

(2002) 01 MP CK 0073
In the Madhya Pradesh High Court
Case No : Writ Petition No. 804 of 2000

Arvind Dixit

APPELLANT

Vs

Director General of Police and Others

RESPONDENT

Date of Decision : 04-01-2002

Acts Referred:

Constitution of India, 1950 — Article 136, 137, 14, 142, 226
Industrial Disputes Act, 1947 — Section 11A

Citation : (2002) ILR (MP) 244 : (2002) 2 JLJ 33 : (2002) 2 MPJR 244 : (2002) 3 MPLJ 258

Hon'ble Judges : Bhawani Singh, C.J.; K.K. Lahoti, J

Bench : Division Bench

Advocate : P.R. Bhave, for the Appellant; Vivek Awasthy, Government Advocate, for the Respondent

Judgement

Bhawani Singh, C.J.

This petition under Articles 226/227 of the Constitution of India challenges the order of State Administrative Tribunal, Bhopal Bench, dated November 16, 1999 in O.A. No. 421 of 1992.

Briefly, it may be mentioned that Petitioner was constable in the Police Department, Government of Madhya Pradesh. He was on leave from 5.2.1990 to 21.9.1990 as his younger brother had fallen from roof and had sustained severe injuries. Therefore, leave had been taken for his treatment. On 16.1.1991, he was sitting outside the office of Deputy Superintendent of Police, suffering stomach pain; Shri Girdhari Lal Naik, Superintendent of Police, Raisen got annoyed and suspended him on 18.1.1991. This suspension was revoked on 6.2.1991 (Annexure A-2). Show cause notice (Annexure A-3) was issued and punishment of withholding one increment without cumulative effect was passed. Appeal against this punishment was rejected on 23.5.1991 (Annexure A-6). Representation to Director General of Police met the same fate on 30.4.1992 (Annexure A-7). Earlier, Petitioner was also awarded punishment of drill for the

incident of 16.1.1991. However, he did not suffer it being under suspension. Girdhari Lal Naik, Superintendent of Police called him to his office through Reserve Inspector and compelled him to change his explanation (Annexure A-4). On failure to do so, he was suspended by order dated 12.3.1991 (Annexure A-8). This suspension was revoked on 19.3.1991. However, without seeking explanation, he was censured by order dated 9.4.1991 against which he filed appeal to the Deputy Inspector General of Police, Hoshangabad Range, which has not been decided till the date.

The Petitioner further alleges that with a view to harass him, leave was not granted to him. He was deployed for Guard Duty for twenty days. Shri D.S. Mathur, Inspector General of Police, Bhopal Zone inspected Raisen District on 23.3.1991. After the parade, he heard the grievances of subordinate employees in the Police Line. Petitioner also appeared before him and stated that he was not granted leave to look after his brother. He had also brought his brother to the Police Line to demonstrate the genuineness of his request for leave. Initially, the Inspector General of Police did not listen to him and called him to his office. After hearing him, the Inspector General of Police asked the Superintendent of Police to grant leave to the Petitioner. At that time, no explanation was taken from the Petitioner for his misbehaviour, but by letter dated 1.4.1991 (Annexure A-12); explanation was called from Petitioner to which he replied on 8.4.1991. A preliminary enquiry was ordered and charge-sheet issued (Annexure A-14). Against the same, Petitioner preferred an appeal. However, Deputy Inspector General of Police by order dated 2.8.1991 dropped the enquiry and ordered grant of leave for the period the Petitioner remained absent.

The Reserve Inspector made complaint against Petitioner on 29.3.1991 (Annexure A-16) in which he alleged that the Petitioner committed act of indiscipline by removing his belt and cap and threw them at the time of inspection by Inspector General of Police. A preliminary enquiry was held and report submitted to the Superintendent of Police on 18.4.1991 (Annexure A-17). Respondent No. 3 ordered issuance of charge-sheet against the Petitioner. Departmental enquiry was initiated to which reply was submitted by Petitioner. Enquiry was conducted by Shri H.N. Guru, Town Inspector, Mandideep. The Petitioner also examined three witnesses in defence. Ultimately, punishment of removal from service was passed. Petitioner challenged the decision before the State Administrative Tribunal on grounds inter alia that he was not allowed to examine Stenographer who had prepared the charge-sheet; copies of documents supplied to him were defective; charge-sheet was issued after five and half months without explaining the delay; statement of Inspector General of Police, though necessary, was not recorded; his request for change of Enquiry Officer was turned down; and he was punished out of prejudice.

Respondents submitted that Petitioner was punished for committing serious act of indiscipline. The departmental enquiry was conducted strictly according to the rules. The appeal against punishment of censure was rejected on 4.1.1993. The

Petitioner had thrown his belt and cap before the Inspector General of Police which amounted to serious indiscipline. He did not mention any reason for examining the Stenographer nor he requested for change of Enquiry Officer. Evidence of Inspector General of Police was not necessary, therefore, the petition was liable to be dismissed. The Petitioner also submitted before the Tribunal that punishment of removal from service was disproportionate to the alleged misconduct, hence interference by Tribunal was called for and that non-examination of Shri D.S. Mathur, Inspector General of Police was fatal to the enquiry.

The Tribunal held that there was no need of examining the Inspector General of Police in whose presence the alleged misconduct was committed since eye-witnesses Ramawad Singh, Assistant Sub-Inspector (Reserve Line) and Manhar, SDO (P), a Gazetted Officer of Police Department had specifically stated that at the time of inspection of Inspector General of Police, Petitioner lost his temper, removed his belt and cap and put it on the ground. Therefore, in view of this evidence establishing the charge against the Petitioner, interference was not called for by the Tribunal regarding the adequacy of evidence. It rested the conclusion on observations of Apex Court in paragraph 12 of judgment in *B.C. Chaturvedi v. Union of India and Ors.* [1996 SCC (L&S) 80]. With regard to quantum of punishment, the view taken by Tribunal is that the Petitioner belongs to a disciplinary Police Force where great value is attached to uniform, belt and cap. Removing the belt and cap and throwing them in front of Inspector General of Police, a senior officer of the Department, is clearly a serious act of indiscipline, which could not be tolerated in the Police Department. Therefore, it cannot be said that the punishment awarded to the Petitioner was disproportionate to the misconduct committed by him. Other pleas taken by the Petitioner have also been rejected on the ground that it had not been demonstrated how the examination of Stenographer was essential and nothing was brought on record to show prejudice of the Enquiry Officer against the Petitioner.

Shri P.R. Bhawe, learned Counsel for Petitioner contended that Petitioner served the Police Department for six years. During this period, he had been posted in dacoity infested area of the State. He performed duties with distinction and was awarded 53 awards. He had been put to serious harassment by his superiors from time to time and was not granted leave urgently required by him for attending his ailing brother who had fallen from roof. He had brought his brother to the place of duty so that his superiors could realise the genuineness of his claim for leave. The allegation against the Petitioner that he threw belt and cap before the Inspector General of Police is incorrect, which is clear from the statement of Ramawad Singh, Assistant Sub-Inspector (Reserve Line) and Manhar, SDO (P) who have contradicted it stating that the Petitioner put the same on the ground. This allegation has been prejudicially framed against him. Learned counsel for Petitioner submits that in the totality of circumstances, punishment of removal from service is clearly arbitrary, shocking and

disproportionate to the gravity of charge, therefore, liable to be set aside by this Court. In support of his submission, learned Counsel placed reliance on decisions of Apex Court in *Ex-Naik Sardar Singh v. Union of India and Ors.* (AIR 1992 SC 417) and *B.C. Chaturvedi Vs. Union of India and others*, Shri Vivek Awasthy, learned Government Advocate submits that the charge against the Petitioner has been established and findings cannot be interfered with by this Court, so also the punishment, being within the domain of disciplinary authority.

We have not been called upon to decide the merits of departmental enquiry. Therefore, we turn to the question whether this Court can interfere with the award of punishment imposed by the Disciplinary authority where it is alleged that it is arbitrary and disproportionate to the gravity of the misconduct. Apex Court considered this question in *Bhagat Ram Vs. State of Himachal Pradesh and Others*, and held:

It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution.

This view has been approved in *Ex-Naik Sardar Singh v. Union of India and Ors.* (AIR 1992 SC 417). K. Jayachandra Reddy, J. speaking for the Court said in paragraph 5 that :

5. In *Council of Civil Service Unions v. Minister for the Civil Service* (1984) 3 All ER 935, 950, Lord Diplock said :

Judicial review has, I think, developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. This first ground I would call ? illegality?, the second ?irrationality? and the third ?procedural impropriety?. This is not to say that further development on a case-by-case basis may not in course of time add other grounds. I have in mind particularly the possible adoption in the future of the principle of ?proportionality? which is recognised in the administrative law of several of our fellow members of the European Economic Community.

This principle was followed in *Ranjit Thakur Vs. Union of India (UOI) and Others*, , where this Court considered the question of doctrine of proportionality in the matter of awarding punishment under the Army Act and ?it was observed thus (at page 2392 of AIR) :

The question of the choice and quantum of punishment is within the jurisdiction and discretion? of the Court Martial. But the sentence has to suit the offence and the offender. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is otherwise within the exclusive province of the Court-

Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review.? In Bhagat Ram Vs. State of Himachal Pradesh and Others, : Bhagat Ram Vs. State of Himachal Pradesh and Others, , this Court held as under (at p. 460 of AIR) :

it is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution.

Applying these principles to the instant case, we are also constrained to say that there is an element of arbitrariness in awarding these severe punishments to the Appellant.

Then in paragraph 6, the Court said that :

6. We have heard both the learned Counsel on this aspect elaborately and we are satisfied that an interference is called for and the matter has to be remanded on the question of awarding any of the lesser punishments. Having given our earnest consideration to the facts and circumstances of this case and in view of the submissions made by both the counsel, we feel that ends of justice will sufficiently be met if a lesser punishment as provided u/s 71(f) is awarded to the Appellant. Accordingly, we set aside the punishments of three months? RI and dismissal from service and remand the matter to the Court-Martial which shall award any of lesser punishments having due regard to the nature and circumstances of the case and in the light of above observations made by us

The above decisions were considered by Apex Court in B.C. Chaturvedi (supra), K. Ramaswamy, J. for himself and B.P. Jeevan Reddy, said in paragraph 18 that :

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.

Hansaria, J. concurred with the conclusions reached by Ramaswamy, J. learned Judge held that High Court can, under Article 226, like Apex Court under Article 136 of the Constitution, do complete justice in the case and for this purpose, it would be within its jurisdiction to modify the punishment/penalty by moulding the relief when the same shocks the judicial conscience in a case involving

acquisition of assets by employee beyond known sources of income. It would be profitable to record what has been said in paragraphs 22 and 23 as under :

22. The aforesaid has, therefore, to be avoided and I have no doubt that a High Court would be within its jurisdiction to modify the punishment/penalty by moulding the relief, which power it undoubtedly has in view of long lines of decisions of this Court to which reference is not deemed necessary as the position is well settled in law. It may, however, be stated that this power of moulding relief in cases of the present nature can be invoked by a High Court only when the punishment/penalty awarded shocks the judicial conscience.

23. It deserves to be pointed out that the mere fact that there is no provision parallel to Article 142 relating to the High Courts, can be no ground to think that they have not to do complete justice, and if moulding of relief would do complete justice between the parties, the same cannot be ordered. Absence of provisions like Article 142 is not material according to me. This may be illustrated by pointing out that despite there being no provision in the Constitution parallel to Article 137 conferring power of review on the High Court, this Court held as early as 1961 in *Shivdeo Singh and Others Vs. State of Punjab and Others*, , that the High Courts too can exercise power of review which inheres in every Court of plenary jurisdiction. I would say that power to do complete justice also inheres in every Court, not to speak of a Court of plenary jurisdiction like of High Court. Of course, this power is not as wide which this Court has under Article 142. That, however, is a different matter. Then in paragraph 25, it is said that:

25. No doubt, while exercising power under Article 226 of the Constitution, the High Courts have to bear in mind the restraints inherent in exercising power of judicial review. It is because of this that substitution of High Courts? view regarding appropriate punishment is not permissible. But for this constraint, I would have thought that the law makers do desire application of judicial mind to the question of even proportionality of punishment/penalty. I have said so because the Industrial Disputes Act, 1947 was amended to insert Section 11A in it to confer this power even on a Labour Court/Industrial Tribunal. It may be that this power was conferred on these adjudicating authorities because of the prevalence of unfair labour practice or victimisation by the management. Even so, the power u/s 11A is available to be exercised even if there be no victimisation or taking recourse to unfair labour practices. In this background, I do not think if we would be justified in giving much weight to the decision of the employer on the question of appropriate punishment in service matters relating to Government employees or employees of the public corporations. I have said so because if need for maintenance of office discipline be the reason of our adopting a strict attitude qua the public servants, discipline has to be maintained in the industrial sector also. The availability of appeal etc. to public servants does not make a real difference, as the appellate/revisional authority is known to have taken a different view on the question of sentence only rarely. I would, therefore, think that but for the self-imposed limitation while exercising power under Article

226 of the Constitution, there is no inherent reason to disallow application of judicial mind to the question of proportionately of punishment/ penalty. But then, while seized with this question as a writ Court, interference is permissible only when the punishment/penalty is shockingly disproportionate.

Giving our serious consideration to the facts of this case, we find) justification to interfere with the penalty awarded in this case, being grossly severe and disproportionate to the gravity of misconduct committed by the Petitioner. The Petitioner had been in Police Department for six years. He served in dacoity infested area of the State. He performed well, that is why he earned 53 awards in six years of service. He was subjected to suspensions, explanations, censures and drill parades on trifles. He was refused leave, though genuinely required for attending his ailing brother. Obviously, he must be passing through great mental strain. With this background, assuming that the lapse for which he has been removed from service, was committed, though the witnesses have not said that he threw the cap and belt before the Inspector General of Police, the punishment of removal from service is clearly disproportionate to the gravity of misconduct committed by the Petitioner which is, therefore, set aside.

Shri Bhawe, learned Counsel for Petitioner, contends that this Court may award some minor punishment to the Petitioner who is out of service for the past many years. We do not propose to do so. Therefore, the Superintendent of Police, Raisen will consider the case and award some minor punishment to the Petitioner. The matter being old, the decision be taken within two months and while doing so, he shall also decide whether the Petitioner would be entitled to salary for the periods he remained out of service.

Costs on parties.