
(2006) 04 MP CK 0063
In the Madhya Pradesh High Court
Case No : Writ Petition No. 22914/03

Ramanuj Pandey	Vs	APPELLANT
State of Madhya Pradesh and Others		RESPONDENT

Date of Decision : 04-04-2006

Acts Referred:

Constitution of India, 1950 — Article 14
Lunacy Act, 1912 — Section 13

Citation : (2006) 04 MP CK 0063

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Advocate : Narendra Sharma, for the Appellant; Om Namdeo, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Abhay M. Naik, J.—This petition has been preferred against the order of dismissal dated 7.5.1992 contained in Annexure A-1, passed by superintendent of Police, Sehore, after due enquiry.

2. The petitioner was appointed as Constable in the service of M.P. Police on 1.11.1967 and was subsequently promoted to the post of Head Constable vide order Annexure A-6 dated 9.7.1979. At the relevant time the petitioner was posted as Incharge, Outpost, Kolar Dam, Birpur under Police Station Bilquisganj vide order dated 13.6.1991 contained in Annexure A-11. It is stated in the petition that on 25.9.1991 at about 9 a.m., the petitioner apprehended one Lallu @ Laxmi Narain, Dozer Operator of Kolar Dam in an insane condition. He was carrying a bag with a sickle inside. He attacked the petitioner with the same and caused injuries. The petitioner, prepared a complaint u/s 13 of the Lunacy Act and directed two Constables to bring and produce the said Laxmi Narain before the Station Officer for further action. A complaint was made against the petitioner and an enquiry was made. Consequent thereto, the petitioner was suspended and a charge sheet was issued to him, contained in Annexure A-12.

The charges were denied by the petitioner who was ultimately found guilty in the departmental enquiry. Concurring with the finding of the Enquiry Officer, a show cause notice was issued to the petitioner vide order dated 7.4.1992, contained in Annexure A-16. After considering the reply, the petitioner was dismissed vide Annexure A-1, dated 7.5.1992. Appeals preferred against the same have been rejected by the Deputy Inspector General of Police and Director General of Police, Bhopal vide Annexures A-2 and A-3 respectively. Shri Sharma, learned Counsel for the petitioner submitted that the petitioner acted in good faith while making arrest of Laxmi Narain, since the latter was insane. He further submitted that no departmental enquiry was warranted in such matters. Secondly, it is submitted by the learned Counsel for the petitioner that the punishment imposed on the petitioner is shocking disproportionate and highly excessive. The petitioner has already put a service of more than 27 years and a minor punishment could have at the most been ordered.

3. Shri Om Namdeo, learned Government Advocate contended that the scope of judicial review in such matters is very limited. The petitioner has been found guilty after due enquiry and the findings of the Enquiry Officer were based on the material on record and the same are not liable to be interfered with. Learned Government Advocate further submitted that the petitioner belongs to the police service and was required to act in a disciplined manner. He could not have been permitted to misuse his position as a Head Constable of Police and as such the punishment inflicted after due enquiry is quite justified.

4. Heard the submissions and perused the record.

5. As regards the factual position it may be seen that there is no iota on record to establish that Laxmi Narain was of unsound mind in any manner. Admittedly, he was in employment of Kolar Project. There is no evidence on record to show that Laxmi Narain did ever act with insanity during the employment or otherwise. In the enquiry, Dr. Dharam Singh was examined, as a medical expert who categorically stated that Laxmi Narain behaved as a common man. The doctor found that there were three injuries on the body of Laxmi Narain. These injuries were received by him from the hands of the petitioner, as has been found in the enquiry. Statement of Laxmi Narain has been recorded wherein he has slated that the petitioner addressed him with abusive language and on being resisted he was severely beaten by the petitioner. His statement does not demonstrate that he was in a condition of unsound mind and could be said to be an insane. Thus, the findings of the Enquiry Officer that the petitioner misused his position as Head Constable and inflicted injuries on the body of Laxmi Narain cannot be found to be faulted with. Shri Sharma, learned Counsel for the petitioner has been unable to demonstrate any kind of infirmity in the findings arrived at by the Enquiry Officer in the departmental enquiry, which have been made basis for passing of order of dismissal.

6. Next submission of learned Counsel for the petitioner is that the punishment awarded to the petitioner is highly disproportionate and shockingly excessive. He

submitted that a minor punishment could have served the purpose of departmental enquiry. Reliance has been placed on the decision of the Apex Court in the case of B.C. Chaturvedi Vs. Union of India and others, . The Apex Court has held that if the punishment imposed by the disciplinary authority or appellate authority shocks the conscience of the High Court/Tribunal, a discretion may be exercised to impose appropriate punishment, keeping in view the magnitude and gravity of the misconduct. Shri Sharma, learned Counsel for the petitioner further relied on the Division Bench of this Court in the case of Arvind Dixit v. Director General of Police reported as 2002 (3) MPLJ 258. As regards the latter decision, the allegation against the delinquent was that he threw the belt and cap before the Inspector General of Police. In the present case there are specific charges against the petitioner of severe misconduct involving a member from public at large without any fault who was severely beaten by the petitioner and was mishandled. Thus, the latter decision is quite distinguishable on facts. As regards the application of decision of B.C. Chaturvedi (supra), it is to be examined whether the punishment of dismissal from service can be said to be highly disproportionate, so as to shock the judicial conscience. It cannot be overlooked that the petitioner belongs to police services and is expected to behave in a balanced and disciplined manner. He is found to have misused his position as Head Constable of Police, by using abusive language and giving beatings to Laxmi Narain who resisted abusive act of the petitioner. Recently, the Hon"ble Supreme Court was dealing with a case of Police Constable, in the case of Commissioner of Police and Ors. v. Syed Hussain (2006) 3 SCC 171, wherein it has been held:

It is one thing to say that order passed, by the statutory authority is wholly arbitrary and thus violative of Article 14 of the Constitution and thus liable to be set aside, but it is another thing to say that the discretionary jurisdiction exercised by such authority should not ordinarily be interfered with by a superior court while exercising its power of Judicial review unless one or the other ground upon which and on the basis whereof the power of judicial review can be exercised, exists.

It has been further held:

Thus, even assuming that a time has come where this Court can develop "administrative law" by following the recent decisions of the House of Lords, we are of the opinion that it is not one of such cases where the doctrine of proportionality should be invoked. In *ex p Daly* it was held that the depth of judicial review and the deference due to the administrative discretion vary with the subject-matter.

It has been finally concluded by the Hon"ble Supreme Court:

It is, therefore, beyond any doubt or dispute that the doctrine of proportionality has to be applied in appropriate ease as the depth of judicial review will depend on the facts and circumstances of each case.

7. Now, coming to the case in hand, it may be seen that the petitioner was a Head Constable and is found to have misused his position by abusing a member of public and inflicting injuries on him. In the concluding paragraph of the impugned order it is clearly mentioned that earlier also it was found that the petitioner had misused his position and is found to have ill treated members from common public. He was earlier punished with three minor penalties and two major penalties, on account of his misconduct. The petitioner has obviously failed to improve himself and has rather got involved in the infringement of fundamental right of a common man. Apex Court in Syed Hussain's case (supra), has clearly mentioned that in a situation of this nature, keeping in view the nature of duties that a protector of law is required to perform. We are firmly of the opinion that the disciplinary authority cannot be said to have committed an error in imposing the punishment of removal from service upon the respondent, particularly when on earlier two occasions also he had been found guilty of commission of misconduct and punished therefor.

8. In view of the discussion contained hereinabove, I do not find any merit in the petition. The same is accordingly, dismissed, however without order as to costs.