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

+ **RFA 637/2007**

UOI & ORS.

.....Appellant

Through: Mr Rajendra Sahu, Senior Panel
Counsel for UOI.

versus

SUNIL KUMAR

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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28.10.2024

1. It is seen that the respondent-plaintiff has initiated a civil suit seeking damages against the appellant-defendant alleging mental anguish and suffering, attributed to the appellant-defendant, purportedly resulting from certain actions and inactions undertaken during a disciplinary enquiry.
2. The aforementioned civil suit was decreed against the appellant-defendant *vide* impugned judgment and decree dated 28.09.2007, awarding a sum of Rs. 50,000/-, along with interest at the rate of 12% per annum. In light of this judgment and decree against the Union of India, the appellant-defendant has filed the present appeal.
3. This Court, while admitting the appeal, has passed the following interim directions *vide* order dated 22.04.2008:-

“The appellant has already deposited the decretal amount of Rs.66,000/- in this court. Having heard the learned counsel for the appellant and the respondent, who appears in person, we direct release of 50% of the said amount in favour of the respondent, subject to the condition that in case the appellant succeeds in this appeal and the respondent is held to be not



entitled to the amount, he shall refund the amount released to him within such time as may be fixed by this Court. Remainder of the amount shall remain invested in a term deposit initially for a period of three years.”

4. It is seen that of the total amount deposited, 50% has been released to the respondent-plaintiff, subject to the condition that should the appellant-defendant succeed in this appeal, the released amount shall be refunded. The remaining portion of the amount has been ordered to be invested in a Term Deposit on a renewable basis. Consequently, the remainder of the amount is currently held in deposit with the Registrar General of this Court.

5. Learned counsel appearing on behalf of the appellant-defendant contends that the learned Trial Court has erred in awarding damages, asserting that any accident suffered by the delinquent employee during the course of disciplinary proceedings cannot be attributed to the employer. He further states that the memorandum of charges was served on the respondent on 5.04.2004, and was subsequently withdrawn on 06.12.2004. He submits that while the matter was under inquiry, the appellant-defendant cannot be held liable for any mental anguish or suffering allegedly experienced by the respondent-plaintiff.

6. I have considered the submissions made by learned counsel appearing on behalf of the appellant and have perused the record.

7. The facts of the case would indicate that the memorandum was issued by the appellant-defendant on 15.04.2004, on account of purported misconduct by the respondent-plaintiff that allegedly occurred while on duty during the night of 08-09.04.2004 at approximately 2:40 a.m.

8. It is seen that, against the said memorandum, the respondent-plaintiff submitted a reply within 15 days, specifically on 29.04.2004, asserting that



he was on leave on the date in question. The Department took a considerable amount of time to resolve the matter, ultimately withdrawing the memorandum of charges on 06.12.2004, after being satisfied with the respondent-plaintiff's explanation. The respondent-plaintiff claims that as a result of this protracted process, he suffered from depression and experienced dizziness, leading to a fall on 03.05.2004, which resulted in dislocation of his teeth. He further contends that due to this injury, he developed an infection requiring surgical intervention at Ram Manohar Lohia Hospital, New Delhi, on 22.05.2004, and again on 02.11.2004, for the removal of the infected teeth.

9. According to the respondent-plaintiff, due to the aforementioned surgery and the subsequent illness, he was unable to sit for his Bachelor of Arts first-year examinations at Delhi University, which commenced on 27.05.2004. Additionally, he asserts that he was unsuccessful in an interview for the position of security guard at the Ministry of External Affairs, held on 16.08.2004, as the disciplinary proceedings against him were not withdrawn until 06.12.2004.

10. In view of the aforesaid, the learned Trial Court has framed the following issues:-

“1. Whether the suit of the plaintiff is not maintainable as per preliminary objections no. 1 and 3?

2. Whether the plaintiff suffered damages on account of pendency of false charges/enquiry thereby causing him mental tension and agony which was withdrawn on 06-12-04?

3. To what amount, if any, the plaintiff is entitled as damages?”

11. With respect to issue no. 2, the learned Trial Court has addressed the matter in paragraphs 17 to 22, which are set forth as follows:-

“17. It is admitted case of the defendants that the charges levelled against



the plaintiff vide memo dt. 15-4-04 Ex. PW 1/1 were withdrawn by the defendants vide order dt. 6-12-04 Ex. PW 1/10 although plaintiff submitted reply to the memo on 29-4-04 proved as Ex. PW y2 which was duly received by the defendant no.3 vide Ex. PW 1/3 on the same date. Vide Ex. PW 1/1, representation was sought within 10 days from the plaintiff against imputation of misconduct on which action was supposed to be taken for being found sleeping inside the room after getting the door closed from inside while on duty on 8/9-4-04 at 0240 to 0255 hours as per statement of imputation. The memo was withdrawn vide Ex. PW 1/10 and reply Ex. PW 1/2 was found satisfactory with the observation that charge is **“withdrawn due to non-availability of material facts/evidence”**. The plaintiff proved the certificate inspector of the defendant Ex. PW 1/3 to the effect that plaintiff was on weekly off on 8-4-04 who was on duty on 7-4-04 from 1900 to 700 hours.

18. The defence of the defendants as per deposition of the defendants' witness is that Sh. N.K. Sharma examined as DW2 who is Iy. Commandant CISF was on night checking duty which was carried out from 22.45 hours of 8-1-04 to 0410 hours of 9-1-04 when he found the plaintiff and one other personnel Dharam Pal sleeping in the allotted room for SSF at Vigyan Bhawan at 02.40 hours to 02.55 hours who were marked absent and report was submitted to the DIG which is proved as Ex. DW 2/X.

19. DW-1 Sh. Izzai Rai Uppal, DIG also deposed that he received a checking report on 10-1-04 from Shri N.K. Sharma Dy. Commandant and he issued charge sheet to the plaintiff on 15-4-04 proved as Ex. DW1/B. He also deposed that inadvertently and because of typing mistake, the date of checking was shown as 8/9-4-04 instead of 8/9-1-04 in the charge memo. He also deposed that on receipt of reply from the plaintiff, the disciplinary authority decided to withdraw the said charge memorandum. He also deposed that during course of enquiry, it was established that plaintiff committed the offence of sleeping while on duty but due to typographical error, the case against him was dropped.

20. It is not the case of the defendants that any corrigendum of imputation of charges / memorandum was issued to the plaintiff ever.

21. In support of the defence, DW-2 also proved document Ex. DW 2/X (colly) which are the copies of the forwarding letters of the night checking report along with the report addressed to the Deputy Inspector General by Deputy Commandant Sh. N.K. Sharma of which copy was addressed/senior commandant. On the strength of Ex. DW2/X and the checking report, Ld. counsel for the defendants submitted that it was a case of mistaken date of inspection as mentioned in the memorandum Ex. PW 1/1 with which details of charges were issued to the plaintiff for the date 8/9-04-04 instead of 8/9-01-04. There is no doubt that Ex. DW 2/X and the inspection/checking report does mention the date of inspection as 8/9-01-04 when the plaintiff was found sleeping in the room for SSF at Vigyan Bhawan bolted from inside and when mark of sleeping was noted on the register by the Deputy



Commandant Shri N.K. Sharma.

22. *Ld. counsel for the plaintiff, however, submitted that Ex. DW 2/X is an after thought document prepared by the defendants as the defendants failed to place and prove on record the register which was the basic document to prove the bona fide of the defendants of the defence of mistaken mention of date in the charge memo.”*

12. It is observed that, upon analyzing the facts and circumstances in light of the evidence presented, the learned Trial Court determined that the withdrawal of charges was due to the absence of material facts and evidence. Notably, the respondent-plaintiff endured significant hardship for approximately eight months, despite having submitted his reply on 29.04.2004, in response to the memorandum dated 15.04.2004.

13. The learned Trial Court has rightly placed reliance on the decision in the case of ***W.B. SEB v. Dilip Kumar Roy***¹, which has observed that the initiation of unfounded and malicious proceedings before any administrative or domestic tribunal, in the absence of foundational facts or material, is likely to cause significant mental anguish to the delinquent employee. Although the respondent-plaintiff sought compensation for damages in the amount of Rs. 10,00,000/-, the Court awarded Rs. 50,000, along with interest at the rate of 12% per annum, calculated from the date of issuance of the legal notice, i.e., 29.01.2015.

14. In light of the foregoing, the Court finds no justification to interfere into the aforesaid findings. Consequently, the appeal stands dismissed.

PURUSHAINDRA KUMAR KAURAV, J

OCTOBER 28, 2024

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¹ (2004) 5 SLR 723 (Cal) (DB)