
(2001) 07 P&H CK 0165
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 3418 of 1993

P.S. Rao

APPELLANT

Vs

The H.S.E.B.

RESPONDENT

Date of Decision : 18-07-2001

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 226, 227
Punishment and Appeal Rules, 1952 — Rule 8.15

Citation : (2001) 07 P&H CK 0165

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : Mr. P.S. Patwalia, for the Appellant; Mr. R.C. Setia, Senior Advocate and Mr. Anish Setia, for the Respondent

Final Decision : Partly Allowed

Judgement

S.S. Nijjar, J.—This petition under Articles 226/227 of the Constitution of India seeks issue of a writ in the nature of Certiorari quashing the order dated 15.2.1993, Annexure P-27, passed by respondent No. 1- Board, vide which the petitioner has been removed from service.

2. The petitioner was appointed as a Sub Divisional Officer in the year 1968 and was posted at Bhakhra Power House in the Bhakhra Beas Management Board. He was confirmed as such in the year 1974 and promoted on the post of Executive Engineer in the month of December, 1982. In the month of October, 1987, he was posed as Executive Engineer in the office of Directorate Rural Electrocation, Head Office, Haryana State Electricity Board, Panchkula (hereinafter referred to as the H.S.E.B.). In May, 1988, he was posted as Executive Engineer (Operation), H.S.E.B., Hansi. In May, 1989, he was transferred as Executive Engineer in the office of H.S.E.B. (Operation), Gurgaon. He remained posted there till 31.7.1991. On 1.8.1991, he was transferred from Gurgaon to Panchkula as Executive Engineer in the office of the Rural Electrocation Directorate, Head Office, H.S.E.B., Panchkula. He joined there on 7.8.1991. Thereafter he

proceeded on Earned Leave for 45 days. Before proceedings on leave, the petitioner handed over the charge by letter dated 20.12.1991. The petitioner, however, could not join duty as, according to him, he had fallen ill. He was under medical treatment of a duly qualified doctor, namely Dr. P.N. Rao. Although the petitioner had been transferred from Gurgaon, yet he did not vacate the official accommodation till the issuance of charge-sheet dated 9.7.1992. The petitioner was charge-sheeted on the following two charges :-

"1. Sh. P. Suba Rao, Xen has remained wilfully absent from duty w.e.f. 13.2.92 till date as per the details given in the statement of allegations.

2. That he has violated Board's Accommodation Regulation by not vacating Board's residence at Gurgaon after his transfer during 7/91".

The petitioner was placed under suspension on 6.7.1992. The enquiry officer was appointed on 9.9.1992, Annexure P-13. The departmental enquiry was directed to be completed within a period of 45 days positively. The enquiry proceedings were completed in five sittings. The enquiry report is made on 29.11.1992. The Enquiry Officer retired on 30.11.1992.

3. Mr. Patwalia, learned counsel for the petitioner, submitted that the Enquiry has been conducted in breach of principles of natural justice. There is also breach of Rule 8.15 of the Punishment and Appeal Rules, 1952. The petitioner was not given three clear days time prior to the examination of the witnesses of the department. It is also submitted that the new evidence which has been permitted to be produced by the respondents could not be so permitted in the absence of any inherent lacuna or defect in the evidence which has been originally produced. It is also submitted that most crucial evidence in favour of the petitioner was that of Dr. P.N. Rao. When he was summoned by the Enquiry Officer, it was not possible for the Doctor (P.N. Rao) to appear before the Enquiry Officer and he had made a request for adjournment of the enquiry from the month of November to the month of December. This reasonable request of Dr. P.N. Rao was not accepted. Consequently, the petitioner was unable to rely on the evidence which would have clearly shown that the petitioner was rendered immovable due to back pain. Further more, it was submitted that the Enquiry Officer was conducting the proceedings in undue haste due to his impending retirement. Learned counsel submits that this becomes obvious from the fact that the enquiry report was submitted only one day before the retirement of the Enquiry Officer. According to the learned counsel, the cumulative effect of all the aforesaid facts would lead to a conclusion that the petitioner was denied a reasonable opportunity of putting forward his case.

4. Mr. Patwalia further submitted that even if enquiry report is held to be not vitiated, the impugned order is still liable to be quashed as the punishment awarded is disproportionate to the misconduct, if any, committed by the petitioner. It is submitted that under Articles 226/227 of the Constitution of India, this Court has the jurisdiction to interfere and quash the order of

punishment if the same is found to be disproportionate to the proved misconduct. Learned counsel cited the judgment of the Supreme Court given in the case of B.C. Chaturvedi Vs. Union of India and others, , in support of his submission that while exercising jurisdiction under Articles 226/227 of the Constitution of India, the High Court can even substitute a lesser punishment for the punishment awarded to the delinquent official. In support of the submission that the punishment is far in excess of the proved misconduct, learned counsel submitted that at the time when the charge-sheet was issued, the petitioner had put in 25 years of service. All his Annual Confidential Reports upto that time are either very good or excellent. Till that time the petitioner was an asset to the respondent-Board. He had published many papers of national level on the subject in which he was an expert.

5. Learned counsel further submitted that a number of other officials have also overstayed in the official accommodation. In the case of one Mr. M.S. Mann, the Board itself rectified the order of removal and altered the punishment to that of stoppage of three increments.

6. Consequently, it is submitted by the learned counsel that the impugned order is liable to be quashed being discriminatory in nature.

7. I have considered the submissions made by the learned counsel for the petitioner.

8. There is considerable force in the submission made by Mr. R.C. Setia, learned Senior Advocate appearing for the respondents that this Court while exercising jurisdiction under Articles 226/227 of the Constitution of India, would not re-appreciate the evidence in the manner it could be done by the Appellate Court. I also find force in the submission of Mr. Setia to the effect that the findings of fact recorded by the Enquiry Officer are based on evidence. This Court would not quash the findings of fact recorded by the Enquiry Officer on the ground that material relied upon by the Enquiry Officer was not sufficient. This Court would only be justified in quashing the findings of the Enquiry Officer if the same are found to be based on no evidence or are found to be perverse on the face of it. A perusal of the Enquiry Report clearly shows that although the petitioner had been asked to submit himself for examination by the C.M.O., H.S.E.B., Panchkula, on a number of occasions but he did not undergo the medical examination. The Enquiry Officer also points out that in his letter to the respondent-Board, the petitioner had never requested that he should be allowed to appear before the C.M.O., Gurgaon or any other authorised C.M.O. nearby. With regard to the non-examination of Dr. P.N. Rao, again it is stated by the Enquiry Officer that he was summoned twice. Both the times, the witness intentionally declined to appear before the Enquiry Officer stating that due to his professional and personal pre-occupation, he would not be able to attend the enquiry in November, 1992. The Enquiry Officer also refers to the evidence given by Prem Singh, PW-6, who produced two D.O. letters dated 8.8.1991 and 22.1.1992 which were written by Shri Jagdish Tytler, Minister of State for Power and Non-Conventional Energy

Sources, New Delhi, and the then Chief Minister of Haryana. It is pointed out that in both these D.O. letters, it was desired that the petitioner be posted at Gurgaon instead of Panchkula due to family circumstances. In both these letters, the ground for retention of the petitioner at Gurgaon was not the medical unfitness of the petitioner. Both these letters do not indicate even slightly that the petitioner was ill nor the family circumstances were defined so as to warrant his posting at Gurgaon.

9. In view of the above, it would not be possible to accept the submissions made by Mr. Patwalia that the findings rendered by the Enquiry Officer are either perverse or based on no evidence. Similarly, with regard to charge No. 2 it is stated that the petitioner was required to vacate the official accommodation after 21 days of relinquishing the charge. Admittedly, the petitioner did not vacate the official accommodation within stipulated period. Thus, it cannot be said that the findings on second charge are also perverse or based on no evidence.

10. However, there seems to be much force in the submission made by the learned counsel for the petitioner that the punishment is dis-proportionate to the misconduct which is stated to have been proved against the petitioner. A Division Bench of this Court in the case of Union of India and others v. Ex. LAC Ind Raj 1996(3) SCT 74 (P & H)(DB) : 1996(3) A I J 339, while considering the scope of judicial review with regard to punishment, held as under :-

"The settled position of law is that the High Court while exercising writ jurisdiction cannot interfere with the sentence awarded by the Court Martial and confirmed by the competent authority under normal circumstances. The question of choice of quantum of punishment is admittedly within the jurisdiction and discretion of the authority under the Act. However, if the sentence is proved to have been awarded against the provisions of law prevalent in the country the same can be corrected by this Court as all actions of the authority within the meaning of Article 12 of the Constitution are subject to judicial review. The Supreme Court in Ranjit Thakur Vs. Union of India (UOI) and Others, , held that :-

".....Judicial review generally speaking is not directed against decision, but is directed against the "decision making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of the bias. The doctrine of judicial review would ensure that even on an aspect which is otherwise within the exclusive province of the Court Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review. In Council of Civil Service Union v. Minister for the Civil Service 1984 A.W.I.R. 1174 (HL), Lord Diplock said :-

"..... Judicial Review has, I think, developed to a stage today when without reiterating any analysis of the steps by which the development has come about. One can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call illegality, the second irrationality and the third procedural impropriety. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of proportionality which is recognized in the administrative law of several of our fellow members of the European Economic Community.....".

In *Bhagat Ram Vs. State of Himachal Pradesh and Others*, , the Supreme Court had held :-

".....It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution."

Similar view have been expressed by a Division-Bench of the Jammu and Kashmir High Court in *Ranbir Singh v. General Court Martial 1991 K.L.J. 56*."

As noticed above, the petitioner has rendered 25 years meritorious service before issuance of the charge-sheet. The mis-conduct which has been found to be proved against the petitioner is not such which would reflect adversely on the honesty or integrity of the petitioner. He seems to have been placed under some unfortunate circumstances. As soon as he was medically fit, he offered himself for examination before the Chief Surgeon, Gurgaon. He was actually examined on 11.11.1992. On that date, the Civil Surgeon, Gurgaon, confined petitioner for rest for two days. On 19.11.1992, again, he was confined to bed for two days. Therefore, it cannot be said that the claim put forward by the petitioner was wholly without justification. In addition to that, it is a matter of record that the petitioner would have retired from service on 31 December, 1998. In my view, the impugned order dated 15.2.1993, Annexure P-27, deserves to be quashed on the ground that the punishment imposed on the petitioner is far in excess of the gravity of the misconduct allegedly committed by the petitioner. The present petition is, therefore, allowed to that extent. The order of punishment Annexure P-27 is hereby quashed. The respondents are hereby directed to re-consider the question of imposing a suitable punishment on the petitioner which would ensure that he does not lose the retrial benefits.

11. In view of the fact that the order of punishment has been quashed, the petitioner would be entitled to some relief with regard to wages. However, it is to be noticed that the petitioner has been out of employment since July, 1992 and has not performed any duty till the date of superannuation in December, 1998. It would, therefore, not be proper to grant him full back wages. The petitioner must also bear some of the burden as charges have been proved against him. In view of the above, the respondents are directed to pay to the petitioner an amount

equal to 50% of the wages between the date of order of removal till superannuation. The petitioner shall also be granted his terminal benefits Within a period of two months of the receipt of a certified copy of this order.

12. It has been pointed out by Mr. Patwalia, that the Admitting Bench on 29.3.1994 directed the petitioner to make a representation to the Board which has also been disposed of vide order dated 12.1.1995, Annexure P-28.

In view of the findings recorded above, order dated 12.1.1995, Annexure P-28, also will not be given effect to.

13. Petition partly allowed.