

(2015) 07 RAJ CK 0195
In the Rajasthan High Court
Case No : Civil Writ Petition No. 6189 of 1998

Gopi Chand Yadav

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 08-07-2015

Acts Referred:

Constitution of India, 1950 — Article 51-A(j)

Citation : (2015) 07 RAJ CK 0195

Hon'ble Judges : Anupinder Singh Grewal, J

Bench : Single Bench

Advocate : Ankur Gupta, Counsel, for the Appellant; A.S. Khangarot, Addl. G.C., Advocates for the Respondent

Final Decision : Dismissed

Judgement

Anupinder Singh Grewal, J—This petition is directed against the order dated 28.12.1991, whereby the services of the petitioner were terminated, and the order dated 18.07.1992 (Annexure-2) passed in appeal as well as the order dated 02.05.1995 (Annexure-3) dismissing the review petition.

2. The petitioner was appointed as Constable with the Rajasthan Police on 11.06.1981. He stated to have been confirmed after successful completion of training in the year 1982. The petitioner was issued charge-sheet on 28.06.1991 under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (hereinafter referred to as "the CCA Rules") as amended in 1983, for unauthorised absence from duty from 14.09.1989 till 15.03.1991. After regular enquiry, the petitioner was dismissed from service vide order dated 28.12.1991, which is impugned in this petition.

3. Mr. Ankur Gupta, learned counsel appearing for the petitioner has contended that the procedure, as stipulated under the CCA Rules, was not followed, which has caused serious prejudice to the petitioner. The petitioner was not given adequate opportunity to defend his case and he was not provided the relevant

documents to present his defence. He has also submitted that the petitioner was seriously ill during the period of absence as well as during the period of enquiry, and was, therefore, unable to appear before the enquiry officer. He has further submitted that even if the charges levelled against the petitioner are assumed to be proved, the punishment of dismissal from service is excessive and grossly disproportionate to the alleged misconduct. Learned counsel lastly argued that the disciplinary authority has not recorded a finding that the absence was willful, and hence the impugned order is vitiated on this ground as well. In support of the aforesaid arguments, he has placed reliance upon the judgments of Hon''ble Supreme Court in *Krushnakant B. Parmar Vs. Union of India (UOI) and Another*, (2012) 132 FLR 1023 : (2012) 2 JT 352 : (2012) 2 SCALE 545 : (2012) 3 SCC 178 : (2012) 2 SLJ 19 : (2012) AIRSCW 1633 : (2012) 2 Supreme 254 , *Rajasthan Tourism Devt. Corporation Ltd. and Another Vs. Jai Raj Singh Chauhan*, (2012) 135 FLR 743 : (2012) 4 LLJ 1 : (2011) 6 SCALE 449 : (2011) 13 SCC 541 , *Shri Bhagwan Lal Arya Vs. Commissioner of Police Delhi and Others*, AIR 2004 SC 2131 : (2004) 2 CTC 301 : (2004) 101 FLR 193 : (2004) 3 JT 384 : (2004) 3 SCALE 356 : (2004) 4 SCC 560 : (2004) SCC(L&S) 661 : (2004) 3 SCR 1 : (2004) 2 SLJ 460 : (2004) AIRSCW 2288 : (2004) 2 Supreme 677 , *Chairman cum Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and Others*, AIR 2010 SC 75 : (2009) 123 FLR 601 : (2009) 11 JT 472 : (2009) 4 LLJ 672 : (2009) 11 SCALE 608 : (2009) 15 SCC 620 : (2009) 13 SCR 487 : (2009) 7 SLR 546 : (2009) 7 SLR 251 : (2009) 9 UJ 4097 : (2009) AIRSCW 5596 , and the judgment of the Single Bench of this Court in *Avadh Behari Pachauri v. State of Rajasthan* [2005 (1) SLR 607].

4. On the other hand, Dr. A.S. Khangarot, learned Additional Government Counsel has submitted that the petitioner was given ample opportunity to defend his case and only thereafter the impugned order of dismissal was passed. He further submitted that the entire procedure, as laid down under the CCA Rules, was followed while passing the order of termination. In support of his arguments, he has placed reliance on the judgment of Hon''ble Supreme Court in *Om Prakash Vs. State of Punjab and Others*, (2013) LabIC 510 : (2011) 10 SCALE 258 : (2011) 11 SCR 263 : (2011) 5 UJ 3291 : (2012) AIRSCW 3762 .

5. I have heard learned counsel appearing for the parties and with their assistance perused the record.

6. It is apparent from record that the petitioner was not present during the roll call on 14.09.1989 at 8.00 p.m. He continued to remain absent till 15.03.1991. He had neither applied for leave nor sent any intimation about his absence to the respondent-authorities. It is also borne out that a notice had been sent at the residence of the petitioner asking him to join duty, but the petitioner failed to do so.

7. There does not seem to be any merit in the argument of the learned counsel for the petitioner that the petitioner was not given adequate opportunity of hearing before the impugned order was passed. It is palpably clear from the

additional affidavit, filed by the respondents, that the statements of the prosecution witnesses were recorded in the presence of the petitioner or his defence nominee. The enquiry officer had recorded the statement of PW-5 Yadvir Singh, Reserve Inspector in the presence of the defence nominee, and the petitioner was informed, vide letter dated 08.07.1991, to appear before the enquiry officer on 17.07.1991, but neither the petitioner nor his defence nominee appeared on that date. He was once again intimated about the next date of hearing vide letter dated 14.08.1991, but he failed to appear before the enquiry officer. Copies of the letters dated 08.07.1991 & 14.08.1991 are appended as Annexures-R/1 & R/3 respectively with the reply of the respondents. Subsequently, several other reminders were sent to the petitioner to appear before the enquiry officer, copies whereof have been annexed as Annexures R/4 to R/9.

8. The judgments, which have been relied upon by the learned counsel for the petitioner, are clearly distinguishable and not applicable to the facts of the instant case.

9. In the case of *Krushnakant B. Parmar v. Union of India & Another* (supra), the petitioner, who was a Security Assistant, had remained absent from duty. He had submitted evidence that he was prevented from joining duty. This evidence was ignored by the competent authority while passing the punitive order. There is no such evidence produced by the petitioner before the enquiry officer in the instant case.

10. In *Rajasthan Tourism Development Corporation Limited & Another v. Jai Raj Singh Chauhan* (supra), the respondent, who was an employee of the petitioner-Corporation, had gone abroad to meet his wife, who was working as a doctor in Trinidad, West Indies after submitting application of leave. Before the leave could be sanctioned, he proceeded abroad. The punishment of dismissal was substituted with stoppage of two annual grade increments with cumulative effect, and it was, in such circumstances, held by the Supreme Court that the High Court should have remitted the matter to the disciplinary authority to pass a fresh order. In the case of *Chairman-cum-Managing Director, Coal India Limited & Another v. Mukul Kumar Choudhuri & Others* (supra), the delinquent had overstayed after expiry of sanctioned leave and sent his resignation. After his resignation was not accepted by the Management, he joined duty. He also admitted his guilt before enquiry officer and explained that absence was for the reasons beyond his control. In such circumstances the Supreme Court held that the termination of his service was grossly disproportionate to the misconduct. In the case of the petitioner, as already stated, neither any medical evidence was furnished nor any intimation was sent to the respondent-authorities regarding his absence from duty.

11. The argument of the learned counsel for the petitioner that the petitioner could not report on duty as he was unwell and not in a position to perform his duties, and that this aspect has not been addressed by the disciplinary authority

while passing the impugned order, cannot be accepted as the petitioner has not laid out any factual foundation for his illness through any evidence whatsoever either in the form of medical certificate or any other material to indicate that he was suffering from any ailment. No such document or medical certificate was produced before the enquiry officer. As a matter of fact, even in the instant writ petition, neither copy of any medical evidence, nor any other document in support thereof has been annexed. Therefore, bald and vague averments of the learned counsel for the petitioner in this regard cannot be accepted. The judgment of *Bhagwan Lal Arya v. Commissioner of Police, Delhi & Ors.* (supra) is clearly distinguishable on the facts from the instant case, as the absence from duty therein was on account of compulsion on medical grounds and medical certificate of the Government authority had been duly submitted before the disciplinary authority. In *Avadh Behari Pachauri v. State of Rajasthan* (supra), this Court held that the dismissal from service is disproportionate to the charge especially when the medical certificate, duly presented by the delinquent, had been disbelieved without assigning any reason.

12. The averment of the learned counsel appearing for the petitioner that the disciplinary authority has not recorded a finding that the absence was willful cannot also be accepted as it is not an absolute proposition of law that where there is a long unauthorised absence, it is obligatory on the part of the disciplinary authority to record such a finding. This finding could be discernible from the facts and circumstances surrounding the case. The petitioner's absence for 547 days without any intimation and not reporting for duty despite notice cannot but be termed as willful absence.

13. I am also conscious of the fact that the scope of judicial review, in the findings of the disciplinary authority, is extremely limited and confined to the cases, where the finding is clearly unsustainable having been recorded without any material whatsoever or there is gross illegality. The sufficiency or adequacy of material before the disciplinary authority cannot be gone into by this Court while exercising writ jurisdiction. Even if another view is possible on the same factual matrix, interference will not be called for as this Court does not exercise appellate jurisdiction over the departmental authorities. I draw support from the judgment of the Hon'ble Supreme Court in *Vinod Kumar Vs. State of Haryana and Others*, (2013) 11 AD 68 : AIR 2014 SC 33 : (2013) 14 JT 207 : (2014) LabIC 1525 : (2013) 5 LLN 6 : (2013) 13 SCALE 161 : (2014) 1 SCJ 339 : (2014) 1 SCT 312 : (2014) 1 SLJ 155 , wherein it was held as under:

"24. The matter can be looked into from another angle as well. In those cases where Courts are concerned with the judicial review of the administrative action, the parameters within which administrative action can be reviewed by the courts are well settled. No doubt, the scope of judicial review is limited and the courts do not go into the merits of the decision taken by the administrative authorities but are concerned with the decision making process. Interference with the order of the administrative authority is permissible when it is found to be irrational,

unreasonable or there is procedural impropriety. However, where reasonable conduct is expected, the criterion of reasonableness is not subjective but objective; albeit the onus of establishment of unreasonableness rests upon the person challenging the validity of the act. It is also trite that while exercising limited power of judicial review on the grounds mentioned above, the court can examine whether administrative decisions in exercise of powers, even if conferred in subjective terms are made in good faith and on relevant considerations. The courts inquire whether a reasonable man could have come to the decision in question without misdirecting himself on the law or facts in a material respect. (See: M.A. Rasheed and Others Vs. The State of Kerala, AIR 1974 SC 2249 : (1974) 2 SCC 687 : (1975) 2 SCR 93 : (1974) 6 UJ 611 .)"

14. Insofar as the question of proportionality is concerned, it is settled law that the Court shall interfere in the award of punishment only in case the punishment imposed is wholly disproportionate to the misconduct and shocks the conscience of the Court.

15. It is also well settled that absence without leave in a disciplined force like the Police has to be viewed seriously so as to warrant dismissal from service. Reference can be made to the judgment of the Hon'ble Supreme Court in the case of Om Prakash v. State of Punjab & Ors. (supra), wherein dismissal of a Head Constable for his absence for a period of 39 days without leave or intimation was upheld.

16. Reference can also be made to the judgment of the Hon'ble Supreme Court in the case of Chennai Metropolitan Water Supply and Sewerage Board and Others Vs. T.T. Murali Babu, AIR 2014 SC 1141 : (2014) AIRSCW 1142 : (2014) 2 JT 574 : (2014) 2 SCALE 163 : (2014) 4 SCC 108 , wherein while allowing the appeal, the order dismissing the respondent therein, who was absent without leave for a period of 1 year & 7 months, was upheld. It was held as under:

"30. After so stating the two-Judge Bench proceeded to say that one of the tests to be applied while dealing with the question of quantum of punishment is whether any reasonable employer would have imposed such punishment in like circumstances taking into consideration the major, magnitude and degree of misconduct and all other relevant circumstances after excluding irrelevant matters before imposing punishment. It is apt to note here that in the said case the respondent had remained unauthorisedly absent from duty for six months and admitted his guilt and explained the reasons for his absence by stating that he neither had any intention nor desire to disobey the order of superior authority or violated any of the rules or regulations but the reason was purely personal and beyond his control. Regard being had to the obtaining factual matrix, the Court interfered with the punishment on the ground of proportionality. The facts in the present case are quite different. As has been seen from the analysis made by the High Court, it has given emphasis on past misconduct of absence and first time desertion and thereafter proceeded to apply the doctrine of proportionality. The aforesaid approach is obviously incorrect. It is telltale that the respondent

had remained absent for a considerable length of time. He had exhibited adamant attitude in not responding to the communications from the employer while he was unauthorisedly absent. As it appears, he has chosen his way, possibly nurturing the idea that he can remain absent for any length of time, apply for grant of leave at any time and also knock at the doors of the court at his own will. Learned counsel for the respondent has endeavoured hard to impress upon us that he had not been a habitual absentee. We really fail to fathom the said submission when the respondent had remained absent for almost one year and seven months. The plea of absence of "habitual absenteeism" is absolutely unacceptable and, under the obtaining circumstances, does not commend acceptance. We are disposed to think that the respondent by remaining unauthorisedly absent for such a long period with inadequate reason had not only shown indiscipline but also made an attempt to get away with it. Such a conduct is not permissible and we are inclined to think that the High Court has erroneously placed reliance on the authorities where this Court had interfered with the punishment. We have no shadow of doubt that the doctrine of proportionality does not get remotely attracted to such a case. The punishment is definitely not shockingly disproportionate.

31. Another aspect needs to be noted. The respondent was a Junior Engineer. Regard being had to his official position, it was expected of him to maintain discipline, act with responsibility, perform his duty with sincerity and serve the institution with honesty. This kind of conduct cannot be countenanced as it creates a concavity in the work culture and ushers in indiscipline in an organization. In this context, we may fruitfully quote a passage from Government of India and another v. George Philip:-

"In a case involving overstay of leave and absence from duty, granting six months" time to join duty amounts to not only giving premium to indiscipline but is wholly subversive of the work culture in the organization. Article 51-A(j) of the Constitution lays down that it shall be the duty of every citizen to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement. This cannot be achieved unless the employees maintain discipline and devotion to duty. Courts should not pass such orders which instead of achieving the underlying spirit and objects of Part IV-A of the Constitution have the tendency to negate or destroy the same."

32. We respectfully reiterate the said feeling and restate with the hope that employees in any organization should adhere to discipline for not only achieving personal excellence but for collective good of an organization. When we say this, we may not be understood to have stated that the employers should be harsh to impose grave punishment on any misconduct. An amiable atmosphere in an organization develops the work culture and the employer and the employees are expected to remember the same as a precious value for systemic development."

17. In Union of India (UOI) and Others Vs. Dinesh Prasad, (2012) 135 FLR 919 :

(2012) 10 JT 578 : (2012) 10 SCALE 583 : (2012) 12 SCC 63 : (2013) 1 SLJ 37 , while dealing with the case of the respondent therein, who remained absent for more than two years, it was held that the order of dismissal cannot be said to be disproportionate, oppressive or founded on extraneous consideration.

18. Tested in the light of the aforementioned principles of law, the dismissal of the petitioner, who was a Police Constable and had been absent without leave for a period of 547 days, cannot in any manner be said to be disproportionate to the misconduct.

19. In view of the aforesaid discussion, it could not be said that the impugned orders suffer from any infirmity warranting interference by this Court. They are, in fact, fully justifiable as there is adequate material on record in support of the findings.

20. Consequently, the writ petition is dismissed without any order as to costs.