
(2003) 08 JH CK 0100
In the Jharkhand High Court
Case No : CWJC No. 2694 of 1999 (R)

Mahabir Sahu

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 4 JCR 699

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : S.B. Gadodia, Sumeet Gadodia and Rajiv Kumar, for the Appellant;
Ram Kishore Prasad, Addl. CGSC, for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—Heard Mr. S.B. Gadodia, learned counsel appearing for the petitioner and Mr. Ram Kishore Prasad, learned Additional Central Government Standing Counsel for the respondents.

2. The petitioner is aggrieved by the order of punishment dated 1.3.1999 as contained in Annexure 4 by which the punishment of dismissal from service was inflicted upon the petitioner. The petitioner is further aggrieved by the order dated 5.7.1999 passed by the respondent No. 3 as contained in Annexure 7 confirming the aforementioned order of punishment. The petitioner Joined the armed forces in the year 1972 on the post of a Vehicle Mechanic. After completing 27 yeas of service, which, according to the petitioner, was totally unblemished, he was transferred to Ranchi in May 1997. It appears that while he was performing his duty in the Canteen Stores Department, an occurrence took place is a result of which a charge-sheet was issued against him. The charge-sheet contained four charges and these charges were :--

(a) On 4.3.1998, while performing the duties of a Canteen JCO, he sold canteen items to one Sanjay Prasad Sahu with an intention to cause wrongful gain to him.

(b) On 5th March 1998 while performing the duties of a Canteen JCO and being responsible to deposit each day's sale proceeds in the Unit's Regimental Treasure Chest by 6 p.m. . and having received Rs. 28,000/- from the said Sanjay Prasad Sahu for the sale of items, he failed to deposit the same within that period and did so on 9.3.1998.

(c) Between 7-8.3.1998 while performing the duties of a Canteen JCO and being responsible to deposit each day's sale proceeds in the units Regimental Treasure Chest by 6 p.m. he failed to deposit Rs. 778.10 and Rs. 7424.70 within the period, i.e., of 7th March 1998 and 8th March 1998 and deposited the same only on 11.3.1998; and

(d) Between November 1997 to March 1998 while he was performing the duties of a canteen JCO, he failed to properly maintain the General Stock Ledger of the Canteen.

3. The aforementioned charge-sheet became a subject matter of Court Martial and upon conclusion thereof the aforementioned punishment was inflicted upon petitioner.

4. Upon perusal of Annexure 4, it appears that second charge was not believed, i.e., the charge relating to having received Rs. 28,000/- from Sanjay Prasad Sahu on 5.3.1998 and depositing the same on 9.3.1998. However, for the first third and fourth charge, the petitioner was found guilty and accordingly dismissed from service. According to the petitioner, the first charge relates to selling of items from the canteen to a civilian, whereas the third charge shows delayed deposit and the fourth charge relates to improperly maintaining the General Stock Ledger of the Canteen.

5. The proceedings were concluded and after the trial was over, the Commanding officer issued a statement relating to the character and particulars of service of the petitioner and the same is contained in Annexure 5 column No. 2 states that irrespective of the trial, the petitioner's general character was "exemplary". According to Mr. S.B. Gadodia, learned Senior Advocate appearing for the petitioner, the aforementioned certificate as contained in Annexure 5 when read with the nature of offence alleged against the petitioner, the same was such that it certainly did not warrant the punishment of dismissal from service. According to him having served the Army for more than twenty seven years and having earned such a remarks to the extent that save and except the trial his general character being "exemplary", the punishment of dismissal from service was totally disproportionate and extremely harsh and that the respondents could have inflicted a lesser punishment upon the petitioner by taking into consideration the effects of the provisions of Section 52(f) read with Section 63, 71 and 72. Mr. Gadodia submits that even in relation to Charge No. 1 for the sale of goods, the petitioner had deposited the entire amount though belatedly. Similar was the case with regard to Charge N. 3 also.

6. This Court after having looked into the aforementioned charge-sheet and the

aforementioned certificate alongwith orders of punishment is also of the view that the punishment appears to be extremely harsh and disproportionate. In the case of Ex-Nayak Sardar Singh v. Union of India and Ors. reported in AIR 1992 SC 417, the Hon"ble Supreme Court of India following other earlier judgments of the said Apex Court, followed the view that the question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court Martial but the sentence is to suit the offence and the offender and that it should not be unduly harsh or so disproportionate so as to shock the conscience. The relevant portions of the judgment of the Hon"ble Supreme Court is therefore worth reproducing :--

"5. In Council of Civil Service Union v. Minister for the Civil Service (1984) 3 All ER 935, 950 Lord Diplock said :--

"Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three, heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call "illegality", the second "irrationality" and the third "procedural impropriety. This is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle" of "proportionality" which is recognized in the administrative law of several of our fellow members of the European Economic Community".

This principle was followed in Ranjit Thakur Vs. Union of India (UOI) and Others, where this Court considered the question of doctrine of proportionality in the matter of awarding punishment under the Army Act and it was observed thus at p. 2392 of AIR;

"The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correct. Irrationality and perversity are recognized grounds of judicial review."

In Bhagat Ram Vs. State of Himachal Pradesh and Others, this Court held as under (at p. 460 of AIR);

"It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution."

Applying these principles, to the instant case, we are also constrained to say that there is an element of arbitrariness in awarding these severe punishments to the appellants."

7. In yet another judgment of the Hon"ble Supreme Court of India in the case of Bhagat Ram Vs. State of Himachal Pradesh and Others, the said Apex Court went a step further holding that where the penalty was disproportionate to the gravity of misconduct, the same would be violative of Article 14 of the Constitution of India. Paragraph 15 of the said judgment reads as follows :--

"15. The question is once we quash the order, is it open to us to give any direction which would not permit a fresh inquiry to be held? After all what is the purpose of holding a fresh inquiry? Obviously, it must be impose some penalty. It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution. Having been influenced by all these relevant considerations, we are of the opinion that no useful purpose would be served by a fresh inquiry. What option is open to use in exercise of our jurisdiction under Article 136 to make an appropriate order. We believe that justice and fair play demand that we make an order of minor penalty here and now without being unduly technical apart jurisdiction, we are fortified in this view by the decision of this Court in Hindustan Steels Ltd., Rourkela Vs. A.K. Roy and Others, where this Court after quashing the order of reinstatement proceeded to examine whether the party should be left to pursue further remedy. Other alternative was to remand the matter that being a case of an industrial dispute to the Tribunal. It is possible that on such a remand this Court further observed, that the Tribunal may pass an appropriate order but that would mean prolonging the dispute which would hardly be fair or conducive to the interest of parties. This Court in such circumstances proceeded to make an appropriate order by awarding compensation. We may adopt the same approach. Keeping in view, the nature of misconduct, gravity of charge and no consequential loss, a penalty of withholding his increments with future effect will met the ends of justice. Accordingly, two increments with future effect of the appellant be withheld and he must be paid 50% of the arrears from the date of termination till the date of reinstatement."

8. In yet another judgment of the Hon"ble Supreme Court of India passed in the case of Ranjit Thakur Vs. Union of India (UOI) and Others, , their Lordships have held at paragraph 9 that irrationality and perversity are recognized grounds of judicial review and therefore where the penalty imposed is not commensurate and where it was so strikingly disproportionate then it cannot be allowed to remain in corrected in judicial review, Paragraph 9 of the said judgment reads as follows :--

"9. Re : contention (d) : Judicial review generally speaking, is not directed against a decision, but is directed against the "decision making process." The question of the choice and quantum of punishment is within the Jurisdiction and

discretion of the Court Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correct. Irrationality and perversity are recognized grounds of judicial review. In *Council of Civil Service Union v. Minister for the Civil Service* (1984) 3 WLR 1174 (HL) Lord Diplock said :

"Judicial Review has I think, developed to a stage today when without by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call "illegality", the second "irrationality" and the third "procedural impropriety". That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of "proportionality" which is recognized in the administrative law of several of our fellow members of the European Economic Community."

In *Bhagat Ram Vs. State of Himachal Pradesh and Others*, (at p. 460) this Court held :

"It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution."

The point to note and emphasis is that all powers have legal limits.

In the present case the punishment is so strikingly disproportionate as to call for and justify interference. It cannot be allowed to remain unconnected in judicial review."

9. In this case, this Court finds that so far as first charge is concerned, it related to sale of canteen items to a civilian. No doubt this is an irregularity, but the petitioner did not "pocket" the sale proceeds nor did he cause any loss or injury to the respondents. He deposited the entire sale proceeds though such deposit was not done on the same day, but belatedly on 9.3.1998. This was the crux of the first charge and so far as third charge is concerned, it also relates to a belated deposit. At best these are irregularities which could have been punished in a lesser manner but inflicting the punishment of dismissal from service is so harsh in such a case that it cannot be said to be proportionate. It is here that the doctrine of proportionality compels this Court to examine this matter while exercising jurisdiction of judicial review. Scope of judicial review is not directed against a decision but it is directed against the decision making process. It is true that the question of choice and the quantum of punishment is within the discretion of the Court Martial authorities but the punishment should be such that

it does not become so disproportionate that it compels a Court to examine the same in exercise of its jurisdiction under Article 226 of the Constitution. In all cases therefore, it cannot be said that the doctrine of proportionality cannot be looked into, because the scope of judicial review includes the scope to examine proportionality of a punishment.

10. For the forging reasons therefore, this Court is satisfied that the impugned order of punishment lacks proportions, is extremely harsh and it cannot be allowed to go unnoticed and unconnected in judicial review. Accordingly, the impugned orders are set aside and quashed. The matter stands remanded to the respondent No. 3 to pass a fresh order in accordance with law after taking into consideration the observations made herein.

The writ petitioner as allowed. No order as to costs.