

(2009) 11 GUJ CK 0016

In the Gujarat High Court

Case No : Special Civil Application No. 2652 of 1994

Prakashrao Bajirao Devre

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 10-11-2009

Acts Referred:

Bombay Police Manual, 1959 — Rule 454
Constitution of India, 1950 — Article 226

Citation : (2009) 11 GUJ CK 0016

Hon'ble Judges : Rajesh H. Shukla, J

Bench : Single Bench

Advocate : Samir Gohil, for I.S. Supehia, for the Appellant; Jirga Jhaveri, Assistant Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh H. Shukla, J.—The present petition has been filed under Article 226 of the Constitution of India by the petitioner for the prayer inter alia to quash and set aside the order dated 21.5.1993 passed by the State Government in appeal, imposing the penalty of placing him in minimum of the scale instead of order of dismissal, on various grounds set out in the memo of the petition.

2. The main contention which has been raised referring to Rule 454 of Bombay Police Manual is regarding the assistance to a delinquent in a departmental inquiry by a friend of his choice. Learned advocate Mr. Samir Gohil for learned advocate Mr. I.S. Supehia for the petitioner submitted that the petitioner, who was working as Unarmed Constable, was charged with the statement of imputations as stated in Annexure-A about getting an application when he was at Panvad Outpost for breach of peace, and on the basis thereof, he had placed one Mathurbhai Dalabhai Rathwa in the lock up and thereafter demanded a bribe of Rs. 40/- from his wife. As reflected in detail, after the inquiry, the disciplinary authority, i.e. the Superintendent of Police, passed an order of dismissal dated 27.7.1987. This order of dismissal was challenged by the petitioner in a

departmental revision as provided under the Bombay Police Manual before the Secretary, Home Department. The Secretary, Home Department vide order dated 21.5.1993 set aside the order of the disciplinary authority though the charges were held to be proved, but substituted the punishment of reducing and placing him in the minimum of the pay scale for one year in the cadre of Head Constable, and the period of suspension was treated as 'leave without pay'. It is this order, which has been challenged in the present petition.

3. Learned advocate Mr. Samir Gohil for learned advocate Mr. Supehia for the petitioner referred to the impugned order and also the averments made in the petition and submitted that the main thrust of the submission is that he has been denied the opportunity of effective representation by a friend of his choice in the departmental inquiry. For that he referred to Rule 454 of the Bombay Police Manual and submitted that therefore the entire inquiry is in violation of the rules of natural justice and the orders passed are required to be set aside.

4. Learned AGP Ms. Jirga Jhaveri referred to the order passed by the Secretary, Home Department dated 21.5.1993 at Annexure-B and submitted that considering the charges of imputation, infact the appellate authority has been liberal and has substituted the punishment, reinstating him with minimum of the scale in the cadre for one year. Therefore, it was submitted that this Court may not interfere with regard to the quantum of punishment in these proceedings under Article 226 of the Constitution of India. It was submitted that though the contention has been raised that an opportunity has not been given to be represented by a friend of his choice, infact he had desired that he may be represented by one C.K. Khandwilkar as stated in Annexure-F. However, as he was busy with other work, he could not be permitted. Learned AGP submitted that however, thereafter, vide letter at Annexure-I dated 8.3.1985 he was asked to give the name of other friend which he had not given and thereafter as stated in Annexure-J, he had suggested the name of one Unarmed Head Constable - Choithram Parmanand, therefore, the submission is misconceived. Learned AGP therefore submitted that the impugned order is just and proper and this Court may not interfere with the punishment imposed which is just and proper.

5. In view of the rival submissions, it is required to be considered whether the present petition can be interfered with or not.

6. A bare perusal of the charges reflect that the charges were serious enough. However, the disciplinary authority after the inquiry and considering the nature of charges, passed an order of dismissal which was challenged by the petitioner by way of appeal / revision before the Secretary, Home Department and the Secretary, Home Department by order dated 21.5.1993 at Annexure-B has allowed the appeal and set aside the order of dismissal passed by the disciplinary authority reinstating the petitioner and the punishment was also substituted as stated above. Therefore, as rightly submitted, the appellate authority had been liberal while passing the order and therefore it does not call for any interference.

7. It is settled by catena of judicial pronouncements that this Court in exercise of jurisdiction under Article 226 of the Constitution of India is not required to interfere with the quantum of punishment imposed by the authorities on appreciation of material and evidence in departmental inquiry. The Hon''ble Apex Court has in its pronouncement made the position clear. The Hon''ble Apex Court in a judgment reported in case of Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate, quoting from the earlier judgment reported in case of The Regional Manager, Rajasthan State Road Transport Corporation Vs. Sohan Lal etc., has observed and quoted:

It has been held that it is not the normal jurisdiction of the superior courts to interfere with the quantum of sentence unless it is wholly disproportionate to the misconduct proved. Such is not the case herein. In the facts and circumstances of the case and having regard to the past conduct of the respondent as also his conduct during the domestic enquiry proceedings, we cannot say that the quantum of punishment imposed upon the respondent was wholly disproportionate to his act of misconduct or otherwise arbitrary.

8. Therefore, normally the Court should not interfere with the quantum of punishment unless it is disproportionate or too harsh. Therefore, considering the nature of charges of imputation, which the disciplinary authority has accepted and has only modified or substituted the quantum of punishment liberally, it would not be proper to interfere in the said order any further.

9. The another facet of the argument that the petitioner was not provided with an opportunity of representing his case in a departmental inquiry by a friend of his choice is also misconceived. The petitioner had suggested the name of one Mr. Khandwilkar who could not be given the permission for his other pre-occupation, and therefore, he was asked to suggest the another name, which he has suggested. Therefore, it cannot be said that the order passed or the inquiry has been conducted in violation of natural justice or without affording him opportunity of representing his case by a friend of his choice. He has been given an opportunity to represent his case by a friend of his choice, which he subsequently suggested as reflected in Annexure-J. Therefore, this submission is without any merit. Further, infact even though he has been represented by another friend of his choice, which has not been to his prejudice inasmuch the appeal has been allowed while accepting the appeal and the quantum of punishment has been substituted instead of dismissal to placing him in the minimum of the pay scale for a period of one year and treating the period of suspension as leave without pay, but he has been reinstated. Therefore, it has not caused in any way prejudice to the petitioner. Therefore, as this Court is not required to substitute its opinion with regard tot he quantum of punishment, the petition deserves to be dismissed and accordingly stands dismissed. Rule is discharged. No order as to costs.