

(2010) 06 AP CK 0078
In the Andhra Pradesh High Court
Case No : Writ Petition No. 23312 of 2002

N.S. Shinde

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-06-2010

Acts Referred:

Central Industrial Security Force Rules, 1969 — Rule 49, 49A, 55

Citation : (2010) 06 AP CK 0078

Hon'ble Judges : Nooty Ramamohana Rao, J

Bench : Single Bench

Advocate : Manda Adam, for the Appellant; C. Vani Reddy, Additional S.C. for C.G., for the Respondent

Final Decision : Allowed

Judgement

Nooty Ramamohana Rao, J.—This writ petition has been instituted by a constable attached to the Central Industrial Security Force (for short "CISF") seeking for a declaration that the order passed by the 2nd respondent, the Director General of the CISF on 24.1.2003 as illegal and consequently to direct the respondents to treat the intervening period from 30.10.1980 to 19.3.1997 as continuation of service rendered by him and for payment of backwages.

2. The facts which are relevant for our inquiry are these:

3. The writ petitioner was appointed as a constable/security guard in the CISF on 17.1.1970. He was subsequently promoted as a Head Constable in August 1978. While he was on duty at the LPG plant of the Indian Oil Corporation Unit at Baroda in the State of Gujarat between 13 Hours to 21 Hours on 21.12.1979, a truck bearing Registration No. RSB 969 which brought 350 empty cylinders and was to carry equal number of filled in cylinders, was subjected to a check by the officers of the CISF at Gate No. 10 of the plant. They found that truck was carrying 350 filled in cylinders and also one empty cylinder, which was hidden in a tarpolin cover kept on the roof of the cabin of the driver of the truck. For this

unauthorized carrying away an empty cylinder, the officers have found fault with the writ petitioner who is the Head Security Guard on duty at that time, for his lax supervision. The writ petitioner has been subjected to disciplinary proceedings and was also subjected to prosecution of a criminal case. The disciplinary proceedings have culminated in an order passed on 25.10.1980 by the Deputy Inspector General of CISF imposing the punishment of dismissal from service of the writ petitioner. That was the subject matter of consideration in a writ petition before the High Court of Gujarat at Ahmedabad in Special Civil Application No. 1591 of 1981. By the judgment dated 3.8.1996, the Gujarat High Court found that the charge laid against the writ petitioner therein was only of negligence, but not of connivance, collusion or of help extended for extraneous considerations for pilferage of one empty LPG cylinder from the plant. After noticing that the past service record of the petitioner was blemishless, and also noticing the fact that the criminal court has acquitted the writ petitioner of the charge laid against him on merits, the Gujarat High Court found that the penalty of dismissal imposed against the petitioner is disproportionate to the charges leveled and proved. Hence, the matter has been remanded to the appellate authority to decide what appropriate penalty should be imposed upon the writ petitioner for that portion of the proven negligence.

4. In terms of the order passed by the Gujarat High Court, the Inspector General of the Force passed a detailed order on 20.2.1997. The appellate authority held that the penalty awarded to the petitioner by the DIG was a little excessive. Hence, the appellate authority has modified the punishment of dismissal from service to that of reduction to the lower post viz., Constable until he is found fit by the competent authority to be restored to the higher post of Head Constable after a period of three years from the date of rejoining duty on reinstatement. The writ petitioner was ordered to be reinstated to service. However, the appellate authority proposed to regulate the intervening period i.e., from the date of dismissal from service to the date of rejoining duty on reinstatement as dies non and called upon the writ petitioner to submit objections if any for the proposed action in that regard. The writ petitioner has drawn a detailed representation on 3.4.1997 and submitted the same pointing out that the punishment imposed by the Deputy Inspector General of the Force having been found to be excessive, there is no justification to treat the intervening period as dies non. However, the Inspector General of the Force passed orders on 25/28.4.1997 ordering that the intervening period between the date of dismissal from service till 19.3.1997, when he reported for duty upon reinstatement, shall be treated as dies non in terms of Rule 49-A of the CISF Rules, 1969. Consequently, the writ petitioner was declared as not entitled to pay and allowances during the said period and the period shall also not be treated as qualifying service for the purpose of pension. The writ petitioner then lodged a Revision Petition with the Director General of the CISF pointing out that the Inspector General of the Force has not chosen to assign any reasons as to why the explanation submitted by him on 3.4.1997 was not found satisfactory.

Instead, the Inspector General has cryptically commented that his explanation was not satisfactory without disclosing the reasons therefor. The writ petitioner therefore has pointed out that the Inspector General has not properly applied his mind before an order has been passed declaring the period as dies non. The Director General of the Force passed final orders through his proceedings bearing No. V-11014/121/02/L and R/279, dated 24.1.2003. It was ordered that that since the writ petitioner has filed the Revision Petition on 29.4.2002, which is five years subsequent to the order passed by the Inspector General of the Force, hence, he does not see any justification for condoning such a long delay and hence rejected the revision petition. That is why the present writ petition has been instituted.

5. Sri M. Adam, learned Counsel for the petitioner would submit that the writ petitioner has been proceeded against as a measure of discipline for an allegation that he was negligent while performing his duty, at the LPG plant of the Indian Oil Corporation, Baroda, inasmuch as he has failed to notice that the truck in question has not unloaded all the 350 empty cylinders which it has brought inside. The learned Counsel has pointed out that the writ petitioner has not played any role for the truck driver to indulge in the act of misdemeanor of carrying one of the empty bottles wrapped up in tarpaulin and keep it on the roof of the cabin of the truck driver. The learned Counsel for the petitioner would elaborate further and submit that when a reasonable degree of care has been employed while checking the truck on its return journey, no mistake has been committed by the petitioner as he found that it was carrying only 350 filled in LPG cylinders. The petitioner having not found the empty cylinder in the truck portion, was under a bona fide impression that all the 350 empty cylinders which were brought in have been unloaded. There is no room for the writ petitioner to suspect that the truck driver would indulge in mischief of carrying away one of the empty bottles wrapping it up around in a tarpaulin lying on the roof of the truck driver's cabin. Normal human behaviour and conduct has been blown out of all preparation by force and the heaviest punishment of dismissal from service has been imposed. When the Gujarat High Court has rightly directed the respondents to reconsider the matter, the appellate authority has correctly found that the punishment handed down to the writ petitioner was a little too excessive. He has substituted the punishment of dismissal from service to that of reduction in rank for a period of three years. Therefore, submits Sri Adams that the absence of the writ petitioner from the service of the Force has been brought about by an improper order passed on 25.10.1980 by the DIG dismissing him from service. The fact that it took nearly 16 years for him to get reinstated is not entirely due to his fault, but because of the delay that has occasioned at various stages in prosecuting the matter. Sri Adams would further submit that Rule 49A of the CISF Rules itself has been introduced by way of amendment through GSR No. 50, dated 15.1.1983 and the said rule reads as under:

49-A. Dies non

Notwithstanding anything contained in these Rule an appellate Authority or a Revision Authority may, on reinstatement of a member of the Force in service after setting aside a penalty of dismissal, removal or compulsory retirement without exonerating such member of the Force of charges which resulted in any of those penalties, after giving an opportunity to the member of the Force concerned to show cause against such action and for reasons to be recorded in writing order that the intervening period between the date of dismissal, removal or compulsory retirement, as the case may be and the date of reinstatement be treated as dies non for purposes of his service.

6. Sri Adams would submit that at the time when the order of dismissal passed on 25.10.1980, Rule 49A was not available on the Statute Book and it has been inserted vide GSR Notification No. 50, dated 15.1.1983. Therefore, if the appellate authority himself or for that matter, the disciplinary authority has imposed the punishment of reduction to the lower stage instead of dismissing the writ petitioner from service, there would not have been any occasion for treating the period of his absence as Dies non. Even otherwise, the authority competent to pass an order in terms of Rule 49A is required to record reasons in writing as to why the period is liable to be treated as Dies non for the purpose of his service. Learned Counsel would submit that for no fault, the order of reinstatement has been delayed for more than 16 years and that itself is a huge suffering to the writ petitioner and imposing a further punishment of treating the entire period as Dies non for the purpose of his service would be visiting him with far more seriousness inasmuch as his terminal benefits will get impacted.

7. In the counter affidavit, it is pointed out that there is no justification for the claim of the writ petitioner for payment of backwages as well as treating the period of Dies non as liable to be counted for service benefits.

8. The important question that falls for consideration is whether the appellate authority is justified in treating the period between the date of his dismissal to that of subsequent reinstatement as Dies non for the purpose of regulating his service.

9. It is not in dispute that the writ petitioner was only charged to be negligent in not effectively verifying the contents of the truck on its return journey. While the truck was carrying 350 filled in cylinders, it was also found carrying one empty cylinder, which it has brought inside. It is not in dispute that the writ petitioner is not assigned the duty to oversee or supervise the unloading operations of the empty cylinders. As a Head Constable of the CISF, his duty was to take all necessary care and precautions for allowing only authorized materials to enter the LPG plant. If the truck in question has brought 350 empty cylinders, his duty was to ensure that it has specifically carried 350 empty bottles inside. It was not part of his duty to oversee whether the truck in question has also unloaded all the 350 empty cylinders at the unloading platform or not. If the truck in question has only unloaded 349 instead of 350 empty bottles, the laxity in supervision of the said act lies on the head of someone else, but not on the head of the writ

petitioner. It is also the duty of the writ petitioner to ensure that only authorized material is taken out from out of the LPG plant. The truck was authorized to carry 350 filled in cylinders. That far, there is no difficulty as the truck did really carry 350 filled in bottles. Apart from these 350 filled in bottles, the truck also carried one empty LPG cylinder. That was not authorized to be carried away. The writ "petitioner should have detected it. As was noticed supra, the said empty cylinder has been rolled in a tarpolin and is carried on the roof top of the driver"s cabin of the truck. Obviously, the writ petitioner did not suspect that the truck driver would be resorting to such an unauthorized act of carrying away one of the empty bottles. Therefore, to the extent of not detecting the unauthorized lifting of one empty cylinder by the truck driver, the petitioner can be found fault with. As to whether the writ petitioner has taken all necessary precautions and employed the necessary degree of skill in the matter of checking and verification of the contents of the truck will depend upon the facts and evidence gathered at the domestic enquiry. In the instant case, I am not called upon to enter into that charter. If the material on record does indicate that the writ petitioner has not employed all the necessary precautions and the necessary degree of skill while inspecting the contents of the truck on its return journey, he can be faulted. That could perhaps be the reason why the Inspector General of the Force passed orders on 20.2.1997 substituting the punishment of reduction to the lower grade for a period of three years. Therefore, in the instant case, we have to proceed from that stage onwards, that the petitioner was guilty of negligence while performing his duties.

11. The Inspector General of the Force is an appellate authority. He has the power to substitute one punishment with any other. Exercising such a power available to him, he has substituted the punishment of dismissal imposed by the DIG/NWS, New Delhi on 15.10.1980 with that of reduction to the next lower stage, in the following words:

6. ...Accordingly, I hereby order that the penalty of "Dismissal from service" awarded to the appellant be modified as follows:

The appellant is reduced the lower post Constable until he is found fit by the competent authority to be restored to the higher post of Head Constable after a period of 3 years from the date of rejoining duty on re-instatement.

7. With the above modification in penalty, the appellant is re-instated in service....

12. What does substitution exactly mean by it? The word "substitution" was explained by Webster and Oxford Dictionaries as under:

Oxford Dictionary - "substitute" - noun. 1. a person or thing acting or serving in place of another. 2. a sports player eligible to replace another after a match has begun. Substitution - noun - Exchange, change; replacement, replacing, swapping, switching

13. Verb - 1. use, add or serve in place of. 2. replace with another. 3. replace (a sports player) with a substitute during a match;

Webster Dictionary - Noun.-

1. An event in which one thing is substituted for another.
2. The act of putting one thing or person in the place of another: "he sent Smith in for Jones but the substitution came too late to help".
3. The act of substituting or putting one person or thing in the place of another; as, the substitution of an agent, attorney, or representative to act for one in his absence; the substitution of bank notes for gold and silver as a circulating medium.
4. The state of being substituted for another.
5. The office or authority of one acting for another; delegated authority.
6. The designation of a person in a will to take a devise or legacy, either on failure of a former devisee or legatee by incapacity or unwillingness to accept, or after him.
7. The doctrine that Christ suffered vicariously, being substituted for the sinner, and that his sufferings were expiatory.
8. The act or process of substituting an atom or radical for another atom or radical; metathesis; also, the state of being so substituted.

14. In Black's Law Dictionary, the word "substitution" has been detailed as under:

1. A designation of a person or thing to take the place of another person or thing. 2. The process by which one person or thing takes the place of another person or thing. 3. Parliamentary law.- An amendment by replacing one or more words with others. 4. Roman law.- The nomination of a person to take the place of a previously named heir who has refused or failed to accept an inheritance. - Also termed common substitution; vulgar substitution. 5. Roman law.- The nomination of a person to take the place of, or to succeed, a descendant who is under the age of puberty and in the potestas of the testator, if the descendant has died before reaching puberty. 6. Roman law.- A testator's designation of a person to whom the property was to be given by the person named as heir, or by the heir of that person. 7. Civil law.-The designation of a person to succeed another as beneficiary of an estate, usu. Involving a fideicommissum.

15. In normal parlance, the word "substitution" is understood as meaning replacing the one originally ordered with the one subsequently ordered. The original one getting replaced by the new. Applying this test to the present context, it amounts to, the order passed by the DIG imposing the punishment of dismissal from service stands replaced with imposition of the punishment of reduction to the next lower stage. It would also be appropriate, right here, to

notice how the Supreme Court, pointed out, the legal significance of the expression "substitution" in State of Maharashtra Vs. The Central Provinces Manganese Ore Co. Ltd.,

(17) WE do not think that the word substitution necessarily or always connotes two severable steps, that is to say, one of repeal and another of a fresh enactment even if it implies two steps. Indeed the natural meaning of the word "substitution" is to indicate that the process cannot be split up into two pieces like this. If the process described as substitution fails, it is totally ineffective so as to leave intact what was sought to be displaced. That seems to us to be the ordinary and natural meaning of the words "shall be substituted." This part could not become effective without the assent of the Governor-General. The State Governor's assent was insufficient. It could not be inferred that, what was intended was that, in case the substitution failed or proved ineffective, some repeal, not mentioned at all, was brought about and remained effective so as to create what may be described as a vacuum in the statutory law on the subject-matter. Primarily, the question is one of gathering the intent from the use of words in the enacting provisions seen in the light of the procedure gone through. Here, no intention to repeal without a substitution, is deducible. In other words, there could be no repeal if substitution failed. The two were a part and parcel of a single indivisible process and not bits of a disjointed operation.

16. Rule 49-A which was no doubt introduced by way of amendment brought about on 15.1.1983 enabled the Competent Authority to treat the interregnum period as Dies non for the purpose of service of a member of the Force. Since this rule was introduced by the time the appellate authority has passed orders on 20.2.1997, I consider that the action of the appellate authority viz., the Inspector General of the Force in invoking Rule 49-A cannot be faulted only on the ground that such a provision was not available on the Statute Book at the time when the writ petitioner is dismissed initially from service by the DIG of Force on 15.10.1980. At that stage, there was no necessity to deal with the interregnum period at all. Such an occasion was presented because the appellate authority thought it appropriate to reinstate him back to service and hence, he was required to deal with the interregnum period. But, at the same time, Rule 49-A mandated the competent authority to comply with two elements. First is, that an opportunity has got to be afforded to the member of the Force to showcase against such action. The second requirement was for reasons to be recorded in writing the competent authority will have to order the intervening period between the date of dismissal till the date of reinstatement to be treated as Dies non for the purpose of his service. The first part of putting the writ petitioner on notice has been complied with faithfully by the Inspector General of Force. But, if we examine the order passed by him on 25/28.4.1997, he has failed to comply with the second requirement. All that the appellate authority would say is this:

...He has, however, submitted reply to the show-cause notice as was expected from him against the treatment of intervening period. I have carefully gone

through the pleas advanced by him and find that grounds advanced by him are not satisfactory.

Now, therefore, it is hereby ordered that the intervening period between the date of dismissal from service to the date of re-instatement i.e., 19.3.1997 is treated as "Dies-Non" under the Rule 49-A of CISF Rules, 1969. He shall not be entitled to pay and allowances during the period aforesaid. This period shall also not be treated as qualifying service for the purpose of pension etc.

17. Clearly, the Inspector General of the Force has not recorded a single reason much less a valid or tenable one under law for his conclusion. He has recorded in the order that the explanation offered by the writ petitioner as not satisfactory. The all important reason as to why the explanation is not satisfactory is missing. Apart from that, the Inspector General of Force was also required to consider as to whether the intervening period was really required and warranted to be treated as Dies Non or not. If the period were to be treated as Dies Non, consequences thereof would be that the member of the Force will not be entitled to reckon the same for all purposes of his service including for his post retirement benefits. It is therefore necessary that competent authority before exercising the power available under Rule 49A of the CISF Rules was required and warranted to explore as to whether the facts on record justify passing such an order treating the intervening period as Dies Non or not. Any order which will impact the rights of another individual can be passed only after complying with the principles of natural justice and after a serious consideration is bestowed on all relevant factors. Compliance of principles of natural justice does not mean a mechanical adherence of issuing a show-cause notice. There was something much more important than that. It requires consideration of the matter purely on its merits uninfluenced by other factors. In quasi judicial exercise, while determining the rights of the parties, the ultimate conclusion has to be based upon the foundations of sustainable reasons. If the foundations are not laid properly, the ultimate conclusion gets vitiated. It is the reasons which lend support to the conclusion. Sans reasons, a quasi judicial decision merely amounts to recording the conclusion. It would be as bad as putting the cart before the horse. Further, the areas of application of mind by the quasi judicial authority can be ascertained or gathered only from the reasons assigned and available on record. It is the reasons, which disclose as to the areas of consideration or omissions as the case may be. Any decision has got to be reached based upon appreciation of correct and relevant facts and simultaneous omission of inaccurate and irrelevant material. Long years ago in *Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI)*, the Supreme Court has set out as to why reasons are required to be assigned by quasi judicial agencies for their conclusions in the following words:

(8) THE conception of exercise of revisional jurisdiction and the manner of disposal provided in Rule. 55 of the Rules are indicative of the scope and nature of the Government's jurisdiction. If tribunals can make orders without giving

reasons, the said power in the hands of unscrupulous or dishonest officers may turn out to be a potent weapon for abuse of power. But, if reasons for an order are to be given, it will be an effective restraint on such abuse, as the order, if it discloses extraneous or irrelevant considerations, will be subject to judicial scrutiny and correction. A speaking order will at its best be a reasonable and at its worst be at least a plausible one. The public should not be deprived of this only safeguard.

(9) IT is said that this principle is not uniformly followed by appellate Courts, for appeals and revisions are dismissed by appellate and revisional Courts in limine without giving any reasons. There is an essential distinction between a Court and an administrative tribunal. A Judge is trained to look at things objectively, uninfluenced by consideration of policy or expediency; but, an executive officer generally looks at things from the standpoint of policy and expediency. The habit of mind of an executive officer so formed cannot be expected to change from function to function or from act to act. So it is essential that some restrictions shall be imposed on tribunals in the matter of passing orders affecting the rights of parties; and the least they should do is to give reasons for their orders. Even in the case of appellate Courts invariably reasons are given, except when they dismiss an appeal or revision in limine and that is because the appellate or revisional Court agrees with the reasoned judgment of the subordinate Court or there are no legally permissible grounds to interfere with it. But the same reasoning cannot apply to an appellate tribunal, for as often as not the order of the first tribunal is laconic and does not give any reasons. That apart, when we insist upon reasons, we do not prescribe any particular form or scale of the reasons. The extent and the nature of the reasons depend upon each case. Ordinarily, the appellate or revisional tribunal shall give its own reasons succinctly; but in a case of affirmance where the original tribunal gives adequate reasons, the appellate tribunal may dismiss the appeal or the revision, as the case may be, agreeing with those reasons. What is essential is that reasons shall be given by an appellate or revisional tribunal expressly or by reference to those given by the original tribunal. The nature and the elaboration of the reasons necessarily depend upon the facts of each case. In the present case, neither the State Government's nor the Central Government's order discloses the reasons for rejecting the- application of the appellant. In the circumstances the Central Government's order is vitiated, as it does not disclose any reasons for rejecting the revision application of the appellant.

18. In the instant case, the order of the Inspector General has tersely concluded the entire issue by merely observing that he has carefully gone through the pleas advanced by the writ petitioner and found them as not satisfactory. No reasons as to why the pleas advanced by the petitioner were not satisfactory are essentially missing. Hence, the order passed by the Inspector General of the Force on 25/28.4.1997 is clearly contrary to the fundamental requirement of Rule 49-A of the CISF Rules. Therefore, an illegality has crept on record.

19. Further, the competent authority is also required to consider whether it was really warranted in the facts and circumstances of each case that was brought before him whether the interregnum period be treated as Dies Non or not. In the instant case, from the order dated 25/28.4.1997 of the Inspector General of the Force, no such exercise appears to have been carried out.

20. The Director General of the Force being the revisional authority was required to keep all the subordinate agencies within the bounds of law. That was the very essence of bestowing the revisional powers upon him. When the order of the Inspector General of the Force dated 25/28.4.1997 was ex facie not in conformity with the requirements of Rule 49-A of the CISF Rules, the revisional authority should not have missed the opportunity to correct this manifest error and therefore he is not justified in rejecting the revision of the petitioner only on the precious plea that the same has been preferred belatedly, i.e., after a period of five years. Rule 49 of the CISF Rules conferred revisional powers on any superior authority to that of the authority making the appellate order. Rule 49 empowers the revisional authority, suo motu, to exercise the said power if it considers necessary to revise an order, original or appellate. It's no doubt true that in the later part of the Rule, a period of one year has also been contemplated for such exercise of power. Rule 49 therefore constituted very wide powers upon the revisional authority which can be gathered from the fact that the revisional authority can exercise such powers suo motu even. Obviously, the rule making authority has conferred such a wide power upon the revisional authorities to act suo motu because it wanted the revisional authority to keep all subordinate authorities/agencies within the bounds of law. Therefore, the Director General of the Force should not have missed the opportunity to correct the error committed in the instant case by the Inspector General of the Force when he ordered for the interregnum to be treated as Dies Non instead of rejecting the same on the grounds of delay. It is a well known principle of law that when suo motu powers are conferred upon any superior authority, such powers can be exercised within a reasonable period of time, whereas the period of one year provided there for is intended to act as a guidance to regulate or prevent the indiscriminate usage of such powers. The power of revision, therefore, has to be exercised with specific regard to the order that is needed to be revised. Therefore, I have no hesitation to hold that the order passed by the Director General of Force on 15.10.1980 is contrary to the spirit of Rule 49 constituting revisional powers on him. Further, normally delay shall not result in denying relief so long as 3rd party interests do not intervene in the meantime. In the instant case, no such impediment and hence only on the ground A that revision is preferred belatedly by the petitioner, the Direct General need not have hesitated" to exercise the power of revision. Hence, I set aside the orders passed by the Inspector General of the Force on 25/28.4.1997 as well as 15.10.1980 of the Director General of the Force. The writ petitioner is entitled to treat the period of his absence from service pursuant to the order passed by the DIG of the Force on 25.10.1980 imposing the punishment of dismissal from service till

19.3.1997, the date of his reinstatement back to service as period to be counted for the purpose of service and it shall not be treated as Dies Non.

21. However, for the enormous delay that had occasioned in the process, a portion of the blame is to be owned by the petitioner as well, for which, the Force also is not totally at fault. As is required, they launched prosecution and the time consumed for resolving these disputes cannot also be put against them. The Force also has to plan for it's financial commitments much early and provide for the same in time. Further, the petitioner has also not rendered any service to the Force, for such a long length of period. Therefore, the writ petitioner may not be entitled to be paid salary and allowances for the said period. But, he will be entitled to count the said period for other purposes and benefits of the service.

22. The writ petition stands allowed to the extent noted supra. No costs.