

(2007) 10 RAJ CK 0081
In the Rajasthan High Court

Mohan Lal Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-10-2007

Acts Referred:

Citation : (2008) 2 RLW 1037

Hon'ble Judges : Shiv Kumar Sharma, J;R.S. Chauhan, J

Bench : Division Bench

Judgement

Shiv Kumar Sharma, J.—Having put in service for twenty-four years, the appellant was removed from the service vide order dated 28.10.1994 on the charge of wilful absence from service for a period of two months. Although the appellant had filed a departmental appeal against the said order, his appeal was dismissed vide order dated 7.4.1995. The appellant filed a writ petition challenging the order dated 28.10.1994 and 7.4.1995 before this Court. However, vide judgment dated 5.8.1996, the learned Single Judge has dismissed the writ petition. Hence, this appeal before this Court.

2. The brief facts of the case are that the appellant was initially appointed as a constable in the Railway Protection Force, in the year 1968. From 1968 to till 1992, neither any charge-sheet was served upon him, nor there was any complaint about his conduct. But, on 12.9.1992, a charge-sheet was served upon him, wherein two charges were levelled, against the appellant: firstly, he was wilfully absent from duty from 9.10.1991 to 25.11.1991 without any sanctioned leave. Secondly, the appellant was caught gambling in the railway quarter and was granted bail on 19.11.1991. However, he had concealed this fact from the respondent-authorities. Therefore, a disciplinary inquiry was contemplated against him. Immediately; the petitioner filed a reply against the said charges and pleaded that according to the charge-sheet itself, the respondents have admitted the fact that the petitioner has sent a medical certificate with regard to his illness and his inability to join the service, although the medical certificate was issued by a private practitioner. Considering the existence of the medical

certificate, it cannot be said that he had absented from his duties willfully. With regard to the second charge, the petitioner had pleaded that he was falsely implicated by the police as would be obvious from the Roznamcha dated 30.11.1991. However, notwithstanding his reply, an inquiry officer was appointed vide letter dated 18.2.1992. Instead of giving an opportunity of hearing to the appellant, the Inquiry Officer proceeded ex parte and submitted his inquiry report to the Disciplinary Authority i.e., Divisional Security Commissioner. Vide order dated 30.9.1992, the Divisional Security Commissioner, imposed a penalty of removal from service with immediate effect. Aggrieved by the said order, the appellant preferred a departmental appeal before the Deputy Chief Security Commissioner. On appeal filed by the appellant, the Deputy Chief Security Commissioner, set aside the punishment order and directed a de novo disciplinary proceedings, as the departmental inquiry had been held ex-parte. Therefore, the appellant was reinstated in service. But, later on he was placed under suspension vide order dated 11.11.1993.

3. Again, a charge-sheet containing two charges namely that he was absent from duty from 23.3.1992 till 29.5.1992 and secondly from 9.10.1991 till 25.11.1991, was served upon the appellant on 19.8.1992. The Inquiry Officer, after completing the inquiry, did not find the second charge proved; but, he held the first charge to be proven against the appellant. The Inquiry Officer forwarded the report to the Assistant Security Commissioner. However, the Assistant Commissioner disagreed with the report of the Inquiry Officer with regard to the second charge. Vide order dated 2.7.1994, the Assistant Security Commissioner recommended that the appellant be removed from service. However, the removal from service was not within his jurisdiction. Thus, the file was forwarded to the Divisional Security Commissioner. Consequently, on 28.10.1994, the Divisional Security Commissioner passed an order removing the appellant from service with immediate effect. The appellant preferred an appeal before the Chief Security Commissioner. However, vide order dated 7.4.1994, the said appeal was dismissed and the order of the Divisional Security Commissioner was upheld. Aggrieved by the order dated 28.10.1994 and 7.4.1995, the appellant filed a writ petition before this Court. However, vide judgment dated 5.8.1994, the learned Single Judge dismissed the writ petition. Hence, this appeal before this Court.

4. Mr. Vijay Dutt, the learned Counsel for the appellant, has vehemently argued that the appellant had put in twenty-four years of service in the Department. During his long tenure, except for once, the alleged willful absence, the appellant always attend to his work. The alleged absence was caused not by choice, but by the necessity. For, the appellant was suffering from severe back pain and was advised total bed rest by the doctors. The appellant had produced medical certificates, although from a private doctor and had constantly informed the department about his illness.

Thirdly, for the mere alleged absence of two months, he has been removed from service. Therefore, the punishment is shockingly disproportionate to the alleged

misconduct committed by the appellant. Fourthly, in the criminal case for gambling, the appellant has already been acquitted by the trial Court and no appeal has been filed by the State against the order of acquittal. Lastly, he has prayed that the punishment should be reduced from dismissal from service to compulsory retirement.

5. On the other hand, Mr. S.S. Hasan, the learned Counsel for the respondent, has strenuously argued that the appellant has submitted medical certificates issued by private doctors. However, such certificates are not considered to be valid by the Department. In case, he was bed stricken, he should have produced the medical certificates from a Government doctor. Secondly, the punishment meted out to the appellant is just and reasonable. Hence, he has supported the impugned orders and has supported the impugned judgment of the learned Single Judge.

6. We have heard both the learned Counsels, have perused the impugned orders and impugned judgment and have examined the record.

7. In the case of Damoh Panna Sagar Rural Regional Bank and Another Vs. Munna Lal Jain, while dealing with the scope of judicial review of punishment awarded in a departmental inquiry, the Hon''ble Apex Court has observed as under:

The Court should not interfere with the administrator's decision unless it is illogical or suffers from procedural impropriety or is shocking to the conscience of the court, in the sense that it is in defiance of logic or moral standards. Unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. When a court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law. In the normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the appellate authority to reconsider the penalty imposed.

8. Moreover, in the case of Harjit Singh and Anr. v. The State of Punjab and Anr. (2007) 4 SLR 645 while dealing with the case of a constable in the Punjab Police Force, who was also absent from duty, but considering the fact that the occurrence had taken place as far back in the year 1984, the Apex Court thought it proper to modify the punishment from "dismissal of service" to "compulsory retirement". In that case, the Hon''ble Supreme Court observed that since the case has been hanging fire for a long period, the Court would be justified in modifying the punishment itself.

9. A bare perusal of the facts narrated above clearly reveal the only charge proved, against the appellant was absence from duty for a period of two months.

According to the respondent, the appellant had submitted medical certificates in order to prove his absence from the service was not willful, but was due to his inability to move as he was suffering from cervical pain and was directed by doctors to take bed rest. Illness is part of human existence, Being mortals, we are subjected to periodic, unannounced, unwarranted illness. Therefore, it is not surprising if the appellant had fallen ill and was unable to attend to his services. Although, it is true that the appellant had not submitted any medical certificate issued by Government doctor, but every certificates issued by a private doctor cannot be subject of skepticism and suspicion.

10. Even if the absence from duty is taken to be true, one cannot overlook the fact that the appellant had served the Department for twenty-four years i.e., he had given the best part of his life to the service of the Department. Out of these twenty-four years, he was absent only for two months. Moreover, his absence does not seem to be out of choice, but appears to be out of necessity. For, his absence, the economic death knell of the appellant should not be sounded. This Court cannot overlook the fact that in the criminal case Instituted against the appellant, he was acquitted by the learned trial Court. Therefore, the punishment awarded to the appellant seems to be shockingly disproportionate to the alleged misconduct committed by him. Furthermore, the appellant has already retired, yet he is being denied the retiral benefits only because of the punishment as Imposed upon him by the respondent.

11. Lastly, the appellant has been facing departmental inquiry since 1992, and the litigation since 1995. Considering the fact that the proceedings have gone on for last fifteen years, this Court deems it proper, in the interest of justice, to modify the punishment itself. Hence, this Court is of the opinion that the punishment of "removal from service" should be substituted with the punishment of "compulsory retirement". The punishment of compulsory retirement is permissible under Rule 148 of the Railway Protection Force Rules, 1987. Such a punishment would equallse the need to punish the appellant for the misconduct committed by him, but simultaneously to save the appellant from an economic and financial death.

12. As a result of our discussion, we partly allow the appeal and instead of punishment of removal from service, we direct the respondents to compulsory retire the appellant with effect from October 28, 1994. There shall be no orders as to costs.