
(2003) 12 GAU CK 0052
In the Gauhati High Court
Case No : WP (C) No. 6044 of 1999

Bonti Bora

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-12-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 GLR 223 : (2003) 3 GLT 598

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : K.K. Phukan and B.N. Deka, for the Appellant; C. Choudhury, Sr. CGSC, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—In this writ petition, the petitioner has made a challenge to the order dated 16.2.1999 passed by the Group Commandant, CISF, Group Headquarters, Guwahati-21 imposing the penalty of removal from service. At the time of removal from service, the writ petitioner was serving as Head Constable in the CISF.

2. During the pendency of the writ petition, the petitioner died and his wife Smt. Bonti Bora entered into the proceeding in place of the writ petitioner as per the order dated 19.9.2000 in Misc. Case No. 474/2000.

3. The petitioner while in servicing as aforesaid a Memorandum of charge sheet dated 27.8.1998 was issued levelling the following charges :-

"Details of the charges levelled against B.C. Bora No. 733190151 CISF Unit NPM Jagiroad.

Article -I

B.C. Bora No. 733190151 CISF Unit NPM Jagiroad was remained absent without permission of the authority for more than the leave granted from 25.6.1992 to

30.7.1998, which showed negligence to duty and indiscipline conduct. Hence this charge.

Article-II

As per Inspector of previous record of B.C. Bora No. 733190151 CISF Unit NPM Jagiroad that he was punished for 5 (five) times under Rule 35 for O.S.L./A.W.L. but he has not improve his functioning from which it is revealed that he is habituated to O.S.L."

The petitioner in response to the said Memorandum of charge sheet submitted his written statement of defence. Thereafter a regular enquiry was held relating to the charges and the petitioner was found guilty of the same by the Enquiry Officer. A copy of the enquiry report was forwarded to the petitioner against which he duly submitted his representation. On consideration of the enquiry report and the representation submitted by the petitioner, the impugned order of penalty was passed on 16.2.1999 awarding the penalty of removal from service with immediate effect.

4. The petitioner thereafter preferred an appeal against the said order of penalty which, however was rejected by the appellate authority by its order dated 12.10.1999. Hence this writ petition.

5. Learned counsel for the petitioner during the course of his argument in support of the case of the petitioner did not seriously dispute the procedure adopted towards completion of the enquiry proceeding. On perusal of the records also I do not find any infirmity so far as the procedure adopted towards conclusion of the enquiry is concerned. Records revealed that the petitioner was given all reasonable opportunity to defend his case. The learned counsel for the petitioner also did not seriously dispute the legality and validity of the procedure adopted in the enquiry proceeding. The main thrust of argument of the learned counsel for the petitioner is that the penalty imposed against the petitioner is disproportionate having regard to the gravity of the offence committed by the petitioner. It is next contended by the learned counsel that on the sad demise of the petitioner, his family is in distress and accordingly the court should take a sympathetic view of the matter.

6. Opposing the prayer made on behalf of the writ petitioner the learned Addl. CGSC, strenuously urged that there being no procedural irregularity in conducting the departmental proceeding, non interference with the same is called for. He also argued that the petitioner being a member of the disciplined force like CISF, unauthorised absence from duty as reflected in article of charge No. 1 coupled with the fact that on earlier occasions also the petitioner resorted to same practice as reflected in article of charge No. 2 is a serious offence and does not called for any leniency.

7. I have considered the rival submissions made. Admittedly, the petitioner belonged to a disciplined force and he was to maintain absolute discipline. From

the charges levelled against him I find that he remain un-authorisedly absent for which he was charged with negligence of duty and in-disciplined conduct. On earlier occasions also he was punished as many as five (5) times on account of overstaying of leave and absence without leave. As per the charge there was no improvement on his functioning and he was rated as habituated to overstay of leave.

8. A member of the disciplinary force is always considered to be on duty and cannot leave his duty without any permission. He also cannot overstay his leave without permission. In the instant case he overstayed leave for a period of 36 days without the permission of the competent authority nor he sent any intimation to the competent authority. The proceeding further reveals that the petitioner failed to follow the instructions issued to him for immediate joining of duty. Such kind of an attitude on the part of a member of the disciplinary force cannot be appreciated. It is not the case that this was the first offence on the part of the petitioner. As reflected in the charges, it appears that he was a habitual absentee and on earlier occasions also as many as five times he remained either un-authorisidely absent or overstayed the leave. The contention of the petitioner that he had already been penalised for the earlier offences, same could not have been taken into account towards imposition of the penalty of removal. The Disciplinary Authority is within its competence and jurisdiction to take into account the earlier offences committed by the delinquent while deciding the new charge and imposing penalty on that basis. It is not a case of taking into account the earlier mis-conduct and punishment awarded thereto behind the back of the petitioner. The earlier conduct of the petitioner was reflected in the charge sheet itself and there was nothing wrong in doing so.

9. The Apex Court has time and again reiterated the role of a member of the disciplined force. The un-authorised absence from duty or overstaying of leave by such member of the force has all along been deprecated. In this connection I would like to refer to a decision of the Apex Court as reported in State of U.P. and others Vs. Ashok Kumar Singh and anothers, That was also a case of un-authorised absence of a Police Constable on several occasions. The High Court had interfered with the punishment of removal. The Apex Court observed in para 8 of its judgment as follows :-

"We are clearly of the opinion that the High Court has exceeded its jurisdiction in modifying the punishment while concurring with the findings of the Tribunal on facts. The High Court failed to bear in mind that the first respondent was a Police Constable and was serving in a disciplined force demanding strict adherence to the rules and procedures more than any other department. Having noticed the fact that the first respondent has absented himself from duty without leave on several occasions, who were entitled to appreciate the High Court's observation that "his absence from duty would not amount to such a grave charge". Even otherwise on the facts of the case, there was no justification for the High Court to interfere with the punishment holding that "punishment does not

commensurate with the gravity of the charge" especially when the High Court concurred with the findings of the Tribunal on facts. No case for interference with the punishment is made out."

10. The same is the case here also and I see no mitigating circumstances so as to hold that the penalty imposed on the petitioner is shockingly dis-proportionate warranting interfered with the same in exercise of power under Article 226 of the Constitution of India.

11. It was strenuously argued on behalf of the petitioner that having regard to the fact that the petitioner has already expired and the family now being represented in this proceeding by his wife is in distress and accordingly the court should take a lenient view of the matter. I am afraid, the writ Court cannot adopt such an approach. The jurisdiction of this Court under Article 226 of the Constitution of India should not be frittered away for such a purpose. The writ petition will have to be decided on its merit and the writ Court will not be swayed by any sympathetic consideration. The power under Article 226 of the Constitution of India is the power of judicial review.

The High Court can only examine the procedural correctness of the decision making process. It has already been held that there was no procedural irregularity in conducting the enquiry. It has also been held that the penalty imposed is not shockly dis-proportionate warranting any interference of the writ Court. There is no scope for any benevolence under Article 226. I in exercise of power under Article 226 cannot depart from law and enter the arena of benevolence. Otherwise there will be no objective standard of judging and justice would be personalised.

In view of the above I find no merit in the writ petition and the same in dismissed. There will be no order as to cost.