

(1996) 07 KL CK 0016

In the High Court Of Kerala

Case No : W.A. No's. 171 of 1994 and 605 of 1994-A

Ex-Constable E.V. Das

APPELLANT

Vs

Commandant, C.I.S.F. and Others

RESPONDENT

Date of Decision : 03-07-1996

Acts Referred:

Central Industrial Security Force Rules, 1969 — Rule 31

Citation : (1996) 07 KL CK 0016

Hon'ble Judges : K. Sreedharan, Acting C.J.;C.S. Rajan, J

Bench : Division Bench

Advocate : Sasidharan Chempazhanthiyil, for the Appellant; George Poonthottam, for the Respondent

Judgement

C.S. Rajan, J.—The Petitioner in the Original Petition is the Appellant in W.A. No. 605/94. Respondents 1 to 3 in the Original Petition are the Appellants in W.A. No. 171/94. The Petitioner in the Original Petition while working as a Constable in the Central Industrial Security Force was charge-sheeted as per Ext. P-2 for the alleged misconduct of absenting himself from the barracks between 9 p.m. and 4 a.m. Apparently the Petitioner did not file any written statement and also did not cross-examine the witnesses during the enquiry. His defence case was that after taking meals at 8 p.m. he went to A Coy to have a talk with his friends and as he was not feeling well, he slept in A Coy barracks and came back only at 4 a.m. to his own barrack. As per Ext. P-5 order, the disciplinary authority concurred with the findings of the enquiry authority that the charge had been proved. According to the disciplinary authority the charge proved was quite serious in nature and therefore imposed the punishment of removal from service. The Petitioner appealed to the appellate authority and the appellate authority by Ext. P-9 order rejected the appeal confirming the punishment imposed by the disciplinary authority.

2. The Petitioner filed the Original Petition challenging Exts. P-5 and P-9 orders. A specific contention was put forward by the Petitioner in the Original Petition

that the quantum of punishment was not commensurate with the gravity of the offence alleged, because the Petitioner was in the service of the Respondents for about 10 years and removing him from service was most unfair and unjust. The learned Single Judge considered the above argument and found that the penalties of compulsory retirement, removal and dismissal from service are intended to be used in the case of misconduct of a serious kind which makes it necessary that the concerned employee should not remain in the job. It was further found that the misconduct alleged against the Petitioner is not of such a kind as to justify his removal from service. Therefore the learned Single Judge was of opinion that the punishment was disproportionate to the gravity of the misconduct. After quashing the impugned orders, the learned Single Judge directed that the Respondents shall forthwith reinstate the Petitioner in service and then impose on him one of the punishments enumerated as Clauses (e) to (h) of Rule 31 of the Central Industrial Security Force Rules, 1969 consistent with the nature of the misconduct and its gravity.

3. The learned Counsel appearing for the Appellants in W.A. No. 171/94 did not canvass the proposition that this Court has no jurisdiction to consider the proportionality of the punishment imposed by the disciplinary authority. Moreover, authoritative pronouncements are not wanting in this respect. The latest pronouncement of the Supreme Court in B.C. Chaturvedi Vs. Union of India and others, dealt with the above aspect and the Supreme Court found that 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 reconsider 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. Therefore this Court can definitely either hold that the punishment is disproportionate or can direct the disciplinary authority to impose a lesser punishment or to substitute its own punishment. In the present case the Petitioner was having ten years service in the Industrial Security Force. The offence against him was that he was found absent from the barracks from 9 p.m. to 4 a.m. on a particular day. Nothing further was proved against him to show that his absence was purposeful or for committing any other misconduct. Under these circumstances it need not be stated that such a punishment will shock or prick the conscience of a Court. We are clear in our mind that a punishment of this nature like removal from service was really disproportionate to the misconduct proved against the Petitioner. Therefore the learned Single Judge was quite correct in giving the directions contained in the judgment to reconsider the matter and to impose any other punishment enumerated in Sub-clauses (e) to (h) of Rule 31 of the Rules. Therefore W.A. No. 171/94 is dismissed. We do not find any justification to interfere with the judgment of the learned Single Judge at the instance of the Petitioner in the Original Petition who filed W.A. No. 605/94. Therefore W.A. No. 605/94 is also dismissed.