
(1997) 05 GAU CK 0036
In the Gauhati High Court
Case No : Civil Rule No. 1095 of 1989

Elangbam Nimai Singh	Vs	APPELLANT
State of Manipur and Others		RESPONDENT

Date of Decision : 28-05-1997

Acts Referred:

Constitution of India, 1950 — Article 137, 14, 142, 21, 226

Citation : (1998) 2 GLT 315

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : Lalit Kumar, for the Appellant; Jagat Chandra, G.A., for the Respondent

Judgement

J.N. Sarma, J.—The Writ Petitioner herein challenges his order of termination from service. The Petitioner was a constable in the Police Department and he was dismissed from service for being absent for a period of 68 days without grant of leave. The admitted position is that the Petitioner was absent for this period of 68 days, but his case was that he applied for leave on medical ground along with the Medical Certificate. It is also admitted in the affidavit-in-opposition, inter-alia, as follows:

In reply to the Petitioner's allegation, it is to state that the Petitioner in his defence statement stated that he applied Earned Leave on 10.11.1986 through the Officer-in-Charge, Yairipok. The said application for Earned Leave could not be traced in the Office of the Superintendent of Police, Thoubal. However, vide despatch register of Yairipok Police Station, under Entry No. 2003 dated 19.11.1986, it was despatched to the Sub-Divisional Police Officer, Thoubal, through the receipt of the same is not shown in the register of the Office of S.D.P.O. Thoubal. In the above circumstances, leave application is presumed as to have been submitted by the Petitioner before suspension order of Departmental Enquiry as initiated.

2. So the fact remains that the Petitioner applied for leave on medical ground

along with medical certificate. But the leave was not considered by the authority and the order of suspension was passed and thereafter, the Departmental enquiry was initiated and it was concluded and the punishment was imposed.

3. I have heard Shri Lalit Kumar, learned Advocate for the Petitioner and Shri Jagat Chandra, learned Advocate for the Respondents. The parties in support of their contentions places reliance on the following decisions-

(i) Union of India and others Vs. Giriraj Sharma, That was a case where a CRPF Jowan over stayed a leave period and he was dismissed from service. There was a Writ Application under Article 226 of the Constitution and that was allowed on the ground that the dismissal merely on the ground of overstaying leave period and the authority imposed harsh and severe punishment and it is disproportionate with the gravity of the offence and violative of Article 14. By quashing the order of termination the Supreme Court directed to impose any other minor punishment save and except the dismissal.

(ii) The next case relied on by the learned Advocate is AIR 1992 SC 417 (Ex. Naik Sardar Singh, Appellant v. Union of India and Ors., Respondents). That was a case of an Army Jowan. That Army Jowan was on leave and went to his native place to attend the marriage ceremony of his brother-in-law. When going to attend the marriage ceremony he purchased 11 bottles of Rum and 1 bottle of Brandy. According to law he was allowed to carry 4 bottles of Rum and 1 Bottle of Brandy. When he was passing through Surendra Nagar, he was arrested on the ground that he was carrying liquor through a prohibited area. His defence was that he had the permission from the higher authorities to purchase 11 bottles of Rum and 1 bottle of Brandy. But he had to face a Court Martial and in the Court Martial he was sentenced for a period of 3 months R.I. and he was dismissed from service. There was an appeal before the Army Commandar, but the appeal was rejected. Thereafter, he filed a writ petition in the Delhi High Court which was summarily rejected. As against this a SLP was filed. The Supreme Court quashed the order of termination holding that it was absolutely disproportionate to the gravity of the offence committed as he had the valid licence for purchase of 11 bottles of Rum and 1 bottle of Brandy for celebration in the marriage ceremony. But instead of enjoying the celebration of marriage ceremony of his brother-in-law he was rotting in jail for a period of 3 months. The Supreme Court by quashing the order of dismissal passed an order for reinstatement to the service of the Petitioner.

4. On the other hand the learned Counsel for the Respondents relies on Malkiat Singh Vs. State of Punjab and Others, That was also a case of absenteeism on the part of a Constable and it was found that he was absent from duty on three occasions. The paragraph 3 of the judgment is quoted below:

3. The Appellant was appointed on 20.4.1990 and was discharged from service on 22.7.1992 on the ground that he remained absent from duty for more than 1 month 9 days. So he could not prove himself to be an efficient constable. We had

sent for the records which disclose that he was absent on three occasions. On the first occasion, when he was called upon to report for duty at 12 noon, he reported on 10.9.90 and was late by six hours. On the second occasion, he was absent on 30.6.1991, from night duty. The third occasion was on 24.4.1995. The explanation offered for the absence on the third occasion was that since in his wife's delivery certain complication had arisen, he had to attend to his wife and so he could not present. The medical certificate in that behalf was produced. In view of the medical certificate, it cannot be said that he had deliberately absented himself from duty. On the previous two occasions, the absence for one day and in another year for one night cannot be considered to be regular absence so as to reach the conclusion that he had not proved his efficiency. It is true that discipline is required to be maintained. However, absence may sometimes be inevitable. In the facts and circumstances of this case, as opportunity may be given to the Appellant to work efficiently to prove his excellence. The order of discharge is set aside. The Respondents are directed to take the Appellant into service forthwith. If the Appellant absents himself again for two consecutive days within one year without prior permission, appropriate action may be taken by dismissing him from service. The Appellant, however, is not entitled to back wages.

5. So from the judgment it will be found that the order of termination was pushed by the Supreme Court, though the Supreme Court found that the Constable was absent from duty and as a punishment the Supreme Court held that the Constable shall not be entitled to backwage. This decision of the learned Advocate for the Respondents helped the case of the Petitioner instead of helping the case of the Respondents.

(iii) The next case relied on by the learned Advocate for the Respondents is State of U.P. and others Vs. Ashok Kumar Singh and another, wherein in paragraph 8 the Supreme Court has pointed out as follows:

8. 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 procedure more than any other department. Having noticed the fact that the first Respondent has absented himself from duty without leave on several occasions, we are unable to appreciate the High Court's observation that "his absence from duty would not amount such a grave charge". Even otherwise on the facts of this case, there was no justification for the High Court to interfere with the punishment holding that "the 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.

That was a case where the Supreme Court found that the Respondent - Constable has absented from duty without leave on several occasions. That is not

the case in hand. Here is a case where the Petitioner was absent from duty but applied for leave on medical ground with necessary certificate. So this case is distinguishable on facts.

6. The next case relied on by the learned Advocate for the Respondents is State of U.P. and others Vs. Nand Kishore Shukla and another, wherein in paragraph 7 it is pointed out as follows:

7. It is settled law that the Court is not a Court of appeal to go into the question of imposition of the punishment. It is for the disciplinary authority to consider what would be the nature of the punishment to be imposed on a Government servant, based upon the proved misconduct against the Government servants. Its proportionality also can not be gone into by the Court. The only question is whether the disciplinary authority would have passed such an order. It is settled law that even one of the charges, if held proved and sufficient for imposition of penalty by the disciplinary authority or by the appellate authority, the Court would be loath to interfere with that part of the order. The order of removal does not cast stigma on the Respondent to disable him from seeking any appointment elsewhere. Under these circumstances we think that the High Court was wholly wrong in setting aside the order.

But this is a judgment by two Hon''ble Judges. But in B.C. Chaturvedi Vs. Union of India and others, three Judges Bench of the Supreme Court has pointed out as follows:

18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to consider the penalty imposed or to shorten the litigation. It may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

And in the concurring judgment of Hon''ble Justice B.L. Hansaria, J., it has been pointed out as follows:

23. It deserves to be pointed out that the mere fact that there is no provision parallel to Article 142 relating to the High Courts, can be no ground to think that they have not to do complete justice, and if moulding of relief would do complete justice between the parties, the same cannot be ordered. Absence of provisions like Article 142 is not material according to me. This may be illustrated by pointing out that despite there being no provision in the Constitution parallel to Article 137 conferring power of review on the High Court, this Court held as early

as 1961 in Shivdeo Singh and Others Vs. State of Punjab and Others, that the High Courts too can exercise power of review, which inherassin every Court not to speak of a Court of plenary jurisdiction like of High Court. Of course this power is not as wide which this Court has under Article 142. That, however, is a different matter.

24. What has been stated above may be buttressed by putting the matter a little differently. The same is that in a case of dismissal. Article 21 gets attracted. And, in view of the inter-dependence of fundamental rights, which concept was first accepted in the case commonly known as Bank Nationalisation case (1970) 3 SCR 530 : AIR 1970 SC 564 , which thinking was extended to cases attracting Article 21 in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, the punishment/penalty awarded has to be reasonable; and if it to be unreasonable, Article 14 would be violated. The Article 14 gets attracted in a case of disproportionate punishment was the view of this Court in Bhagat Ram Vs. State of Himachal Pradesh and Others, also. Now if Article 14 were to be violated, it cannot be doubted that a High Court can take care of the same by substituting, in appropriate cases a punishment deemed reasonable by it.

7. As the judgment of B.C. Chaturvedi v. Union of India is of a larger Bench I am bound to follow that judgment in deciding this case. Accordingly, on consideration of the materials on record I find that the punishment imposed on the Petitioner-Constable is a severe and harsh punishment, as there was an application for leave as indicated above on medical ground and that is not found to be false by the authority. But that was not considered by the authority, for the inaction of the authority the Petitioner cannot be made to suffer. The order of termination shall stand quashed and I leave it to the authority to impose any other minor punishment save and except dismissal of removal from service.

8. It is made clear that the Petitioner shall not be entitled to backwages. The order of reinstatement shall be passed within a period of 2 months from the date of receipt of this order on production of certified copy of this order. Save and except the backwages, the Petitioner shall be entitled to other service benefits for the period.