

(1984) 05 RAJ CK 0020

In the Rajasthan High Court

Case No : Civil Special Appeal No. 135 of 1976

Kundan Singh Jhala

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 21-05-1984

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : (1984) RLW 631 : (1984) WLN 237

Hon'ble Judges : S.K. Mal Lodha, J;Kanta Bhatnagar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.K. Mal Lodha, J.—This appeal has been filed by Shri Kundan Singh Jhala whose writ petition under Article 226 of the Constitution was dismissed by the learned Single Judge by his order dated April 15, 1976. As the learned Counsel for the appellant has confined this appeal on the question of punishment alone, we do not want to encumber this judgment by giving narration of the facts hading to this appeal in detail. We will only state those facts which are necessary for deciding the question that has been canvassed before us.

2. The following five charges were framed against the petitioner-appellant.

CHARGE I

That the said Shri Kundan Singh Jhala while functioning as Assistant Regional Transport Officer, Kota, has been charging penalty lesser than that prescribed u/s 5 of the Rajasthan Motor Vehicle Taxation Act, 1961. A few instances have been given in Item IV of statement of allegations. Such unlawful action on the pan of said Shri K.S. Jhala in the capacity of Assistant Regional Transport Officer, Kota, has also resulted in loss of Government revenue.

CHARGE II

That the said Shri K.S. Jhala while functioning as Assistant Regional Transport

Officer, Kota, granted irregular exemption from payment of Motor Vehicle Tax, stated in the statement of allegations that Motor Vehicles Taxation exemptions were allowed in contravention of the provisions of law as also against departmental instructions issued from time to time. This has resulted in considerable loss of Revenue to the Government. There was also lack of supervision over his office and subordinates as stated in Allegation No. 2.

CHARGE III

That the said Shri Kundan Singh Jhala while functioning as Assistant Regional Transport Officer, Kota, allowed the issue of clearance certificate by unauthorised officials although tax dues are recorded against the particular vehicles in respect of which such clearance certificates have been issued as stated in Allegation No. 3 enclosed. Such unauthorised and irregular issue of tax clearance certificates has resulted in a huge loss of Government revenue. Moreover, office copies of such clearance certificates were also not maintained which is most objectionable. The said Shri K.S. Jhala did not take any action against the concerned officials as indicated in the statement of allegations which is unbecoming of a gazetted and responsible officer.

CHARGE IV

That the said Kundan Singh, Jhala did not take surrendered documents in his personal custody in spite of clear departmental instructions in this behalf and allowed these documents to remain with the clerks. In some cases such documents were not found with the clerks although the record showed that such documents were surrendered. The details are given in the statement of allegations No. 4. This is a positive proof and deliberate ignoring of orders of higher competent authorities.

CHARGE V

That the said Shri K.S. Jhala while functioning as Assistant Regional Transport Officer, Kota, allowed irregular actions on the part of his subordinate officials by not maintaining temporary permit Registers in respect of public and private carriers which is a clear violation of rules and departmental instructions and leads to corruption as it cannot be ascertained whether all the permit fees have been accounted for as indicated in the statement of allegation No. 5.

An Inquiry Officer was appointed vide inquiry report Ex. 14 dated November 29, 1965. The Inquiry Officer held charges Nos. 1 to 5 proved against the petitioner-appellant. Ultimately vide order Ex. 1 dated July 22, 1971 the State Government held that charges Nos. 1, 2, 4 and 5 are proved against the petitioner appellant. This was so held after obtaining the opinion of the Rajasthan Public Service Commission. The material part of the order Ex. 21 (dated July 22, 1971) is as follows:

After considering Shri Jhala's representation to show cause notice along with the advice of the Commission with reference to relevant record of the case, the

Government, while accepting the advice of the Rajasthan Public Service Commission, has been pleased to order that:

- (1) the penalty of stoppage of three annual grade increments with cumulative effect be imposed upon Shri K.S. Jhala;
- (2) full pay minus subsistence, if any already drawn, be allowed to Shri Jhala for the period he remained under suspension; and
- (3) the period of his suspension be treated as period spent on duty for purposes of pension, grade increment, leave etc.

The petitioner-appellant filed the writ petition in this Court on January 20, 1972 praying that the Order Ex. 21 imposing the penalty of stoppage of three annual grade increments with cumulative effect may be quashed and set aside and that the non-petitioner-respondent (State Government) may be directed to pay the petitioner his increments due upto date and pay him all arrears of that account. The writ Petition was contested by the State Government. The learned Single Judge held that the State Government was not justified in finding the petitioner guilty in respect of charge No. 2. The learned single Judge found that charge Nos. 1 and 2 have not been proved against the petitioner-appellant. So far as charge No. 4 is concerned, the learned Judge has observed that the learned Counsel for the petitioner-appellant was not able to show that finding recorded by the Inquiry Officer in respect of charge No. 4 was substantially incorrect. As regards charge No. 5, the learned Judge held that the finding on charge No. 5 cannot be said to be improper or illegal. From the aforesaid narration it is clear that the findings on charges No. 1 and 2 are reversed by the learned single Judge. He, however, maintained findings in respect of charges Nos. 4 and 5. In view of this it was contended before the learned single Judge that the punishment of stoppage of three annual grade increments with cumulative effect imposed on the petitioner vide Ex. 21 dated July 22, 1971 was not justified and the case should be remanded to the State Government to reconsider and redetermine the question of penalty-imposed upon the petitioner in respect of charges Nos. 4 and 5. The learned single Judge after referring the State of Orissa Vs. Bidyabhushan Mohapatra, and Railway Board Representing The Union of India (UOI) Vs. Niranjana Singh, repelled the contentions of the learned Counsel raised on behalf of the petitioner-appellant. We may here expect what the learned single Judge has said in this connection:

In the present case, the State Government by its order dated 22-7-1971 imposed a penalty of stoppage of three annual grade increments with cumulative effect upon the petitioner. Although the aforesaid penalty was imposed on the basis that charges Nos. 1, 2, 4 and 5 were proved against the petitioner. But if charges Nos. 1 and 2 are held to be unsustainable against the Petitioner even then it cannot be said that the punishment imposed upon the Petitioner by the State Government could not lawfully have been imposed upon him on the basis of the remaining charges Nos. 4 and 5 which are found to be sustainable. In view

of the aforesaid decisions of their Lordships of the Supreme Court, I do not think it would be proper for this court to direct the State Government to reconsider the order regarding Petitioner. It is, therefore, not possible to accept the contention of the learned Counsel for the Petitioner that the matter should be remanded back to the State Government to reconsider as to whether lesser punishment would suffice in the present case.

The unsuccessful petitioner (appellant) has filed this appeal.

3. Mr. M. Mridul learned Counsel for the appellant has raised only one contention before us, namely that the learned single Judge was not right and justified in maintaining the punishment of stoppage of three grade increments with cumulative effect when he held that charges Nos. 1 and 2 have not been established against the petitioner-appellant and only charges Nos. 4 and 5 have been proved. The Disciplinary Authority had imposed penalty of stoppage of three annual grade increment with cumulative effect on the ground that charges Nos. 1, 2, 4 and 5 have been proved against the petitioner and to the same punishment is not justified when only charges Nos. 4 and 5 have been held to be proved, which according to the learned Counsel for the appellant are less serious charges in comparison to charges Nos. 1 and 2. Learned Counsel submitted that *State of Orissa Vs. Bidyabhushan Mohapatra*, and *Railway Board Representing The Union of India (UOI) Vs. Niranjan Singh*, are distinguishable. He, however, relied on *S. Govinda Menon v. The Union of India* 1973 LLJ 369 *Jayaram Naidu v. University of Mysore* 1974 (2) LLJ 147 and *Zonal Manager v. M.L. Saraf* 1978(2) SLR 868 in support of his submission. On the other hand, learned Deputy Government Advocate supported the impugned order dated April 15, 1976 of the learned single Judge and urged that if the punishment imposed can be justified on the basis of the charge or charges that have been held to have been established against the petitioner-appellant, the High Court in exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution cannot direct the authority to reconsider the order of imposing of punishment for, findings in respect of the charges have been maintained and punishment so imposed is justified on that count.

4. We have bestowed our best consideration to the rival contentions raised on behalf of the parties. A perusal of charges Nos. 1, 2, 4 and 5, which have been reproduced hereinabove, shows that charges Nos. 1 and 2 are more serious in nature than charges Nos. 4 and 5. In other words, charges Nos. 4 and 5 are not as grave as charges Nos. 1 and 2, The Disciplinary Authority in respect of all the four charges which were held by it to have been proved imposed the penalty of stoppage of three annual grade increments with cumulative effect upon the petitioner-appellant. The learned single Judge despite holding that findings on charges Nos. 1 and 2 are unsustainable, maintained the penalty holding that the State Government could lawfully impose the aforesaid penalty in respect of charges Nos. 4 and 5.

5. In *S. Govinda Menon's* case 1973 LLJ 369 punishment was imposed by the

State Government on the delinquent Officer (S. Govinda Menon) under Ex. P. 10 on the ground of cumulative effect of the allegations found against him. It was held that substantial part of the allegations were not maintainable in the absence of materials and the question arose whether the punishment of removal from service imposed on the delinquent officer could be sustained or that any lesser punishment should be awarded. It was held by the learned Judge that as the substantial part of the allegations have been held to be unmaintainable for want of materials, the punishment cannot be sustained. As the delinquent Officer had died, the question of lesser punishment did not arise. The learned Judge has, inter alia referred to State of Orissa Vs. Bidyabhushan Mohapatra, and Railway Board, New Delhi's case AIR 1979 SC 966 and explained them.

6. In M. G. Jayaram Naidu's case 1974(2) LLJ 147 there were three charges. On the basis of the report submitted by the Registrar, the Vice-Chancellor found that petitioner in that case was guilty of three charges which had been framed against him and awarded the punishment of reduction to the grade of Senior Assistant from that of the Superintendent. By another order dated June 18, 1971, the pay of the petitioner was fixed at the minimum of the scale of senior Assistant. It was also ordered that the petitioner was not eligible for promotion, for a period of five years, from the date he reported to duty as senior assistant. The learned Judge of the High Court of Karnataka in the writ petition filed by the petitioner (delinquent Officer) held that finding of third charge is vitiated. The question arose whether the punishment awarded in respect of three charges could be maintained. The learned Judge has observed as under:

In the instant case, the University has awarded a single punishment in respect of three charges, of which the petitioner had been found guilty. On comparison, I find that the first two charges, to which Shri Shivanna referred, are not as grave as the third charge in respect of which the Registrar held the enquiry. Since I have come to the conclusion that the finding regarding the third charge is vitiated, it is not possible to uphold the punishment awarded in this case because it is not known what punishment the Vice-Chancellor would have awarded to the petitioner if he had found the petitioner guilty of only two of the charges, which are comparatively of a minor character. Hence the enquiry proceedings held by the Registrar and the punishment awarded by the Vice-Chancellor are set aside....

In Zonal Manager's case 1978(2) SLR 868 the punishment of dismissal from service was imposed on composite charges. The learned Judge has observed as under:

It is settled law that if action can be supported by charges, other than the one found defective, the order cannot be interfered with by the High Court under Article 226 unless the charges are composite. Where the charges are composite, it would not be proper to ignore the defective part of the charge to sustain the order because the punishing authority had taken all those factors into consideration while proposing the punishment. We reject the argument of Mr. Nanda that in spite of the failure of one charge, the order of punishment can be

unheld. Whereas it is correct that under the statute, the punishment of dismissal can be imposed on the proof of even the last charge relating to the issuance of stationery alone, but it would be difficult to hold that the punishing authority would have imposed the punishment of dismissal on the proof of that charge alone. He may or he may not have so done and as such it would be that the punishment imposed is justified, when one of the charges against the respondent has failed for taking into account incredible evidence. In this view of the matter the punishment imposed is not sustainable.

In the case on hand the penalty of stoppage of three annual grade increments with cumulative effect, could be imposed on the proof of one or more charges. The Disciplinary Authority had imposed the penalty of stoppage of three grade annual increments with cumulative effect upon the petitioner-appellant on proof of four charges, namely, 1, 2, 4 and 5. Whether it would have imposed the punishment of withholding of three (sic) grade annual increments on proof of two charges, or not is a matter of (sic) conjecture. The Disciplinary Authority imposed the aforesaid punishment on account of the cumulative effect of the four charges having been proved against the petitioner. But this cannot be necessarily true that the same Disciplinary Authority might have imposed the punishment of withholding of three grade annual increments with cumulative effect on proof of charges Nos. 4 and 5 which as stated above, are not so grave or serious as charges Nos. 1 and 2 which have been held to have not been established against the petitioner-appellant. As one single punishment was imposed regarding the four charges (Nos. 1, 2, 4 and 5) and findings in respect of charges Nos. 3 and 2 have been reversed by the learned single Judge, the punishment so awarded stands negatived. We are, therefore, unhesitatingly of the opinion that when charges No. 1 and 2 have not been established against the petitioner-appellant, there is no justification in maintaining the punishment which was imposed upon the petitioner-appellant in respect of the aforesaid four charges.

7. In support of his conclusion, the learned single Judge has, as stated above, referred to *State of Orissa Vs. Bidyabhushan Mohapatra*, and *Railway Board Representing The Union of India (UOI) Vs. Niranjan Singh*, In *State of Orissa Vs. Bidyabhushan Mohapatra*, an inquiry was conducted against a Government servant on five charges of corruption and a sixth charge of possession of means disproportionate to his assets. The Tribunal found him guilty of four charges and sixth charge of possession of illegal assets. The finding was accepted by the Government and the delinquent servant was dismissed from service. In a writ petition filed by the delinquent servant, the High Court held that the finding in respect of two of the charges relating to corruption was vitiated being opposed to the rules of natural justice and directed the Government to decide whether on the basis of those charges the punishment imposed on the Government servant should be maintained or lesser punishment would be sufficient. The Government filed appeal to the Supreme Court which while allowing the appeal has observed as follows:

But the Court in a case in which an order of dismissal of a public servant is impugned, is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanour established. The reasons which induce the punishing authority if there has been an enquiry consistent with the prescribed rules, are not justiciable; nor is the penalty open to review by the Court. If the High Court is satisfied that if some but not all of the findings of the Tribunal were "unassailable", the order of the Governor on whose powers by the rules no restrictions in determining the appropriate punishment are placed, was final, and the High Court had no jurisdiction to direct the Governor to review the penalty or as we have already observed the order of dismissal passed by the competent authority on a public servant, if the conditions of the constitutional protection have been complied with, is not justiciable. Therefore, if the order may be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction if the findings of the enquiry officer or the Tribunal *prima facie* make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there has been violation of the rules of natural justice. The High Court was, in our judgment, in error in directing the Governor of Orissa to reconsider the question.

So far as Railway Board Representing The Union of India (UOI) Vs. Niranjan Singh, is concerned, in that case a employee was accused of two charges. The first charge was that he was instrumental in compelling the air compressor being shut down and the second charges was that he contravened the directions of the General Manager Northern Railway by addressing meetings within the railway premises. The Inquiry Committee held that he was found guilty of the second charge and not the first one. The Disciplinary Authority found him guilty of both the charges and imposed upon him the punishment of removal from service. The High Court found that the finding of the Disciplinary Authority on first charge cannot be sustained and set aside the punishment awarded to him. The Railway appealed to the Supreme Court which held that the High Court erred in interfering with the finding of the Disciplinary Authority on the first charge and that there was sufficient evidence to sustain that finding. Thereafter the Court considered the question whether the punishment imposed on the railway employee can be sustained on the basis of the finding on one of the two charges alone. The Supreme Court has expressed itself in the following words:

It was not disputed before us that the first charge levelled against the respondent is a serious charge and it would have been appropriate for the General Manager to remove the respondent from service on the basis of his finding on that charge. But we were told that we cannot assume that the General Manager would have inflicted that punishment solely on the basis of that charge and consequently we cannot sustain the punishment imposed if we hold that one

of the two charges on the basis of which it was imposed is unsustainable. This contention cannot be accepted in view of the decision of this Court in *State of Orissa Vs. Bidyabhushan Mohapatra*, wherein it was held that if the order in an enquiry under Article 311 can be supported on any finding as substantial misdemeanour for which the punishment imposed can lawfully be imposed it is not for the Court to consider whether that ground alone would have weighed with the authority in imposing the punishment in question.

In that case there were three charges of misconduct against the Sub-Divisional Officer. Each charge was to the effect that on a particular day a girl who was arrested and brought before him was detained in custody and brought to his house and made to stay with him for immoral purpose. The delinquent officer was found guilty of all the charges and dismissed from service. The High Court set aside the order of dismissal on some technical grounds. An appeal was filed by the State Government to the Supreme Court. The Supreme Court found that the first charge against the delinquent officer had been conclusively established, the Supreme Court stated that said charge was grave enough to warrant the punishment of dismissal from service and that it was not, therefore necessary to consider whether the other charges had been made out against the delinquent officer.

8. Having considered the aforesaid two decisions of the Supreme Court on which reliance was placed by the learned Deputy Government Advocate we are definitely of the opinion that they cannot be of any assistance in the facts and circumstances of the case on hand. They are distinguishable. In the facts and circumstances of the case which have already been detailed above, we adopt the reasoning given in *S. Govinda Menon's case* 1973(2) LLJ 369 *M.G. Jayaram Naidu's case* 1974(2) LLJ 147 and *Zonal Manager's case* 1978(2) SLR 868 and subscribe to the view taken therein and hold that the single punishment imposed in respect of the proof of charges Nos. 1, 2, 4 and 5 stands vitiated when the learned single Judge has reversed the findings regarding charges Nos. 1 and 2 and held that they have not been proved. The punishment imposed is, therefore, unsustainable. In view of this, the punishment of stoppage of three grade annual increments with cumulative effect imposed upon the petitioner by the Disciplinary Authority vide Ex. P. 21 dated July 22, 1971 and maintained by the learned single Judge cannot be sustained and it is hereby quashed and set aside.

9. The result is that we allow the appeal and set aside the order dated January 15, 1976 of the learned single Judge to this extent only by which he maintained the penalty of stoppage of three grade annual increments with cumulative effect imposed upon the petitioner-appellant.

10. In the facts and circumstances of the case there will be no order as to costs of this appeal.