

(2001) 03 AP CK 0046

In the Andhra Pradesh High Court

Case No : Writ Petition No. 11398 of 1998

General Manager, Ordinance Factory, Project Yeddumailaram
and Another

APPELLANT

Vs

Central Administrative Tribunal, Hyderabad and Another

RESPONDENT

Date of Decision : 08-03-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 311(2)

Citation : (2001) 3 ALD 94 : (2001) 3 ALT 84 : (2001) 90 FLR 576

Hon'ble Judges : S.B. Sinha, C.J.; S.R. Nayak, J

Bench : Division Bench

Advocate : Mr. L. Narasimha Reddy, SC for CG, for the Appellant; Mr. Pratapnarayansanghi, for the Respondent

Judgement

S.B. Sinha, CJ.

1. This writ petition is directed against an order dated 7-4-1999 passed by the Central Administrative Tribunal, Hyderabad in OA No.664 of 1998 whereby and whereunder the writ petition filed by the unofficial respondent No.2 herein was disposed of directing:

"13. (1) Hence the orders, the legality of which is challenged in this OA are quashed and set aside.

(2) The applicant is directed to be reinstated without any backwages and without any continuity of service.

(3) In other words, the intervening period between the date of the applicant's removal from service till his reinstatement shall be treated as diets non.

(4) The applicant shall be reinstated on the same post on which he was working prior to the removal. If the same is not available, he may be posted on any equivalent post or even on any inferior post. The preference, however, shall be for the same post, failing which the second preference shall be for equivalent

post.

(5) The above directions shall be carried out within 30 (thirty) days from the date of this order.

(6) Both the respondents are jointly and severally liable for timely compliance with the above orders."

2. The basic fact of the matter is not in dispute. The applicant was appointed as a driver in the ordinance factory project. He was charge-sheeted on the ground that he has been carrying on loose bundle of cotton swap in his tiffin bag on 8-4-1983. When he was asked to explain, he allegedly stated that he had been carrying the same to prevent jerks which may spoil his food and further stated that he had to frequently visit his agricultural land and he required the same for cleaning hands. However, in the enquiry he categorically stated that he had not declared the same by mistake which was absolutely necessary having regard to the fact that he was holding a responsible post in an ordinance factory in the Ministry of Defence. According to the petitioner such declaration was not made having regard to the fact (hat it was not a matter of much importance.

3. A disciplinary proceeding against the delinquent was initiated wherein he was found guilty. The disciplinary authority passed an order of dismissal from services and an appeal preferred there against by the respondent herein before the appellatant authority was dismissed whereafter an original application was filed before the learned Tribunal which was marked as OANo.579 of 1995. By an order dated 7-1-1998 the appropriate authority was directed by the Tribunal to pass necessary orders on the appeal preferred by the applicant but the appeal was not disposed of within a reasonable time. In the said order it was observed:

"We feel that reconsideration of punishment may be required in this case. We leave it to the appellate authority to consider his request for reduction in the penalty already awarded to him by the disciplinary authority in accordance with the rules and pass a speaking order within a period of two months from the date of receipt of a copy of this order."

4. However, the said appeal was dismissed.

5. The Tribunal having regard to the issues raised before it came to the conclusion that only one question arose for its consideration as to whether the punishment or removal from service was grossly unjust and highly disproportionate to the misconduct. The learned Tribunal relying on a decision of the apex Court in B.C. Chaturvedi v. Union of India (1996) SCC 80, wherein it was held as under, issued the aforementioned directions:

"13. The disciplinary authority is the sole Judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappraise the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before

the Court/Tribunal. In Union of India (UOI) Vs. H.C. Goel, , this Court held at p.728 that if the conclusion, upon consideration of the evidence,, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

6. The question which arises for consideration is whether in the facts and circumstances of this case can it be said that the imposition of punishment of dismissal was so irrational so as to attract the principles of Wednesbury Unreasonableness?

7. The petitioner was working in an ordinance factory. He was found guilty of theft of an end product. It is beyond any doubt that he prevaricated his stand from stage to stage.

8. Having regard to the fact that the delinquent employee was working in an ordinance factory belonging to the Ministry of Defence of the Government of India was also a relevant matter which should be borne in mind.

9. Theft or misappropriation even of a small amount may have to be viewed seriously. Nay, in a case of this nature if the employer takes a strick view, the same cannot be termed to be so irrational so as to attract the principles of Wednesbury Unreasonableness. In Om Kumar and others v. Union of India JT 2000 (Supp) III SC 92, the apex Court upon taking into consideration its earlier decision in Union of India and another Vs. G. Ganayutham (Dead) by LRs., , held that the action on the part of the State authority can be tested on the touch stone of doctrine of proportionality, but the Court will interfere therewith only in the event it is held to be so irrational or unreasonable so as to attract the principles of Wednesbury Unreasonableness of Article 14 of the Constitution of India.

10. In Municipal Committee, Bahadurgarh Vs. Krishan Behari and others, , it was held:

"4. It is obvious that the respondent has been convicted of a serious crime and it is a clear case attracting under proviso (a) to Article 311(2) of the Constitution. In a case of such natureindeed, in cases involving corruption - there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriate that is relevant. The Director had interfered with the punishment under a total misapprehension of the relevant factors to be borne in mind in such a case."

11. In State of T.N. v. K. Guruswamy, (1996) 7 SCC 114) , the Apex Court held that when a delinquent officer is charged with misconduct of corruption no other punishment than the dismissal is called for. In B.C. Chaturvedi Vs. Union of India and others, , it was held:

"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 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."

12. It is, therefore, evident from the aforementioned decision that only in exceptional and rare cases the Court or the Tribunal would interfere with the punishment imposed by the employer and impose appropriate punishment with cogent reasons in support thereof. The learned Tribunal, therefore, was not correct in coming to the conclusion that a compassionate approach can be taken in the matter of quantum of punishment placing reliance on the B.C. Chaturvedi case (supra). The learned Tribunal merely held:

"11. In the case before us, the value of the article which was the subject-matter of the inquiry may be quite insignificant but the factor which heavily weighs against the applicant is the theft of Government property which cannot be viewed leniently. It is the bent of mind of the delinquent which prevails over the value of the stolen article."

13. The approach of the teamed Tribunal was to show sympathy and compunction which cannot be said to be synonymous with irrationality. For the purpose of considering the quantum of punishment what may be material is the nature of misconduct and not the amount involved therein.

14. For the aforementioned reasons we are of the opinion that the learned Tribunal was not correct in interfering with the punishment imposed by the employer upon the respondent. This application is, therefore, allowed and the impugned order is set aside. However, in the facts and circumstances of the case there will be no order as to costs.