A UNION OF INDIA & ORS.

v.

EX. CONSTABLE RAM KARAN

(Civil Appeal No(s). 6723 of 2021)

B NOVEMBER 11, 2021

[AJAY RASTOGI AND ABHAY S. OKA, JJ.]

Service law: Departmental inquiries – Quantum of punishment – Judicial review of – On facts, allegations against constable of C *CRPF that he threatened the Doctor-complainant, misbehaved and abused and injured him and made false allegations against him of sexual harassment to his wife – Disciplinary inquiry against the Constable – Imposition of penalty of removal from service confirmed by the appellate/revisional authority – However , the High Court substituted the penalty of removal from service with confinement of* D *the constable from 1.00 p.m. to 10.00 p.m. in quarter guard jail – On appeal, held: It was the disciplinary authority, or the appellate authority in appeal, which is to decide the nature of punishment to be given to the delinquent employee – Keeping in view the seriousness of the misconduct committed by such an employee, it is* E *not open for the Courts to assume and usurp the function of the disciplinary authority – Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the Court, normally the disciplinary authority or the appellate authority should be directed to reconsider the question of imposition of penalty – Scope of judicial review on the quantum of* F *punishment is available only when the penalty imposed appears to be shockingly disproportionate to the nature of misconduct that the Courts would frown upon – Even in such a case, after setting aside the penalty order, it is to be left to the disciplinary/appellate authority to take a call and it is not for the Court to substitute its decision by* G *prescribing the quantum of punishment – However, it is only in rare and exceptional cases where the court might substitute its own view as to the quantum of punishment in place of punishment that too after assigning cogent reasons – Interference made by the High Court is in a cavalier manner while recording the finding of penalty to be disproportionate without taking into consideration the* H *seriousness of the misconduct committed by the respondent which*

is unpardonable and not sustainable in law – High Court overlooked the Scheme of the 1949 Act, thus, the interference made by the High Court in substituting punishment is unsustainable and set aside – Central Reserve Force Police Act, 1949 – ss. 9, 10, 11 – Central Reserve Force Police Rules 1955 – r. 27.

Removal and dismissal from service – Difference between – Held: Both stand on the same footing and both terminate the relationship of employer/employee – Only difference between the two is that in the case of dismissal, it precludes the employee from seeking future employment in the Government while in the case of removal, he is not disqualified from any future employment.

Allowing the appeal, the Court

HELD: 1.1 The scheme of Section 11 of the Central Reserve Force Police Act, 1949 mandates that the competent authority may, subject to rules made thereunder, award in lieu of, or in addition to, suspension or dismissal any one or more punishment if found guilty of misconduct in his capacity as member of the force. The use of words 'in lieu of, or in addition to, suspension or dismissal', appearing in Section 11(1) clearly indicates that the authorities mentioned therein are empowered to award punishment of suspension or dismissal to member of the force who is found guilty and in addition to, or in lieu thereof, the punishment mentioned in clause (a) to (e) may also be awarded. [Para 15, 16][313-B-D]

1.2 More heinous offences or less heinous offences prescribe penalty of sentence of imprisonment if member of the force is found guilty. At the same time, Section 11 is clear and unambiguous and prescribe those minor punishments which the competent authority may award in a departmental inquiry in lieu of or in addition to suspension or dismissal any one or more of the punishments to member of the force as referred under clauses (a) to (e) of Section 11(1) of the Act 1949 even if the member has not been prosecuted for an offence under Section 9 or Section 10 of the Act. [Para 17][313-D-E]

1.3 Removal and dismissal from service stand on the same footing and both terminate the relationship of employer/employee. The only difference between the two is that in the case of dismissal,

it precludes the employee from seeking future employment in the Government while in the case of removal, he is not disqualified from any future employment. By virtue of an explanation appended to Rule 27 of the scheme of Central Reserve Force Police Rules 1955, the rule making authority has made it clear that dismissal of a member of the force precludes him from being re-employed in Government service, while removal of any such member from the force shall not be disqualification, for any future employment (other than an employment in the Central Reserve Police Force) under the Government. [Para 18][313-F-G]

1.4 In the instant case, the respondent has been punished with penalty of removal from service after the charges levelled against him stood proved by the disciplinary authority in a departmental inquiry held against him after going through the procedure prescribed under Rule 27 of the Rules 1955. Such nature of minor punishment of removal from service could be in addition to dismissal as being provided under Section 11 of the Act 1949. Section 11 of the Act 1949 has been completely overlooked by the High Court while examining as to whether the punishment of removal from service could be inflicted in lieu of or in addition to dismissal from service to member of the force, if the misconduct stands proved in the course of disciplinary inquiry and after it was confirmed by the High Court under the impugned judgment. [Para 19, 20][313-H; 314-A-C]

1.5 The nature of allegations against the respondent are indeed grave in nature as the respondent not only threatened the Doctor-complainant but has misbehaved and abused and injured him and made false allegations against him of sexual harassment to his wife. Such a nature of misconduct which has been committed by the respondent once stand proved is unpardonable and if the authority has considered it appropriate to punish him with penalty of removal from service by an Order and confirmed by the appellate/revisional authority and by the High Court in the impugned judgment leaves no sympathy for retention in service and that too in a discipline force like CRPF. [Para 21][314-C-E]

1.6 The well ingrained principle of law is that it is the disciplinary authority, or the appellate authority in appeal, which

is to decide the nature of punishment to be given to the delinquent employee. Keeping in view the seriousness of the misconduct committed by such an employee, it is not open for the Courts to assume and usurp the function of the disciplinary authority. [Para 22][314-E-F]

1.7 Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the Court, normally the disciplinary authority or the appellate authority should be directed to reconsider the question of imposition of penalty. The scope of judicial review on the quantum of punishment is available but with a limited scope. It is only when the penalty imposed appears to be shockingly disproportionate to the nature of misconduct that the Courts would frown upon. Even in such a case, after setting aside the penalty order, it is to be left to the disciplinary/appellate authority to take a call and it is not for the Court to substitute its decision by prescribing the quantum of punishment. However, it is only in rare and exceptional cases where the court might to shorten the litigation may think of substituting its own view as to the quantum of punishment in place of punishment awarded by the competent authority that too after assigning cogent reasons. [Para 23][314-F-H; 315-A-B]

1.8 Adverting to the facts of the instant case, the High Court, erred in interfering with the punishment, which could lawfully be imposed by the departmental authorities for his proven misconduct. The High Court should not have substituted its own discretion for that of the authority. What punishment was required to be imposed, in the facts and circumstances of the case, was a matter which fell exclusively within the jurisdiction of the competent authority and the interference made by the High Court is in a cavalier manner while recording the finding of penalty to be disproportionate without taking into consideration the seriousness of the misconduct committed by the respondent which is unpardonable and not sustainable in law. [Para 26][316-F-G]

1.9 In the instant case, the disciplinary matters of members of the force for minor punishments are being governed under Section 11 of the Act 1949 and if any nature of more heinous

offence/less heinous offence being committed, if found proved, member of the force shall be punishable for imprisonment for a specified term as being referred to under Section 9 and Section 10 of the Act 1949 and at the same time, dismissal and removal from service are being considered to be the minor punishments as reflected from Section 11(1) of the Act 1949. If the allegation is found proved, the competent authority may award in lieu of, or in addition to, suspension or dismissal any one or more of punishments to a member of the force whom he considers to be guilty of disobedience, neglect or duty, or remissness in the discharge of any duty or of other misconduct with confinement in the quarter-guard or removal as indicated under clauses (d) and (e) of Section 11(1) of the Act 1949. [Para 28][317-G-H; 318-A-B]

1.10 The scheme of the Act 1949 of which reference has been made was completely overlooked by the High Court and while keeping in mind the standards of examining the misconduct of a civil servant, interference has been made in the quantum of punishment which may not apply to member of the discipline force and, the interference made by the High Court in substituting punishment in the instant case is unsustainable and is set aside. [Para 29][318-B-D]

Union of India and Others v. Ghulam Mohd. Bhat. **(2005) 13 SCC 228 : [2005] 4 Suppl. SCR 367;** *B.C. Chaturvedi v. Union of India and Others* **(1995) 6 SCC 749 : [1995] 4 Suppl. SCR 644;** *Lucknow Kshetriya Gramin Bank (Now Allahabad, Uttar Pradesh Gramin Bank) and Another v. Rajendra Singh* **(2013) 12 SCC 372 : [2013] 17 SCR 309 – referred to.**

Case Law Reference

[2005] 4 Suppl. SCR 367	**referred to**	**Para 11**
[1995] 4 Suppl. SCR 644	**referred to**	**Para 24**
[2013] 17 SCR 309	**referred to**	**Para 25**

CIVIL APPELLATE JURISDICTION: Civil Appeal No.6723 of 2021.

From the Judgment and Order dated 11.02.2016 of the High Court of Delhi at New Delhi in W.P. (C) No.13317 of 2009.

Ms. Madhavi Divan, ASG, Ms. Manjula Gupta, Balaji Srinivasan, Ayush Puri, B. V. Balaram Das, Advs. for the Appellants.

Ashok Agrwaal, Ms. Sridevi Panikkar, Ms. Aditi Saraswat, Advs. for the Respondent.

The Judgment of the Court was delivered by

RASTOGI, J.

1. Leave granted.

2. Union of India, in the instant appeal, has challenged the judgment and order passed by the Division Bench of the High Court of Delhi substituting the penalty of removal from service inflicted on the respondent after holding disciplinary inquiry as provided under Rule 27 of The Central Reserve Police Force Rules, 1955 (hereinafter being referred to as the "Rules 1955") with confinement of respondent from 1.00 p.m. to 10.00 p.m. in quarter guard jail without noticing the mandate of the nature of punishments indicated under Section 11(1) of The Central Reserve Police Force Act, 1949 (hereinafter being referred to as the "Act 1949").

3. The brief facts of the case culled out from the record are that the respondent joined service with the Central Reserve Police Force in the year 1983 and was on attachment duty at Group Centre, CRPF. In 2003, his wife was under treatment of Dr. Nazir, Gynaecologist (complainant). On 12th September 2003, the respondent accompanied with his wife forcibly entered into the chamber of the Dr. Nazir-complainant and asked him to attest the reimbursement of medical claims and upon his refusal, the respondent verbally abused and physically struck the Doctor-Complainant, resulting in injuries. He was escorted out by the Constable Suresh, who also happened to see the conduct of the respondent and his wife. Respondent not only misbehaved and abused the Doctor-complainant while on duty in which he sustained injuries on his face but to conceal his misconduct, he made a false allegation of sexual harassment on his wife against the Doctor-complainant. For such a gross misconduct, which he had committed while in service, he was placed under suspension and a Charge Memo dated 29th October, 2003

for holding disciplinary inquiry under Rule 27 of the Rules 1955 came to be served upon him for (i) violation of Section 11(1) of the Rules 1955, for misbehaving and abusing and injuring the Doctor-complainant while on official duty; and (ii) for instituting false criminal charges of sexual harassment against the Doctor-complainant. Article of Charge 1 and Charge 2 of the Charge Memo along with the details are reproduced hereunder:-

"ARTICLE I

Constable Driver No.961340413 Ram Karan of 120BN while being at the post of Constable have violated rule 11(1) being the member of the force on 12.9.03 around 12.00 senior medical officer who was on official duty Const. Ram Karan misbehaved and abused due to which received injuries near bus left eye which is punishable under the act.

ARTICLE II

Constable Driver Ram Karan 120 BN while being posted in Pinjore as Const/Driver in the Month of September 2003 has violated CRPF rules 1949 rule 11(1) being the member of the force misbehaved with doctor Abdul Nair abused him that the doctor had misbehaved with his wife Savita Devi who has visited the doctor along with her husband who had violated the said rules."

Details

"The said Const/Driver Rain Karan did 10.3.03 to 26.9.03 was posted in Pinjore. Wife of Const/Driver were under treatment of senior medical officer Dr. Nazir on 11.9.03 has set her case for consideration. Smt. Savita dated 12.9.03 around 11.15 has visited Dr. Nazir with Cash memo No.2137 dated 11.9.03 she left the room that her husband is going to teach him a lesson. Around 12.00 driver Ram Karan visited the office saying to authorize the cash memo in which medicine prescribed by the doctor were not mentioned when refused he misbehaved and abused the doctor.

The said, misbehaviour was reported by Dr. Abdul Nazir to the senior official Pinjore on the complaint of Abdul Nazir action was taken against Cont. Ram Karan and suspended on the same day. In order to gain sympathy of the general public he falsely made allegation against Dr. Nazir of sexual abuse of his wife.

According to const. Ram Karan his wife Savita was under treatment of Dr. Abdul Nazir and had gone for a checkup. During check up Dr. Nazir sexually abused her and on calling her husband for help and when his husband entered the room he was beaten by the doctor.

Hence Cont./Driver Ram Karan has made false allegations against Dr. Nazir of sexual abuse of his wife Savita. His only purpose of doing so was to save himself from injury and gain sympathy of public although according to witnesses on 12.9.03 around 12.00 he along with his wife has entered the room of the doctor."

4. The departmental inquiry was conducted by the disciplinary authority in terms of the procedure prescribed under Rule 27 of Rules 1955 and after affording an opportunity of hearing, the disciplinary authority found both the charges proved against him after due compliance of the principles of natural justice and taking note of the gravity of the charges which were found proved and all other factors into consideration, punished him with the penalty of removal from service by an Order dated 14th July, 2004.

5. The Departmental Appeal preferred against the Order dated 14th July, 2004 before the Appellate Authority came to be dismissed by an Order dated 3rd January, 2006 and the revision petition also came to be rejected by the revisional authority by an Order dated 1st October, 2008. The penalty of removal from service and consequential orders passed by the appellate/revisional authority was the subject matter of challenge by filing writ petition before the High Court of Delhi under Article 226 of the Constitution at the instance of the respondent.

6. After taking note of the factual matrix on record and the submissions made, the High Court under its impugned judgment dated 11th February, 2016 upheld the charges which were found proved by the disciplinary authority during the course of inquiry. However, substituted the penalty of removal from service inflicted upon the respondent in exercise of the power of judicial review and recorded a finding that looking into the nature of allegations which stand proved, the punishment of removal from service is disproportionate to the proved misconduct to confinement of the respondent from 1.00 p.m. to 10.00 p.m. in quarter guard jail as the adequate punishment with a further direction for his

reinstatement with immediate effect with entitlement of salary and other benefits admissible to him under the law for the purposes of calculating the pensionary benefits. The relevant paras of the impugned judgment dated 11th February, 2016 are as under:-

> "19. The evidence of PW-5 Suresh shows that on entering into Dr. Nazir's room, he saw both the doctor and the appellant scuffling with each other and they were separated through his intervention. There is nothing on record to show that the appellant had acted in a pre-meditated manner or had planned the whole thing. The incident appears to have occurred at the spur of the moment. Although the court cannot be certain about the circumstance, yet there can be a reasonable doubt as to whether there was anything spoken to the petitioner's wife, by Dr. Nazir, which led to the scuffle or altercation. Whilst the version about the assault on the petitioner's wife may be doubtful, the statement made to the police that the doctor had expressed something about her character in the context of her inability to produce the prescribed medication, for verification, is still open to judicial scrutiny in the application under Section 156(3) of Cr.P.C. of his wife.
>
> 20. Keeping in view the totality of the circumstances of this case, we are of the view that the penalty of removal from service, especially when the petitioner has clean record of 11 years of previous service, is disproportionate to the proved charges. Given the circumstances of the case, we feel that confinement of petitioner from 1.00 PM noon to 10.00 PM in quarter guard jail was sufficient punishment. We accordingly order for the reinstatement of the petitioner with immediate effect. The respondents are also directed to treat the period from the date of dismissal till the reinstatement as per the provisions of law. The petitioner is also entitled for salary and other benefits admissible in law. He shall be considered on duty during this period for the purpose of calculation of pensionary benefits. The petition is allowed in the above terms. No costs."

7. This Court, while issuing notice by an Order dated 18th November 2016, stayed the operation of the impugned judgment dated 11th February, 2016.

8. Ms. Madhavi Divan, learned ASG appearing for the Union of India submits that the interference which has been made by the High Court under its limited scope of judicial review under Article 226 of the Constitution is a clear abuse of judicial discretion and such a gross misconduct which was committed by the respondent while serving as member of discipline force in CRPF, in no manner, was pardonable.

9. Learned counsel further submits that Section 11 of the scheme of Act 1949 has been completely overlooked by the High Court. That in terms of Section 11, the competent authority may award in lieu of or in addition to suspension or dismissal, any one or more of the punishments including confinement in quarter guard jail or removal referred to under clauses (d) and (e) of Section 11(1) of the Act, 1949.

10. Learned counsel further submits that the High Court has proceeded on its own perception as if it was a case of criminal trial where incident can be condoned if it has been committed without pre-meditated manner or occurred at the spur of the moment. This theory may not apply in the case of departmental enquiry and in the given circumstances, the interference made by the High Court in substituting punishment under the impugned judgment dated 11th February 2016 is unsustainable in law and deserves to be set aside.

11. In support of her submission, learned counsel has placed reliance on the judgment of this Court in ***Union of India and Others Vs. Ghulam Mohd. Bhat.***[1]

12. On the other hand, Mr. Ashok Agrwaal, learned counsel for the respondent, while supporting the finding recorded by the High Court in the impugned judgment submits that the respondent had rendered, by that time, 11 years of unblemished service and he had full respect and regard to Dr. Nazir-complainant but the circumstances created at the given time were such that were beyond his control and the High Court has taken note of not only the unblemished service of 11 years but in totality of the facts under consideration while holding the punishment of removal from service, to be disproportionate to the charges proved against him and what has been considered by the High Court in the impugned judgment is not only substituting the punishment but protecting the rights of the respondent and his family and to save his livelihood and

[1] 2005 (13) SCC 228.

A submits that a justice has been done by the High Court under the impugned judgment which may not require any interference by this Court.

13. We have heard learned counsel for the parties and with their assistance perused the material available on record.

B 14. The service conditions of member of the force are governed in accordance with provisions of the Act 1949. Section 9 and Section 10 provides the nature of "more heinous offences/less heinous offences". The nature of punishments have also been provided for more heinous offences/less heinous offences, if found proved against member of the force are in the form of imprisonment for a term provided under scheme C of the Act. At the same time, the nature of minor punishments are provided under Section 11 of the Act 1949 and the procedure to be followed by the disciplinary authority has been prescribed under Rule 27 of the Rules 1955. The relevant paras are as under:-

> **"Section 11. Minor punishments.** – (1) The Commandant or D any other authority or officer as may be prescribed, may, subject to any rules made under this Act, award in lieu of, or in addition to, suspension or dismissal any one or more of the following punishments to any member of the Force whom he considers to be guilty of disobedience, neglect of duty, or remissness in the discharge of any duty or of other misconduct in his capacity as a E member of the Force, that is to say, -
>
> (a) reduction in rank;
>
> (b) fine of any amount not exceeding one month's pay and allowances;
>
> F (c) confinement to quarters, lines or camp for a term not exceeding one month;
>
> (d) confinement in the quarter-guard for not more than twenty-eight days, with or without punishment drill or extra guard, fatigue or other duty; and
>
> G (e) removal from any office of distinction or special emolument in the Force.
>
> .....".
>
> "**Rule 27. Procedure for the Award of Punishments.-** (a) The H Punishments shown as items 1 to 11 in column 2 of the table

below may he inflicted or non-Gazetted Officers and men of the various ranks shown in each of the headings of columns 3 to 6, by the authorities named below such headings under the conditions mentioned in column 7.

TABLE

Sl. No.	Punishment	Subedar (Inspector)	Sub-Inspector	Others except Const & enrolled followers	Consts & enrolled followers	Remarks
1	2	3	4	5	6	7
1.	Dismissal or removal from the Force	DIGP	DIGP	Comdt.	Comdt.	To be inflicted after formal departmental enquiry.
2.	…	…	…	…	…	…
3.	…	…	…	…	…	…
4.	…	…	…	…	…	…
5.	…	…	…	…	…	…
6.	Confinement in the Quarter Guard exceeding seven days but not more than twenty-eight days with or without punishment drill or extra guard fatigue or other duty.	-	-	-	Comdt.	To be inflicted after formal departmental enquiry.
7.	…	…	…	…	…	…
8.	Removal from any office of distinction or special emolument in the Force.	DIGP	DIGP	Comdt.	Comdt.	May be inflicted without a formal departmental enquiry.
9.	…					
10.	Confinement to Quarter Guard for not more than seven days with or without punishment or extra guard fatigue or other duty.	-	-	-	Comdt.	-
11.	…	…	…	…	…	…

Note.- 1. When the post of Deputy Inspector General remains unfilled for a period of over one month at a time the Commandant shall exercise the powers of punishing the Subedars (Inspectors) and Sub-Inspectors except the powers of ordering dismissal or removal from the Force.

Note. - 2. When the post of Commandant remains unfilled for a period of over one month at a time consequent on the incumbent proceeding on leave or otherwise, the Assistant Commandant shall

A exercise the powers of punishment vested in the Commandant, except the powers of ordering dismissal or removal from the Force.

Explanation:- (a) Dismissal of member of the Force precludes him from being re-employed in Government service while removal of any such member from the Force shall not be disqualification B for any future employment (other than an employment in the Central Reserve Police Force) under the Government.

(b) When non-gazetted officers or men of the various ranks are to be punished for any offence; a departmental enquiry, if necessary under clause (a) shall be held by the Commandant or other superior C officer under the orders of the Commandant, provided that when the charge is against an officer of the rank of Subedar (Inspector) or Sub-Inspector the enquiry shall be held by an authority to be designated for the purpose by the Deputy Inspector General. Where the officer conducting the enquiry in the case of a Subedar (Inspector) or a Sub-Inspector considers that a punishment under D items (1) to (5) and (7) of the Table is called for, he shall complete the departmental proceedings and forward the same to the Deputy Inspector General for orders.(GSR 631 dated 27.8.1983)

(c) The procedure for conducting a departmental enquiry shall be as follows:-

E

(1) The substance of the accusation shall be reduced to the form of a written charge, which should be as precise as possible. The charge shall be read out to the accused and a copy of it given to him at least 48 hrs. before the commencement of the enquiry.

F

(2) At the commencement of the enquiry the accused shall be asked to enter a plea of "Guilty" or "Not Guilty" after which evidence necessary to establish the charge shall be let in. The evidence shall be material to the charge and may either be oral or documentary, if oral:

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(i) it shall be direct:

(ii) it shall be recorded by the Officer conducting, the enquiry himself in the presence of the accused:

H

(iii) the accused shall be allowed to cross examine the witnesses. A

……..”

15. The scheme of Section 11 of the Act 1949 mandates that the competent authority may, subject to rules made thereunder, award in lieu of, or in addition to, suspension or dismissal any one or more punishment if found guilty of misconduct in his capacity as member of the force. B

16. The use of words ‘in lieu of, or in addition to, suspension or dismissal’, appearing in Section 11(1) clearly indicates that the authorities mentioned therein are empowered to award punishment of suspension or dismissal to member of the force who is found guilty and in addition to, or in lieu thereof, the punishment mentioned in clause (a) to (e) may also be awarded. C

17. It may be noted that more heinous offences or less heinous offences prescribe penalty of sentence of imprisonment if member of the force is found guilty. At the same time, Section 11 is clear and unambiguous and prescribe those minor punishments which the competent authority may award in a departmental inquiry in lieu of or in addition to suspension or dismissal any one or more of the punishments to member of the force as referred under clauses (a) to (e) of Section 11(1) of the Act 1949 even if the member has not been prosecuted for an offence under Section 9 or Section 10 of the Act. D E

18. It is also well settled that removal and dismissal from service stand on the same footing and both terminate the relationship of employer/ employee. The only difference between the two is that in the case of dismissal, it precludes the employee from seeking future employment in the Government while in the case of removal, he is not disqualified from any future employment. By virtue of an explanation appended to Rule 27 of the scheme of Rules 1955, the rule making authority has made it clear that dismissal of a member of the force precludes him from being re-employed in Government service, while removal of any such member from the force shall not be disqualification, for any future employment (other than an employment in the Central Reserve Police Force) under the Government. F G

19. In the instant case, the respondent has been punished with penalty of removal from service after the charges levelled against him H

A stood proved by the disciplinary authority in a departmental inquiry held against him after going through the procedure prescribed under Rule 27 of the Rules 1955. Such nature of minor punishment of removal from service could be in addition to dismissal as being provided under Section 11 of the Act 1949.

B 20. Section 11 of the Act 1949 has been completely overlooked by the High Court while examining as to whether the punishment of removal from service could be inflicted in lieu of or in addition to dismissal from service to member of the force, if the misconduct stands proved in the course of disciplinary inquiry and after it was confirmed by the High Court under the impugned judgment.

C

21. The nature of allegations against the respondent are indeed grave in nature as the respondent not only threatened the Doctor-complainant but has misbehaved and abused and injured him and made false allegations against him of sexual harassment to his wife. Such a nature of misconduct which has been committed by the respondent once

D stand proved is unpardonable and if the authority has considered it appropriate to punish him with penalty of removal from service by an Order dated 14th July 2004 and confirmed by the appellate/revisional authority and by the High Court in the impugned judgment leaves no sympathy for retention in service and that too in a discipline force like

E CRPF.

22. The well ingrained principle of law is that it is the disciplinary authority, or the appellate authority in appeal, which is to decide the nature of punishment to be given to the delinquent employee. Keeping in view the seriousness of the misconduct committed by such an employee,

F it is not open for the Courts to assume and usurp the function of the disciplinary authority.

23. Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the Court, normally the disciplinary authority or the appellate authority should be directed to

G reconsider the question of imposition of penalty. The scope of judicial review on the quantum of punishment is available but with a limited scope. It is only when the penalty imposed appears to be shockingly disproportionate to the nature of misconduct that the Courts would frown upon. Even in such a case, after setting aside the penalty order, it is to be left to the disciplinary/appellate authority to take a call and it is not for

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the Court to substitute its decision by prescribing the quantum of punishment. However, it is only in rare and exceptional cases where the court might to shorten the litigation may think of substituting its own view as to the quantum of punishment in place of punishment awarded by the competent authority that too after assigning cogent reasons.

24. The principles have been culled out by a three-Judge Bench of this Court way back in ***B.C. Chaturvedi vs. Union of India and Others***[2] wherein it was observed as under:-

> "**18**. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/ Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

25. It has been further examined by this Court in ***Lucknow Kshetriya Gramin Bank (Now Allahabad, Uttar Pradesh Gramin Bank) and Another vs. Rajendra Singh***[3] as under:-

> **"19.** The principles discussed above can be summed up and summarised as follows:
>
> **19.1.** When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.
>
> **19.2.** The courts cannot assume the function of disciplinary/ departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority.

[2] 1995(6) SCC 749
[3] (2013) 12 SCC 372

19.3. Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the court.

19.4. Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case.

19.5. The only exception to the principle stated in para 19.4 above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct were identical or the co-delinquent was foisted with more serious charges. This would be on the doctrine of equality when it is found that the employee concerned and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge-sheet in the two cases. If the co-delinquent accepts the charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable."

26. Adverting to the facts of the instant case, the High Court, in our considered view, fell in error in interfering with the punishment, which could lawfully be imposed by the departmental authorities for his proven misconduct. The High Court should not have substituted its own discretion for that of the authority. What punishment was required to be imposed, in the facts and circumstances of the case, was a matter which fell exclusively within the jurisdiction of the competent authority and the interference made by the High Court is in a cavalier manner while recording the finding of penalty to be disproportionate without taking into consideration the seriousness of the misconduct committed by the respondent which is unpardonable and not sustainable in law.

27. Before we may conclude, we would like to observe that the employees who are in civil services, their disciplinary matters are being governed by their respective services (classification, control and appeal) rules and for the sake of instance, we take note of the Central Civil

Services (Classification, Control and Appeal) Rules, 1965(hereinafter being referred to as the "Rules 1965"). The nature of penalties has been provided under Part V and removal and dismissal from service are in the category of "Major penalties". If the misconduct is found proved, looking into the gravity and the nature of misconduct, either of the punishment, i.e., removal or dismissal from service, could be inflicted upon the civil servant after holding disciplinary enquiry for imposing major penalties if held guilty as provided under Part IV of the Rules 1965 and this what being ordinarily understood. The following penalties under scheme of Rules 1965 may, for good and sufficient reasons and as hereinafter provided can be imposed on a Government servant namely:-

"Minor penalties

(i) Censure;

(ii) ..

(iii) …

(iiia)…

(iv) withholding of increments of pay;

Major penalties:

(v) …

(vi) …

(vii) Compulsory retirement;

(viii) Removal from service, which shall not be a disqualification for future employment under the Government;

(ix) Dismissal from service which shall ordinarily be a disqualification for future employment under the Government.

…."

28. In the instant case, the disciplinary matters of members of the force for minor punishments are being governed under Section 11 of the Act 1949 and if any nature of more heinous offence/less heinous offence being committed, if found proved, member of the force shall be punishable for imprisonment for a specified term as being referred to under Section 9 and Section 10 of the Act 1949 and at the same time, dismissal and

A removal from service are being considered to be the minor punishments as reflected from Section 11(1) of the Act 1949. If the allegation is found proved, the competent authority may award in lieu of, or in addition to, suspension or dismissal any one or more of punishments to a member of the force whom he considers to be guilty of disobedience, neglect or duty, or remissness in the discharge of any duty or of other misconduct B with confinement in the quarter-guard or removal as indicated under clauses (d) and (e) of Section 11(1) of the Act 1949.

29. The scheme of the Act 1949 of which reference has been made was completely overlooked by the High Court of Delhi and while keeping in mind the standards of examining the misconduct of a civil C servant, interference has been made in the quantum of punishment which may not apply to member of the discipline force and, in our considered view, the interference made by the High Court in substituting punishment in the instant case is unsustainable and deserves to be set aside.

30. Consequently, the appeal succeeds and is allowed. The D impugned judgment of the High Court of Delhi dated 11th February 2016 is quashed and set aside. No costs.

31. Pending application(s), if any, stand disposed of.

Nidhi Jain Appeal allowed.