

(2002) 09 AHC CK 0047

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 14724 of 1991

Bhikam Singh

APPELLANT

Vs

The Union of India (UOI) and Another

RESPONDENT

Date of Decision : 10-09-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 376, 452

Citation : (2002) 5 AWC 3787 : (2003) 1 UPLBEC 441

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Tapan Ghosh, Anup Ghosh, I.P. Yadav, S.K. Tyagi, Krishna Ji Khare and K. Ji Srivastava, for the Appellant; U.N. Sharma, R.C. Shukla and V.K. Singh and Mohd. I. Khan, S.C., for the Respondent

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard the learned Counsel for the parties and perused the records.

2. By means of the present writ petition the petitioner has challenged the order of dismissal dated 30.1.1991, Annexure-9 to the writ petition.

3. The petitioner was appointed as Constable in Central Reserve Police Force in June. 1996. He proceeded on casual leave with effect from 18.6.1990 to 6.7.1990 for his village. During this period it is alleged that there was an incident of Marpeet in the village on 2.7.1990 between his family members and Shiv Ram, his neighbour. It is stated that there was rivalry between his family and the family of Shiv Ram. The petitioner returned back to his Company on 3.7.1990 and informed about the incident to his Company Commander Deputy S.P. Ishwar Singh.

4. It is submitted that Makhan Singh, brother of the petitioner informed him that a report has been lodged against him under Sections 376, 452 and 323 IPC at Police Station Achhnera by Smt. Rupan Devi wife of Shiv Ram and that his

mother is seriously ill. On being so informed, the petitioner again proceeded on earned leave w.e.f. 20.7.1990 to 28.8.1990 and obtained a copy of the F.I.R. lodged against him as well as copy of the Medical Report of Smt. Rupan Devi. After attending his ailing mother he again returned on duty. From the copies of F.I.R. and the Medical Report, it transpired that she was used to sexual intercourse and there was no injury on the person of Smt. Rupan Devi to suggest that any force has been used on her. The Doctor, who had examined her, was not in a position to give any opinion in respect of rape as alleged by Rupan Devi. A copy of F.I.R. sent by Smt. Rupan Devi, was received by the Commandant informing that the petitioner was involved in a case u/s 376, IPC and should be placed under suspension, therefore, departmental proceedings were initiated against the petitioner under Rule 27 of C.R.P.F. Rules.

5. In the mean time, the petitioner was acquitted by the Sessions Court in Session Trial No. 201 of 1992 vide judgment and order dated 31.3.1993 with the observations that the offences under Sections 376 and 452, IPC are not proved. He was also exonerated of the offence u/s 323, IPC by giving him benefit of doubt. The order acquitting the petitioner was not challenged, hence it became final.

6. Thereafter, a charge-sheet was issued to the petitioner by the department and he was also directed to show cause why he may not be dismissed from service for not informing his Superior Officer about the two incidents vide notice dated 13.1.1991, on 25.11.1991 he moved an application for granting short leave for giving reply to the show cause notice, but his request for time was rejected.

7. In the counter-affidavit it is not denied that the petitioner had asked for time, but neither time was granted nor opportunity of hearing was given to him and the order of dismissal was passed in violation of principles of natural justice against which an appeal was filed. It is alleged that the appeal was also rejected by the Appellate Authority without considering the material on record.

8. The only charge against the petitioner is that he had not informed his Superior Officer on the two occasions while he was on leave w.e.f., 18.6.1990 to 6.7.1990 and w.e.f, 20.7.1990 to 28.8.1990, that he had been charged under Sections 376, 452 and 323 IPC and of having been released on bail and thereby concealed the above facts from the department and has, therefore, committed a misconduct.

9. In the enquiry proceedings the petitioner examined Deputy S.P. Ishwar Singh, who in his statement admitted that he was the Company Commander at the relevant time and the petitioner had informed him about the incident of Marpeet but he took it to be an ordinary incident and did not Act thereon. This fact is also apparent from the perusal of the Enquiry Report.

10. On the basis of the above fact, it is contended by the Counsel for the petitioner that the order of the dismissal dated 30.1.1991 is illegal and arbitrary because-

(i) He has been acquitted of the charges levelled under Sections 376, 452 and 323 IPC which have been found to be false and was falsely implicated.

(ii) The Medical Reports conclusively prove that there was no injury on the body of Smt. Rupan Devi and she was not subjected to any rape.

(iii) The only charge that the petitioner did not inform his Superior Officer about the incident. From the evidence of S.P. Iswar Singh, the then Commandant and the Enquiry Report that the petitioner had in fact informed his Superior Officer about the incident of Marpeet.

(iv) He was not given any opportunity of hearing before dismissing him from service as to enable him to collect the documentary evidence from his village in response to memorandum of charge dated 13.1.1991. Thus, denial of even a reasonable opportunity to defend himself is in utter violation of principles natural justice.

(v) Since the appeal has not been decided as yet even though sufficient time has elapsed, it amounts to unnecessary harassment of the petitioner on frivolous and flimsy charges.

11. The Counsel for the respondents has tried to defend the impugned order on the ground that dismissal of the petitioner from service was on the ground of serious misconduct of rape alleged to have been committed by him. This, however, is not the charge on which he was dismissed. The petitioner has already been acquitted of the charges under Sections 376, 452 and 323 IPC. There is force in the contention of the petitioner.

12. The only charge that the petitioner had not informed his Superior Officer about the incident, does not stand to judicial scrutiny by this Court. The punishment of dismissal from service even otherwise is too harsh and is highly disproportionate to the charges levelled against him. Right to livelihood can not be taken on such trifles. The petitioner has not committed any misconduct subversive to discipline of the force.

13. If any incident of Marpeet had at all happened, while the petitioner was in his native place on leave, his livelihood cannot be taken away on the ground mentioned in the charge-sheet. In *Ram Awadh v. The Dy. Inspector General, Eastern Region, C1SF, Patna and Ors.*, 1997(76) FLR 775 a Single Judge of this Court has held that:-

"The termination order itself shows that the only ground of termination is involvement in a particular criminal case. The petitioner has been acquitted in that criminal case, and hence obviously how nothing remains against the petitioner. It is settled law that all judgments operate retrospectively (unless expressly made prospective) and hence it must be deemed that there was never any involvement of the petitioner in the criminal case. The acquittal of the petitioner washes off his involvement in the criminal case retrospectively that being so no basis for the impugned order dated 26. 12.1995 remains."

14. In *Ranjit Thakur Vs. Union of India (UOI) and Others*, the appellant had fallen out of favour of the Commanding Officer for making a complaint against him. He was sentenced to 28 days rigorous imprisonment and while serving the sentence he was served with another charge-sheet. He was charged as under :--

"Disobeying a lawful command given by his Superior Officer. In that he at 15.30 hrs. on May 29, 1985 when ordered by JC 106251-P Sub. Ram Singh, the orderly Officer of the same Regiment to eat his food, did not do so."

15. The Apex Court held that "on such a ridiculous charge rigorous imprisonment of one year was imposed. He was then dismissed from service, with the added dis-qualification of being declared unfit for any future civil employment. It was on such gross facts that this Court made the observations quoted above and held that the punishment was so strikingly disproportionate that it called for interference. The above observations are not to be taken to mean that a Court can, while exercising powers under Articles 226 or 227 and/or under Article 32, interfere with the punishment because it considers the punishment to be disproportionate. It is only in extreme cases, which on their face show perversity or irrationality that there can be judicial review."

16. In the instant case also the charge of not informing about incident of Marpeet in his native village to his Superior Officer is of extreme irrationality to the punishment of dismissal which is shockingly disproportionate. Termination of such a ridiculous charge cannot be sustained particularly when it is established from the second evidence of S.P. Iswar Singh the then Commandant and the Enquiry Report that petitioner had in fact informed his Superior Officer about the incident. It is one of those extreme cases in which irrationality and perversity is apparent on face of it and is, therefore, open for judicial scrutiny. There also exist no basis for passing the impugned order as has been held in *Ram Awadh v. Dy. Inspector General (supra)*. The acquittal of the petitioner has washed off his involvement in the criminal case.

17. For aforesaid reasons the writ petition succeeds and is allowed with direction to respondent No. 2 to reinstate the petitioner in service with all consequential benefits with two months from the date of production of certified copy of the order. Respondents are directed to pay arrears of salary to the petitioner within a period of three months from today. No order as to costs