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Court : Delhi

Decided On : Jul-16-2014

Judge : Kailash Gambhir

Appellant : Ramesh Ram

Respondent : Union of India and ors

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) 3067/2013 RAMESH RAM Through: ....Petitioner Ms. Rekha Palli & Ms. Punam Singh, Advocates versus UNION OF INDIA & ORS Through: ..... Respondents Mr.Amrit Pal Singh, Central Government Standing Counsel with Ms. Gurjinder Kaur, Advocate CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER
1607.2014 % KAILASH GAMBHIR, J.

(Oral) 1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner, a Head Constable with CISF seeks to challenge the order dated 19.12.2008 passed by the Disciplinary Authority, order dated 28.05.2009 passed by the Reviewing Authority and the order dated 23.10.2009 passed by the Appellate Authority.

2. The gist of the facts giving rise to the filing of the present petition can be summarised as under:- The Petitioner had joined the central Industrial Security Force as a constable on 30.09.1976.The petitioner was promoted as a Naik in 1983 and thereafter, as a Head Constable in the year 2000. During 33 years of his career, he received 32 rewards. That in May 2007, the petitioner was posted at CISF Unit, Container Corporation of India Ltd., Tuglakabad, New Delhi. There were several gates in this unit, leading to the Container Corporation of India/ Inland Container Depot and from time to time, vehicles used to enter through gate No.4 whereas Gate No.5 was used for pedestrians as Entry Gate and at the gates, force personnel were posted in three shifts. On 26.07.2008 Head Constable P.K. Singh was on duty at Gate no.4 from 9.00 p.m. to 5 a.m. and the petitioner took charge from him at 5.00 a.m. in the morning on 27.7.2008. That near the gate where the CISF personnel were posted, there was a table and a chair with cushion and whenever there was a change in the duty, a formal charge was handed over by making an entry in the register. That on 27.07.2008 which was a Sunday, while the petitioner was on duty, Shri G.I Singh, Assistant Commandant and Inspector V.P. Singh came to the place and sat near the gate watching the petitioner who kept doing his duty as usual. That around 12 O clock, the aforesaid Assistant Commandant and Inspector came and asked the petitioner to give his personal search. The petitioner was checked thoroughly, and even his clothes were checked but no recovery was made. However, when the chair and cushion on which the petitioner was seated, was picked up and dusted, some currency notes to the sum of Rs. 286/- were found from the tatters of the cushion. The petitioner was issued a charge sheet dated 08.08.2008 by the respondent no.5 on two charges, first being that on checking of the petitioner at the In Gate No.4/5 by Asst. Commandant G.I. Singh, Rs. 286/- was found and second charge was to the effect that as per Unit Office Order dated 4.06.2007, it was administered that no force personnel had illegally kept any money. Departmental enquiry was held and the petitioner was held guilty of the said charges. Petitioner then submitted his representation but the disciplinary authority, relying on the evidence available, imposed a penalty of stoppage of one increment for three years with a cumulative effect on the petitioner. The petitioner had resumed his duties, but respondent No.4 by a purported exercise of Rule 54 (1) of the Central Industrial Security Force

Rules, issued a Show Cause notice dated 27.03.2009 whereby the petitioner was informed that the penalty imposed did not commensurate with the charges and therefore, respondent no.4 after cancelling the penalty awarded by respondent No.5, proposed to compulsory retire him. Therefore, the petitioner was asked to show cause as to why such a punishment may not be imposed. Petitioner duly submitted his reply, but vide order dated W.P. (C) No.3067/2013 Page 2 of 17 28.05.2009, the respondent no.4 imposed a penalty of compulsory retirement upon him. The petitioner preferred an appeal to respondent no.3 herein but the same was rejected vide order dated 23.10.2009 wherein it was held that it was a grave misconduct on the part of the petitioner. Aggrieved by the same, petitioner approached the Allahabad High Court, but as the cause of action arose at Delhi, the same was dismissed on account of territorial jurisdiction. Hence, the present Writ Petition.

3. Addressing the arguments on behalf of the petitioner, Ms. Rekha Palli, Advocate vehemently contends that the currency notes which were found from the tatters of the cushion were not within the knowledge of the petitioner as the chair on which the said cushion was found was used by several other watchmen and not by the petitioner alone. Counsel for the petitioner also submits that on any single day, at least three watchmen used to sit on the same chair as per the three shifts and at a time none could take care of the chair and the cushion, if the watchmen on duty would leave the place to attend the call of nature. Counsel also submits that once the money was not found from the person of the petitioner or from a place in his exclusive control or possession, the petitioner could not be held guilty of the charge of being in illegal possession of Rs.286/-. Counsel further submits that no witnesses were adduced by the respondents to prove the charge of the said money being in illegal possession of the petitioner and not only that, the respondents even failed to consider the past excellent service record of the petitioner during which he had received 32 rewards and not even a single adverse entry. Counsel for the petitioner also submits that the presenting officer himself came to the conclusion that the amount of Rs.286/- found from the tatters of the cushion could not be treated as illegal money and none of the other witnesses had seen the petitioner taking or demanding any such money, yet the petitioner has been held guilty for the offence which he never committed.

4. Another contention raised by the counsel for the petitioner on which she laid strong emphasis was that respondent No.4 has acted in a most illegal and arbitrary manner by imposing the penalty of compulsory retirement on the petitioner vide order dated 28.05.2009 by suo motu exercising his power under Rule 54(1) of the Central Industrial Security Force Rules, 2001(hereinafter referred to as CISF Rules) without disclosing any reason for his disagreement with the penalty imposed by respondent No.5 of stopping one increment of the petitioner for three years with cumulative effect vide order dated 19.12.2008. Based on the above submissions, counsel for the petitioner vehemently urged that the petitioner has been compulsorily retired after being labelled as a corrupt and dishonest officer ignoring his distinguished career of 33 years during which he had received 32 rewards and not even a single adverse entry in his service record.

5. Refuting these arguments, Mr. Amrit Pal Singh, learned Central Government Standing Counsel for the respondents, submits that the Reviewing Authority was well within its power to suo motu review the case of the petitioner under Rule 54 (1)B of the CISF Rules, 2001. Counsel also submits that the petitioner indulged in corruption by illegally collecting money to the tune of Rs. 286/-, which he had concealed in the seat, cushion but the Disciplinary Authority adopted a lenient view in awarding him a minor penalty ignoring the proven misconduct on the part of the petitioner. Counsel also submits that before awarding the said punishment of compulsory retirement, a show cause notice dated 27.03.2009 was issued to the petitioner to which he had filed a reply dated 1.05.2009 and after considering his reply and the entire evidence adduced during the course of inquiry, the Reviewing Authority vide order dated 28.05.2009 awarded the punishment of compulsory retirement to the petitioner. Counsel also submits that the petitioner does not deserve reinstatement in service in a disciplined force like CISF for his proven misconduct of indulging into corruption. W.P. (C) No.3067/2013 Counsel also Page 5 of 17 submits that the Reviewing Authority had taken a considerate view by awarding penalty of compulsory retirement instead of his dismissal taking into account his past unblemished service and a distinguished career. Counsel thus submits that the punishment awarded by the Reviewing Authority is fully commensurate with the proven charge and there is no perversity or irrationality in the order passed by the Reviewing Authority warranting any interference by this

Court.

6. We have heard learned counsel for the parties at a considerable length and given our thoughtful consideration to the arguments advanced by them.

7. It is the settled legal position that in the exercise of power of judicial review, the court would not normally substitute its own conclusion on the quantum of punishment until and unless the punishment imposed by the authority is not commensurate with the gravity of the charges and if the court comes to the conclusion that the punishment so awarded, is shocking to the conscience of the court, in the sense that it was in defiance of logic or rationality on the very face of it, in such instance the same shall be set aside.

8. The question of interference on the quantum of punishment has been a subject matter of discussion in a plethora of judgments and we may usefully refer to relevant paras of the some of the authoritative pronouncements of the Supreme Court. In the case of Ranjit Thakur v. Union of India & Ors., AIR 1987 SC2386 the Honble Supreme Court while discussing on the quantum of sentence held as under:

25. Re: contention (d): Judicial review generally speaking, is not directed against a decision, but is directed against the "decision making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-Martialbut the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review. In Council Of Civil Service Unions v. Minister For The Civil Service (1984) 3 W L R1174 Lord Daglock said:

...Judicial Review has, I think, developed to a stage today when without re-iterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognised in the administrative law of several of our fellow members of the European Economic Community....

26. In Bhagat Ram v. State Of Himachal Pradesh AIR 1953 SC454this Court held:

It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportion to the gravity of the misconduct would be violative of Article 14 of the Constitution.

The point to note, and emphasis is that all powers have legal limits.

9. In Kailash Nath Gupta vs. Enquiry Officer (R.K. Rai), Allahabad Bank and Ors. 2003 (9) SCC480 the Court again adopted a similar approach:

11. In the background of what has been stated above, one thing is clear that the power of interference with the quantum of punishment is extremely limited. But when relevant factors are not taken note of, which have some bearing on the quantum of punishment, certainly the Court can direct reconsideration or in an appropriate case to shorten litigation, indicate the punishment to be awarded. It is stated that there was no occasion in the long past service indicating either irregularity or misconduct of the appellant except the charges which were the subject-matter of his removal from service. The stand of the appellant as indicated above is that though small advances may have become irrecoverable, there is nothing to indicate that the appellant had misappropriated any money or had committed any act of fraud. If any loss has been caused to the Bank (which he quantifies at about Rs. 46,000) that can be recovered from the appellant. As the reading of the various articles of charges go to show, at the most there is some procedural irregularity which cannot be termed to be negligence to warrant the

extreme punishment of dismissal from service.

10. In S.R. Tewari v. Union of India & Anr., (2013) 6 SCC602 the Honble Apex Court while reiterating the law laid down in Ranjit Thakur(supra) on disproportionate punishment, held as under:

24. The question of interference on the quantum of punishment, has been considered by this Court in a catena of judgments, and it was held that if the punishment awarded is disproportionate to the gravity of the misconduct, it would be arbitrary, and thus, would violate the mandate of Article 14 of the Constitution.

25. In B.C. Chaturvedi v. Union of India & Anr., AIR 1996 SC484 this Court after examining various its earlier decisions observed that in exercise of the powers of judicial review, the court cannot "normally" substitute its own conclusion or penalty. However, if the penalty imposed by an authority "shocks the conscience" of the court, it would appropriately mould the relief either directing the authority to reconsider the penalty imposed and in exceptional and rare cases, in order to shorten the litigation, itself, impose appropriate punishment with cogent reasons in support thereof. While examining the issue of proportionality, court can also consider the circumstances under which the misconduct was committed. In a given case, the prevailing circumstances might have forced the accused to act in a certain manner though he had not intended to do so. The court may further examine the effect, if the order is set aside or substituted by some other penalty. However, it is only in very rare cases that the court might, to shorten the litigation, think of substituting its own view as to the quantum of punishment in place of punishment awarded by the Competent Authority.

26. In V. Ramana V. A.P.S.R.T.C & Anr., AIR 2005 SC3417 this Court considered the scope of judicial review as to the quantum of punishment is permissible only if it is found that it is not commensurate with the gravity of the charges and if the court comes to the conclusion that the scope of judicial review as to the quantum of punishment is permissible only if it is found to be "shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards."

In a normal course, if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the Disciplinary Authority to reconsider the penalty imposed. However, in order to shorten the litigation, in exceptional and rare cases, the Court itself can impose appropriate punishment by recording cogent reasons in support thereof.

27. In State of Meghalaya and ors. V. Mecken Singh N. Marak AIR 2008 SC2862 this Court observed that a Court or a Tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment is not commensurate with the proved charges. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. The punishment imposed by the disciplinary authority or the appellate authority unless shocks the conscience of the court, cannot be subjected to judicial review. (See W.P. (C) No.3067/2013 Page 9 of 17 also: Depot Manager, A.P.S.R.T.C v. P. Jayaram Reddy (2009) 2 SCC681.

28. The role of the court in the matter of departmental proceedings is very limited and the court cannot substitute its own views or findings by replacing the findings arrived at by the authority on detailed appreciation of the evidence on record. In the matter of imposition of sentence, the scope for interference by the court is very limited and restricted to exceptional cases. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. The court has to record reasons as to why the punishment is disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice. (Vide: Union of India & Anr v. Bodupalli Gopalaswami : (2011) 13 SCC553 and Sanjay Kumar Singh v. Union of India & Anr: AIR 2012 SC1783.

29. In Union of India & Anr v. R.K. Sharma AIR 2001 SC3053 this Court explained the observations made in Ranjit Thakur (supra) observing that if the charge was ridiculous, the punishment was harsh or strikingly disproportionate it would warrant interference. However, the said observations in Ranjit Thakur (supra) are not to be taken to mean that a court can, while exercising the power of judicial review, interfere with the punishment merely because it considers the punishment to be

disproportionate. It was held that only in extreme cases, which on their face, show perversity or irrationality, there could be judicial review and courts should not interfere merely on compassionate grounds.

30. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. If a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with. (Vide:Rajinder Kumar Kindra v. Delhi Administration AIR 1984 SC1805 Kuldeep Singh v. Commissioner of Police and ors. : AIR 1999 SC677 Gamini Bala Koteswara Rao and ors. v. State of Andhra Pradesh thr. Secretary AIR 2010 SC589 and Babu v. State of Kerala (2010) 9 SCC189.

31. Hence, where there is evidence of malpractice, gross irregularity or illegality, interference is permissible.

11. In the light of the said legal position, let us now examine if the punishment of retiring the petitioner compulsorily for his indulgence in corrupt practise, can be held to be shockingly disproportionate to the proven charges against him, under Rule 36 of CISF Rules, 2001 which are reproduced as under:

Charge No.1 Report has been received that Force No.762241677 HC/GD (Suspended) Ramesh Ram, CISF CCIL Tughlakabad was deployed in the first shift for registering vehicles of CCIL/ICD Plant at Gate No.04/05 on 27.07.2008 (time 0500 hrs to 1300 hrs). During the period of duty suddenly at about 1200 hrs search of HC Ramesh Ram was conducted by Shri G.I. Singh, Assistant Commandant at CCIL Tughlakabad vehicle in Gate in the presence of Inspector GP Singh, SI Bagruram and Rs.286/- (comprising two notes of Rs.100/-, one note of Rs.20, four notes of Rs. 10/-, one note of Rs.5/- and five coins of Rs.5- and one coin of Rs.1/) were found on him. HC/GD Ramesh Ram is not only a member of

an Armed Force but also a government servant. Being a government servant it was expected from him that he would perform his duties with utmost sincerity and honesty but he failed to do so. Hence the charge. Charge No.02 Report has been received that the Force No.762241677 HC/GD (Suspended) Ramesh Ram, CISF CCIL Tughlakabad was deployed in the first shift for registering vehicles of CCIL/ICD Plant at Gate No.04/05 on 27.07.2008 (time 0500 hrs to 1300 hrs). He kept Rs.286/- at his duty post illegally whereas Adm/07-724 dated vide order 04.06.2007 No.it E-42099/CISF/CCIL has been clearly instructed that no force member shall keep more than Rs.10/- in his possession during duty but keeping a sum of Rs.286/- by HC Ramesh in his possession is a symbol of intentionally disobeying the orders/instructions. Hence the charge.

12. The Inquiry Officer vide his report dated 03.11.2008 found both the said charges proven against the petitioner and based on the findings of the Inquiry Officer, the Disciplinary Authority vide his order dated 19.12.2008 awarded the punishment of reduction of increment of the petitioner by one stage for three years in the time scale of pay. It was also directed that the petitioner will not earn increments during the period of reduction and on the expiry of this period of three years, the reduction will have the effect of postponing his future increments of pay. The Reviewing Authority with a purpose to re-examine the matter, examined the departmental inquiry file and the same took the view that the act of the appellant was a symbol of tarnishing the image of the Force and any lenient view in the matter would give rise to indiscipline and corruption, which would have an adverse effect on the other members of the Force. The Reviewing Authority thus exercised its suo motu power under Rule 54 (1) (b) of the CISF Rules, 2001 and directed a show cause notice to the petitioner as to why his punishment may not be enhanced by awarding punishment of compulsory retirement with all pensionary benefits. The petitioner had submitted reply to the show cause notice dated 27.03.2009 and finally vide order dated 28.05.2009, the Reviewing Authority had enhanced the punishment to compulsory retirement from service with pensionary benefits.

13. According to the counsel for the petitioner, the said punishment awarded to the petitioner is shocking and disproportionate even if it is accepted that the charges

levelled against him were proved. On the other hand, the stand of the respondents is that the punishment cannot be held to be shocking and disproportionate, as the petitioner being a member of a disciplined force, CISF, and he was not expected to indulge in any kind of corrupt practises. The guiding principle at the time of awarding punishment in a disciplinary proceeding would be the nature of the charges, evidence, misconduct, the nature of the duty assigned to the delinquent officer and the organization to which he/she belongs. In the present case, the officer belonged to a disciplined Force, wherein there exists no room for being careless or nonchalant.

14. It is no more res integra that in cases involving corruption, there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large but it is the act of misappropriation that is relevant. (Ref: U.P. State Road Transport Corporations v. Suresh Chand Sharma, (2010) 6 SCC555.

15. In Divisional Controller N.E.K.R.T.C. v. H. Amaresh, AIR 2006 SC2730 the Honble Supreme Court held that the punishment should always be proportionate to the gravity of the misconduct. However, in a case of corruption, the only punishment is dismissal.

16. Corruption should be nipped in the bud. It should be weeded out from the very system and corruption by a Public Servant is condemnable because a public servant, like Caesars wife, should be always above suspicion.

17. Considering the case at hand in light of the aforesaid settled legal propositions, it is important to note that the petitioner herein was charged for corruption, misappropriation of funds. Such case should be dealt with sternly. Public servant cannot be quirky in conduct towards laid down parameters and expectation of the Force/Organisation he/she is a part of. Every institution expects its members/ employees to adhere to its defining ethos, credo and institutional personality. In instances where persons act in fiduciary capacity, public trust is involved and there can be no let up in upholding the trust at all times. Permitting a public servant convicted of corruption or found to be involved in such mal-practices to continue in service, would impair the morale of the other honest persons manning such office.

It would erode the confidence of the co-workers and also of the public in the institution itself. Nothing could be more damaging for the institution.

18. It is not a matter of dispute that the amount of Rs.286/- was recovered from the cushion of the chair and at that relevant time, only the petitioner was on duty and the said chair was being used by him. It is also not in dispute that in terms of Order No.E- 42099/CISF/CCIL/Adm./07-724 dated 04.06.2007, no force member could keep more than Rs.10/- in his possession during the time, when he is on duty and therefore, recovery of a sum of Rs.286/- from the cushion of the chair which at the relevant time was under the use by the petitioner and none else. The corruption charges against the petitioner were clearly established.

19. We find no weight in the contention raised by the counsel for the petitioner that the said amount of Rs.286/- would have been hidden by any other officer prior to taking over the duty by the present petitioner. One cannot cast a shadow of doubt of his own whims and fancies on anyone, when technically, it is the person on duty who is responsible for any sort of misdemeanour during his shift. One cannot doubt the credibility of somebody elses alacrity and dutifulness, when the person to be blamed for is he himself. Not every post in any public office is susceptible to generation of illegal money or gratification. A bribe would be paid only for certain favours. One cannot lose sight of the fact, that the prime duty of the petitioner was to allow the entry of the trucks and it was during his shift duty only that the amount was recovered, in his presence, from the cushion of the seat he was ensconced in. What is required of a public servant is to be more alert and vigilant while performing such kind of duties. It is not even the case of the petitioner that except him, someone else was holding charge of the Unit/ Seat from where the said illegal money was recovered. This is a proven case of corruption which needs to be dealt with sternly and swiftly. Because of the nature of duties assigned and the breach thereof, the punishment of compulsory retirement was justified.

20. We find no merit in the present petition. Hence, it is accordingly dismissed.

21. No order as to costs. KAILASH GAMBHIR, J.

NAJMI WAZIRI, J.

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