
(2005) 09 MP CK 0003

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4058 of 2003

Ashok Kumar Mishra

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 09-09-2005

Acts Referred:

Citation : (2005) 4 MPLJ 589

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Advocate : Anil Trivedi, for the Appellant; Anand Pathak, Dy. Government Advocate, for the Respondent

Judgement

A.K. Shrivastava, J.

This petition was originally filed before the M. P. Administrative Tribunal, Bench at Indore on 22-1-1994. However, on account of abolition of the Tribunal, this petition has been received by this Court for its adjudication.

By this petition, petitioner is seeking quashment of enquiry report dated 17-10-1991 (Annexure P/2), show-cause notice dated 30-10-1991 issued by respondent No. 4 (Annexure P/3), final order dated 18-1-1992 issued by respondent No. 4 (Annexure P/7), appellate order dated 17-7-1992 issued by respondent No. 3 (Annexure P/9) and second appellate order dated 3-2-1993 issued by respondent No. 2 (Annexure P/II).

The petitioner at the relevant point of time was serving on the post of Constable. On 12-6-1991, petitioner was directed to go to Bhopal to deliver some Dak. As a result of which, he proceeded from Khargone to Bhopal on 12-6-1991, but after delivering the Dak, he did not come back voluntarily, and submitted his joining only on 29-6-1991 at 12.00 hours.

On the basis of above misconduct committed by the petitioner, he was subjected to departmental enquiry and a charge was framed against him which reads

thus :-

Needless to emphasis, the petitioner refuted the charge levelled against him. The enquiry officer thereafter proceeded with the enquiry and after completing the departmental enquiry, he came to hold that the charge is proved. Thereafter, a show-cause notice was issued to the petitioner about the proposed punishment. The petitioner submitted his reply and after considering his reply, the disciplinary authority i.e. Superintendent of Police passed the impugned order (Annexure P/7) dated 18-1-1992 punishing the petitioner by dismissing him from services.

The petitioner thereafter filed a departmental appeal to the Dy. Inspector General of Police. The Dy. Inspector General of Police, Indore Range, concurred the view of the disciplinary authority and dismissed the appeal by maintaining the punishment of dismissal from services awarded to the petitioner. In second appeal, the Inspector General of Police vide its order dated 3-2-1993 (Annexure P/II) dismissed the appeal and the mercy petition which was filed by the petitioner before the Director General of Police was also dismissed vide order dated 12-2-1993 (Annexure P/12). The net result is that, on account of the charge which was found to be proved in the departmental enquiry against the petitioner, he was dismissed from his services. Hence, this petition.

The only submission which has been put forth by Shri Trivedi, learned counsel for petitioner is that the petitioner was sent to deliver the Dak to Bhopal and as a result of which, on 12-6-1991, he left Khargone. Thereafter, he did not turn up immediately, but overstayed and gave his joining on 29-6-1992 at 12.00 hours. In these circumstances, according to learned counsel for petitioner, the punishment of dismissal from services is shockingly disproportionate. In support of his contention, learned counsel for petitioner placed his reliance on decision of Supreme Court in Union of India and others Vs. Giriraj Sharma, .

Per contra, Shri Anand Pathak, learned Dy. Government Advocate appearing for respondents, submitted that looking to the entire facts, circumstances and the conduct of the petitioner as he overstayed, the punishment of dismissal from service which has been accorded to him cannot be said to be in excessive or shockingly disproportionate from any angle. Learned Dy. Government Advocate submits that this petition be dismissed.

After having heard learned counsel for the parties, I am of the view that this petition deserves to be allowed in part.

Admittedly, the petitioner who at the relevant point of time was serving on the post of Constable was directed to carry Dak to Bhopal. The petitioner proceeded from Khargone to Bhopal in compliance of the said order on 12-6-1991, but he did not voluntarily turn up well in time and submitted his joining only on 29-6-1991 at 12.00 hours. This charge has been found to be proved. The question is whether the punishment awarded to the petitioner is shockingly disproportionate or not. It be seen that the petitioner left Khargone on 12-6-1991 to deliver Dak at Bhopal. Though it does not transpire from the record

that on what date he was directed to come back, but looking to the distance from Khargone to Bhopal, it was expected that he should have come back in between 14-1-1991 and 15-6-1991. Thus, for near-about 14 days, he remained absent unauthorisedly without obtaining any leave and without submitting any application to obtain leave. In the case of Giriraj Sharma (supra), the employee who was granted leave, overstayed and the department after holding the enquiry against him, passed the order of punishment dismissing him from his services. In the case of Giriraj Sharma (supra), the employee overstayed for 12 days. The Supreme Court held that the punishment was harsh. As a result of which, the High Court directed the order of reinstatement and the Supreme Court held that the High Court did not commit any error in passing the order of reinstatement.

In the case of Shri Bhagwan Lal Arya Vs. Commissioner of Police Delhi and Others, , in similar facts and circumstances, the Supreme Court held that dismissal on the ground of alleged misconduct of such absence from duty was excessive and disproportionate. The Supreme Court held that removal from service imposed upon the delinquent for overstaying for two months is highly excessive and disproportionate. The Supreme Court quashed the order of dismissal from service of the delinquent.

The ratio decidendi of the cases Giriraj Sharma (supra) and Bhagwan Lal Arya (supra) are tested on the touchstone of the present factual scenario. Since the petitioner has overstayed for near-about 14 days, his punishment order of dismissal from service is hereby quashed. The orders passed by the disciplinary authority dated 18-1-1992 (Annexure P/7), appellate order dated 17-7-1992 (Annexure P/9) and the second appellate order dated 3-2-1993 (Annexure P/II), are hereby quashed. The respondents are hereby directed to reinstate the petitioner forthwith. The disciplinary authority is hereby directed to pass suitable lesser punishment order against the petitioner. The payment of backwages shall be subject to the decision by the disciplinary authority.

With the aforesaid observation, this petition is partly allowed with no order as to costs.