
(2006) 11 MP CK 0046
In the Madhya Pradesh High Court

Madhukar Mahar	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 07-11-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2007) 2 MPHT 252

Hon'ble Judges : R.S. Jha, J;Dipak Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dipak Misra, J.—Invoking the extra-ordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India the petitioner, a former employee of the Ordnance Factory, Khamaria has called in question the tenability of the order, dated 12-2-2002 passed by the Central Administrative Tribunal, Jabalpur Bench, Jabalpur (in short "the Tribunal").

2. The facts which are requisite to be stated for adjudication of the writ petition are that the petitioner was while working in the Ordnance Factory, Khamaria was found in a drunken state in the working hours. In addition, he was also playing truant and remaining absent from duties. Be it noted, the petitioner was working as "Durwan" in the Ordnance Factory, Khamaria. Because of this situation a disciplinary proceeding was initiated against him and a charge-sheet was served on him. After the charge-sheet was served, the delinquent employee filed his show-cause admitting the charges levelled against him. On the basis of the admission, the Disciplinary Authority passed the order of removal vide Annexure P-3, dated 10-11-1990.

3. Being aggrieved by the aforesaid order the petitioner preferred an appeal before the Appellate Authority. Memorandum of appeal has been brought on record as Annexure P-4. In the appeal in Paragraph 3 it was expressly stated that he had accepted the charges as he was assured that lesser punishment would be

imposed. The Appellate Authority vide Annexure P-6 scrutinizing the grounds urged in the memorandum of appeal came to hold that after admitting the charges, the petitioner cannot take a somersault. The Appellate Authority also stated that the contention of the petitioner that he was not intoxicated was not acceptable as after medical examination it was confirmed that he was under influence of alcohol. Eventually the appeal stood dismissed.

4. The aforesaid factual matrix compelled the petitioner to file an Original Application before the Tribunal forming the subject matter of O.A. No. 91/96. The Tribunal took stock of fact situation and expressed the opinion that when he had admitted the charges levelled against him there was no necessity of inquiry and the orders passed by the authorities did not warrant interference. It is worthnoting here that in the rejoinder affidavit filed by the petitioner before the Tribunal it was admitted in categorical terms that at the time of service of charge-sheet the Disciplinary Authority had promised him to inflict lesser punishment and, therefore, he had admitted the charges. Nothing has been brought on record to show that any assurance was given to him. What is reflectable is that the petitioner has admitted the charges. The same is also noticeable from Annexure P-2.

5. From the aforesaid it is clear as crystal that there was admission of the charges by the petitioner levelled against him; that there is no material to show that the Disciplinary Authority has forced or coerced or did anything to persuade him admit the charges; and that once there had been admission, there was no question for conducting of an inquiry.

6. Mr. Mukhtar Ahmed, learned Counsel for the petitioner while criticizing the order passed by the Tribunal tried to hold unto the last plank by submitting that the petitioner was a "Durwan" in the Ordnance Factory and remained absent due to unavoidable circumstances and, therefore, he should have been dealt with leniency. In essence, the submission of the learned Counsel for the petitioner is that doctrine of proportionality gets attracted to the case at hand.

7. Per contra, Mr. S. Dharmadhikari, learned Counsel for the respondents has submitted that the charge-sheet would go a long way to show that the petitioner was in the habit of remaining absent in the duty hours and remained absent for a considerable length of time and he was found in drunken state despite the fact that he was holding the post of "Darban" and hence, the doctrine of proportionality does not get attracted.

8. At this juncture, it is obligatory on our part to refer to the decision rendered in the case of Ramavtar v. State of M.P. and Ors. 2006 (2) M.P.H.T. 351, which has been commended to us by Mr. Mukhtar Ahmed. Learned Counsel has submitted that in the said case this Court taking note of the facts in entirety reduced the punishment from removal from the service to initial pay-scale of the post of constable with a further stipulation to withhold two increments with cumulative effect. In the said case the petitioner Ramavtar was working in the post of SAF

Constable and had left the Head Quarters without obtaining leave. We do not intend to advert to the correctness of the said decision except stating that the facts are different. Here the delinquent employee was a "Durwan". He was employed under the Ordnance Factory, Khamaria. The duty cast on him was of grave responsibility for establishment. An employee who holds such a post cannot afford to play truant. Truancy and discharge of duty in a responsible atmosphere are contradictory in terms. The gravity of the post can never be lost sight of. It can be well imagined what would be the discipline if a "Durwan" remains absent in the duty hours and is found in a drunken state. A guard slowly becomes unfit to guard because of paving the path total indiscipline. A public employment is an employment for the collective at large. A person after getting employment has to conduct himself with all sincerity. Asking for apology in a case of this nature is an anathema to discipline. Discipline for a post of guard has to have paramount role more so when he has been engaged to function as a "Durwan" in a factory which manufactures explosives. Be it placed on record, the said factory comes under the Defence. A spacious plea of the employee that he was given assurance by the authorities that he would be excused if he accepts the charges is unacceptable. In the case at hand, the punishment of dismissal is neither shockingly disproportionate nor does it run counter to the concept of reasonableness, rationality and acceptability to the conscience of a prudent man.

10. Consequently, the writ petition, being devoid of merit, stands dismissed without any order as to costs.