
(2016) 02 SC CK 0161

In the Supreme Court Of India

Case No : Civil Appeal No. 1549 of 2016 (Arising out of SLP (C) No. 5186 of 2016) (Arising out of SLP (c)... CC 2113/2016)

Commissioner of Police and Others

APPELLANT

Vs

Sat Narayan Kaushik

RESPONDENT

Date of Decision : 17-02-2016

Acts Referred:

Citation : (2016) AIR(SCW) 1464 : (2016) AIRSC 1464 : (2016) 2 ApexCourtJudgments(SC) 67 : (2016) 150 FLR 997 : (2016) 2 JT 643 : (2016) LIC 1827 : (2016) 3 LLN 14 : (2016) 2 RecentApexJudgments(RAJ) 511 : (2016) 4 RSJ 20 : (2016) 2 Scale 625 : (2016) 6 SCC 303 : (2

Hon'ble Judges : Jasti Chelameswar and Abhay Manohar Sapre, JJ.

Bench : Division Bench

Advocate : Ajit K. Sinha, Sr. Adv., M. Khairati, Vibhu Shankar Misra, Umesh Babu Chaurasia and D.S. Mahra, Advocates, for the Appellant; Shanker Raju and Neeraj Shekhar, Advocates, for the Respondent

Final Decision : Partly Allowed

Judgement

Abhay Manohar Sapre, J.—1. There is a delay of 30 days in filing the special leave petition. Delay condoned. Issue notice. Mr. Neeraj Shekhar, learned Counsel accepts notice on behalf of the Respondent/caveator. Since learned Counsel for the Respondent does not want to file the counter affidavit, we heard the matter finally with the consent of the parties.

2. After hearing learned Counsel for the parties, leave granted.

3. This appeal is filed against the judgment and order dated 19.08.2015 passed by the High Court of Delhi at New Delhi in Writ Petition (c) No. 2345 of 2015 whereby the High Court partly allowed the writ petition filed by the Respondent herein and set aside the order 05.12.2014 of the Central Administrative Tribunal, Principal Bench, New Delhi passed in O.A. No. 4349 of 2010 filed by the Respondent.

4. In order to appreciate the issue involved in this appeal, it is necessary to state a few relevant facts:

5. The Respondent was an Assistant Sub-Inspector (ASI) (Min.). At the relevant time, the Respondent was posted in HAG 8th Bn. DAP. On 26.02.2008 at about 10.30 a.m. while Mr. B.P. Jain, Assistant Commissioner of Police (ACP)/Security was briefing the staff regarding transportation of records and other articles of offices of 8th, 9th and 10th Bn. from Pitampura Lines to Main Security Lines, the Respondent reported there. When ACP asked the Respondent as to why he did not attend the office in time, he replied that he would not come before 10.15 a.m. and the ACP can take any action against him whatever he feels proper. The Respondent then started misbehaving and gave a slap to the ACP in the presence of other office staff and left for the gallery calling the ACP by name. The ACP brought the facts to the notice of Mr. Rishi Pal, Addl. DCP/Security (SG), who then ordered the Respondent to appear before him on 27.02.2008. Mr. R.P. Tyagi, Sub-Inspector, Head Clerk, 8th Bn. accordingly informed the Respondent to appear before Addl. DCP/Security (SG) but the Respondent said that he was having blood pressure and, therefore, would not talk to anyone and went back home.

6. For the abovesaid misconduct, the Respondent was suspended on 22.06.2008, which was followed by a departmental enquiry against the Respondent and a charge sheet was accordingly issued to the Respondent on 08.07.2008. After examination of witnesses, the Enquiry Officer, in his report dated 28.11.2008, held the Respondent guilty of the charges.

7. Thereafter, the disciplinary authority vide order dated 02.07.2009 imposed the penalty of dismissal from service with immediate effect to the Respondent.

8. Against the said order, the Respondent preferred an appeal before the Joint Commissioner of Police. By order dated 11.11.2009, the Joint Commissioner of Police rejected the appeal.

9. Aggrieved by the said order, the Respondent filed original application being O.A. No. 4349 of 2010 before the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "the Tribunal"). By order dated 05.12.2014, the Tribunal dismissed the O.A.

10. Challenging the order of Tribunal, the Respondent filed petition being W.P.(c) No. 2345 before the High Court. The High Court, by impugned judgment dated 19.08.2015, partly allowed the petition and set aside the punishment of dismissal from service and instead punished the Respondent with the penalty of compulsory retirement from service and also directed that the Respondent shall not be entitled to any service benefits from 02.07.2009 till the date of order of the High Court. The operative part of the order of the High Court reads as under:

20... Therefore we are of the view that a considerable time period has elapsed and the Petitioner is 53 years of age with family responsibilities. Petitioner has

served his duties with utmost sincerity for a period of approximately 29 years with the blemish-free career. Therefore, we deem it proper to set aside the punishment of dismissal from service and instead the Petitioner shall be punished with the penalty of compulsory retirement from service. The Petitioner shall not be entitled to any service benefits from 02.07.2009 till the date of this order, i.e. 19.08.2015.

21. Consequently, the writ petition is disposed of in the aforestated terms with no order as to costs.

11. Challenging the said order, the Appellants-Department have filed this appeal by way of special leave.

12. Heard Mr. Ajit Kr. Sinha, learned Senior Counsel for the Appellants and Mr. Shanker Raju, learned Counsel for the Respondent.

13. Mr. Ajit Kr. Sinha, learned Senior Counsel for the Appellants while assailing the legality and correctness of the impugned order made three submissions.

14. In the first place, learned Senior Counsel for the Appellants contended that once the charges leveled against the Respondent (delinquent employee) were proved in the enquiry proceedings and later upheld in the departmental appeal and the Tribunal dismissed the O.A. filed by the Respondent and lastly, when it was also affirmed by the writ court in the impugned judgment, then in such event, there was no justifiable reason for the writ court to have interfered with the quantum of punishment which was rightly imposed by the appointing authority on the Respondent.

15. In the second place, learned Senior Counsel contended that looking to the nature of misconduct alleged against the Respondent, which was serious in nature, the punishment of dismissal imposed by the appointing authority on the Respondent was just and proper calling no interference by the writ court. He submitted that the Respondent had slapped his superior while on duty and thereafter refused to follow his instructions and hence such behavior of the Respondent, according to learned Counsel, was most apprehensive in nature. It was urged that it was not expected from an employee much less an employee of police department to behave in such a manner with his superior. Learned Counsel thus contended that keeping in view the past conduct of the Respondent and the nature of misconduct committed by the Respondent, there was no case made out to interfere with the quantum of punishment by the High Court by converting the punishment of "dismissal" to that of "compulsory retirement".

16. In the third place, learned Counsel submitted that in any case, the High Court was not justified in directing that the Respondent would not be entitled to claim any service benefits from the date of his dismissal order i.e. 02.07.2009 till date of impugned order. According to learned Counsel, the High Court should have held that the Respondent was not entitled to claim any of his service benefits at least from the date of his suspension, i.e., 22.06.2008.

17. In reply, Mr. Shanker Raju, learned Counsel for the Respondent, supported the impugned order and contended that no case is made out to interfere in the impugned order.

18. Having heard the learned Counsel for the parties and on perusal of the record of the case, though we do not find any merit in the first two submissions of learned Counsel for the Appellants, however, we find merit in the third submission.

19. Coming to the first two submissions of the learned Counsel for the Appellant, we are of the view that High Court, in exercise of its writ jurisdiction, has power to interfere with the quantum of punishment imposed by the appointing authority in an appropriate case provided the High Court has taken into consideration the totality of the facts and circumstances of the case such as nature of charges leveled against the employee, its gravity, seriousness, whether proved and, if so, to what extent, entire service record, work done in the past, remaining tenure of the delinquent left etc. In other words, it is necessary for the High Court to take these factors into consideration before interfering in the quantum of the punishment.

20. In this case, we find that the learned Judges of the High Court did apply their mind to some of the factors for coming to a conclusion that this is an appropriate case where interference in the quantum of punishment is called for and accordingly converted the punishment of dismissal into punishment of compulsory retirement.

21. In our view, the finding on this issue appears to be just and proper and does not call for any interference in our appellate jurisdiction. We accordingly reject the first and second submissions.

22. Coming to the third submission of the learned Counsel for the Appellant, we find that the incident for which the Respondent was served with the charge sheet occurred on 26.02.2008. The Respondent was accordingly placed under suspension for committing the misconduct on 22.06.2008 which, after holding an inquiry, resulted in his dismissal from services on 02.07.2009.

23. Having regard to the peculiar facts of the case in hand, we are of the considered opinion that the High Court erred in holding that the Respondent was not entitled to claim any service benefits from 02.07.2009. Instead it should have been held that the Respondent was not entitled to claim any service benefits from the date of his suspension order i.e. from 22.06.2008. In our view, the impugned order of the High Court requires to be modified to this extent in favour of the Appellants and against the Respondent.

24. In view of foregoing discussion, the appeal succeeds and is accordingly allowed in part. The impugned order is modified to the extent mentioned above.

25. In other words, it is directed that the Respondent shall not be entitled to claim any service benefits from 22.06.2008. All other findings of the High Court

are upheld. No costs.