
(2011) 01 SHI CK 0087
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 6226 of 2008

Bhado Devi

APPELLANT

Vs

State of H.P. and Another

RESPONDENT

Date of Decision : 07-01-2011

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14
Central Civil Services (Pension) Rules, 1972 — Rule 9
Constitution of India, 1950 — Article 136, 14
Penal Code, 1860 (IPC) — Section 120B, 467, 468, 471

Citation : (2011) 01 SHI CK 0087

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Petitioner Kali Ram (now deceased) (hereinafter referred to as "original Petitioner" for convenience sake) was appointed as Patwari on 16.7.1971. He died on 19.3.2002. An application bearing M.A. No. 1766/2002 was preferred before the learned erstwhile Himachal Pradesh Administrative Tribunal for bringing on record his legal representatives. The same was allowed by the learned Tribunal on 30.3.2006.

2. Disciplinary proceedings were initiated against him, under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, vide memo dated 5.6.1996. The Sub Divisional Officer (Civil), Paonta Sahib was appointed as Inquiry Officer on 22.9.1997. He submitted the report to the Disciplinary Authority. The Disciplinary Authority imposed the penalty of dismissal upon the original Petitioner on 28.4.1999. Original Petitioner preferred an appeal before the Divisional Commissioner. He dismissed the same on 6.10.1999.

3. Mr. S.C. Sharma has strenuously argued that the imposition of penalty of dismissal upon the original Petitioner is harsh, excessive and disproportionate to the alleged misconduct, thus, violative of Article 14 of the Constitution of India.

According to him, the person, who was charge-sheeted alongwith him on same charge, namely, Kailash Chand, has been dealt with leniently. He has also argued that one Sh. Mam Raj was also involved in the same incident, but no action has been taken against him.

4. Mr. P.M. Negi, learned Deputy Advocate General has vehemently argued that the penalty imposed upon the original Petitioner is neither disproportionate nor harsh. According to him, as far as Kailash Chand is concerned, penalty of stoppage of five increments with cumulative effect, was imposed upon him by the Disciplinary Authority and the order of the removal was passed by the learned Divisional Commissioner. However, the learned erstwhile Himachal Pradesh Administrative Tribunal set aside the order of Divisional Commissioner and restored the order of Disciplinary Authority. He also argued that Mam Raj has superannuated and the case was taken up with the State Government to proceed against him, under Rule 9 of the Central Civil Services (Pension) Rules, 1972.

5. I have heard the learned Counsel for the parties and have perused the record carefully.

6. The charge levelled against the original Petitioner was that he has made unauthorized entries by tempering with the revenue record thereby giving undue benefit to Surtu as Kabiz thereby incorporating 20-0 bighas of land in the revenue record in the name of Surtu. Case of the original Petitioner, in a nutshell, before the Department, was that the entries in Khasra Girdawari were initially carried out by one Sh. Kailash Chand and he has only processed the case thereafter.

7. Mr. P.M. Negi has submitted that it was the duty cast upon the original Petitioner to bring this fact to the notice of the higher authorities instead of incorporating the entries in the jamabandi by giving undue benefit to Surtu.

8. The Inquiry Officer has come to a conclusion that the charges levelled against the original Petitioner stood proved. Original Petitioner was supplied with the copy of inquiry report to enable him to file the reply. The reply was filed by the original Petitioner on 16.2.1999. The Disciplinary Authority imposed the penalty of dismissal upon the original Petitioner on 28.4.1999. Petitioner preferred an appeal, as noticed above, which also stand rejected on 6.10.1999.

9. An FIR bearing No. 2/1996 was also registered against the original Petitioner, Kailash Chand and Mam Raj. The challan was put up in the Court of Chief Judicial Magistrate, Sirmaur and these persons faced the trial. All of them were acquitted of the charges by the Chief Judicial Magistrate on 1.3.2002. There is nothing on record to suggest that any appeal was preferred by the State against the judgment dated 1.3.2000. One Sh. Kailash Chand, who was predecessor-in-office of the original Petitioner, was also charged with the same misconduct. The Disciplinary Authority, in his case, has imposed penalty of stoppage of five increments with cumulative effect. In an appeal, the Divisional Commissioner, set

aside the order of imposition of penalty by the Disciplinary Authority and Kailash Chand was ordered to be removed from service. He preferred an original application bearing O.A. No. 362/1998. The same was decided by the learned Tribunal on 17.7.2003. The learned Tribunal taking into consideration that the instruction in para 3.39 (12) were incorporated in the Himachal Pradesh Land Record Manual 1992, the order of the Divisional Commissioner dated 3.2.1998 was set aside and the order of Disciplinary Authority was restored. The learned Tribunal has ordered the reinstatement of Sh. Kailash Chand. Now, as far as Mam Raj is concerned, he has retired from service during the pendency of the departmental proceedings on 31.10.1997. The matter after the conclusion of the inquiry was referred to the Financial Commissioner-cum-Secretary (Revenue) to the Government of Himachal Pradesh under Rule 9 of the Central Civil Services (Pension) Rules, 1972 on 29.6.1999. It is not discernible from the record what happened to letter dated 29.6.1999. The fact of the matter is that similarly situate person, Sh. Kailash Chand, has been treated differently. In his case, the Disciplinary Authority has only imposed the penalty of withholding of five increments with cumulative effect. Though this penalty was set aside and penalty of removal was substituted by the Divisional Commissioner, however, the learned Tribunal set aside the order dated 3.2.1998 and has ordered the reinstatement of Sh. Kailash Chand by restoring the order of Disciplinary Authority. Kailash Chand was also one of the co-accused with the original Petitioner in criminal case No. 1/2 of 2000/2001. Original Petitioner, Kailash Chand and Mam Raj have been acquitted by the learned trial court. The original Petitioner has been treated differently by the employer.

10. The following point had been framed by the learned trial court in Criminal Case No. 1/2 of 2001/2000, which reads thus:

Whether the prosecution established beyond reasonable doubt that all the accused persons hatched criminal conspiracy and in prosecution of this conspiracy made illegal entries about the possession of 20 bighas Government Shamlat land comprised under khasra No. 291 and 5 bighas land in favour of Sh. Surtu Ram and Lachhi Ram without making corresponding rapat in rapat roznamcha wakiyati and as such they committed forgery with revenue record and thus they are liable for the offences u/s section 467, 468 and 471 read with Section 120B IPC, as alleged.

11. The charge levelled against the original Petitioner and Kailash Chand was common. There is similarity in the charge against the original Petitioner in the criminal case and disciplinary proceedings. Original Petitioner has been acquitted by the criminal court. The fact that original Petitioner has been acquitted has not been taken into consideration by the Respondent-State.

12. Their Lordships of the Hon''ble Supreme Court in G.M. Tank Vs. State of Gujarat and Another, have held under:

20. It is thus seen that this is a case of no evidence. There is no iota of evidence

against the Appellant to hold that the Appellant is guilty of having illegally accumulated excess income by way of gratification. The Respondent failed to prove the charges leveled against the Appellant. It is not in dispute that the Appellant being a public servant used to submit his yearly property return relating to his movable and immovable property and the Appellant has also submitted his return in the year 1975 showing his entire movable and immovable assets. No query whatsoever was ever raised about the movable and immovable assets of the Appellant. In fact, the Respondent did not produce any evidence in support of and/or about the alleged charges levelled against the Appellant.. Likewise, the criminal proceedings were initiated against the Appellant for the alleged charges punishable under the provisions of P.C. Act on the same set of facts and evidence. It was submitted that the departmental proceedings and the criminal case are based on identical and similar (verbatim) set of facts and evidence. The Appellant has been honourably acquitted by the competent Court on the same set of facts, evidence and witness and, therefore, the dismissal order based on same set of facts and evidence on the departmental side is liable to be set aside in the interest of justice.

30. The judgments relied on by the learned Counsel appearing for the Respondents are not distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a Departmental case against the Appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the Appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts namely, raid conducted at the Appellant's residence, recovery of articles therev from. The Investigating Officer, Mr. V.B. Raval and other departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their statement came to the conclusion that the charges were established against the Appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the Appellant beyond any reasonable doubt and acquitted the Appellant by his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.

31. In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the Appellant should succeed. The distinction which is usually proved between the

departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case (supra) will apply. We, therefore, hold that the appeal filed by the Appellant deserves to be allowed.

13. Their Lordships of the Hon"ble Supreme Court in State of Uttar Pradesh and Ors. v. Raj Pal Singh (2010) 5 SCC 783 have held that when charges are similar and identical in relation to one and the same incident, then to deal with the delinquents differently in the award of punishment, would be discriminatory. Their Lordships have held as under:

6. It is undoubtedly open for the disciplinary authority to deal with the delinquency and once charges are established to award appropriate punishment. But when the charges are same and identical in relation to one and the same incident, then to deal with the delinquents differently in the award punishment, would be discriminatory. In this view of the matter, we see no infirmity with the impugned order requiring our interference under Article 136 of the Constitution.

14. In the instant case, the penalty of removal has been inflicted upon the original Petitioner on same incident whereby he had carried out the revenue entries, which had already been incorporated by his predecessor-in-office, Sh. Kailash Chand. The penalty of removal upon the original Petitioner is harsh and excessive. It was not proportionate to the alleged misconduct. It is settled law by now that the penalty imposed must commensurate to the misconduct. In the instant case, the charges levelled against the Petitioner and Sh. Kailash Chand pertained to the same incident. However, they have been treated differently.

15. Their Lordships of the Hon"ble Supreme in Chairman cum Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and Others, have held that the employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters, before imposing punishment. Their Lordships have held as under:

19. The doctrine of proportionality is, thus, well recognized concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review.

16. In the instant case, the set of circumstances against the original Petitioner in criminal case and disciplinary proceedings were also the same. He has been

acquitted by the criminal Court on 1.3.2002. He has been treated differently as far as imposition of penalty is concerned. Sh. Kailash Chand was reinstated though after the indulgence shown by the learned erstwhile Himachal Pradesh Administrative Tribunal in O.A. No. 362/1998. The penalty imposed upon the original Petitioner is disproportionate to the alleged misconduct. In normal circumstances, the Court would have remitted the matter back to the Disciplinary Authority to impose penalty upon the original Petitioner, proportionate to the alleged misconduct, however, since the penalty of removal was imposed upon the Petitioner on 28.4.1999, the Court does not consider fit to adopt that course.

17. Accordingly, in view of the observations and discussions made hereinabove, the petition is allowed. Annexures A-1 and A-2 dated, respectively are quashed and set aside. The original Petitioner will be deemed to be in continuous service. However, in view of the observations made hereinabove, the penalty of withholding of five increments is imposed upon him, at par with Sh. Kailash Chand. Since the original Petitioner has died, his wife is entitled to family pension/retiral benefits to be paid to her within a period of two months after the date of production of certified copy of this judgment, by the Petitioner. No costs.