
(2003) 05 PAT CK 0040
In the Patna High Court
Case No : C.W.J.C. No. 2454 of 2003

Arun Kumar Singh

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-05-2003

Acts Referred:

Citation : (2003) 05 PAT CK 0040

Final Decision : Dismissed

Judgement

Chandramauli Kr. Prasad, J.—Prayer of the petitioner in this application filed under Article 226 of the Constitution of India is to quash the order dated 3-4-2002 whereby the petitioner has been visited with the penalty of compulsory retirement. Further prayer made by him is to quash the order dated 27-8-2002 and order dated 31-10-2002 whereby the appeal and the memorial preferred against the order of the disciplinary authority has been rejected.

2. Short facts giving rise to the present application are that at the relevant time petitioner was a Constable in the Central Reserve Police Force (for short the Force). A departmental proceeding was initiated and by memo dated 8-10-2001 (Annexure-1) memo of charges served which contained three charges. First charge pertained to petitioner's absence from duty on different shifts for 118 days and deserting the force for the same number of days Punishment of withholding of salary on three occasions earlier was also the subject matter of charge. Defence of the petitioner was that on account of sickness he absented from the duty and deserted the force. The enquiry officer after holding the enquiry held the petitioner guilty of all the charges. The disciplinary authority made available to the petitioner copy of the enquiry report and asked him to submit his show cause. Petitioner did not file his show cause. The disciplinary authority on consideration of the report of the enquiry officer and taking into consideration the relevant records by order dated 3rd April, 2002 inflicted penalty of compulsory retirement. Petitioner aggrieved by the same preferred appeal dated 3-5-2002 but the same was sent by speed post on 10-8-2002.

Petitioner did not assign reason for delay in filing the appeal and the appellate authority by order dated 27-8-2002 (Annexure-4) dismissed the appeal. Petitioner aggrieved by the same preferred Revision and the Inspector General of Force by order dated 31-10-2002 which was communicated to the petitioner by letter dated 5-11-2002 (Annexure-6) dismissed the same.

3. In this writ application prayer of the petitioner is to quash the aforesaid orders of the disciplinary authority, appellate authority and the revisional authority.

4. Mr. Teg Bahadur Singh appearing on behalf of the petitioner submits that the petitioner had filed the medical certificate of sickness and same ought to have been relied and the petitioner exonerated from all the charges. It is well settled that this Court does not act as a Court of appeal against the orders of the authorities and interferes with the same only when the finding recorded is perverse which means that the finding has been rendered, without consideration of the relevant material or considering the irrelevant material or no reasonable person duly instructed in law shall come to the said finding. Here in the present case medical certificate given by the petitioner was considered by the enquiry officer and on appreciation of the same no reliance was placed on that. As such finding cannot be said to be perverse calling for interference by this Court in exercise of the writ jurisdiction.

5. Mr. Singh then contends that the petitioner has not been given opportunity to examine the defence witnesses and this itself vitiates, the report. In support of his submission, he has placed reliance on a judgment of the Supreme Court in the case of Phulbari Tea Estate v. Its Workmen reported in AIR 1959 SC 1111 and my attention has been drawn to para-5 of the said judgment:

"(5) We may in this connection refer to Union of India (UOI) Vs. T.R. Varma, . That was a case relating to the dismissal of a public servant and the question was whether the enquiry held under Article 311 of the Constitution of India was in accordance with the principles of natural justice. This Court, speaking through Venkatarama Ayyar J, observed as follows in that connection at p. 507 (of SCR): at P. 885 of AIR:

"Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them."

6. I do not find any substance in this submission and the authority relied on by Mr. Singh referred to above, is clearly distinguishable. It may be mentioned that during the course of departmental enquiry petitioner has not made any such grievance. In fact before the enquiry officer he has stated that he has nothing to represent or to obtain anything in connection with the departmental enquiry,

Thus he has himself not examined the defence witness, for which he has to blame himself.

7. Further submission of the learned Counsel is that documents in relation to 3rd charge which pertains to punishments awarded to him earlier were not supplied to him and this vitiates the enquiry report. I do not find any force in this submission of the learned Counsel also. The document in relation to previous absence leading to award of punishment were given to the petitioner at the time of initiation of the departmental proceeding and the petitioner at no point of time made any grievance about the same during the course of the departmental enquiry. Hence the enquiry report cannot be said to be vitiated on that account.

8. Mr. Singh then contends that the appellate authority had not adjudicated the pleas raised by the petitioner in the memo of appeal. As stated earlier, in the memo of appeal petitioner has mentioned the date as 3-5-2002 but the same was sent by speed post on 10-8-2002. Petitioner has not explained the delay in filing the appeal and accordingly the appellate authority found the appeal to be time barred and consequently rejected the same. It is relevant here to state that the revision application filed by the petitioner has not been dismissed on merit. In such a situation the order of the appellate authority cannot be said to have been vitiated on account of non-mentioning of the reason. In that view of the matter, the order of the appellate authority dismissing the appeal as time barred cannot be said to be illegal.

9. Mr. Singh lastly contends that the punishment of compulsory retirement is disproportionate to the gravity of allegation. He points out that for the absence of 118 days the penalty of compulsory retirement is not called for. Reliance has been placed on a decision of this Court 17-10-1995 passed in C.W.J.C. No. 3154 of 1995 *Ramdeo Singh v. State of Bihar and Ors.* and my attention has been drawn to the following passage of the said judgment:--

"Apart from the same the period of absence from duty from 14-10-1991 onwards is only for a period of 105 days. In the case of *Bishwanath Ram* (supra) this Court held that the punishment for dismissal for service is not only disproportionate to both gravity of the charges but the same was discriminatory in the other case of *Bishwanath Singh* the punishment of black mark having been inflicted for unauthorised absence for a period of 195 days".

10. Mr. P.K. Shahi however appearing on behalf of the respondents submits that the petitioner is a member of Force who absented from duty for 118 days and also deserted the force. For such misconduct he was awarded punishment thrice earlier and as such the punishment awarded to him is just and proper.

11. Having appreciated the rival contention, I do not find any force in the submission of Sri Singh. It is well settled that what punishment a particular misconduct deserves is primarily a function of the authority and this Court interferes with the quantum of punishment only when it is shown that the same is disproportionate to the gravity of allegation or in other words shocking to the

conscience of the Court. Reference in this connection can be made to a decision of the Supreme Court in the case of P.C. Kakkar v. Chairman and Managing Director, United Commercial Bank and Ors., JT 2002 (2) SC 78 in which it has been held as follows:--

"(12) To put differently unless the punishment imposed by the disciplinary authority or the appellate authority shocks to the conscience of the Court/tribunal, there is no scope for interference. Further to certain litigants it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the appellate authority to reconsider the penalty imposed."

12. Here in the present case, as stated earlier, petitioner is a member of Force. He deserted the force for 118 days and did not attend to his duty on those days. He was punished thrice for the same kind of misconduct earlier. In that view of the matter, I am of the opinion that the punishment is not disproportionate to the gravity of allegation. As regards the decision of this Court in the case of Ramdeo Singh (*supra*), the same is clearly distinguishable. In the said case to another Constable who was unauthorisedly absent for 195 days, punishment of black mark was given whereas the petitioner of the said case was dismissed from service and in the background of the said fact this Court held the punishment of dismissal disproportionate to the gravity of the allegation. To put the record straight, petitioner has not been visited with the penalty of dismissal but compulsory retirement.

13. In the result, I do not find any merit in this application and it is dismissed accordingly.