

(1978) 09 GUJ CK 0003
In the Gujarat High Court
Case No : Spl. Civil Application No. 1570 of 1975

M.D. Parmar

APPELLANT

Vs

Y.B. Zala and Another

RESPONDENT

Date of Decision : 05-09-1978

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1979) GLR 497 : (1980) 1 LLJ 260

Hon'ble Judges : M.P. Thakkar, J

Bench : Single Bench

Judgement

1. New situations pose new challenges and demand new answers. Such a situation has arisen in the present petition by a dismissed Government servant which has thrown up a very vital question, namely :

Can an employee satisfactorily explain whether he had a good and sufficient cause for reporting late on a particular day one and a half years ago and show-cause for the lapse ? Would or would not the delay of one and half years to initiate disciplinary proceedings by itself constitute denial of reasonable opportunity to defend and thus violate principles of natural justice ?

2. On the allegation that on one occasion the petitioner, a police constable, had remained absent in the morning parade and on some other occasions he was found absent when roll call was taken during the course of one month between November 15, 1971 and December 15, 1971, departmental proceedings were initiated against the said constable about 1 1/2 years thereafter by a charge-sheet dated May 18, 1973. At the conclusion of the departmental proceedings the petitioner was removed from service by an order passed by Shri Y. B. Jhala, District Superintendent of Police, Mehsana, as per annexure "F" dated October 31, 1973. The appeal and revision preferred to the higher authorities having failed, petitioner has approached this Court by way of the present petition under Art. 226 of the Constitution of India and has challenged the impugned order of removal from service on the following grounds :

(A) Institution of disciplinary proceedings after an inordinate delay of about 1 1/2 years in the context of the charge as regards failure to attend a parade or to answer a roll call in itself constitutes denial of principles of natural justice inasmuch as it would not be possible to dig out from the store of memory the cause for the failure and to explain and justify the failure;

(B) Even though a definite allegation of bias was in terms made against Shri Jhala (Opponent No. 1 herein) in the written statement filed by the petitioner, Shri Jhala had proceeded to record a finding of guilt and to impose the penalty of removal from service without even dealing with the allegation made by him and that even the averment made in the petition in this behalf had remained uncontroverted on the part of Mr. Jhala;

(C) The impugned order has been passed in violation of principles of natural justice as also in disregard of the requirements of the relevant rules without considering any evidence and without even taking note of the defence raised by the petitioner. The order under the circumstances betrays lack of application of mind and being violative of the requirements of principles of natural justice, is rendered void; and

(D) The disciplinary authority has not taken into account the relevant departmental instructions in regard to the imposition of penalty contained in the Bombay Police Manual.

3. It is an admitted position that the alleged absence from parade occurred on November 15, 1971, and the alleged absence at the time of taking roll call occurred on some occasions between November 15, 1971 and December 15, 1971, that is to say, during the course of one month in 1971. It is also not in dispute that charge-sheet in this behalf was served for the first time on May 18, 1973, that is to say, about 1 1/2 years after the aforesaid lapses are said to have occurred. The learned counsel for the petitioner has argued that this inordinate delay by itself constitutes denial of reasonable opportunity to defend inasmuch as after 1 1/2 years it would be humanly impossible for any one with average memory and recollection to explain under what circumstances he was unable to attend the parade or to remain present at the time when roll call was taken. The allegation appears to be that at the point of time of roll call the petitioner was not found present. It does not mean that he had not turned up at all. It means that he had turned up late. It is not possible for any one after a lapse of 1 1/2 years to explain under what circumstances he was late or unable to attend the parade or had remained absent at the time of the taking of the roll call. No doubt, in the police force, the authorities would be justified in expecting strict discipline from the police constables. Even so it cannot be overlooked that they are human beings. Nor can it be overlooked that they may have good grounds for not being able to report for the parade or roll call at the stroke of the hour. One can conceive of several reasons. May be he was indisposed. May be there was some unexpected occurrence in the family. May be something occurred on his way to the parade ground which held him up. A mere lapse in regard to such

a small matter by itself, regardless of the underlying cause for the lapse, cannot constitute negligence or dereliction from duty. A police constable must be given an opportunity to effectively explain the circumstances in which the lapse occurred in order to satisfy the disciplinary authority that the lapse was neither intentional nor deliberate nor on account of indifference or negligence but was occasioned by circumstances beyond his control. If he can satisfy the disciplinary authority on this point the charge cannot be established. Can he, however, at all offer a satisfactory explanation on the basis of his memory when the charge is levelled one and half years after the occurrence ? Having regard to the very nature and content of the charge, a delay of about 1 1/2 years must be considered fatal from the point of view of affording reasonable opportunity to the constable concerned to show cause against the charge levelled against him. It would be asking for the impossible to expect the constable concerned to explain satisfactorily the reason which occasioned the delay in reporting for duty. If the charge or accusation had been levelled very soon after the lapse, the constable concerned could have rendered an appropriate explanation regardless of whether it was or was not considered satisfactory by the, competent authority. Not having done so far more than 1 1/2 years after the occurrence, the constable cannot be penalised for not being able to show cause to the satisfaction of the disciplinary authority. Under the circumstances, the very delay in initiating proceedings must be held to constitute a denial of reasonable opportunity to defend himself for one cannot reasonably expect an employee to have a computer-like memory or to maintain a day-to-day diary in which every small matter is meticulously recorded in anticipation of future eventualities of which he cannot have a provision. Nor can he be expected to adduce evidence to establish his innocence, for, after inordinate delay he would not recall the identity of the witnesses who could support him. Delay by itself, therefore, will constitute denial of reasonable opportunity to show cause. This would amount to violation of principles of natural justice, and the impugned order must be struck down on this ground alone.

* * * * 4. In the result, the petition succeeds. The impugned order of removal from service as per Annexure "P", dated October 31, 1973, must be quashed and set aside as being null and void on the ground of being violative of principles of natural justice and on the aforesaid grounds.

5. Along with this order the appellate and the revisional orders as per Annexures I, J, and K must also be quashed and set aside.

6. It is declared that the petitioner continues in service. The petitioner shall be given a posting on or before October 3, 1978. He shall also be paid all the back wages including increments due to him till the date of his reinstatement latest by October 20, 1978.

7. The petition is allowed. Rule is made, absolute to the aforesaid extent with costs.

8. The learned Assistant Government Pleader is directed to communicate the

order to the, department specifying the time limit for compliance so that the directions issued by the Court are complied with in time.