

**(2001) 03 DEL CK 0036**

**In the Delhi High Court**

**Case No : L.P.A. 73 / 1999**

Union of India and others

APPELLANT

Vs

Shri B.R. Sharma

RESPONDENT

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**Date of Decision :** 26-03-2001

**Acts Referred:**

**Citation :** (2001) 4 AD 890 : (2001) 92 DLT 121 : (2001) 91 FLR 324

**Hon'ble Judges :** M.S.A. Siddiqui, J;B.A. Khan, J

**Bench :** Division Bench

**Advocate :** Mr. S. Mukherjee, for the Appellant; Mr. F.C. Sharma, for the Respondent

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## **Judgement**

Khan, (J)

1. Respondent was a Head Constable in CISF and was posted at VSSC, Thumba, Trivandrum at relevant time. A complaint was filed against him on 20.9.1983 by his colleague on N.K. Sandil charging him of misbehaving with his wife. A charge sheet was given to him on 25.10.1983 levelling three charges: (1) unauthorised entry in the house of Sandil on 20.9.1983 (b) misbehavior with his wife Kamla Devi and (c) threatening her. An enquiry was held against him. The Inquiry Officer gave acceleration on first charge and reported the other two established. Disciplinary authority disagreed with his finding on first charge and dismissed him from services. respondent thereafter took an appeal against his dismissal which was rejected. He then sought review of the order which was also turned down. He finally filed C.W.P. 1624/1997 to challenge his dismissal from service and sought its quashment. The writ court on consideration of the matter found discrepancies in the statement of imputations, statements of Sandil and his wife and the report of Enquiry Officer. The court also found that the complaint against respondent was not signed by any one. It concluded on this and other circumstances that the charges against him were not proved by any evidence resulting in miscarriage of justice. It also held that punishment awarded to respondent was disproportionate to the charges leveled against him. The court

accordingly quashed orders dated 19.3.1984, 16.7.1985, 8.5.1986 and 12.2.1987 and ordered respondent's reinstatement in service with consequential benefits.

2. Appellant has filed this appeal to question the writ court order on the plea that it had out stepped its judgment to reappraise and reappreciate the evidence recorded in enquiry proceedings thus converting itself into a court of appeal. It is submitted that discrepancies found by the court were inconsequential and immaterial and that disciplinary authority was within his right to disagree with the acceleration given by the Enquiry Officer on the first charge. The court was also incompetent to examine the question of punishment awarded to respondent.

3. While we were examining this appeal, L/C for appellant Mr. Mukherjee sought adjournment twice to produce the enquiry record to satisfy us about the evidence available on record which according to him substantiated the charges against respondent. He, however, failed to produce any such record leaving us with no option but to draw the inference that charges against respondent was not supported by any evidence and that findings of the Enquiry Officer were without any basis whatever. We are conscious of the constraints of the court's jurisdiction in scrutinizing/reviewing the domestic enquiry proceedings but, where findings of Enquiry Officer are found unsupported by evidence, these become perverse vitiating the enquiry and consequential action. This hold good in the present case also because even a copy of statement of Kamla Devi was also not made available so as to gather the gravity on the charge against respondent. We, Therefore, presume that appellant failed to establish the charge against respondent and there was no material or basis to pass the impugned order of dismissal against him.

4. Appellant's contention that writ court was not competent to examine the quantum of punishment also merits outright rejection. It is well settled by now that the writ court was enjoying equitable jurisdiction and was competent not only to look into the disproportionateness of punishment awarded to an delinquent employee but to do away with it where it was found disproportionate to the charge resulting in miscarriage of justice.

5. In the present case charge against respondent appears too trivial to warrant his dismissal from service and to deprive him of his livelihood. Even if the complaint was taken to be on its face value respondent had only conveyed his infatuation to Kamla Devi and that itself ought not to have warranted his dismissal from service.

6. We are, however, of the view that writ court ought to have stopped short of granting consequential benefits to respondent which issue could have been best left for being examined and decided by the competent authority. It could as well be that respondent may have been engaged in gainful employment elsewhere after his ouster from service which required to be taken into consideration for granting him back wage etc.

7. This appeal is Therefore partly allowed. Impugned writ court order is affirmed to the extent of respondents reinstatement in service. The question of consequential benefits shall, however, be considered by competent authority of appellant in accordance with Rules and appropriate orders passed thereon within 6 months from receipt of this order.

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