

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

% Date of Decision : 5th July, 2010

+ **W.P.(C) No.2450/2010**

DIRECTOR GENERAL OF AUDIT CENTRAL
EXPENDITURE AND ANR

..... Petitioner

Through: Mr.Ashok Bhasin, Sr.Advocate with
Mr.Gaurang Kanth and Mr.Rahul
Kumar, Advocates

versus

PANKAJ JOSHI

..... Respondent

Through: Mr.Shrigopal, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J. (Oral)

1. Rule D.B. Heard for disposal.

2. It is not in dispute that the respondent, Pankaj Joshi, was appointed as a clerk under the first petitioner in the year 2001 and has a most unsatisfactory service profile. He has a tendency to overstay his leave, which had to be subsequently regularized.

3. The law is clear. For purposes of the service record, regularization of a leave which otherwise is availed of without due procedure being followed, does not mitigate the misdemeanour.

4. The misdemeanour of overstaying the leave which

was obtained are as under:

“(i) After availing his earned leave from 29.4.2002 to 2.6.2002, he had overstayed his leave from 3.6.2002 to 14.8.2002 which was subsequently regularized.

(ii) After availing his earned leave from 19.5.2003 to 30.5.2003, he had overstayed his leave from 31.5.2003 to 18.8.2003 which was subsequently regularized.

(iii) After availing sanctioned extraordinary leave from 1.5.2004 to 31.5.2004, he had yet again overstayed his leave from 1.6.2004 to 5.9.2004 which was treated as dies-non.

(iv) After availing his sanctioned leave from 16.5.2005 to 20.5.2005, he had overstayed his leave from 21.5.2005 to 12.12.2005 which was yet again treated as dies-non.

(v) Remained absent without intimation from 5.5.2006 to 3.8.2006.”

5. Pertaining to the last misdemeanour of remaining absent without intimation from 5.5.2006 to 3.8.2006, after following the procedure prescribed by law, the penalty of dismissal from service was inflicted upon Pankaj Joshi, which order was challenged by him vide OA No.728/2008.

6. The challenge succeeded on the issue of proportionality. Vide order dated 28.1.2009, Central Administrative Tribunal held that the quantum of punishment was shockingly disproportionate to the nature of charge.

7. The Tribunal held that Pankaj Joshi was an outstanding sportsman and his passion for sports overtook prudence and due to his immature age it was apparent that he could not take prudent and mature decisions.

8. Setting aside the penalty, the Tribunal directed that the competent authority should take a fresh decision on penalty.

9. Unfortunately, the competent authority reiterated the

decision to inflict the penalty of dismissal, which was the subject matter of challenge by and under another original application before the Tribunal being OA No.1732/2009.

10. Finding that its earlier decision had attained finality, the Tribunal quashed the fresh order of dismissal and directed the competent authority to re-decide the matter but with further directions that the competent authority would not inflict the penalty of dismissal, removal from service or compulsory retirement.

11. This has been done vide impugned order dated 22.12.2009.

12. We have prohibited learned counsel for the petitioner to urge that the penalty of dismissal from service is the appropriate penalty, keeping in view that even in the past the first respondent had resorted to similar conduct i.e. of overstaying leave. Counsel pointed out that it was not a case where the respondent overstayed the leave by a day or two. It was pointed out that in the first instance, in the year 2002, the first respondent overstayed leave by 2 months and 11 days. The next year i.e. in the year 2003 he overstayed leave by 2 months and 18 days. The next year i.e. the year 2004, he overstayed his leave by 3 months and 5 days. In the year 2005 he overstayed his leave by nearly 7 months and the year next i.e. the year 2006 the first respondent remained absent without intimation for 3 months.

13. It certainly is arguable whether under the circumstances, the Tribunal was justified in holding that the penalty of dismissal inflicted upon the first respondent is disproportionate i.e. shakes the conscience of the court. But, in view of the fact that the order dated 28.1.2009 has attained finality, it does not lie within the domain of the competent authority to re-impose the penalty of dismissal from service and

to this extent we concur with the view taken by the Tribunal in its order dated 22.12.2009.

14. But, the Tribunal is wholly unjustified and has indeed gone beyond its jurisdiction to direct that while re-considering the matter the respondent cannot inflict the penalty of compulsory retirement or removal from service.

15. Needless to state the penalty of dismissal from service operates as a bar from being employed under the Government. A penalty of removal from service or compulsory retirement does not operate as a bar for re-employment.

16. That the first respondent is an outstanding sportsman does not give him a license not to report for duty for months together and that too, year after year. There has to be a limit to tolerance.

17. It is settled law that where a delinquent commits repetitive acts of delinquency; and of the same kind, it is a case of obstinate and incorrigible behavior and the past conduct can always be considered by the disciplinary authority in imposing the penalty.

18. The writ petition accordingly stands disposed of expunging the directions in the impugned order dated 22.12.2009 prohibiting the imposition of the penalty of removal or compulsory retirement. It is clarified that the disciplinary authority of the first respondent cannot impose the penalty of dismissal from service.

19. In a nut-shell, we dispose of the petition directing the disciplinary authority of the first respondent to re-decide the penalty which has to be inflicted upon the first respondent and while so doing we prohibit the authority from inflicting the penalty of dismissal from service.

20. After giving valid reasons it would be open to the authority concerned to pass an order imposing any appropriate

penalty, but not the penalty of dismissal from service.

21. Needful would be done within a period of 8 weeks from today.

22. Dasti.

PRADEEP NANDRAJOG, J.

JULY 05, 2010

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MOOL CHAND GARG, J.