

(2005) 05 AHC CK 0175

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 41611 of 2002

Constable CP No. 111 Kanshi Ram and Constable CP No.
2136 Feroze Khan

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-05-2005

Acts Referred:

Constitution of India, 1950 — Article 309
Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules,
1991 — Rule 14, 14(1), 8(4)

Citation : (2005) 4 AWC 3335 : (2006) 106 FLR 312

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : Sant Sharan Upadhyaya and Sadhna Upadhyaya, for the Appellant;

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.

Heard Sri Sam Saran Upadhyay learned counsel for the petitioner and learned standing counsel.

1. The petitioners Constable OP No. 111 Kasb Ram and Countable CP. No. 2136 Feroze Khan were charged with gross negligence in performance of their duties on account of which an accused prisoner Randhir Singh escaped from their custody while returning from District Courts Agra. They did not utilise the services of police Mm which, was to leave in the evening at 04.00 PM with other prisoners, and proceeded along with accused prisoner on a cycle rickshaw. On the way with the help of his accomplices the prisoner jumped from the rickshaw and escaped from their custody.

2. The petitioners submitted their reply in the enquiry which proceeded under Rule 14 (1) of the U.P. Police Officers of Subordinate Rank (Punishment and Appeal) Rules 1991. The Senior Superintendent of Police, Agra considered their

proceeded to return from District Courts without availing the services of Police van which has to return at 04.00 PM in the evening. prisoner escaped on performance of their duties and dismissed them from, service under 14 (1) read with Rule (I) of the Rules of 1991. The appeals and revisions filed by the petitioners have been dismissed by the Deputy Inspector General of Police and Inspector General of Police Agra Region, Agra. The petitioners have dated 2.5.2001, 30.10.2001 and 8.8.2002 and have prayed for reinstatement with back wagesl

3. Learned counsel for the petitioner submits that the authorities have failed to appreciate that the accused prisoner escaped without any ill motive on the part of the petitioners. In fact the petitioner had put their life at stake. A country-made revolver was fired upon them on which Constable Kashi Ram petitioner no. 1 had sustained injuries. Instead of rewarding the petitioners for resisting the escape they have been punished by a highly stigmatic order. Learned counsel for the petitioner further submits that the punishment is grossly disproportionate to the Charges. The negligence in performance of duties could not have been made a ground for dismissal. He has also commented upon manner in which the criminals are entrusted, in the custody of the constables, They were not issued rifles and the facility of transportation was not provided while transferring the prisoners to the Court.

4. Learned standing counsel, on the other hand, submits that the petitioners were guilty of gross negligence in performance of their duties. A police van was available in the court, it was to return at 04.00 PM with all the prisoners. The petitioners did not avail the services of the police van. They used their discretion and proceeded to return by cycle rickshaw which resulted in the escape of the prisoner. The petitioners did not offer any resistance and that, the injuries suffered by ; One of them do not demonstrate that they had even attempted the resistance.

5. The scope of judicial review in the matter of finding of facts in "disciplinary proceedings is very limited. In the present case, the Senior Superintendent of Police has considered the reply given by the petitioners, and has found that the petitioner were grossly negligent in , failing to wait for the police van to return from the District Courts.proceeded to take the prisoner back in cycle rickshaw giving opportunity to the prisoner to escape. He was escorted by only one of these Constables who did not offer any resistance. The other two following in another rickshaw at some distance In the preliminary enquiry the Circle Officer; Hari Parwat, Agra found that petitioners were, guilty of gross negligence. The petitioners could not show any reason as to why they could not wait to avail the services of police and in their cross examination. They admitted that they had violated the procedure in escorting to the prisoner to the court.

6. I do not find that any material evidence was ignored or that the findings are so arbitrary, unreasonable or perverse so as, to cause any, interference in the matter. The procedure provided under Rule 14 of the Rules of 1991 in

departmental enquiry was followed and that the appellate and revisional authorities have applied their mind to the grounds raised before them in dismissing the appeals and revision. With regard to the proportionality of the punishment. Rule 8 (4) (a) provides a statutory minimum punishment, of dismissal in case the police personnel is found guilty of intentional and negligently allowing a person in police custody or judicial custody to escape, unless the punishment authorities for the reasons to be recorded in writing, awarded a less punishment. Rule 8(4) (a) is quoted as below;

"8. Dismissal and removal

(4) (a) The punishment for intentionally or negligently allowing a person in police custody or judicial custody to escape shall be dismissal unless the punishing authority for reasons to be recorded in writing awards a lesser punishment."

7. The petitioner has relied upon in *Mirja Barkat Ali vs. Inspector General of Police, Allahabad and Ors.* (Writ Petition No. 30415/1998, decided on 24.5.2002) , in support of his submission of proportionately in awarding punishment in which this Court had relied upon the judgements in *Union of India and others Vs. Giriraj Sharma*, ; *Yoginath D. Bagde Vs. State of Maharashtra and Another*, ; *Kartar Singh Gerwal Vs. State of Punjab*, ; *B.C. Chaturvedi Vs. Union of India and others*, : *Union of India and another Vs. G. Ganayutham (Dead) by LRs.*, ; *State Bank of Hyderabad and Others Vs. Rangachary, and Hardwari Lal v. State of U.P and Ors.* , 1990 (8) SCC 582.

8. In these cases it was held that the Court or Tribunal shall not interfere with the discretion of the punishing authority unless the penalty imposed is grossly disproportionate with; the misconduct; committed by the delinquent employee. In *State of Karnataka and Others Vs. H. Nagaraj*, following *Union of India vs. G. Ganyuthan* (supra) the Supreme Court dealing with a case where the punishment, of dismissal! was substituted by the Karnataka administrative Tribunal, to two increments with cumulative effect, held the interference to be illegal and restored the punishment of the dismissal by the appellate authority. The Supreme Court held that the, power to impose penalty is conferred by the competent authority by an Act of Legislature or Rules made under the proviso to Article 309 of Constitution of India. If the departmental enquiry has been held in accordance with the Rules following the principles of natural justice what punishment would meet the acts of justice is a matter exclusively within the jurisdiction of the competent authority. The principles of proportionality can be invoked only in a case where the punishment is totally irrational in the sense that it was outrageous, in defiance of logic or moral standards.

9. In the present case, I do not find any such illegality so as to interfere with either the finding of misconduct or the punishment more so when the Rule 8 (4) (a) of the Rules of 1991 provides, for a statutory minimum punishment of dismissal in such cases, unless a lesser punishment is awarded by reasons in writing. No such reasons could be found in the present case.

10. The writ petition is dismissed. No order as to costs.