
(2014) 02 RAJ CK 0143

In the Rajasthan High Court

Case No : Civil Writ Petition No. 10375 of 2012

Ami Chand

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 05-02-2014

Acts Referred:

Constitution of India, 1950 — Article 136, 14, 16
Industrial Disputes Act, 1947 — Section 11A
Penal Code, 1860 (IPC) — Section 379, 409

Citation : (2014) LabIC 4011

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Manish Sharma, Advocate for the Appellant; Sunil Kumar Yadav, Additional Government Counsel, Advocate for the Respondent

Judgement

Mohammad Rafiq, J.—This writ petition has been filed by the petitioner against the order dated 13/9/2004 (Ann. 3) dismissing the petitioner from service in a disciplinary proceeding, the order dated 31/12/2004 by which the appeal filed by the petitioner challenging the order of dismissal was dismissed, the order dated 16/6/2008 (Ann. 6) whereby, the review petition filed by him challenging the appellate order dismissing appeal was dismissed and the order dated 31/1/2012 (Ann. 8) by which the second review petition was dismissed. Facts of the case in brief are that petitioner while working on the post of Constable, was placed under suspension vide order dated 19/8/2002 on account of an incident, which took place on that day while he was assigned the patrolling duty with arms & ammunitions along with another Constable Gokul Chand during night from Police Station Kotwali Dholpur from 7-11 p.m. A charge-sheet was served upon both of them on 19/12/2002 under Rule 16 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 (for short, the "CCA Rules") alleging that they did not return back to the office and remained absent from duties without informing their authorities. The department lodged a first information report against them for offence u/Ss. 379, 409 IPC read with Section

7(g) of the Rajasthan Armed Constabulary Act, 1950 on 21/9/2002. Three charges against both the delinquents were framed, which were exactly identically worded except the difference of their names. Both the delinquents filed reply to the charge-sheet and denied the charges. In the reply, it was contended by the petitioner that he had stomach problem and had dysentery and went to the doctor for his treatment and therefore could not immediately report back. There was thus no case for offence u/s. 379 IPC. Defence of the petitioner was that he handed over the arms & ammunitions issued in his name to the officer of the department because they were apprehending their arrest due to lodgment of FIR against them and were advised to seek anticipatory bail from the Court. Their explanation was not accepted and the enquiry officer was appointed.

2. A common enquiry was held against both the delinquents. The enquiry officer in his report found all the charges proved against both of them with the same finding of guilt. The disciplinary authority though by separate orders passed on the same day i.e., 13/9/2004 (Ann. 3), dismissed both the petitioner-Ami Chand and co-delinquent-Gokul Chand from service. Petitioner as well as the co-delinquent filed appeal under Rule 23 of the CCA Rules. However, the appellate authority dismissed both the appeals by identically worded separate orders on 31/12/2004. Petitioner as well as the co-delinquent filed review petition before His Excellency, the Governor of Rajasthan under Rule 34 of the CCA Rules against the said orders. The Reviewing Authority dismissed the review petition filed by the petitioner vide order dated 16/6/2008 (Ann. 6) but partly allowed the review petition filed by co-delinquent Gokul Chand vide order dated 22/9/2006 (Ann. 5) on the ground of penalty being disproportionate to the gravity of the proven charge and directed that the intervening period would be treated as "dies non" and converted the penalty of dismissal of service into one stoppage of three annual grade increments with cumulative effect.

3. Petitioner earlier approached before this Court by filing S.B. Civil Writ Petition No. 9976/2008 (Amichand v. State & Ors.). This Court partly allowed the writ petition thereby, setting aside the reviewing order dated 16/6/2008 however remanded the matter back to the Reviewing Authority to re-consider the review petition filed by the petitioner and the order passed in the case of co-delinquent Gokul Chand. The Reviewing Authority vide order dated 31/1/2012 (Ann. 8) again dismissed the review petition filed by the petitioner on the premise that there is no provision for reconsideration of the order of reduction of penalty passed on the review petition filed under Rule 23 and thus the order passed by the predecessor Governor of the State in the case of co-delinquent Gokul Chand cannot be reviewed. Therefore, not agreeing with the order passed in the case of co-delinquent, Reviewing Authority has dismissed the petition for review filed by the petitioner. Aggrieved thereby, the petitioner has again approached this Court by filing the present writ petition.

4. Shri Manish Sharma, learned counsel for the petitioner has confined his challenge to the order passed by the Reviewing Authority on the ground of

discrimination. It is argued that the disciplinary authority has passed the harsh punishment order and the Reviewing Authority has also not considered the arguments made by the petitioner on the quantum of punishment. The charges are not so grave so as to warrant his dismissal from service. Learned counsel submitted that charges against petitioner and Gokul Chand were exactly the same. The order of penalty as also the order of dismissing appeal in their cases were also similarly worded except difference of their names. Thus, the petitioner has been meted out with hostile discrimination. Learned counsel for the petitioner argued that absence of the petitioner for two days was not willful and was owing to the fact that he was suffering from dysentery and went to the doctor for his treatment and therefore some delay was occasioned in reporting back on duty. It was not the case of willful absence but due to illness of the petitioner therefore, no case for offence u/s. 379 IPC is made out against the petitioner. The petitioner was officially issued the arms & ammunitions while he was on patrolling duty and he handed over the rifle and cartridges in the night of 20/9/2012 to Shri Bagga Ram, Constable, In-charge of the arms & ammunitions with the request to deposit the same in the police station but he told that now the arms & ammunitions would be deposited with the Police Station Kotwali Dholpur as a criminal case has been registered against them. After enquiry, they came to know that patrolling Head Constable has lodged a false FIR against them that they disappeared from duty. Seizure of rifles and cartridges were instead shown in that FIR. No ill-motive proved on the part of the petitioner. The petitioner and Gokul Chand were frightened because of lodgment of the FIR against them apprehending that if they directly went to the police station, they may be arrested. Petitioner applied for anticipatory bail and thereafter appeared at the police station. The appellate authority as also the Reviewing Authority failed to appreciate this fact. Learned counsel for the petitioner in support of his arguments has placed reliance upon the judgment of this Court in Hindustan Copper Ltd. Khetri v. Shri Sangram Singh & Anr., S.B. Civil Writ Petition No. 5509/1995 decided on 8/9/2009.

5. Shri Sunil Kumar Yadav, learned Additional Government Counsel for the State has opposed the writ petition and submitted that the charges against petitioner were quite serious and, therefore, he has rightly been awarded with the penalty of dismissal. Learned Government Counsel submitted that Hon"ble the Governor of the State of Rajasthan has rightly dismissed the review petition filed by the petitioner earlier on 16/6/2008. On remand by this Court, the second review petition was also rightly dismissed as there was no new ground and second review petition was based on the self-same grounds, which were earlier considered and rejected. There was no case of discrimination as the penalty of dismissal was rightly awarded to the petitioner based on gravity of the charges against him. Penalty is proportionate to misconduct as the charge against petitioner was of willful absence from duty and leaving the arms & ammunitions unattended. It was argued that the plea of sudden illness set up by the petitioner was not accepted by the enquiry officer and the disciplinary authority as the

petitioner failed to substantiate those pleas. Petitioner being member of a disciplined police force was not expected to act in a most negligent manner. Gravity of the charge against him was such as would even justify dispensing with the holding of regular disciplinary enquiry and his case was such where straightway dismissal from service without holding the regular disciplinary enquiry would be justified. Even then, the respondents keeping in view the principles of natural justice, held the regular disciplinary enquiry against him and upon the charges being proved, passed the order of his dismissal. The Reviewing Authority after re-consideration of the review in its wisdom, despite the charges/charge-sheet being same, in the light of the evidence on record rightly dismissed the second review petition, which was based on the same grounds as earlier, vide order dated 31/1/2012 (Ann. 8).

6. I have given my anxious consideration to the rival submissions and perused the material available on record.

7. This Court in *Hindustan Copper Ltd. Khetri* supra dealt with a similar argument with regard to discrimination on the quantum of penalty. Under challenge in that case was the award of the labour court at the instance of the Hindustan Copper Ltd. Khetri. Labour court in the award held the removal of the workman illegal on comparison of penalty awarded to him and other two workmen all of whom were proceeded against in the disciplinary action on same charges. Labour court invoking its power u/s. 11A of the Industrial Disputes Act, 1947, interfered with the quantum of punishment upholding the argument of discrimination as it found that finding of guilt has been recorded against all the three delinquents but other delinquents were let off on lesser penalty only because they had admitting their guilt tendered apology and the workman concerned in that case denied the charges and demanded full-fledged enquiry. Upholding the award of the labour court, this Court has held that merely because the respondent did not plead guilty and insisted upon holding of departmental enquiry, cannot be an additional reason to award him higher penalty and set aside the order of removal directing his re-instatement with continuity in service with 50% backwages.

8. The Supreme Court in *Tata Engineering and Locomotive Co. Ltd. Vs. Jitendra Pd. Singh and Another*, , was dealing with a case where three workmen were found guilty of misconduct in connection with the similar incident. One of them was terminated from service whereas another was reinstated pursuant to the court order. In that situation, the Supreme Court held that even though they were found guilty in certain proceedings in connection with the same incident, one of them punished with one month's suspension and another reinstated pursuant to court's order, in such circumstances, notwithstanding that they were found guilty in separate proceedings, singling out the third one for punishment of dismissal rightly held by the High Court as amounting to denial of justice.

9. In *Sengara Singh and Others Vs. State of Punjab and Others*, , the State of Punjab initiated an action against several employees of the police force and dismissed about 1100 employees on the ground that they participated in the

agitation. Some of the members of the police force, who were dismissed from service, filed writ petitions in Punjab & Haryana High Court, which were dismissed. Thereafter, the State Government on its own withdrew cases pending against them. A committee was constituted by the Government to review cases of their dismissal and on recommendation of such committee, out of 1100 employees, 1000 employees were reinstated and rest filed applications. Those, who were thus weeded out by the Committee, filed writ petitions in the High Court. In those facts, the Supreme Court held that "order of High Court dismissing the petitions was liable to be quashed. Logically, the petitioners must receive the same benefit which those reinstated received to the absence of any distinguishing feature in their cases". In the present case also, respondents shall have to show any distinguishing feature so as to justify different treatment meted out to the respondent workman. Merely because respondents did not plead guilty and insisted upon holding of departmental enquiry, cannot be an additional reason to award him penalty."

10. In *State of Uttar Pradesh and others v. Raj Pal Singh*, (2010) 5 SCC 783, the employee concerned was an Assistant Warder and the allegation against him was that he along with four other Assistant Warders had beaten one Shivdan Singh, and even though the senior officers dissuaded them, they did not listen to senior officer and tried to dissuade them. The allegation was proved in departmental proceedings and the disciplinary authority passed the order of dismissal of respondent but awarded penalty of stoppage of five annual grade increments to others. High Court allowed his writ petition holding that charges against that petitioner and others being the same, which were proved against them, there was no justification of passing two different orders and held that the order of dismissal cannot be sustained, it therefore set-aside the order of dismissal and directed in his case for stoppage of five annual grade increments as was ordered in the case of other delinquents and directed his reinstatement with 50% backwages. Judgment of the High Court was assailed before the Supreme Court relying on certain earlier judgments in support of the argument that High Court was not liable to interfere with the quantum of punishment. Rejecting the argument, the Supreme Court held in paras 5 and 6 of the report in *Raj Pal Singh supra*, as under:--

"5. Though, on principle the ratio in aforesaid cases would ordinarily apply, but in the case in hand, the High Court appears to have considered the nature of charges levelled against the five employees who stood charged on account of the incident that happened on the same day and then the High Court came to the conclusion that since the gravity of charges was the same, it was not open for the disciplinary authority to impose different punishments for different delinquents. The reasoning given by the High Court cannot be faulted with since the State is not able to indicate as to any difference in the delinquency of these employees.

6. It is undoubtedly open for the disciplinary authority to deal with the

delinquency and once charges are established to award appropriate punishment. But when the charges are same and identical in relation to one and the same incident, then to deal with the delinquents differently in the award of punishment, would be discriminatory. In this view of the matter, we see no infirmity with the impugned order requiring our interference under Article 136 of the Constitution."

11. What is not disputed is the fact: (1) that charges against petitioner and co-delinquent Gokul Chand, who both are Constables, were exactly the same, (2) that both of them on the fateful day were on patrolling duty, (3) that both were equipped with the arms & ammunitions, (4) that they both disappeared from duty, (5) that they left the arms & ammunitions in the care of a private person, (6) that a criminal case was registered against both of them, (7) that the disciplinary authority passed exactly similarly worded penalty orders in their case and (8) that the appellate authority has also dismissed their appeals by identically worded orders. But what has transpired at subsequent stage has indeed resulted in hostile discrimination between the two. The Reviewing Authority has dismissed the review petition vide order dated 31/1/2012 (Ann. 8) on the premise that he does not agree with the reasoning's given by the predecessor Reviewing Authority-the then Hon''ble Governor of the State of Rajasthan, in partly allowing the review petition filed by co-delinquent Gokul Chand and reducing the penalty of dismissal to that of stoppage of three annual grade increments with cumulative effect and observed that it has no power to review the order passed earlier in the case of co-delinquent Gokul Chand and therefore it is not now possible to enhance his penalty in review consideration. This observation was made by the Reviewing Authority conscious of the fact that there was indeed a disparity in the award of penalty even though charges against both are exactly same. Nevertheless, end result is that discrimination still persists. While co-delinquent Gokul Chand has been let-off with the lighter penalty of withholding of three annual grade increments with cumulative effect on the same charge, petitioner has been awarded the extreme penalty of dismissal from service, which fact has even been accepted by the Reviewing Authority while again dismissing his review petition.

12. Whoever may be in the office of the Governor of the State but the decision rendered on review petition against the order of penalty would be deemed to an order passed by the Governor. In rule of law, it is expected that when as high as office as the Governor of the State passes an order in the case of different employees of the Government, they are treated alike inasmuch as, such order should not result in hostile discrimination. Even though it may be a fact that the office of the Governor is held by different person at different points of time, but even such different persons have to reflect consistency in the working of the office of the Governor. This Court in the earlier writ petition filed by the petitioner instead of directly interfering with the order impugned, left it to the wisdom of the Reviewing Authority to re-consider the petitioner's review petition in the light of the order passed in the case of co-delinquent Gokul Chand. Reviewing

Authority has now taken a view that it did not agree with the reasoning^s given by the predecessor Governor of the State in the case of Gokul Chand but since there is no provision for review of an order already passed in review petition therefore it would not be possible to enhance the penalty in his case (Gokul Chand); in other words, penalty of dismissal cannot be again imposed on him and further observed that in view of the gravity of charges against petitioner, penalty of dismissal was commensurated with the gravity of the charges against petitioner and did not merit interference.

13. This Court does not approve of the line of reasoning given by the Reviewing Authority. The resultant effect and outcome of this approach is such, which certainly violates the right to equality before law and thus, it is violative of Articles 14 and 16 of the Constitution of India.

14. Even on facts, charges indeed are not so grave as to justify the extreme penalty of dismissal. And if that view has been taken by the very same Reviewing Authority in the case of co-delinquent, it only show that, that was one of the possible views in the facts of the case. There is thus no reason, even otherwise, for this Court to take a different view.

15. Upshot of the above discussion is that the writ petition deserves to succeed and is hereby allowed. The order of dismissal of the petitioner from service dated 13/9/2004 (Ann. 3) as well as appellate order dated 31/12/2004 are set-aside. The penalty of dismissal shall be substituted by the same penalty as was awarded to co-delinquent Gokul Chand. The order of penalty of dismissal would stand reduced to stoppage of three annual grade increments with cumulative effect and period of service of petitioner from the date of order of dismissal i.e. 13/9/2004 till the reinstatement of the a forenamed co-delinquent Shri Gokul Chand is ordered to be treated as dies non. However, the petitioner would be entitled to arrears of salary and actual benefits for the period from the date such Gokul Chand was reinstated in service and also for all consequential benefits. Compliance of the judgment be made within a period of three months from the date, copy of this judgment is produced before the respondents.