

(1994) 04 RAJ CK 0064

In the Rajasthan High Court

Case No : Civil Spl. Appeal No. 317 of 91 and 468 of 93

Rama Shankar Mishra

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-04-1994

Acts Referred:

Air Force Act, 1950 — Section 41
Army Act, 1950 — Section 153
Constitution of India, 1950 — Article 136, 226
Industrial Disputes Act, 1947 — Section 10A, 11A

Citation : (1994) 2 WLC 266 : (1994) 2 WLN 28

Hon'ble Judges : V.G. Palshikar, J;J.R. Chopra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

V.G. Palshikar, J.—Special appeal No. 317/91 with special appeal No. 468/93. Special appeal No. 317/91 is filed by appellant Rama Shanker Mishra against the Union of India and Ors. challenging the order passed by the learned Single Judge partly allowing the writ petition filed by Rama Shanker Mishra. Second special appeal No. 468/93 is filed by the Union of India challenging the same judgment.

2. That the appellant who was petitioner before the learned Single Bench questioned before it the decision of the Court Martial. The writ petition was partially allowed. The punishment of dismissal from service was set aside. Reinstatement of the appellant was directed but the finding of guilt was confirmed, it is that finding which is challenged in this appeal by the petitioner and it is setting aside of the order of dismissal which is impugned by the Union of India in their appeal. Facts giving rise to the present appeal by the original petitioner stated briefly are as under. The petitioner was serving as Corporal in the Indian Air Force stationed at Jodhpur. He had completed 15 years of pensionable service under the respondents. The petitioner was transferred from Jodhpur to Secunderabad vide AFRO Sig. No. RDA/310 dated 29th February, 1980 and respondents No. 2 and 3 issued clearance certificate to the petitioner

so as to enable him to join at Secunderabad. The petitioner submitted an application on 5th March, 1980 for cancellation of his transfer on compassionate grounds, namely, his children were reading at Jodhpur and he was suffering from Adenoma Thyroid ailment. The transfer of the petitioner was not cancelled, however, its operation was postponed on the ground that his son was appealing at the Senior Secondary Examination. Consequently, Shri O.L. Farias, Sqn. Ldr. (9457) F (P) 107 Helicopter Unit, Air Force, Jodhpur issued a Route Form Ex.4 and asked the petitioner to accept the same. By this Route Form, the petitioner was required to commence his journey on 10th April, 1980 at 8 p.m. He was to travel by rail and was to report to the authority mentioned therein at Secunderabad on 13th April, 1980. The petitioner declined to accept the Route Form. Consequently, the petitioner was served with a charge sheet Ex.1. The charge against the petitioner was that he dis-obeyed a lawful command given by his superior officer in that he, at Jodhpur on 10th April, 1980, when asked by Sqn. Ldr. O.L. Farias (9457) F (P), adjutant of No. 107 Helicopter Unit, Air Force to take the movement order IAFF(P)-9 from him for proceeding to Air Force Academy on posting, did not do so. The petitioner claimed to be tried and was duly tried by a District Court Martial. At the trial as many as five witnesses were examined by the prosecution. The petitioner examined himself and further examined D.W.1 Wing Commander (Dr.) T.S. Murthi in his defence. The District Court Martial after hearing both the sides found the petitioner guilty of an offence u/s 41(2) of the Indian Air Force Act (hereinafter referred to as the Act) and inflicted the following punishments:-

- (a) Reduction in Rank
- (b) Dismissal from Service,
- (c) Six months" rigorous imprisonment.

3. The finding and sentence of the District Court Martial were placed for confirmation before respondent No. 2 Air Officer Commanding in Chief (Operational) Group, India Air Force, Jodhpur this respondent maintained the reduction in Rank and dismissal from service of the petitioner but reduced the sentence of six months" rigorous imprisonment to three months" rigorous imprisonment.

4. In the writ petition apart from challenging the correctness of finding of guilt, the petitioner also challenged the punishment as grossly disproportionate. The learned Single Judge considered the various submissions made before him including the several cases cited and found that the petitioner was guilty of misconduct with which he was charged but set aside the dismissal and directed reinstatement giving opportunity to the respondents to award such minor penalty in view of dismissal as they may deem proper after hearing the petitioner. It is this order which is challenged in appeal by the Union of India and the petitioner. The petitioner claims that finding of guilt is incorrect and should have, been set aside. The Union of India claims that having found that the petitioner was

correctly held guilty of the misconduct with which he was charged, the Learned Single Judge of the High Court did not have jurisdiction to interfere with the punishment imposed with the assistance of the learned Counsel for the petitioner and respondents.

5. We have gone through the record of the case and have considered several decisions cited before us in support of rival contentions. The only question which requires careful scrutiny and consideration is whether the High Court exercising jurisdiction Under Article 226 of the Constitution can interfere with the quantum of punishment awarded by the disciplinary authority after it comes to the conclusion that the departmental inquiry at which the punishment was ordered was held in accordance with law and the findings are supported by evidence on record. It will be necessary to note the several authorities cited before us by both the counsel. The counsel for the petitioner has relied on the judgment reported in Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others, that is the first case, where it was observed that absence of even one appeal with power to review evidence legal formulation and adequacy or otherwise of punishment is a serious lacuna in the system, of court martial as provided by Army Act relying on this judgment, the learned Counsel argued that only one appeal is provided before Air Marshal who has the power to confirm vary or quash the punishment awarded by the court martial, but no appeal is available thereafter and therefore, it is not sufficient. However, a careful consideration of the judgment of the Supreme Court will show that even the provisions of Section 153 of the Army Act were considered enough. In the present case, an appeal is squarely provided for, it was open for the appellate authority or the confirming authority i.e. Air Marshal to vary the sentence, if he so desired, the case is therefore, of no assistance to the learned Counsel. Conversely, the learned Counsel for Union of India cited the decision in Gian Chand Vs. Union of India and others, which is a decision of Delhi High Court. The Delhi High Court held that in the absence of malafides there should be no interference with the sentence imposed by the court martial. Relying on this decision, therefore, the learned Counsel urged that the learned Single Judge committed jurisdictional error in interfering with the quantum of the punishment by reducing the sentence of removal from service.

6. The learned Counsel for petitioner then pressed into service, the judgment reported in Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others, . The learned Counsel for the petitioner relying on this decision which deals with Industrial Disputes Act Section 11A holding that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man would come the Arbitrator appointed u/s 10A or the Supreme Court in appeal under Article 136 can reverse such finding as perverse. Submission before us being that the finding of dismissal for non-compliance with transfer order is such perverse finding and was rightly interfered by the learned Single Judge. No interference with the exercise of discretion is called for. However, the learned Counsel for Union of India relied on this very

case and has drawn our attention to para 16 and claimed that it is not permissible for the High Court to reappreciate the evidence and contended that only the Hon'ble Supreme Court can do so under Article 136 and not the High Court Under Article 226 where no fault is found with the inquiry and the findings merely because punishment is found harsh, it cannot be interfered with by the High Court.

7. The learned Counsel for the Union of India then relied on the decision of the Supreme Court reported in *Ranjit Thakur Vs. Union of India (UOI) and Others*, The Supreme Court held by the judgment delivered by Justice Shri Venkatachaliah (As hethen was) on the question of interference with the sentence. The Hon'ble Supreme Court has observed;

Judicial review, generally speaking, is not directed against a 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 bias. The doctrine of proportionality, as part of the concept 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, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review.

8. Then the learned Counsel for the Union of India relied on a decision in *Union of India (UOI) Vs. Parma Nanda*, where it is found by another three judges bench of the Supreme Court of India that the Administrative Tribunal cannot interfere with the quantum of punishment on the ground that it is commensurate with the delinquency of the employee. He therefore, claimed that the learned Single Judge erred in interfering with the matter of the punishment having found as the fact that the conclusion of guilt was proper and that delinquent was guilty of the misconduct, with which he was charged.

9. Another decision of the Supreme Court reported in 1991 V.R. *Katarki v. State of Karnataka* 1241. By decision of three judges the Supreme Court has again taken the view that there should be no interference with the quantum of punishment in exercise of jurisdiction Under Article 226 of the Constitution of India, para 6 of the judgment is emphasised by the learned Counsel which reads as under:

The question for consideration now, therefore, is while the finding that the appellant was guilty in terms of the charges found should the appellant have been dismissed from service. Ordinarily, justification of the quantum of punishment imposed in a disciplinary action is not for the Court to decide and there have been occasions when this Court has taken interference by the High Courts on quantum of punishment as an act in excess of jurisdiction.

10. The learned Counsel then relied on Full Bench decision of the Orissa High Court in support of his contention that the High Court cannot interfere with the amount of punishment. The Full Bench of the Orissa High Court has categorically laid down that the High Court has no jurisdiction to set aside the punishment awarded by the disciplinary authority even if it be of the view that the punishment awarded is arbitrary or grossly excessive or out of all proportionate to the offence committed and so it cannot substitute any other punishment in its place, the Supreme Court however, competent to do so and for coming to this conclusion. The Full Bench has relied on the decision of Supreme Court in that regard. On the basis of this judgment it is therefore, canvassed by the learned Counsel for the Union of India that interference with the quantum of punishment as ordered by the learned Judge is unsustainable in law and deserves to be set aside.

11. Last judgment relied on by the learned Counsel for the Union of India is one reported in Judgment Today 1994 (1) S.C. 217, wherein the Supreme Court has observed that;

In the matter of imposition of punishment or penalty, which can be lawfully imposed on the proved misconduct of the employee. Tribunal or the High Court has no power to substitute its own discretion for that of the disciplinary authority. The High Court or the Tribunal has no jurisdiction to impose any punishment to meet the end of justice -Supreme Court exercise the equitable jurisdiction under Article 136 and the High Court and Tribunal has no such power or jurisdiction.

12. We have carefully considered the case law referred above and in our opinion the Hon"ble Supreme Court is consistently of the view that the High Court should not exercise its jurisdiction Under Article 226 of the Constitution of India where it comes to the conclusion that the delinquent is properly found guilty in the disciplinary inquiry, which has been conducted in consonance of principle of natural justice and the rules of disciplinary inquiry. The quantum of punishment cannot be therefore, interfered with as done by the learned Single Judge. The learned Judge erred in exercise of the jurisdiction available to the High Court Under Article 226 of the Constitution of India in light of the judgment above.

13. In the result, therefore, the appeal of the Union of India is allowed. The order of reinstatement with direction to consider awarding of lesser punishment is set aside. The appeal of the petitioner is dismissed. In the circumstances, there will be no order as to costs.