

(2013) 01 DEL CK 0081

In the Delhi High Court

Case No : Writ Petition (C) No. 631 of 1997

Kshetra Pal Singh

APPELLANT

Vs

NCT of Delhi and Others

RESPONDENT

Date of Decision : 21-01-2013

Acts Referred:

Citation : (2013) 01 DEL CK 0081

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : A.K. Behera, for the Appellant; Latika Chaudhary, for Ms. Avnish Ahlawat, for the Respondent

Final Decision : Allowed

Judgement

Valmiki J Mehta, J.—By this writ petition, the petitioner seeks quashing of the charge sheet dated 25.4.1994 and the impugned order dated 21.2.1995 of the Disciplinary Authority imposing punishment of compulsory retirement on the petitioner. The facts of the case are that the petitioner was appointed as Peon in the office of respondent no. 2 on 15.12.1973. He was thereafter appointed to the post of Dispatch Rider in 1987 and he did such duties till 1994. Petitioner was placed under suspension on 31.3.1994 inasmuch as an MLA Sh. Darshan Kumar Behl complained that he had not received list of business of assembly. The petitioner, on 25.4.1994 was thereafter served a chargesheet of habitual late coming as also having not delivered the list of business to the aforesaid MLA and of abusing his seniors.

2. Enquiry proceedings were held and chargesheet of following "Statement of Imputation of Misconduct or Misbehavior" was served upon the petitioner:-

Statement of Imputation of Misconduct or Misbehaviour

1. That Shri Kshetra Pal Singh, while functioning as Despatch Rider in this Department had been absenting himself from duty or coming late to office without any prior intimation or permission. He was late in attending to his duties

as per details below:-

January, 1993: 4, 6, 7, 11, 13, 15, 18, 25 and 27th January, 1993.

February, 1993: 3, 4, 5, 9, 11, 12, 15, 18, and 19th February, 1993.

March, 1993: 5, 9, 11, 15, 18, 23 and 24th March, 1993.

April, 1993: 16th and 30th April, 1993.

Earned Leave 3, 4 and 5th May, 1993.

May, 1993: 10th and 11th May, 1993.

Earned Leave 3, 4, and 5th May, 1993.

June, 1993: 4, 17, and 21st June, 1993.

July, 1993: 5, 16, 22, and 23rd July, 1993.

August, 1993: 12, 13, 17, 23, 24th and 25th August, 1993 he was absent on 30th August, 1993 but no application was submitted by him.

September, 1993: 1, 2, 10, 24 and 28th September, 1993.

October, 1993: 6, 8, 13, 20, and 27th October, 1993. He was absent on 18th Oct. 1993 and 19th Oct. 1993 but no application was submitted by him.

November, 1993: 4, 16, and 17th November, 1993. He was on earned leave without prior permission from 9.11.93 and 12.11.93

December, 1993: 16th December, 1993.

January, 1994: 7th and 11th January, 1994

February, 1994: 11th February, 1994.

March, 1994: 3, 6, 7, 8, 21, 23rd March, 1994.

Several memos had been given to him as per details below:-

(1) Memo No. F18(5)87-MC/5136 dated 18th Aug. 1988.

(2) Memo No. F18(5)/87-MC/7233 dated 23rd Dec. 1988.

(3) Memo No. F18(5)/87-MC/5002 dated 7th July, 1989.

(4) Memo No. F18(5)/87-MC/495 dated 13th Feb. 1992.

(5) Memo No. F18(5)/87-MC/3135 dated 19th Aug. 1992.

(6) Memo No. F18(5)/87-MC/1871 dated 9th Aug. 1993.

(7) Memo No. F18(5)/87-MC/2369 dated 9th Nov. 1993.

The following order had been issued against him and others for coming late and consequent deduction of casual leave on that account:-

(1) Office order No. 19(28)/93-MC/329-46 dated 11.2.93

(2) Office order No. 19(28)/93-MC/696 dated 8.3.1993

(3) Office order No. 19(28)/93-MC/717 dated 15.4.1993

(4) Office order No. 19(28)/93-MC/907-12 dated 11.5.93

(5) Office order No. 19(28)/93-MC/1598-1607 dated 18.8.93

(2) That on 25.1.1994 Sh. Kshetra Pal Singh, Despatch Rider, abused the Caretaker Shri M.P. Shah and indulged in disorderly behaviour and in indiscipline with staff members during working hours when he was asked for the return of the leather jacket which was given to him for emergent use.

(3) That on 28.3.1994 Sh. Kshetra Pal Singh, Despatch Rider, was given the list of business for delivery to certain MLAs. On 29-3-1994 Shri Darshan Kumar Behl pointed out in the House that he had not received the list of business for 29-3-94. The matter was viewed seriously. The non-delivery of the list of business on 28.3.94 to Shri Darshan Kumar Behl, MLA, on the same day shows gross (sic) neglect of his duties. Verbal warnings were also given to him for non-delivery of Dak to MLAs during the Session on an earlier occasion.

(4) The above mentioned lapses on the part of Shri Kshetra Pal Singh, Despatch Rider, tantamount to gross misconduct on his part unbecoming of a government servant. He has, thus, violated the provisions of Rule 3 of the C.C.S.(conduct) Rules, 1964.

(P.N. Gupta)

Secretary (LA)

3. After hearing the petitioner and after the evidence was led by the parties, appropriate authority passed the order dated 21.2.1995 imposing the penalty of compulsory retirement on the petitioner. The Investigating Officer before that had given his report dated 18.1.1995 holding all the three charges proved against the petitioner.

4. The first charge was of the petitioner reporting late on duty habitually. The dates of joining the duty late have been given in the imputation of charges, however, the self-same imputation of charges states at the end of para 1 that for late coming of the petitioner there were deductions of casual leaves on that account, the last of such order is dated 18.8.1993. Therefore, we are only left with the days from August 1993 to March, 1994 as a basis of charge of late coming against the petitioner.

5. Though the petitioner claimed that he got late in reporting for duties because his daughter was seriously sick, however, the Investigating Officer has found that no evidence of any nature was filed to show the illness of his daughter, therefore, it is proved that the petitioner did not report on time on duties from August, 1993 to March, 1994 and took leaves but made no application on three days. For

two days he went for leave without permission but thereafter applied for such leave which was subsequently granted.

6. Learned counsel for the petitioner has very vehemently argued that the petitioner was never chargesheeted in the past, and punishment of compulsory retirement was extremely harsh on the petitioner, more so when he had about 16 years more of balance service. It is argued that unblemished record of the petitioner existed for as long as 21 years before imposition of the punishment of compulsory retirement on the basis of reporting late for duty and clearly such disproportionately harsh penalty violates the doctrine of proportionality inasmuch as the respondent no. 2 at best could have deducted further leaves from the account of the petitioner, and which was done with respect to other days for which the petitioner had reported late. Counsel for the petitioner relies upon *State of M.P. and Others Vs. Hazarilal*, and paras 11 to 13 thereof read as under:

11. Furthermore the legal parameters of judicial review has undergone a change. Wednesbury principle of unreasonableness has been replaced by the doctrine of proportionality. [See: *Indian Airlines Ltd. Vs. Prabha D. Kanan*, , *State of U.P. Vs. Sheo Shanker Lal Srivastava and Others*, and *M.P. Gangadharan and Another Vs. State of Kerala and Others*,)

12. At this stage we may also notice the application of the Doctrine by the United Kingdom House of Lords in *Seal (FC) (Appellant) v. Chief Constable of South Wales Police (Respondent)*, (2007) 4 All ER 177; *Huang (FC) (Respondent) v. Secretary of State for the Home Department (Appellant) and Kashmiri (FC) (Appellant) v. Secretary of State for the Home Department (Respondent) (Conjoined Appeals)*, [2007] 4 All ER 15; *Tweed (Appellant) v. Parades Commission for Northern Ireland (Respondents) (Northern Ireland)*, [2007] 2 All ER 273 ; *Belfast City Council (Appellants) v. Miss Behavin" Limited (Respondents) (Northern Ireland)* [2007] 3 All ER 1007 and *R (on the application of Countryside Alliance and Ors. and Ors.) v. Her Majesty's Attorney General and Anr.* [2007] 3 WLR 922.

13. It is interesting to note that distinguishing between the traditional grounds of judicial review and the doctrine of proportionality, Lord Carswell in *Tweed* (Supra) after referring to previous decisions and authorities, observed (WLR p.15. para 35)

35...." 27....The starting point is that there is an overlap between the traditional grounds of review and the approach of proportionality. Most cases would be decided in the same way whichever approach is adopted. But the intensity of review is somewhat greater under the proportionality approach. Making due allowance for important structural differences between various convention rights, which I do not propose to discuss, a few generalisations are perhaps permissible. I would mention three concrete differences without suggesting that my statement is exhaustive. First, the doctrine of proportionality may require the reviewing court to assess the balance which the decision maker has struck, not

merely whether it is within the range of rational or reasonable decisions. Secondly, the proportionality test may go further than the traditional grounds of review inasmuch as it may require attention to be directed to the relative weight accorded to interests and considerations. Thirdly, even the heightened scrutiny test developed in *R v. Ministry of Defence, Ex p Smith* [1996] QB 517, 554 is not necessarily appropriate to the protection of human rights.

7. Reliance is also placed upon the judgment of the Supreme Court in the case of *Sheel Kr. Roy Vs. Secretary M/o Defence and Others*, thereof which reads as under:-

Fairness and reasonableness in the action of the State whether in a criminal proceeding or otherwise are the hallmark of Article 14 of the Constitution of India. The doctrine of proportionality is one of the grounds on the basis whereof the power of judicial review could be exercised. It was so held in *Ex-Naik Sardar Singh Vs. Union of India (UOI) and Others*, .

8. There are also many other judgments on the aspect of doctrine of proportionality, and, the doctrine of proportionality is now well established in our jurisprudence, and as per which the facts of each case have to be seen to determine whether interference is called for in the action of the Disciplinary Authority for being violative of the doctrine of proportionality.

9. Considering the subsequent discussion in this judgment wherein I have held the remaining two charges having not been proved and hence I am of the opinion that merely for late joining of the petitioner on certain dates, and especially, when there is a policy of deduction of leaves against late reporting, the petitioner should not have been visited with the drastic punishment of compulsory retirement when there was an unblemished service record for 21 years and balance service remaining was of 16 years. Learned counsel for the petitioner is in a way correct in arguing that the real reason for issuing of chargesheet against the petitioner was that the concerned MLA had raised a furor in the legislative assembly of having not received the list of business, and therefore, the petitioner was chargesheeted, and in order to give weight to the chargesheet, the charge of habitual coming late as also another charge of abusing the seniors was added. In any case, as stated above, the punishment of compulsory retirement is very harsh and clearly violates the doctrine of proportionality in the facts of present case. As stated subsequently in the present judgment the fact that the petitioner has limited his claim to a lumpsum amount instead of the entire service benefits (which would be available if the petitioner is treated as not removed from service) has persuaded this Court to hold in favour of the petitioner.

10. So far as the second charge of misbehaving with the caretaker Sh. M.P. Shah is concerned, the charge is that when the petitioner was asked for return of the leather jacket he abused the caretaker Sh. M.P. Shah, making him guilty of behaving in disorderly fashion with the staff members and indiscipline. In this

regard, admittedly, the only evidence before the investigating officer was the oral statement of one Sh. D.B. Awasthi and who was a friend of Sh. M.P. Shah, and in any case, even assuming there was some exchange of words, in my opinion, the petitioner was quite clearly justified in strongly taking up his case for issue of leather jacket to him. The petitioner was justified because the petitioner was after all a Dispatch Rider, and in the late evening hours on a motorcycle he had to deliver the cause list, and it has been found on record that because of the insistent stand of the petitioner, the petitioner was held legally entitled to and was therefore given a jacket from the store, and which was otherwise being denied to him. Also, I would be reluctant to accept a mere oral testimony of another employee against the petitioner, for holding such a grave charge of indiscipline and disorderly conduct in the facts of the present case and that too as a basis for inflicting the punishment of compulsory retirement.

11. So far as not delivering the list of business is concerned, the Disciplinary Authority and the Inquiry Officer have almost glossed over the matter inasmuch as, almost no findings have been given as to why the petitioner is guilty of charge, although, a person not less than the son of the MLA namely Sh. Pankaj Behl deposed before the Investigating Officer and said that the cause list of business of the legislative assembly was given to him but as he thereafter left for out of station whereby the cause list of business was not given by him to his father. I find that the investigating officer has not done justice to this crucial testimony of Sh. Pankaj Behl except mentioning it only by the way. Once the basic charge of the petitioner of not having given the daily cause list of business of the legislative assembly to the MLA Sh. Darshan Kr. Behl fails as per the statement of Darshan Kr. Behl's son, I fail to see how this charge has been upheld against the petitioner. I may also add that the petitioner at the final hearing before the Investigating Officer had filed a letter Ex.D-2 countersigned by the MLA of accepting the correctness of statement of his son Sh. Pankaj Behl, and thus in my opinion, there is gross perversity in holding the petitioner guilty of the charge of not having delivered the cause list to the MLA.

12. The upshot of the discussion is that out of three charges, two charges fail, and including the important charge of having not delivered the cause list of business to the MLA.

13. The only indiscipline of the petitioner therefore would be of being late for reporting on duty on certain dates and taking leaves for which no applications were made.

14. In the case of Mavji C. Lakum Vs. Central Bank of India, , it was held that extreme punishment of discharge granted on account of absence of certain days of an employee and who was also found to be argumentative in nature was violative of doctrine of proportionality and lesser punishment instead of discharge from service was imposed. In the case of Ved Prakash Gupta Vs. Delton Cable India (P) Ltd., , it was held that if a person is held guilty of abusing some workers and officers of management, but there was no previous adverse remarks

against the delinquent, the extreme penalty of discharge on the ground of alleged mis-conduct was held to be disproportionately excessive and violative of the doctrine of the proportionality. In the judgment of U.P. State Road Transport Corporation and Others Vs. Shivaji, , it was held that termination of services was not justified if a Driver was held guilty of misconduct of driving a bus into a barrier, once it was proved that the incident happened not on account of any deliberate act but negligence of the Driver.

15. In view of the above the present case is an apt case for applying doctrine of proportionality, and I therefore set aside the impugned findings of the investigating officer dated 18.1.1995 and the impugned order of the Disciplinary Authority dated 21.2.1995 imposing the punishment of compulsory retirement upon the petitioner inasmuch as the petitioner has agreed to accept a sum of Rs. 1.5 lacs as lumpsum back wages and also his claim towards enhanced pension. Ordinarily, in the facts of the present case, I was inclined to reinstate the petitioner with around 40% of all back wages and other monetary benefits, however, I order that the petitioner will be entitled to the lumpsum benefit of a sum of Rs. 1.5 lacs in lieu of all the monetary benefits which the petitioner would have got on setting aside of the impugned order dated 21.2.1995 of the Disciplinary Authority compulsorily retiring the petitioner. It is clarified that the pension which will be payable to the petitioner, would be as if the petitioner stood ordinarily superannuated from services on 21.2.1995 and which was the date taken for his compulsory retirement. I may further clarify that if 40% of the back wages of the petitioner including additional back wages whether towards enhancement in the pay as also for other monetary benefits if the petitioner did not stand compulsorily retired on 21.2.1995, if the same is less than Rs. 1.5 lacs then the petitioner will be entitled to only such lesser amount or the amount of Rs. 1.5 lacs whichever is lesser, and the object of fixing a lumpsum amount of Rs. 1.5 lacs is to show reasonableness of the stand taken on behalf of the petitioner in these proceedings. The writ petition is therefore allowed and disposed of by setting aside the impugned order of the Disciplinary Authority dated 21.2.1995 and granting a lumpsum benefit of Rs. 1.5 lacs to the petitioner. This amount of Rs. 1.5 lacs be paid within a period of two months from today, failing which, the same will carry interest at 9% per annum simple. Parties are left to bear their own costs.