

(2012) 10 P&H CK 0065

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2933 of 2011 (O and M)

Shaunk Lari alias Shaukat Ali

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 11-10-2012

Acts Referred:

Citation : (2013) 1 SCT 493

Hon'ble Judges : A.N. Jindal, J

Bench : Single Bench

Advocate : Vijay Lath and Mr. Naveen Sharma, for the Appellant;

Judgement

A.N. Jindal, J.—The judgment dated 11.02.2011 passed by the District Judge, Hoshiarpur, dismissing the appeal filed by the plaintiff appellant (hereinafter referred as "the plaintiff") against the judgment and decree dated 13.05.2010 passed by the trial Court, dismissing the suit of the plaintiff for declaration, is under challenge. The factual position in the case is that two enquiries were held against the plaintiff, who has been working as a conductor in Punjab Roadways, Hoshiarpur. In the first enquiry, the Punishing Authority had awarded a penalty of stoppage of 8 annual increments with cumulative effect vide order dated 21.07.2005 and in the second enquiry, the Punishing Authority, vide order dated 04.08.2005, had compulsorily retired the plaintiff from service. On appeal, the Secretary to Government of Punjab, Transport Department, Chandigarh, vide order dated 18.10.2006 while deliberating over the issues, though held the plaintiff guilty, yet while examining the gravity of the charges, had reduced the penalty in both the cases to the extent of stoppage of two annual increments with cumulative effect in each case. The plaintiff had challenged the aforesaid order by way of filing a civil suit.

2. The trial Court, vide judgment dated 13.05.2010, dismissed the suit of the plaintiff. The appeal filed by him also met the same fate on 11.02.2011.

3. The allegations against the plaintiff relate to the years 1999 and 2002. He also

remained under suspension for some time. The plaintiff was charge sheeted on the allegations that he did not issue tickets to the passengers, though he had charged money from them. Be that it may, the Court should not interfere in the quantum of punishment, but it is not an abstract proposition of law and principles of natural justice could be put into operation in fit and suitable cases. This principle is popularly known as "Wednesbury Principles", to which reference has been made by the Hon"ble Apex Court in case Om Kumar and Others Vs. Union of India, The views of Lord Greene in the case of Associated Provincial Picture Houses v. Wednesbury Corporation, 1947(2) All England Reports 680, have been relied upon by the Hon"ble Apex Court in para No. 26 and the conclusion has been recorded in para No. 71, which are reproduced as under:-

26. Lord Greene said in 1948 in the Wednesbury case, 1947 (2) All.E.R. 680 (CA) that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. He said that interference was not permissible unless one or the other of the following conditions was satisfied, namely the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered; or the decision was one which no reasonable person could have taken. These principles were consistently followed in the U.K. and in India to judge the validity of administrative action. It is equally well known that in 1983, Lord Diplock in Council for Civil Services Union v. Minister of Civil Service, 1983 (1) A.C. 768, (called the GCHO case) summarised the principles of judicial review of administrative action as based upon one or other of the following viz., illegality, procedural irregularity and irrationality. He, however, opined that "proportionality" was a "future possibility."

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71. Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the Court is confined to Wednesbury principles as a secondary reviewing authority. The Court will not apply proportionality as a primary reviewing Court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The Court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the Courts, and such extreme or rare cases can the Court substitute its own view as to the quantum of punishment.

4. A constitution Bench had another opportunity to succinctly state these principles in the case of Rameshwar Prasad and Others Vs. Union of India (UOI) and Another, In para 242, their Lordships have issued the guidelines for correct understanding of Wednesbury Principles and the same reads as under-

242. The Wednesbury principle is often misunderstood to mean that any

administrative decision which is regarded by the Court to be unreasonable must be struck down. The correct understanding of the Wednesbury principle is that a decision will be said to be unreasonable in the Wednesbury sense if (i) it is based on wholly irrelevant material or wholly irrelevant consideration, (ii) it has ignored a very relevant material which it should have taken into consideration, or (iii) it is so absurd that no sensible person could ever have reached it.

5. The aforesaid judgments were relied upon by a Division Bench of this Court in case *Gurdev Singh v. State of Haryana and others*, 2006 (4) S.C.T. 433: 2007 (1) RSJ 45, wherein while discussing the Wednesbury Principle as well as the judgments delivered by the Hon"ble Apex Court in *Om Kumar and Rameshwar Prasad's* cases (supra), it has been held as under:-

...It is well settled that statement which amount to admission have to be read as a whole and cannot be torn out of context. We further find that the charge of insubordination for having disobeyed any order has not been proved as there is no evidence on record to that effect. Therefore, the Wednesbury principles, as per the guidelines given in *Rameshwar Prasad's* case (supra) have been violated. Accordingly, two courses could be followed by us- (i) to issue direction to the respondents to re-examine the matter; or (ii) exercise the jurisdiction ourselves. However, we are availing the second option for the reason that the inquiry report in this case was submitted on 13.02.1999 and the order dismissing the petitioner from service was passed on 15.06.1999 (P-1). A period of more than seven years has already gone by. Therefore, we would conclude that the order of dismissal be converted into the one of compulsorily retirement because the petitioner has rendered long service of about 24 years. This would meet the ends of justice as the petitioner would become entitled to pension and all the pensionary benefits.

6. The principal of proportionality was also considered by the Hon"ble Apex Court in case *Chairman cum Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and Others*, wherein it was observed as under:-

The doctrine of proportionality is, thus, well recognized concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention, if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations, cannot claim immunity and remains open for interference under limited scope of judicial review. One of the tests to be applied while dealing with the question of quantum of punishment would be; would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclusive irrelevant matters before imposing punishment.

7. After examining the aforesaid judgments and the facts and circumstances of

the present case, this Court is of the view that the grave penalty of stoppage of two annual increments with cumulative effect in each case, appears to be highly excessive. This Court in case *Sham Lal v. District & Sessions Judge, Ferozepur*, 1994 (3) SCT 829, observed as under:-

8. After going through the whole of the record of the case, we have come to the conclusion that the disciplinary authority had in fact, intended to award the petitioners punishment of withholding of increment only without any cumulative effect. To arrive at this conclusion, we had to peruse the nature of the charges levelled against the delinquent officials and the report of the Inquiry Officers. The petitions can be disposed of appropriately with a direction of punishment to be simpliciter withholding of increment for the period specified in the orders impugned before us without having cumulative effect.

9. Otherwise also non-supply of the copy of the enquiry report would not in any way render the whole of the proceedings to be a nullity but require only issuance of a direction to the authorities for compliance of the mandate of the Hon''ble Supreme Court with direction to pass fresh appropriate orders. We do not agree with the learned counsel for the petitioner for quashing the whole of the proceedings even if we accept their contention. It is true that we while exercising our writ jurisdiction cannot direct the substitution of punishment awarded to an officer but in view of the fact that we have held that punishment awarded was required to be deemed to be a punishment of withholding of increment simpliciter, no question would arise for substituting of the punishment. Even if it be so, we have been persuaded by the judgment of the Supreme Court delivered in *Bhagat Ram Vs. State of Himachal Pradesh and Others*, wherein it has been held that:

The question is, once we quash the order, is it open to us to give any direction which would not permit a fresh inquiry to be held? After all what is the purpose of holding a fresh inquiry? Obviously, it must be to impose some penalty. 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 violate Article 14 of the Constitution. Having been influenced by all these relevant considerations, we are of the opinion that no useful purpose would be served by a fresh inquiry. What option is open to us in exercise of our jurisdiction under Article 136 to make an appropriate order. We believe that justice and fair play demand that we make an order of minor penalty here and now without being unduly technical apart jurisdiction we are fortified in this view by the decision of this Court in *Hindustan Steels Ltd., Rourkela Vs. A.K. Roy and Others*, , where this Court after quashing the order of reinstatement proceeded to examine whether the party should be left to pursue further remedy. Other alternative was to remand the matter that being a case of an industrial dispute to the Tribunal. It is possible that on such a remand, this Court further observed, that the Tribunal may pass an appropriate order but that would mean prolonging the dispute which would hardly be fair to or conducive to the interest of the

parties. This Court in such circumstances proceeded to make appropriate order by awarding compensation. We may adopt the same approach. Keeping in view, the nature of misconduct, gravity of charge and no consequential loss, a penalty of withholding his increment with further effect will meet the ends of justice. Accordingly, two increments with future effect of the appellant be withheld and he must be paid 50% of the arrears from the date of termination till the date of reinstatement.

8. As such, while examining the gravity of the offence; the harassment already met by the appellant; the length of time he remained under suspension; the magnitude of the imputations; the intention of the punishing authority; the nature of the penalty and over all conduct of the appellant, this Court is inclined to lean to relax the proportionality of the penalty towards the petitioner. The ends of justice would be met and punishment of stoppage of two annual increments without cumulative effect awarded to the plaintiff in each of the departmental enquiries would commensurate to the offences committed by the plaintiff. Resultantly, the present appeal is dismissed with the modification that the impugned orders, by which the plaintiff was awarded the punishment of withholding of two increments with cumulative effect would be treated as orders of withholding of two increments simpliciter in both the enquiries. To make it more clear, it is held that the plaintiff would be deemed to have been awarded punishment of stoppage of two annual grade increments without cumulative effect in both the cases and the plaintiff would be entitled to consequential benefits.

Disposed of accordingly.