident from the CPWD Manual under Section 18.3.16.1.”

11. We have also considered the decision in ***Dalbir Singh vs. Union of India & Ors.: (2019) 7 SCC 84*** relied upon by the respondents but find that the same is not applicable the facts of the present case where it is an admitted position that none of the petitioners abandoned their posts unlike the three superior officers who either left the posts or locked the door of their office inside.

12. In the light of the aforesaid, we are of the view that the penalty of removal from service imposed on the petitioners is liable to be set aside. We accordingly, set aside the removal order dated 26.08.2017 along with the appellate orders as also the revisional order and remand the matter back to the disciplinary authority with a direction to reconsider the penalty imposed on the petitioners within 12 weeks in the light of our observations made hereinabove.

13. It is, however, made clear that till the respondents pass a fresh order in terms of this decision, though the removal orders are being set aside, the petitioners will not be entitled to reinstatement. We hope that while passing



fresh penalty orders, the respondents will take into account that the petitioners have rendered long blemishless service to the nation and any order of removal from service or compulsory retirement will leave them without any source of livelihood. We further make it clear that in case the petitioners are still aggrieved by the orders passed by the respondents, it will be open for them to seek legal recourse as permissible in law.

14. The writ petitions stand disposed of in the aforesaid terms.

(REKHA PALLI)
JUDGE

(SHALINDER KAUR)
JUDGE

JULY 22, 2024
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