

(1993) 08 GUJ CK 0018
In the Gujarat High Court

Parshottam Rajabhai (since decd.) by his heirs and LRs.
Deevaben Rajabhai Baghda and Another

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 19-08-1993

Acts Referred:

Bombay Police Act, 1951 — Section 145(2), 145(2)

Citation : (1994) 1 GLR 93

Hon'ble Judges : K.J. Vaidya, J

Bench : Single Bench

Judgement

K.J. Vaidya, J.—Parshottam Rajabhai, an Armed police Constable, by this writ petition has brought under challenge the impugned order dated 24-12-1986 [Annexure "B"] dismissing him from service, passed by the Deputy Commissioner of Police, Ahmedabad [Respondent No. 2 herein], which ultimately came to be confirmed in appeal by the Commissioner of Police, inter alia praying for [i] quashing and setting aside the same; and [ii] to reinstate him in service with all consequential benefits including backwages.

2. The petitioner was appointed as an Armed Police Constable in Ahmedabad on 12-5-1973, and thereafter was working as such till the time he came to be dismissed by an Order dated 24-12-1986 [Annexure "B"]. In a show-cause notice dated 16-10-1986 [Annexure "A"] issued against him it has been alleged that he had remained absent from his duty without leave from 31-8-1983 to 12-10-1983 [42 days] for which he came to be prosecuted and tried before the learned Metropolitan Magistrate, Ahmedabad for the offence punishable u/s 145(2) of the Bombay Police Act, 1951, and on his pleading guilty, he came to be convicted and sentenced to pay fine of Rs. 25/-; in default, to undergo S.I. for five days. It is also further alleged in the said show-cause notice that thereafter from 9-1-1983 to 1-3-1983, and thereafter from 31-8-1983 to 27-12-1983 he remained absent for 51 and 118 days respectively without leave. Not only that, but also during the period from the year 1974 to 1982, on 42 occasions he had

remained absent without leave. In this way, it is alleged that the petitioner was in the habit of often remaining absent without leave. On the basis of these allegations it was proposed to dismiss the petitioner from service and accordingly, he was directed to show-cause within ten days from the receipt of the said showcause notice as to why he should not be dismissed from service. It was further clarified that if within the aforesaid stipulated period, no reply was received from the delinquent petitioner, an ex parte order would be passed against him taking that he has nothing to say against the same.

2.1. It appears that despite the aforesaid show-cause notice, the petitioner neither appear personally nor gave any reply, and in that view of the matter, the respondent No. 2 dismissed him by passing the impugned order dated 24-12-1986. This was challenged before the Commissioner of Police, Ahmedabad City, who also in his turn by an order dated 23-3-1987, dismissed the same. It is under these circumstances that the petitioner has approached this Court inter alia praying for the immediate reliefs as stated above in para 1 of the judgment.

3. Mr. Supehia, the learned Advocate for the petitioner submitted that he was not in a position to dispute the factum of the petitioner remaining absent for 42 days for which he on pleading guilty came to be convicted and sentenced to pay fine of Rs. 25/- and in default, to undergo S.I. for five days. Mr. Supehia further submitted that he was also not in a position to dispute the fact that despite the show-cause notice as against the proposed punishment, the petitioner has not replied. Mr. Supehia also made it very clear that he does not propose to challenge the impugned order on the ground that the petitioner was not given an opportunity of being heard as against the proposed punishment. However, what Mr. Supehia seriously challenges and disputes is the extreme punishment of dismissal passed against the petitioner, which according to him, taking into consideration the facts and circumstances of the case, was ex-fade grossly disproportionate to the alleged misconduct. In support of this contention, Mr. Supehia has relied upon the decision of this Court rendered in case of Sardarsingh Devisingh v. The District Superintendent of Police, Sabarkantha and Ors. reported in 1985 (2) GLR 1368. On the basis of all these submissions, Mr. Supehia finally urged that the impugned order of dismissal being on face of it quite harsh, unjust and uncalled for, the same deserves to be quashed and set aside by substituting the same by passing some order inflicting reasonable minor punishment which can meet with the ends of justice. Mr. Supehia has also incidentally pointed out that pending this petition, the petitioner expired on 1-8-1989, i.e., after about 31 months of the filing of the present petition, and that his heirs and legal representatives are duly brought on record by virtue of an order dated 23-8-1989 passed in the Civil Application No. 1548 of 1989.

4. Countering the above submissions, Mrs. Shaikh, the learned A.G.P. submitted that no ground was made out to interfere with the impugned order of dismissal as the petitioner was found to be in the constant habit of remaining absent without informing his superior authorities, as made clear in the show-cause

notice dated 16-10-1986. The learned A.G.P. further submitted that one can quite understand a case where a person commits some mistake once a while and for that he can be warned or given some such minor punishment, but this is not that type of case. Here, as the record shows, the petitioner has virtually become incorrigible and as in the past because he appears to have been leniently dealt with, he taking the authorities quite lightly and for granted, has not made any effort whatsoever to improve himself. According to the learned A.G.P., if such a gross indiscipline in the police force is tolerated lightly without imposing a deterrent punishment, as the one in the present case by dismissing the petitioner from service, it would indeed be quite difficult for the authorities to enforce the discipline. Further distinguishing the case of Sardarsingh Devisingh (*supra*) cited at the bar on behalf of the petitioner, the learned A.G.P. submitted that the said decision would not be applicable to the facts and circumstances of the present case, as that was a case wherein an Unarmed Police Constable had challenged his dismissal, whereas in the present case, it is the Armed Police Constable who has challenged his dismissal. Thus, there is a clear difference between the nature of duties and the responsibilities of Unarmed and Armed Police Constables. Further still, according to the A.G.P., the indiscipline in the Armed Police Constable can never be taken lightly more particularly in a city like Ahmedabad which is so sensitive and prone to the breach of law and order because of communal riots and some such things, etc. etc. The learned A.G.P. further submitted that the question involved in the present case essentially being the question of discipline and that too in the Armed Police Force, this Court should not lightly interfere with the exercise of just and proper discretion by the police authorities, which is ultimately for the public interest only.

5. Now undoubtedly, taking into consideration the allegations enlisted in the show-cause notice dated 16-10-1986 [Annexure "A"], the petitioner had remained absent without leave not once but on several occasions, and that too for number of days together, and that is certainly a circumstance serious enough which no authority can ever lose sight of while dealing with the delinquent, if indeed he is genuinely interested in effectively enforcing and maintaining the discipline in the police force. But unfortunately, except the only material about the order of conviction and sentence recorded by the learned Metropolitan Magistrate against the petitioner for remaining absent from duty without leave for 42 days, no other material worth the name has been brought on record to substantiate the rest of the allegations of petitioner absenting himself from duty without leave, by way of some departmental proceedings and orders of punishment inflicted pursuant thereto to show that despite several punishments inflicted upon him, he has not improved; more particularly, when it is the case of the petitioner that he never remained absent without leave as alleged in the show-cause notice. When such is the situation emerging, that is to say, that what is brought on record is only one lapse for which the petitioner came to be convicted by the learned Magistrate, the question that would obviously arise for consideration is "whether the disciplinary authority was justified in imposing an

extreme penalty of dismissal from service which virtually amounts to not only an economic death of the petitioner but its falls-out further as a penalty to the family members of the delinquent as well!" Upon these observations of this Court the reply of the learned A.G.P. was that the show-cause notice in fact and in terms indicate number of such occasions on which the petitioner had remained absent without leave and those circumstances by themselves were quite eloquent and sufficient for the authorities to take a stricter view of the matter to enforce discipline in the police department, more particularly when the petitioner has cleverly chosen not to reply even and refute the allegations levelled against him. Now, it is indeed impossible for this Court to agree with the submissions of the learned A.G.P. more particularly in view of the decision of the Supreme Court rendered in case of State of Mysore Vs. K. Manche Gowda, . In the aforesaid decision, the Supreme Court in substance has held that "if the proposed punishment is mainly based upon the previous record of the Government servant, and if that is not disclosed in the notice, it would mean that the main reason for the proposed punishment is withheld from the knowledge of the Government servant. Further, according to the Supreme Court, it would be no answer to suggest that every Government servant must have had knowledge of the fact that his past record would necessarily be taken into consideration by the Government in inflicting punishment on him; nor would it be an adequate answer to say that he knew as a matter of fact that the earlier punishments were imposed on him or that he knew of his past record. What the Government servant is entitled to is not the knowledge of certain facts but the fact that those facts will be taken into consideration by the Government in inflicting punishment on him. It is not possible for him to know what period of his past record or what acts or omissions of his in a particular period would be considered. Under such circumstances, the Supreme Court further held that it is incumbent upon the authority to give the Government servant at the second stage reasonable opportunity to show-cause against the proposed punishment, and if the proposed punishment is also based on his previous punishments or his previous bad record, this should be included in the second notice so that he may be able to give an explanation. When this decision of the Supreme Court was brought to the notice of the learned A.G.P., she was frank enough to admit that in the show-cause notice dated 16-10-1986 [Annexure "A"] except the bald allegation of the petitioner remaining absent without leave on several occasions, there is nothing to show whether any punishment was inflicted or not except the admitted absence without leave for 42 days. This clearly goes to show that in fact for the other alleged absence from duty without leave, either no proceedings were taken up against the petitioner or as asserted by the petitioner, he never remained absent! Taking it either way, the fact remains that there is no material on the record to indicate that except the petitioner came to be convicted and sentenced by the learned Magistrate, the petitioner has repeatedly committed the alleged misconduct of remaining absent without leave for any other period. This means that what is brought out on the record is only one lapse and if that is the case, to impose a punishment of dismissal without giving him an opportunity of

improvement by inflicting some minor punishment would indeed and undoubtedly being quite harsh and unjust, the same would immediately attract the decision of this Court rendered in case of Sardarsingh Devisingh (supra). If indeed there were other lapses of remaining absent without leave as alleged in the show-cause notice, the authorities certainly would not have failed in taking up departmental proceedings against the petitioner at appropriate time, and thereafter, inflicting proper punishment. In this regard, the "Service Book" of the petitioner would have surely thrown some light and accordingly would have rendered some assistance to the department, but unfortunately, there is not even a whisper of the said record either in the show-cause notice or even in the affidavit-in-reply. It is hardly required to be told that the departmental proceedings are by and large technical proceedings where sometime even a slightest error would cost the impugned order passed by the authorities even though the charges levelled against the delinquent in a given case may be quite honest and truthful. In fact, in order to avoid such set-back on technical grounds, it is quite advisable that the authorities entrusted with departmental proceedings are specially and duly trained, and groomed up on the basis of the relevant departmental rules and the decisions of the Supreme Court and various High Courts with some sort of refresher course, and periodicals informing the authorities of the latest developments in service law matters. If this much care can be taken, unnecessary service litigation, public time consumed for that purpose at the levels of the authorities and the Court, public revenue and sometimes, even uncalled for inconvenience and hardships to the employees and the concerned departments could easily be avoided! In the facts of this case also, had indeed due care been taken to refer to the "Service Book" of the petitioner, what ought we know the respondents would have been proved quite justified in passing the impugned order! It is really painful when the petitioner sometimes win in the Court on the basis of obvious negligence on the part of the concerned authorities. It is true, as pointed out by the learned A.G.P. that the petitioner was an Armed Police Constable, and therefore, the facts of the present case to that extent is distinguishable from the case of Sardarsingh Devisingh (supra), but when it comes to ultimate application of the judgment, it makes no difference because before imposing extreme penalty, be it upon the Unarmed Police Constable or the Armed Police Constable, he should be duly warned to improve himself, by imposing reasonable minor punishment. It is only when the delinquent is found to be incorrigible and that the minor punishment fails to make any dent upon him to have any deterrent effect, as a last resort, the authority would be absolutely justified in imposing the extreme punishment of dismissal. Rather in such a gross case, not to impose deterrent punishment would be against the public interest.

5.1. Taking into consideration the aforesaid discussion, it is very clear that the impugned order of dismissal passed against the petitioner being patently harsh, unjust and uncalled for, the same deserves to be quashed and set aside.

6. In the result, this petition is allowed. The impugned order of dismissal dated

24-12-1986 is hereby quashed and set aside. There is indeed no question of reinstating the petitioner in service as he is no more in this world. The only question therefore which arises for consideration is regarding the backwages. It appears that the impugned order of dismissal came to be passed on 24th December, 1986 and the petitioner expired on 1st August, 1989, meaning thereby for about 31 months he is required to be paid the backwages. Taking into consideration the overall facts and circumstances of this case, the interest of justice would be better served if the respondents are directed to pay 50 per cent of the back-wages to the heirs of the petitioner, i.e., at the rate of 50 per cent of the total amount due of 31 months, within three months from the date of receipt of this judgment. Rule made absolute to the aforesaid extent.