

(1998) 07 P&H CK 0159

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 428 of 1981

Shri Devi Saran

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 02-07-1998

Acts Referred:

Citation : (1998) 120 PLR 449

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : Ram Lal Gupta, for the Appellant; Rajesh Gumber, for the Respondent

Final Decision : Allowed

Judgement

Swatanter Kumar, J.—The challenge in this regular second appeal is to the judgment and decree passed by the learned 1st Appellate Court dated October 11, 1980, vide impugned judgment, the learned Ist Appellate Court has passed the decree in favour of the respondent in that appeal without any orders as to costs.

2. The necessary facts are that present appellant Devi Saran filed a suit for declaration challenging the legality and validity of the order of termination of his services, dated 13.9.1978. Devi Saran who at the relevant time was working as pump attendant in the MES Department at Pathankot, was charged by the Garrison Engineer in January, 1972. The charge framed against the appellant reads as under :-

"As per the memorandum received vide GE West Pathankot Letter No. C-5/14/DS/407/EIC, dated 7/10 Jan. 77, the following charge was to be enquired into-

"That the said Shri Devi Sharan while functioning as Pump Attendant at the Central Sewage Treatment Plant during the period night 27/28 Jan. 1972, is charged with "Absenting from duty without permission" in that when detailed to perform duty from 1600 hrs on 27.1.1972 to 0800 hrs. on 28.1.1972, failed to

perform it, thereby leaving the MES Central Sewage Treatment Plant unattended and as a result of which a pumping set engine was stolen. The said Shri Devi Sharan, thus, contravened the provisions 3(ii) of the Central Civil Services (conduct) Rules, 1965".

3. The departmental inquiry was conducted. The petitioner was found guilty of the charge being absent, without leave and permission of the competent authority but was not held guilty in regard to the charge of theft. It was held in the enquiry report that the appellant would not be held responsible for the theft of the water pump set.

4. The learned trial Court on the respective pleadings of the parties framed following 3 issues :

"1) Whether the civil Court has got no jurisdiction to entertain and try this suit? OPD.

2) Whether the order dated 13.8.1979 passed by the Garrison-Engineer is illegal, null and void, as alleged in the plaint.

3) Relief."

5. Having permitted the parties to lead their respective evidence, the learned trial Court, decided all the issues in favour of the plaintiff and against the defendant, decreed the suit of the plaintiff and set aside the impugned order dated 13.9.1978 passed by Garrison Engineer, Pathankot, removing the plaintiff from service as being illegal, null and void and ineffective. The plaintiff, consequently, was entitled to continuity of service with all resultant benefits. The judgment and decree dated 16.11.1979 passed by the learned Sub Judge, IInd Class, Gurdaspur, was successfully assailed in appeal by the Union of India, as already noticed, giving rise to this regular second appeal.

6. While assailing the judgment and decree of the learned Ist Appellate Court, the learned counsel appearing for the appellant has mainly raised the following contentions :-

1) There is violation of principle of natural justice :

a) The delinquent official was called upon to lead evidence first and his witnesses were examined before any evidence of the departmental witnesses was examined to prove the charge against the appellant;

b) The delinquent official was not granted adequate opportunity to cross examine the witnesses. It is also contended that it was not disclosed earlier as to which witness is appearing on behalf of the department;

c) The presenting officer practically acted as Enquiry Officer and dictated the proceedings and no opportunity was granted to the delinquent official to lead evidence in rebuttal. In the above manner specific rules applicable to the conduct of departmental enquiry, as well as principles of natural justice have been

violated. It has caused serious prejudice to the interest of the delinquent official. Therefore, the entire departmental proceedings and the impugned order passed thereupon is vitiated in law.

2) The impugned order neither give any reason nor does it show any application of mind by the authorities concerned as the order is a non-speaking one;

3) Lastly, it is submitted that the quantum of punishment imposed upon the appellant is totally dis-proportionate to the offence for which the delinquent office was charge, the punishment is excessive, unreasonable and arbitrary.

7. On the other hand, the learned counsel appearing for the Union of India half heartedly contested all these issues but was fair enough to concede that there is violation of principle of natural justice. I have gone through the report of the Enquiry Officer wherein it is clear that the departmental witnesses were not examined first and no opportunity was granted to the delinquent official to rebutt the evidence. The witnesses of the department were examined after the evidence of the petitioner was closed by the Enquiry Officer. This unique method of conducting the departmental enquiry appears to be the innovation of the Enquiry Officer which has certainly prejudiced the right available to the delinquent official in accordance with the relevant rules. It was a case where delinquent official has admitted the absence on medical grounds. It was stated by the petitioner that from duty he had directly gone to the doctor and remained under his treatment till he re-joined the duty overnight. The doctor was examined before the Enquiry Officer as prosecution witness while he was never produced as a witness by the Department. The statement of Dr. Avtar Singh and questioning by the Presenting Officer in cross examination do not reveal any such conduct of the delinquent official or any reason attributable to him which could be termed as misconduct of the kind which would entail the penalty of dismissal/termination from service. In a recent judgment the Hon'ble Supreme Court of India in the case of State Bank of Patiala and others Vs. S.K. Sharma, has held that if there is violation of principles of natural justice, rules and regulations and such violation has caused prejudice to the delinquent official, in that event such proceedings or order of termination would be liable to be set aside. The present case is one where the delinquent official is not required to prove any prejudice other than what is apparent on record. There is definite element of bias reflected from the proceedings of the departmental enquiry and the report submitted by the Enquiry Officer. Once element of bias reasonably appears in that event the burden of proof of prejudice obviously stands reduced to a great extent, as far as delinquent official is concerned. The admission of absence from duty does not amount to admission of misconduct per se. The admission of the official was simplicitor of a fact for which due reasons were given by the delinquent official. If this has to be taken as an admission of the delinquent official, then it must be understood in its right perspective and given its true and correct meaning. The explanation rendered has to be read as an integral part of admission on the part of delinquent official.

8. The Enquiry Officer in paragraph 12 of the enquiry report had given a specific finding stating that the petitioner was not involved in the theft. The relevant portion of the enquiry report reads as under :-

"From the available evidence it cannot be ascertained correctly whether the engine has been stolen away during the period 1600 hrs. to 2030 hrs. or between 2100 hrs. on 27.1.72 to 0830 hrs. on 28 Jan. 78. The theft of pump between the period 2030 hrs. to 2100 hrs. on 27.1.72 (1/2 hour) is unlikely since a minimum period of 1 to 2 hours is necessary for such an operation. The most likely period of the theft is after 2300 hrs. when the installation had remained completely unattended from 2300 hrs. to 0600 hrs. next morning."

9. In view of the findings recorded by the Enquiry Officer himself and from the records, it is clear that mere absence from duty from 8.30 p.m. to 6.00 A.M. on the night 27-28 January, 1972, cannot be termed as a misconduct justifying the imposition of penalty of dismissal, especially when the explanation rendered by the delinquent official was fully corroborated and supported by the doctor who appeared as a witness in the departmental proceedings. In his cross examination nothing could be brought on record which would create a doubt in the stand taken by the official concerned. In these circumstances, I am of the considered view that the punishment imposed upon the appellant does not commensurate with the gravity of the offence for which he was charged and found guilty. Certainly imposition of punishment is a matter which falls in the domain of disciplinary authority and Courts would not normally interfere in the quantum of punishment, unless such order apparently pricks the judicial conscience of the Court. Further, after detailed discussion of law on the subject, this Court in the case of "Constable Kushal Singh v. Union of India and Ors. 1997 (3) R.S.J. 357 held as under :-

"It cannot be disputed that nature and extent of punishment to be imposed upon a delinquent official/officer primarily falls in the domain of competent authority. Once it is shown on record that enquiry was conducted in accordance with rules and in consonance with the principles of natural justice, the jurisdiction of the Courts to interfere in quantum of punishment awarded by the authorities concerned is a limited one. The quantum of punishment falls in the domain of the disciplinary authority as the authority is *Jus Galdii* in this regard. The prerogative of punishing for the offence committed pre-supposes an application of mind by the authorities concerned where it balances the various factors, which should and ought to control and guide the authorities while taking such a decision. What the competent authority considered to be in the interest of department and in public interest normally cannot be interfered with by Court as if they were sitting as Court of appeal of the quantum of punishment. We are of the view that competent authority is entitled to some leverage while determining the quantum of punishment to be imposed upon by delinquent official/officer. The authorities concerned are expected to apply their mind keeping in view the facts and circumstances of a given case, discipline of the department and effect of

imposition of proposed punishment. Such quantum, upon due consideration and in consonance with rules and law of the land, would be one which may not call for any interference. However, if the order of punishment ex-facie is so unreasonable or totally dis-proportionate to the proved misconduct of the employee that it pricks the judicial conscious of the court, is based upon an enquiry which is vitiated for violation of rules and principles of natural justice, is itself an order violative of rules or/and is an order which no person of common prudence on any reasonable basis could arrive at, would be open to interference by Courts in judicial review.

10. In the case of " N. Rajarathinam Vs. State of T.N. and Another, the Supreme Court has held as under :-

"Once there is a finding as regards the proof of misconduct, what should be the nature of the punishment to be imposed is for the disciplinary authority to consider. While making decision to impose punishment of dismissal from service, if the disciplinary authority had taken the totality of all the facts and circumstances into consideration, it is for the authority to take the decision keeping in view the discipline in the service. Though this Court is empowered to go into the question as to the nature of the punishment imposed, it has to be considered in the peculiar facts and circumstances of each case".

11. It is clear from the above well settled law that the jurisdiction of the Courts is not totally ousted in regard to the matter relating to quantum of punishment. Wherever, the facts and circumstances of the case call for, the courts would certainly interfere even in the quantum of punishment. The nature of the offence proved against the petitioner is one which certainly does not call for the severest punishment of dismissal from service.

12. For the reasons aforestated, the present appeal is accepted. The judgment and decree of the learned Ist Appellate Court dated 11.10.1980, is hereby set aside. The impugned order of punishment is hereby quashed. The disciplinary authority is, however, granted liberty to pass order of punishment afresh after hearing the appellant in accordance with law.

13. There shall be no orders as to costs.