
(2013) 03 CAL CK 0073
In the Calcutta High Court
Case No : W.P.S.T. No. 638 of 2009

Ashis Pakhira

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 01-03-2013

Acts Referred:

Citation : (2014) LabIC 799

Hon'ble Judges : Tarun Kumar Gupta, J; Jayanta Kumar Biswas, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Jayanta Kumar Biswas, J.—The petitioner in this WPST under Art. 226 of the Constitution of India dated September 23, 2009 is questioning an order of the West Bengal Administrative Tribunal dated May 18, 2009 dismissing his O.A. No. 1849 of 2004. The petitioner was working in the Kolkata Armed Police Force as a Sepoy. Disciplinary proceedings were initiated against him by issuing a charge-sheet dated October 17, 2003 (WPST p. 88).

2. The allegations made in the charge-sheet dated October 17, 2003 are quoted below:--

"1. You were found unauthorisedly absent from govt. duties & from Company lines on the following dates:

a) On 5.8.2003, b) from 6.8.03 to 1.9.03, c) from 5.9.2003 to 7.9.2003, d) on 10.9.2003 e) 11.9.2003, f) from 16.9.2003 to 26.9.2003, g) from 29.9.2003 to till date.

2. You were directed to be put up before D.C. Hqrs. in his O.R. on 16-9-03 vide CRM No. 1775 D/- 15-9-2003, on 19-9-2003 vide C.R.M. No. 1920 DA 16-9-2003 and on 13-10-2003 vide CRM No. 820 D/-10-10-2003, but you failed to attend the same and thereby violated the Orders and discipline.

3. You are in the habit of absenting yourself without any intimation or permission

frequently. Due to this, you had already been awarded 19 punishments including one Major punishment, but you failed to rectify yourself.

4. Five (5) Warning notices were sent to you through your local P.S. so far directing you to return & resume your duties but you disobeyed them."

3. On November 3, 2003 the petitioner reported for duty. He submitted his reply to the charges. A copy of the reply has not been produced with the WPST. But in his findings the officer conducting the inquiry recorded that he "categorically accepted and agreed to all the charges and the allegations levelled against him with a prayer for consideration due to certain family problems arising out of his father's illness."

4. The petitioner again started unauthorisedly absenting himself from office from November 5, 2003. Certain complaints were also received. Hence an additional charge-sheet dated November 19, 2003(WPST p. 90) was issued alleging as follows:--

1. You have been absenting yourself unauthorisedly from Government duties from Company lines with effect from 5.12.2003 till date.

2. Two warning notices D/- 7.11.2003 and 14.11.2003 were already sent to your recorded address but you violated the orders as contained therein.

3. The complaint was received against you that you married one Sima Show daughter of Jamuna Prasad Show of Vill. & P.O.: Bargachia. P.S. Jagatballavpur. District: Howrah and subsequently you married another woman Krishna Santi daughter of one Raman Santi of Vill. + P.O.: Naskarpur, P.S. Jagatballavpur, District: Howrah and thereby violated R. 30 of West Bengal Government Servants Conduct Rules, 1959."

5. On December 3, 2003 the petitioner again reported for duty and submitted his reply to the additional charges. A copy of the reply has not been produced with the WPST. But in his report the officer conducting the inquiry recorded that the petitioner "did not plead guilty or otherwise and dwelled tediously on certain family issues which allegedly made him a victim of the circumstances."

6. In proof of the charges nine witnesses were examined. A substantial number of documents were exhibited. The petitioner did not examine any defence witness. He submitted his defence statement. A copy thereof has not been produced with the WPST. But the officer conducting the inquiry recorded in his report that the petitioner again "avoided to clearly say if he at all pleaded guilty or otherwise."

7. The officer conducting the inquiry submitted his report dated January 2, 2004 (WPST p. 92) that except the third additional charge that was partially proved all the other charges were duly proved. After giving opportunity to make representation and issuing second show-cause, the disciplinary authority passed the final order dated February 26, 2004 inflicting the penalty of dismissal.

8. To justify the penalty of dismissal the disciplinary authority said as follows:--

"The CO. has been awarded 20 punishments including one major during this 37 years service. Most of the punishments were for his unauthorised absence. Accordingly his probationary period had been extended for period for six (6) months w.e.f. 1.8.2003 vide D.C.H.Q.'s Order No. 1043 dated 26.9.2003. It appears that even after so many punishments for unauthorised absence the CO. did not rectify himself and again became absent unauthorisedly without any leave or permission or intimation for 108 days on eight occasions."

9. The disciplinary authority then said as follows:--

"After applying my judicious mind that the charged sepoy's continuance in service will simply encourage misconduct and indiscipline in the police force and it will also be detrimental to the interest of the Kolkata Police, therefore hereby order that Sepoy/AF 6647, Ashish Pakhira of "E" Coy, 2nd Bn., Kolkata Armed Police is dismissed from Kolkata Police Force with immediate effect as his continuance in service is prejudicial to public interest."

10. Feeling aggrieved by the order of the disciplinary authority, the petitioner filed a statutory appeal dated March 11, 2004 (WPST p. 107). The order of the appellate authority dismissing the appeal has not been produced with the WPST.

11. Questioning the order of the disciplinary authority, the petitioner filed the OA; and he produced the order of the appellate authority, not questioned in the OA, before the Tribunal with a supplementary application. The Tribunal did not find any merit in the contentions raising which the penalty of dismissal from service was questioned.

12. Mr. Gupta appearing for the petitioner has submitted as follows. The officer conducting the inquiry and the disciplinary authority did not record any specific finding that the petitioner's absence from office was wilful and deliberate. Hence the mere absence from office that occasioned because of the serious illness of the petitioner's father who ultimately died could not constitute any misconduct.

13. His further submissions are these. In any case, for unauthorised absence the penalty of dismissal ought not to have been inflicted. The penalty was grossly disproportionate to the gravity of the proven misconduct. The explanations given by the petitioner justifying his absence were not considered by the officer conducting the inquiry, the disciplinary authority, the appellate authority and the Tribunal.

14. He has relied on State of Tripura & Ors. v. Naresh Chandra Das (2007) 15 SCC 759; State of Punjab Vs. Dr. P.L. Singla, Satyanarayan Pandey Vs. The State of West Bengal and Others, ; Inderjit v. Punjab and Haryana High Court & Anr. (2010) 12 SCC 530; Krushnakant B. Parmar Vs. Union of India (UOI) and Another, and Dilip Mukherjee Vs. State of West Bengal,

15. The decision in Krushnakant B. Parmar Vs. Union of India (UOI) and Another,

has been cited in support of the proposition that unless the disciplinary authority proved that the petitioner's unauthorised absence from office was wilful and deliberate, the absence could not constitute a misconduct.

16. Only a wilful or deliberate unauthorised absence of a Government servant from office constitutes a misconduct. But we do not think we have to test the proposition in this case entertaining technical contentions. It has been argued that since the officer conducting the inquiry and the disciplinary authority did not record any finding that the petitioner's unauthorised absence from office was wilful and deliberate, it cannot be said that the absence was wilful and deliberate.

17. The disciplinary authority making the allegation that by remaining unauthorisedly absent from office the petitioner committed a misconduct, was under the obligation to prove that the petitioner actually remained unauthorisedly absent from office on the dates and during the periods mentioned in the charge-sheets; and that under the rules applicable to the petitioner such absence was a misconduct.

18. The petitioner did not dispute that he remained absent from office on all the dates and during all the periods mentioned in the charge-sheets. He was not granted leave for those dates and periods, nor did he apply for leave. These facts were also proved by the witnesses examined in proof of the charges. Hence it was for the petitioner to give evidence to prove that his absence was not wilful or deliberate.

19. The petitioner stated that he remained absent from office on all the dates and during all the periods mentioned in the charge-sheets due to illness of his father who had none else to look after and who ultimately died. This was considered by the officer conducting the inquiry and the disciplinary authority, who, on the facts of the case, found the plea unacceptable.

20. Although the officer conducting the inquiry and the disciplinary authority did not specifically record that the petitioner had absented himself from the office on the dates and during the periods wilfully or deliberately, in our opinion, their findings that the explanation was not acceptable lead to the conclusion that his unauthorised absence was wilful and deliberate. The petitioner never explained why he did not apply for leave.

21. In *Krushnakant B. Parmar Vs. Union of India (UOI) and Another*, the employee concerned took the plea that he had been prevented from signing the attendance register. In our opinion, in this case it cannot be said that the petitioner was prevented by any sufficient cause from attending office on the dates and during the periods mentioned in the charge-sheets, or from responding to the orders of his superiors and notices to him, or from sending leave applications.

22. Whether the penalty is shockingly disproportionate to the gravity of the misconduct cannot be decided on the basis of any of the cited case. We only

accept the proposition that if the penalty is shockingly disproportionate, then this Court is competent to interfere with it not for substituting a penalty for that of the one inflicted by the disciplinary authority, but for remitting the matter to the disciplinary authority for inflicting an appropriate penalty.

23. On the facts of this case, we are unable to hold that the penalty of dismissal from service is shockingly disproportionate to the gravity of the misconduct.

24. In the charge-sheets initiating the proceedings it was mentioned that the petitioner still in probation was in the habit of absenting himself. Nineteen penalties including a major penalty were inflicted during his three and a half years service and most of them for unauthorised absence from office. Five warning notices had been sent asking the petitioner to report for duty. He disobeyed all of them. The principle stated in *State of U.P. and others Vs. Ashok Kumar Singh and others*, apply to the case. For these reasons, we dismiss the WPST. No costs. Certified xerox.