
(2010) 05 CAL CK 0063
In the Calcutta High Court
Case No : Writ Petition S.T. No. 84 of 2010

Sri Shyamalendu Das

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 21-05-2010

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2010) 05 CAL CK 0063

Hon'ble Judges : Syamal Kanti Chakrabarti, J;Pranab Kumar Chattopadhyay, J

Bench : Division Bench

Advocate : B.R. Bhattacharya, S.P. Pahari, A. Pradhan and T.K. Mahapatra, for the Appellant; Pratik Dhar, Jayeeta Chakrabarti, Ritwik Pattanayak and Suryasarathi Basu, for the Respondent

Final Decision : Dismissed

Judgement

Syamal Kanti Chakrabarti, J.—This writ petition has been filed challenging the order dated 20.01.2009 passed by the Learned West Bengal Administrative Tribunal in O. A. No. 1408 of 2004 whereby and whereunder the Learned Tribunal was pleased to dismiss the application filed by the petitioner, Shyamalendu Das on merits.

2. From the records we find that the petitioner herein faced departmental proceedings on the charge of his unauthorised absence from duty on several occasions and lastly the departmental proceedings against him ended with an order of dismissal recorded by the Disciplinary Authority on grounds of unauthorised absence. In course of argument before the Learned Tribunal the Learned Lawyer for the petitioner made submissions regarding extreme punishment imposed upon the petitioner which was claimed to be disproportionate to the charge. Learned Lawyer for the State on the contrary has also claimed maintainability of the application on the grounds of limitation as well as argued justifying the extreme penalty imposed upon the petitioner herein. But the Learned Tribunal has upheld the penalty imposed by the Disciplinary

Authority.

3. Learned Tribunal has held, *inter alia*, that in the past the petitioner made no attempt to satisfy the authority regarding his ground of absence on several occasions which resulted in his punishment without any rectification on his part. Therefore, as a member of the police force without any sense of strict standard of discipline he has repeatedly made himself absent from duty for which the disciplinary authority imposed extreme penalty of dismissal of service on the last occasion which is neither unjust nor disproportionate to the charge levelled against him. Therefore, the Learned Tribunal has refused to interfere with the penalty imposed upon the petitioner herein.

4. The same points have been agitated before us. While considering the merit of this appeal we also find that the Learned Lawyer for the petitioner herein has failed to offer any satisfactory explanation regarding the delay in preferring the writ petition after receipt of the order of penalty. In paragraph 3 of the affidavit-in-opposition it is clearly claimed by the respondent that the petitioner was dismissed from service by an order dated 20.05.2002 but the writ petition was filed before the Learned Tribunal in 2004 without any application praying for condonation of delay u/s 5 of the Limitation Act. In absence of any such prayer for condonation of delay the writ petition appeared to us also to be barred by limitation.

5. So far as the second aspect is concerned regarding disproportionate punishment imposed upon the petitioner herein, Learned Lawyer has submitted that in the disciplinary proceeding in question charge was framed against the petitioner on grounds of his unauthorized absence for 102 days only from 02-12-2001 to 25-12-2001, 30-12-2001, 2 1-01-2002 to 07-04-2002 for absence from duty on grounds of illness dismissal from service should be treated as extreme penalty. In support of his contention he has cited the rulings reported in *Union of India and others Vs. Giriraj Sharma*, . In the said case it has been decided that over staying leave period by employee subsequent to order of rejection of application for extension of leave cannot be treated as willful intention to flout the order. In such case punishment of dismissal from service should be treated as harsh and disproportionate. After careful consideration of the facts stated in the aforesaid case we are unable to accept the arguments advanced by the Learned Lawyer for the petitioner herein because the instant disciplinary proceeding in question was initiated not for any ground of over staying leave period and the facts and circumstances of the present case are quite dissimilar and as such distinguished.

6. In this connection the objection raised by the respondent authority in their affidavit-in-opposition may be placed on record for consideration.

Para-3: It is respectfully submitted that the petitioner was dismissed from service by an order dated 20.05.2002 passed by the Disciplinary Authority being the Deputy Commissioner of Police, 5th Battalion, Kolkata Armed Police. In the

order passed by the Disciplinary Authority it was specifically indicated that within a span of 16 years of service, petitioner got 42 punishments including four major punishments. In fact all the cases of punishments were related with unauthorised absence from duty. Challenging the order of dismissal, the petitioner preferred an appeal before the Appellate Authority being the Joint Commissioner of Police, Kolkata Armed Police. The Appellate Authority by an order dated 13.06.2003 confirmed the order of dismissal passed by the Disciplinary Authority. Challenging the said order of dismissal by the Disciplinary Authority and subsequent confirmation by the Appellate Authority, an original application was filed before the Ld. West Bengal Administrative Tribunal being O. A. No. 1408 of 2004 which was dismissed by an order dated 20.01.2009. It is respectfully submitted that the petitioner is a habitual absentee. The proof of such habitual absentee of the petitioner is clear from the fact that he has received 42 punishments including four major punishments for being unauthorisedly absented himself from different duties.

7. From the conduct of the writ petitioner it appears that he was in the habit of making himself absent from duty without making any leave application in advance. Therefore, in imposing the extreme penalty his past conduct was taken into account by the Disciplinary Authority since he is a member of the police force from whom obedience is always expected by the employer. He has not come to senses even after imposition of 42 punishments in the past on account of his frequent absence from duty without reasonable cause which has ultimately led the Disciplinary Authority to impose extreme penalty like removal from service for his incorrigible behaviour and repeated act of disobedience. The continuous influxes of human mind is always conducted and regulated by human thought which is reflected in the matter of imposition of such extreme penalty. This is neither unnatural nor arbitrary. From this point of view it is true that present is nothing but awareness of past. So reflection of past conduct in imposing extreme penalty is necessary outcome of diligent exercise of discretionary power which should not be interfered with.

8. Moreover, we further observe that the cumulative effect of past misconduct of a delinquent staff must have some bearing upon the disciplinary authority in imposing penalty which is neither illegal nor disproportionate to the conduct of such delinquent staff at the time of his 43rd disciplinary proceeding drawn up by the appointing authority and that is why the Learned Tribunal did not find any illegality or impropriety in imposing such penalty.

9. Learned Lawyer for the State respondent has drawn our attention to the principles laid down in (2007) 10 Supreme Court Cases 511. In the said case a constable was found absenting himself from duties for 65 days 14 hours. On earlier occasions also he indulged in similar absentees. It was held before by Their Lordships that when a police man repeatedly absents himself from duty it cannot but be reasonably concluded that there is incorrigibility in his continued misconduct. Their Lordships were further pleased to observe that in such cases

paramount public interest must outweigh respondent's private considerations from remaining absent from duty. Therefore, we find that the said principle lends support to our conclusion that the Disciplinary Authority in the instant case has rightly conceived the gravity of misconduct of the delinquent constable and imposed the penalty of dismissal which is not at all disproportionate. The same principle is echoed in deciding merit of an unreported case being W.P.S.T. No. 672 of 2009 of this Hon'ble Court. In the said case also the petitioner was awarded 5 major and 18 minor punishments on account of unauthorised absence from duty or overstay after expiry of the sanctioned leave, as the case may be. But this Court upheld the order of dismissal in the final disciplinary proceedings against him. Learned Lawyer for the State has also drawn our attention to the principle laid down in State of U.P. and others Vs. Ashok Kumar Singh and others, in which the unauthorised absence from duty of a police constable on several occasions and the consequential removal from service after departmental enquiry was treated as gross misconduct and his past misconduct was also taken into account in upholding the decision taken by the Disciplinary Authority. In that case also the Hon'ble Apex Court has refused to interfere with such extreme penalty by way of judicial review.

10. Relying upon the above principles and upon due consideration of the facts and circumstances of the case we hold that there is no illegality or impropriety in the impugned judgement and order passed by the Learned Tribunal which should be interfered with. Therefore we hold that there is no merit in this appeal which is accordingly dismissed.

11. Under the circumstances we make no order as to costs.

12. Urgent certified photostat copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

Pranab Kumar Chattopadhyay, J.

13. I agree.