REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs. 48-49 OF 2014
[Arising out of S.L.P.(C)Nos.20506-20507 of 2012]

Ishwar Chandra Jayaswal .....Appellant

Versus

Union of India & Ors. .....Respondents

J U D G M E N T

VIKRAMAJIT SEN, J.

1. Leave granted. These Appeals assail the Judgment dated 11.10.2010 of the Division Bench of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No.38190 of 2004 as well as the subsequent Order dated 28.3.2012 by which a Review Application in respect of the former was dismissed.

2. The Division Bench was confronted with the dismissal from service of the Appellant Dr. Ishwar Chandra Jayaswal against whom three Articles of Charge had been framed. Article-I was that he demanded and accepted a sum of Rs.26/- from Shri Pyare Ram, Khalasi for issuing in his favour a Fit Certificate. Article-II, in

similar vein was that the Appellant demanded and accepted a sum of Rs.34/- from Shri Nandlal, Semi-skilled Revetter for issuing him a Fit Certificate. Article-III was that the Appellant had demanded and accepted Rs.18/- from Shri Balroop, Semi-skilled Revetter for issuing of Fit Certificate. The Inquiry Officer, after duly perusing the entire evidence, returned a finding that Charges 1 and 3 had been proved. The Disciplinary Authority, after considering the response of the Appellant, by its Order dated 22.1.1991 imposed the penalty of removal of the Appellant from service.

3. A Revision came to be filed which appears to have attracted the gravamen of challenge before the Division Bench. After considering the manner in which the Revision was heard and decided, the Division Bench in the impugned Order, has come to the conclusion that the President had decided the Revision in accordance with law.

4. In these proceedings, learned counsel for the Appellant has confined his arguments to the ground – "whether the punishment of removal of service of the petitioner on the alleged demand of meagre amount of Rs.18-45 is contrary to the doctrine of proportionality".

5. It is now well settled that it is open to the Court, in all circumstances, to consider whether the punishment imposed on the delinquent workman or officer, as the case may be, is commensurate with the Articles of Charge levelled against him. There is a deluge

of decisions on this question and we do not propose to travel beyond Union of India v. S.S. Ahluwalia (2007) 7 SCC 257 in which this Court had held that if the conscience of the Court is shocked as to the severity or inappropriateness of the punishment imposed, it can remand the matter back for fresh consideration to the Disciplinary Authority concerned. In that case, the punishment that had been imposed was the deduction of 10% from the pension for a period of one year. The High Court had set aside that order. In those premises, this Court did not think it expedient to remand the matter back to the Disciplinary Authority and instead approved the decision of the High Court.

6. The Appellant before us is presently 75 years of age. At the time when the Articles of Charge had been served upon him, he had already given the best part of his life to the service of the Respondent-Indian Railways. It has been contended before us that the three charges that have been sustained against the Appellant reflected only the tip of the iceberg; however, there is no material on record to substantiate this argument of Respondents. In the present case, the Appellant has served the Respondents for a period of twenty three years and removal from service for the two charges levelled against him shocks our judicial conscience. Part III of The Railway Servants (Discipline & Appeal) Rules, 1968 contains the

penalties that can be imposed against a Railway servant, both Minor Penalties as well as Major Penalties. We have already noted that it has not been established that the Appellant had, as a matter of habit or on a wide scale, made illegal demands from Railway servants desirous of obtaining a Fit Certificate. However, since two of the three charges have been proved, we are of the considered opinion that the imposition of compulsory retirement i.e. Penalty 6(vii) would have better and more appropriately met the ends of justice. While this would have instilled sufficient degree of fear in the mind of the employees, it would also not have set at naught several years of service which the Appellant had already given to the Respondent-Indian Railways. We think that deprivation of retiral benefits in addition to loss of service is entirely incommensurate with the charge of the Appellant having taken very small sums of money for the issuance of Fit Certificate to other Railway employees.

7. It is in these premises that the Appeals are accepted and the impugned Order dated 11.10.2010 is set aside. The Appellant shall be deemed to have compulsorily retired under Part-III Penalty 6(vii) of the aforementioned Railway Rules with effect from 22.1.1991. If he is entitled to retiral or other benefits on the said date, the Respondents shall make necessary payment within three months from today. This decision is restricted to the facts of the present

case.

.....J.
[T.S. THAKUR]

.....J.
[VIKRAMAJIT SEN]

New Delhi
January 3, 2014.