

(2006) 07 GUJ CK 0097

In the Gujarat High Court

Case No : Special Civil Application No. 21778 of 2005

Krushnakant B. Parmar

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 26-07-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2006) 07 GUJ CK 0097

Hon'ble Judges : M.D. Shah, J;B.J. Shethna, J

Bench : Division Bench

Advocate : S.P. Majmudar, for the Appellant; Jitendra Malkan, Assistant Solicitor General of India and Mr. Y.N. Ravani, Central Govt. Counsel, for the Respondent

Final Decision : Dismissed

Judgement

B.J. Shethna, J.—Petitioner, Shri Krishnakant B. Parmar, Ex-Security Assistant, belonging to Scheduled Caste, has filed this petition under Articles 226 and 227 of the Constitution of India and challenged the impugned order dated 28th September, 2005, passed by the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad (for short " the Tribunal"), in Original Application No. 619 of 2004, whereby the learned Tribunal dismissed the application of the petitioner-applicant for quashing and setting aside the impugned order of removal dated 2-12-2003, passed by the respondent No. 2. Learned counsel Shri Majmudar for the petitioner raised the following submissions:

(i) That the muster roll was not produced in I this case in the inquiry. Therefore, the allegation levelled against the petitioner that he remained absent from duty without any prior permission for the period from 3-10-95 to 7-11-05, 9-11-95 to 10-12-95 and 12-12-95 to 2-8-96, cannot be said to be proved. Therefore, the impugned order of removal as well as the impugned order passed by the Tribunal are required to be quashed and set aside.

(ii) In the departmental inquiry, on behalf of the department, most important

witness Venkateswarlu was not examined by the department. Therefore, the inquiry was vitiated.

(iii) In any case, the punishment of removal from service was very harsh and disproportionate to the guilt which is found to be proved against the petitioner.

2. It may be stated that the first contention raised by Mr. Majmudar that the muster roll was not pressed during the inquiry, and therefore, the inquiry was vitiated was never raised before the learned Tribunal in the Original Application. Therefore, for the first time, such a contention cannot be allowed to be raised in a petition under Article 227 of the Constitution of India. Though the petition is levelled as a petition both under Articles 226 and 227 of the Constitution, strictly speaking it is a petition under Article 227 of the Constitution of India the scope of which is very narrow and limited.

3. Non-examination of witness Venkateswarlu would not vitiate the inquiry. Other witnesses have been examined in the case and the case against the petitioner was mainly rested on documentary evidence which clearly shows that the petitioner remained absent for long time on three different occasions. It may be stated that the petitioner was appointed on 16-6-1995 on probation purely in a temporary capacity. That within less than period of two months i.e. on 11-8-1995, he made a representation to the respondent-authority to transfer him from Palanpur to Ahmedabad, Anand or Nadiad. The said representation was not decided in his favour. Therefore, within less than two months thereof i.e. on 3-10-1995, he remained absent from duty for a period of more than one month i.e. up to 7-11-1995. Thereafter, after joining the duty only for one day i.e. 8-11-1995, again from the next date i.e. 9-11-1995 he remained on leave for a period of more than one month i.e. upto 10-12-1995. Again he joined duty for one day i.e. 11-12-95 and from 12-12-95 he remained absent from duty upto 2-8-96 i.e. period of almost eight months. Thus, it is obvious that the petitioner never wanted to serve at Palanpur and as he was from Ahmedabad, he wanted to either serve at Ahmedabad or nearby stations like Anand or Nadiad. When his request was not acceded to by the authority, he preferred to remain absent from duty unauthorisedly and thereby disrupted the service. He was in I.B. Department. Such attitude of any person cannot be tolerated in such a discipline department like I.B. From the impugned judgment of the learned Tribunal it is clear that when his request was not acceded to, then he instigated his uncle to file a criminal complaint against the superior officers which was dismissed by this Court in a petition filed by the accused by awarding cost of Rs. 1,000/-. Having considered all these aspects, the disciplinary authority in its impugned order dated 2-12-2003 (Annexure N) observed that "Shri Parmar appears to be extremely mischievous who has the ingenuity of cooking up allegations against his superior officers if his indisciplined and insincere behaviour is not tolerated. It is also seen from the record that he had been leveling various allegations against most of the senior officers who were connected with the DE against him." Hence, second submission of Mr. Majmudar is also rejected.

4. This brings us to the last contention raised by Mr. Majmudar regarding disproportionate punishment. He submitted that the petitioner was a poor scheduled caste man. For remaining absent from duty unauthorisedly, such an extreme punishment of removal from service cannot be passed. In support of his submissions he has placed reliance on two judgments of this Court (i) 1993 (1) G.L.H. 686 Gujarat Electricity Board vs. Gujarat Electricity Employees Union and (ii) 1994 (1) GCD 640 (Guj) Vadodara Municipal Corporation Kamdar Karmachari Union vs. Municipal Corporation of Vadodara and Another. Both the judgments are of Single Judge. In case of Vadodara Municipal Corporation Kamdar Karmachari Union (Supra) the petitioner was a sweeper and suffering from tuberculosis and was under medical treatment and not in a position to report for duty for a certain period. For remaining absent from duty, he was removed from service. On peculiar facts of that case, the learned Single Judge held that it was a case of disproportionate punishment.

We have already narrated the facts of this case in nutshell hereinabove. The petitioner was appointed as Security Assistant, in the very sensitive and discipline department of IB, he wanted to serve at a particular place i.e. at Ahmedabad or nearby places of Ahmedabad like Anand or Nadiad. When his request was not acceded to, he remained absent from duty for a period of almost one year on three different occasions without any leave. For getting himself transferred, he indulged in tactics of filing a false complaint against his superior officers through close relatives like his uncle which was dismissed by the High Court in a petition filed by the accused u/s 482 of the Code of Criminal Procedure with special cost of Rs. 1,000/-. If a person joins the service and within less than a period of two months tries for his transfer and indulges in these type of activities, then such a person cannot be continued in service. In such type of cases, except punishment of removal from service, no other punishment can be imposed. Having found that the charges are proved, there was no option for the disciplinary authority but to pass an order of removal from service. When it was challenged before the learned Tribunal, then having regard to the peculiar facts and circumstances of the case, the learned Tribunal has also refused to exercise its jurisdiction in favour of the applicant by giving solid and cogent reasons with which we are in complete agreement. Thus, on facts of the present case, it cannot be said that the punishment of removal from service was highly disproportionate.

5. This brings us to the second judgment cited by Mr. Majmudar in case of Narendra Kumar Naganbhai Solanki (Supra) wherein the petitioner was removed from service for suppression of the fact of prosecution in three criminal cases in recruit roll. The learned Single Judge of this Court on the facts of that case came to the conclusion that penalty of removal from service was excessive, therefore, interfered with the same. We may say that later on the Hon'ble Supreme Court in similar type of cases where there was suppression of material fact has held that in such type of cases, penalty of removal from service is the only punishment. Be that as it may, at the cost of repetition we may say that the facts

of the present case are totally different and when the disciplinary authority after having full fledged inquiry came to the conclusion that the charge of remaining absent from duty unauthorisedly is proved, and therefore, decided to remove the petitioner from service, then there is no question of interference. It may be stated that before approaching this Court the petitioner had already approached the Tribunal by way of Original Application 619 of 2003 which was dismissed by the learned Tribunal by assigning cogent reasons. Once the Tribunal has come to the conclusion that penalty of removal cannot be said to be disproportionate, then certainly this Court will not take different view of the matter in a petition under Article 226 of the Constitution of India. In view of the above discussion, the petition fails and is hereby dismissed. Rule is discharged.