
(1992) 04 GUJ CK 0019
In the Gujarat High Court

Arjunsinh Malaram

APPELLANT

Vs

State Govt. of Gujarat and Another

RESPONDENT

Date of Decision : 09-04-1992

Acts Referred:

Bombay Civil Services Rules, 1959 — Rule 152
Bombay Prohibition Act, 1949 — Section 66(1)(b), 85(1)(hi)
Constitution of India, 1950 — Article 226

Citation : (1992) 2 GLR 1622

Hon'ble Judges : A.N. Divecha, J

Bench : Single Bench

Judgement

A.N. Divecha, J.—Can leniency in punishment be shown to an Armed Police Constable found in a drunken unconscious state in breach of the law of prohibition while on duty? This is one of the main questions arising in this petition filed under Article 226 of the Constitution of India challenging the legality and validity of the order of dismissal from service passed by respondent No. 2 on 8th April, 1982.

2. The facts giving rise to this petition may be summarised thus:

The petitioner was at the relevant time working as an Armed Police Constable at Porbandar. On 25th February, 1974 at night he was found unconscious in a drunken state in the shop of one Hardas Maldey. He was supposed to be on duty at that time. He was prosecuted for offences punishable under Sections 66(1)(b), 85(1)(i) and 85(1)(hi) of the Bombay Prohibition Act, 1949 (the "Prohibition Act" for brief). He came to be convicted by the Trial Magistrate. The petitioner carried the matter in appeal before the Sessions Court. It came to be registered as Criminal Appeal No. 10 of 1975. His appeal came to be accepted and he came to be acquitted of the offence with which he came to be charged. A copy of the operative part of the order passed by the Additional Sessions Judge of Junagadh at Porbandar on 30th September, 1975 in Criminal Appeal No. 10 of 1975 is at Annexure "B" to this petition. It transpires therefrom that the acquittal earned by

him was not on merits. He was given the benefit of doubt. It appears that the disciplinary authority decided to proceed against the petitioner departmentally for the same act of misconduct. A charge-sheet of 8th April, 1976 came to be issued to him. Its copy is a part of Annexure "C" collectively. He was subjected to the enquiry proceedings pursuant to the charge-sheet. The Enquiry Officer submitted his report to the disciplinary authority. Its copy is also a part of Annexure "C" collectively. Thereupon the disciplinary authority caused to serve to the petitioner what is popularly styled as the second show-cause notice of 6th April, 1977 calling upon him to show-cause why he should not be dismissed from service. Its copy is at Annexure "D" to this petition. It appears that the petitioner challenged the legality and validity of the second show cause notice at Annexure "D" to this petition as also the enquiry proceedings resulting into issuance thereof by means of a suit in the competent Court at Gondal. He also appears to have obtained an interim injunction against proceeding further with the second show-cause notice at Annexure "D" to this petition. It appears that the suit was ultimately not entertained by the competent Court at Gondal. Thereupon the petitioner submitted his reply on 29th January, 1980 to the second show-cause notice at Annexure "D" to this petition. A copy of his reply is at Annexure "E" to this petition. Thereafter the disciplinary authority, by his order passed on 8th April, 1982, ordered the petitioner's dismissal from service. A copy of the order of dismissal from service is at Annexure "A" to this petition. The petitioner has thereupon invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for questioning its correctness.

3. It is difficult to accept the submission urged by Shri Rana for the petitioner to the effect that the departmental proceedings on the same set of circumstances and on the same charge were not competent on account of the acquittal of the petitioner by the Criminal Court in a criminal case instituted on the same facts and on the same charge in view of the ruling of this Court in the case of Abdul Hakim Ahmad Vs. Dist. Supdt. of Police and Others, as relied on by Kum. Doshit for the respondents. It has been held therein:

A departmental proceeding cannot be initiated as a matter of course or without anything more when the Court of law has acquitted the delinquent. It can be undertaken only if special circumstances are shown to exist. It would not be desirable to exhaustively adumbrate these circumstances. But the illustrative or typical situations can be by and large conceived. For instance-(1) The Court might have acquitted the accused on the ground of failure to obtain the requisite sanction or (2) The acquittal may be grounded on the circumstance that there was no sufficient evidence by reason of the fact that the prosecution witnesses had not remained present and the request made for adjournment to enable the prosecution to examine witnesses was not granted. (3) The charge was defective and trial was vitiated on account of prejudice occasioned to the accused. (4) When the case is that of circumstantial evidence and acquittal is rendered by extending benefit of doubt on the ground that the prosecution has failed to establish its case beyond reasonable doubt. (5) When some of the witnesses who

implicate the accused are believed but others are not believed and in view of conflict of evidence acquittal is ordered on the doctrine of benefit of doubt.

In view of the aforesaid ruling of this Court in the case of Abdul Hakim Ahmad (supra), the competence of the departmental proceedings cannot be questioned.

4. Shri Rana for the petitioner has however invited my attention to the Division Bench ruling of this Court in the case of Ramsinhji Viraji Rathod v. State of Gujarat and Anr., reported in 1971 SLR 743 in support of his contention that in the criminal law an acquittal means an acquittal and it does not matter whether it is a clean acquittal or given on the theory of benefit of doubt. In that case the concerned delinquent was placed under suspension in contemplation of a criminal charge. He came to be acquitted though not with a clean chit. It appears that he earned acquittal by claiming the benefit of doubt. The question that arose was how the period of suspension should be treated in the light of Rule 152 of the Bombay Civil Services Rules (the "B.C. Rules" for brief). In that context this Court has held that the delinquent was entitled to full pay for the suspension period as there is no concept like honourable acquittal or full exoneration in a criminal trial. The Division Bench ruling of this Court in the case of Ramsinhji Viraji Rathod (supra) is distinguishable on its own facts. What applies for the purpose of Rule 152 of the B.C. Rules need not necessarily apply for the purpose of initiation of the departmental proceedings after acquittal on a criminal charge.

5. Shri Rana for the petitioner has then submitted that the dismissal order at Annexure "A" would stand vitiated on the ground that the person issuing the second show-cause notice at Annexure "D" to this petition was different from the person passing the dismissal order at Annexure "A" to this petition. In other words, according to Shri Rana for the petitioner, the person issuing the show-cause notice should decide the fate of the delinquent ultimately. If any other officer is required to decide the fate of the delinquent, runs the submission of Shri Rana for the petitioner, a fresh show-cause notice is required to be issued.

6. It is difficult to accept this submission for certain reasons. In the first place, the ultimate order in the disciplinary proceedings is passed by the disciplinary authority on the basis of the material on record. The second show-cause notice is issued to the delinquent calling upon him to show-cause why a particular disciplinary action should not be taken against him in response thereto. He is supposed to show the cause why no disciplinary action should be taken against him or why the contemplated disciplinary action should not be taken against him. The disciplinary authority is bound to consider the delinquent's representation to the second show-cause notice in the light of the material on record. In that view of the matter, it is not necessary that the author of the second show-cause notice should be the same who ultimately passes the order taking any punitive disciplinary action against the delinquent.

7. Again, transfer of officers in Government service is too commonly known to be ignored. It may happen that the disciplinary officer after issuing the show-cause

notice is transferred from that position. His successor is bound to peruse the record before taking any ultimate disciplinary action against the delinquent. He can certainly proceed with a disciplinary case from the stage where it is left or is pending. It would not be necessary for him to issue or cause to issue another show-cause notice. He has before him the entire proceedings and he can act thereon irrespective of the fact whether or not he is the author of the second show-cause notice.

8. Another situation that might be arising in a given case may not also be overlooked. As has happened in the instant case, the delinquent may challenge the second show-cause notice itself in a Court of law. If his proceedings are entertained, as is commonly known, it might take quite some time before they are carried to their logical conclusion. During the intervening period, the disciplinary officer might come to be transferred. The delinquent in such circumstances might withdraw the suit and allow the second show-cause notice to be issued afresh. Again, he might go on challenging the second show-cause notice in a Court of law and might indulge into postponing his ultimate fate. This cannot simply be permitted to be done. It is a sound principle of law that no party can be permitted to take advantage of his own creation of a peculiar situation. It would be too much to presume that the new disciplinary authority would not look into the record after lapse of a long period of time that might have come to be rolled by on account of some Court proceedings challenging the second show-cause notice. It is again too much to presume that the concerned officer would lose the track of the matter after lapse of time requiring any personal hearing from the delinquent. The disciplinary authority is not ordinarily required to afford any personal hearing to the petitioner after service of the second show-cause notice even though some time might have elapsed between the second show-cause notice and the reply thereto given by or on behalf of the delinquent.

9. Shri Rana for the petitioner has then submitted that the punishment meted out to the petitioner is shockingly disproportionate to the charge that has come to be established in the enquiry proceedings. According to Shri Rana, the petitioner was charged with consumption of alcohol. That charge came to be established in the enquiry proceedings. A person should not be deprived of his bread and butter simply on the ground of having consumed alcohol. Such punishment of economic death, runs the submission of Shri Rana for the petitioners, would subject not only the delinquent to starvation but also members of his family. As against this, Kum. Doshit for the respondents submit that no leniency whatsoever can be shown to a police officer found guilty of violation of the law of prohibition while on duty. According to Kum. Doshit for the respondents, the police force is in-charge of maintenance of law and order. It is in a way the custodian of law. The custodian of law, according to Kum. Doshit for the respondents, cannot be permitted to indulge into any kind of dereliction in duty. Any such dereliction has to be dealt with severely, according to Kum. Doshit for the respondents.

10. The facts in the present case as found in the departmental proceedings clearly go to show that the petitioner was found in an unconscious state in some shop in Porbandar after having consumed alcohol while on duty. Kum. Doshit for the respondent is right in her submission that as an Armed Police Constable it was his duty not to allow any breach of any law, much less the law of prohibition. In this case he has himself made a breach of the law of prohibition. No leniency whatsoever can be shown to a person making breach of the law which he is required to enforce. I am therefore unable to persuade myself to come to the conclusion that the punishment meted out to the petitioner for his delinquency is disproportionate, much less shockingly disproportionate, to the charge proved against him.

11. The ruling of the Supreme Court in the case of Ranjit Thakur Vs. Union of India (UOI) and Others, , as relied on by Shri Rana for the petitioner in support of the aforesaid submission, is of no assistance to him in view of my aforesaid discussion. Even at the cost of repetition, I reiterate that the punishment awarded to the petitioner for the guilt established in the departmental proceedings cannot be said to be disproportionate, much less shockingly disproportionate.

12. In this connection a reference deserves to be made to the ruling of the Supreme Court in the case of Dalbir Singh v. Director General, CRPF, New Delhi, reported in Judgment Today 1987 (4) SC 152. In that case a member of the Central Reserve Police Force was found in a state of intoxication while on duty. He was dismissed from service. The punishment in the appellant's case was reduced presumably on account of the fact that the co-delinquents were leniently dealt with. The Supreme Court has however observed in the last para of the judgment:

We wish to "emphasize that the charge of a member of the Central Reserve Police Force being found in a state of intoxication while on duty is serious enough to merit dismissal from service and this order shall not be treated as a precedent.

The aforesaid mandate flowing from the Supreme Court would preclude me from holding that the punishment meted out in this case can be said to be grossly disproportionate to the charge levelled and proved against him. 13. Shri Rana for the petitioner has then submitted that the disciplinary authority has not addressed himself as to the suitable punishment that could be awarded to the delinquent after carefully considering the material on record. Non-application of mind on the part of the disciplinary authority in that regard, according to Shri Rana for the petitioner, would vitiate the ultimate order of punishment at Annexure "A" to this petition. As against this, according to Kum. Doshit for the respondents, no such requirement on the part of the disciplinary authority to show on record that he applied his mind to the choice of punishment can be pesit out in view of the ruling of the Supreme Court in the case of Union of India (UOI) Vs. Parma Nanda, .

14. In the ruling of the Supreme Court in the case of *Parma Nanda* (supra) the Central Administrative Tribunal exercising its jurisdiction under the Administrative Tribunals Act, 1985 interfered with the quantum of punishment awarded to the delinquent by the disciplinary authority. It may be mentioned at this stage that the proceedings before the Central Administrative Tribunal stood transferred by the High Court of Himachal Pradesh in which the petition under Article 226 was filed by the delinquent challenging the legality and validity of the order of punishment. In that context, on interpretation of the relevant provisions contained in the Administrative Tribunals Act, 1985, the Supreme Court observed that the powers exercised by the Tribunal in that case were those exercisable by the High Courts under Article 226 of the Constitution of India. In that context the Supreme Court has held:

We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter.

It is thus clear that the Tribunal cannot interfere with the quantum of punishment on the ground of its adequacy or otherwise except to the extent indicated by the Supreme Court in its ruling in the case of *Parma Nanda* (supra). As pointed out hereinabove, the Tribunal in that case was found to be exercising the powers exercisable by the High Court under Article 226 of the Constitution of India. On this consideration, it would not be open to this Court to interfere with the quantum of punishment on the ground of its adequacy or otherwise in exercise of its writ jurisdiction under Article 226 of the Constitution of India.

15. Suppose the disciplinary authority had addressed itself to the choice of punishment to be awarded to the delinquent after considering the material on record and awarded a particular punishment, the question that might arise would be whether or not this Court could have interfered with the order of punishment on the ground of its adequacy or otherwise in exercise of its writ jurisdiction under Article 226 of the Constitution of India. The wrong choice of punishment by the disciplinary authority could not have given the jurisdiction to this Court to

interfere with the order of punishment in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India in view of the aforesaid ruling of the Supreme Court in the case of Parma Nanda (supra). If that be so, the process of choosing an appropriate punishment to be awarded to the delinquent need not be reflected in the second show-cause notice or in the ultimate order of punishment. This position of law would emerge from the ruling of the Supreme Court in the case of Parma Nanda (supra).

16. It may also be noted that nowhere in his reply at Annexure "E" to the second show-cause notice the petitioner has shown cause why the particular punishment named in the second show-cause notice should not be awarded to him. His reply at Annexure "E" to the second show-cause notice was confined to the legality and validity of the enquiry proceedings against him in view of his being acquitted by the Criminal Court of the same charge. If he wanted the disciplinary authority to examine the case for the purpose of imposition of a suitable punishment, he ought to have pointed out to the disciplinary authority why the punishment of dismissal proposed in the second show-cause notice should not be awarded to him. It can safely be presumed that, when the disciplinary authority issues the second show-cause notice specifying the particular punishment he proposes to award to the delinquent, he can be said to have applied his mind, even if tentatively, as to the choice of suitable punishment to be imposed on the delinquent. In that case it becomes the duty of the delinquent to point out that the punishment proposed in the second show-cause notice was not the proper punishment on the facts and in the circumstances of the case. Nothing of the sort is done by the petitioner in his reply at Annexure "E" to the second show-cause notice. It is too late in the day for the petitioner to make grievance to the effect that the disciplinary authority did not apply his mind with respect to the choice of proper punishment to be imposed on the petitioner.

17. These were the only contentions urged before me by Shri Rana for the petitioner in support of this petition. I have found no merit in any of them. No case is made out for interfering with the order of punishment at Annexure "A" passed by the disciplinary authority against the petitioner.

In the result, the petitioner fails. This petition of his is rejected. Rule is accordingly discharged however with no order as to costs on the facts and in the circumstances of the case. At the oral request of Shri Rana for the petitioner the interim relief granted in this petition is ordered to be continued for a period of six weeks from today to enable the aggrieved petitioner to challenge this judgment of mine before the appellate forum by means of an appropriate appeal.