
(2003) 03 DEL CK 0042

In the Delhi High Court

Case No : CW 3992/97

Dy. Comdt., S.C. Parashar

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 11-03-2003

Acts Referred:

Citation : (2003) 2 AD 733 : (2003) 104 DLT 31 : (2003) 68 DRJ 236 : (2003) 3 SLJ 447

Hon'ble Judges : V.K. Jain, J;B.N. Chaturvedi, J

Bench : Division Bench

Advocate : R.P. Sharma, for the Appellant; Anjana Gosain, for the Respondent

Final Decision : Partly Allowed

Judgement

This Judgment has been overruled by : Union of India (UOI) and Another Vs. S.C. Parashar, AIR 2006 SC 3566 : (2006) 109 FLR 228 : (2006) 3 JT 162 : (2006) 2 SCALE 527 : (2006) 3 SCC 167 : (2006) SCC(L&S) 496 : (2006) 2 SLJ 490

Vijender Jain, J.—Rule D.B .

2. The petitioner has filed this petition impugning the order of imposition of penalty which is to the following effect;

" In the light of above and having regard to all other aspects of the case and after consultation with UPSC the President considers that ends of justice would be met in this case if the penalty of (i) "Reduction to the minimum of the time-scale of pay for a period of 3 years (three) with cumulative effect, including loss of seniority and (ii) recovery of 25% (Twenty five per cent) of the loss incurred by the Govt. to the tune of Rs.74,341.89 i.e. Rs. 18,585.47 (Rupees Eighteen thousand five hundred eighty five and paise forty seven) only on account of damage to the Gypsy in 18(eighteen) equal monthly installments" is imposed on Shri S.C. Parashar, Dy. Comdt. 42, Bn. CRPF. The President hereby orders accordingly."

3. Mr. Sharma counsel for the petitioner has contended that it is a case where the inquiry officer has not taken into consideration the relevant evidence/material rather acted on extraneous material for arriving at the finding.

4. It was contended that the witness namely, Balbir Singh, whose name figured in the list of witnesses supplied along with the charges, was not examined. It was also contended by the counsel for the petitioner that the reliance placed on the testimony of Satbir Singh was totally misplaced and as a matter of fact no charge is made out even if the testimony of Satbir Singh is taken into account in relation to charge No. 2.

5. Mr. Sharma has contended that the impugned order suffers from patent illegality as the same is a non-speaking order as no appeal lies against the impugned order and the same has been passed without adverting to various facts which were brought out before the enquiry officer as well as before the disciplinary authority. It was contended that grant of three penalties to the petitioner was in violation of CCS (CCA) Rules. It was further contended that reduction to the minimum of the time-scale of pay for a period not exceeding three years with cumulative effect is beyond the purview of Rule 11 sub-rule (iii) (a) of CCS (CCA) Rules, which reads as under:

"PENALTIES

The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely:-

Minor Penalties-

(i) censure;

(ii) withholding of his promotion;

(iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders;

(iii) (a) reduction to a lower stage in the time-scale of pay for a period not exceeding 3 years, without cumulative effect and not adversely affecting his pension.

(iv) withholding of increments of pay;"

6. In view of sub-rule (iii) (a) of Rule 11, it was contended that imposition of reduction to the minimum of the time-scale of pay for a period of three years ought to have been without cumulative effect, whereas, the respondent has imposed the penalty with cumulative effect. It was further contended that the respondent could not have imposed the penalty of loss of seniority as well.

7. Counsel for the petitioner in support of his submission has cited B.C. Chaturvedi Vs. Union of India and others, .

8. On the other hand, Ms. Anjana Gosain counsel for the respondent has

contended that the penalty has been imposed under sub-rule (iii) (a) of Rule 11 keeping in view the seriousness of the charges.

9. We have given our careful consideration to the arguments advanced by both the counsel for the parties.

10. The factual matrix of this case need not detain us. We would not like to go into the controversy with regard to the relevancy or otherwise of the evidence/material taken into consideration. We find that the penalty as imposed by the respondent cannot stand the scrutiny of the law. From the bare reading of Rule 11 of the CCS (CCA) Rules as reproduced above, we notice that no penalty in excess of reduction of pay to the minimum for a period not exceeding a period of three years, in the time-scale of pay, without cumulative effect, could have been inflicted under sub-rule (iii) (a) of Rule 11. In the given case we find it difficult to agree with the submission made by the counsel for the respondent that respondent could have inflicted the penalty with cumulative effect upon the petitioner. When the Rules prohibit the penalty to be with cumulative effect, the imposition of penalty upon the petitioner contrary to the said Rule is without authority of law.

11. Therefore, we set aside that aspect of the impugned order.

12. It is also urged before us by the counsel for the petitioner that the petitioner became entitled for consideration to the next promotion as Second-In-Command on 7th April, 1997. However, he was not considered for said promotion in view of the penalty of loss of seniority imposed by the respondent. Our attention has been invited to para U of the counter affidavit filed by the respondent which is at page 136 of the paper book . This shows the stand taken by the respondent. The same is reproduced below:

" A DPC was convened on 7.4.97 for promotion of Dy. Comdts., to the rank of Second-in-Comd. Since the petitioner has been awarded the penalty including loss of seniority, he was not considered by the said DPC for promotion.

13. Ms. Gosain counsel for the respondent has contended that the petitioner was considered in the DPC, held on 11th February, 1998 and he was promoted subject to the outcome of the writ petition.

14. On the other hand, counsel for the petitioner has contended that immediate junior of the petitioner was promoted on the basis of the DPC held on 7th April, 1997. Therefore, the petitioner shall be entitled for promotion from the date when his next junior was promoted. Counsel for the petitioner has also relied upon the judgment in the case of Shiv Kumar Vs. H.S.E.B. Chandiragh, AIR 1988 S C 1673. The Supreme Court held as under:

"We are unable to accept the above contention. The penalty was imposed on April,15,1968, and as result of which, he was deprived of the monetary benefit of one increments of one year only. The penalty by way of stoppage of one increment for one year was stopped and such stoppage or increment will have no

effect whatsoever on his seniority. Accordingly, the Board acted illegally and most arbitrarily in placing the juniors of the appellant above him in the seniority list and/or confirming the appellant in the post with effect from Dec.1,1969, that is, long after the date of confirmation of the said respondents Nos. 2 to 19. The question of seniority has nothing to do with the penalty that was imposed upon the appellant. It is apparent that for the same act of misconduct, the appellant has been punished twice that is, first by the stoppage of one increment for one year and, second, by placing him below his juniors in the seniority list."

15. In view of the ratio of Shiv Kumar's case (Supra), in this case also it is apparent that three punishments at a time have been inflicted on the petitioner. One by way of stoppage of increment, secondly by imposing the penalty of reduction in pay with cumulative effect and thirdly by affecting the seniority. Following the ratio of Shiv Kumar's case(Supra), we hold that the impugned order which affects the seniority of the petitioner cannot be sustained in the eye of law. The result is that we set aside the impugned order in so far as it imposes the reduction of the pay for a period of three years with cumulative effect. It has to be without cumulative effect. The petitioner shall be entitled to the seniority on the basis of DPC which was held on 7.4.1997 when his immediate junior was promoted to the rank of Second-In-Command. The petitioner shall also be entitled to all consequential benefits which stood denied due to punishment of loss of seniority.

16. Rule is made absolute.

17. Writ petition is partly allowed in terms of the aforesaid order.