
(2010) 06 AP CK 0081

In the Andhra Pradesh High Court

Case No : Writ Petition No. 22961 of 2003

Syed Abdul Kareem

APPELLANT

Vs

The Commandant, 8th Battalion, The Deputy Inspector
General of Police, The Inspector General of Police and The
Government of A.P.

RESPONDENT

Date of Decision : 11-06-2010

Acts Referred:

Citation : (2010) 06 AP CK 0081

Hon'ble Judges : Ghulam Mohammed, J;B. Seshasayana Reddy, J

Bench : Division Bench

Advocate : Kamineni Ramamohan, for the Appellant; The G.P. for Services I, for the Respondent

Final Decision : Allowed

Judgement

Ghulam Mohammed, J.—This writ petition is filed seeking to declare the order dated 01.04.2003 in O.A. No. 1677 of 2001 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad, and memo dated 30.09.1999 issued by the fourth respondent confirming order dated 13.01.1999 passed by the third respondent as illegal and arbitrary.

2. O.A. No. 1677 of 2001 was filed by the petitioner against the memo dated 30.09.1999 issued by the fourth respondent confirming the order dated 29.10.1998 passed by the second respondent, and the order dated 13.01.1999 passed by the third respondent, and consequently to quash the above orders.

3. The case of the petitioner is that he was appointed as a Cook in the first respondent battalion on 30.04.1985 and was discharging duties as such. While so, he developed a chronic disease, due to which, he could not attend to duty for the some days. Therefore, the first respondent issued a charge-memo dated 13.02.1998 alleging unauthorized absence at frequent intervals, and the petitioner submitted explanation dated 25.03.1998 mentioning the reasons for

his absence. However, the first respondent, without considering the explanation, by order dated 29.08.1998, imposed punishment of dismissal from service with immediate effect. Against the same, the petitioner preferred an appeal to the second respondent, who by order dated 29.10.1998 modified the punishment of dismissal to that of compulsory retirement. Aggrieved by the same, the petitioner preferred a revision before the third respondent, who rejected the revision, by order dated 13.01.1999. Then, the petitioner preferred a mercy petition seeking reinstatement before the fourth respondent, who issued memo dated 30.09.1999 rejecting the request for reinstatement into service. Aggrieved by the said orders, the petitioner filed O.A. No. 1677 of 2001 and the Tribunal dismissed the O.A. on 01.04.2003. Therefore, he approached this Court.

4. The grievance of the petitioner is that he could not attend to duty at different spells due to chronic ill-health, and therefore, the punishment of compulsory retirement is severe in nature and that considering the ground of ill-health, he may be reinstated into service.

5. The case of the respondents is that since the petitioner was absent from duty frequently, a charge-memo was issued and considering the explanation submitted by him, the punishment of dismissal from service was ordered and later on, considering his ill-health, the punishment of dismissal was modified to that of compulsory retirement and therefore, impugned orders are in accordance with law.

6. Heard the learned Counsel for the petitioner and the learned Government Pleader for Services I appearing for the respondents, and perused the record.

7. The learned Counsel for the petitioner submits that though the petitioner was absent from duty at frequent intervals, he explained the same properly by producing the medical certificates for such absence; that he is aged about 43 years and he is having about 17 years of service and that taking into consideration his ill-health and the fact that he has to look-after his family consisting of eight members including sick mother, he may be reinstated into service, on humanitarian grounds.

8. The learned Government Pleader for Services I contended that the petitioner absented from duty frequently; that since he was a Cook in a battalion working in anti-extremist fields, his absence without prior information and without sanction of leave, on number of occasions, caused hardship to the Police personnel and that even considering his ill-health and other relevant factors, the punishment was modified from dismissal to that of compulsory retirement. The learned Government Pleader further relied on decisions of the Supreme Court in Union of India (UOI) and Another Vs. S.S. Ahluwalia, and State of Gujarat Vs. Anand Acharya @ Bharat Kumar Sadhu,

9. In Ahluwalia's case (1 supra), the Supreme Court, while dealing with the scope of judicial review in the matters of imposition of penalty as a result of disciplinary proceedings, at paragraph 7, held as under:

The learned single Judge has also set aside the order by which a penalty of 10% deduction in pension for one year had been imposed. This part of the order has also been affirmed by the Division Bench. It may be mentioned here that charge No. I was found to be partly proved and charge Nos. II, III and IV were found to be fully proved. The scope of judicial review in the matter of imposition of penalty as a result of disciplinary proceedings is very limited. The court can interfere with the punishment only if It finds the same to be shockingly disproportionate to the charges found to be proved. In such a case the court is to remit the matter to the disciplinary authority for reconsideration of the punishment. In an appropriate case in order to avoid delay the court can itself impose lesser penalty. In the present case the penalty imposed upon the respondent was very small, namely, 10% deduction from pension for one year. Thus there was hardly any occasion for the High Court to interfere with the order of penalty passed by the Competent Authority. However, having regard to the facts and circumstances of the case and specially to the fact that the penalty was a small one being 10% deduction from the pension for one year only, we do not want to interfere with that part of the order of the learned single Judge and also of the Division Bench.

10. In Anand Acharya's case (2 supra), the Supreme Court, while dealing with judicial review against quantum of punishment in disciplinary proceedings, at paragraph 15, held as under:

The well-settled proposition of law that a court sitting in judicial review against the quantum of punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on penalty is not in dispute. However, if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court, then the Court would appropriately mould the relief either by directing the disciplinary/appropriate authority to reconsider the penalty imposed or to shorten the litigation it may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof [see Bhagat Ram Vs. State of Himachal Pradesh and Others, ; Ranjit Thakur Vs. Union of India (UOI) and Others, and U.P. State Road Transport Corporation and Others Vs. Mahesh Kumar Mishra and Others,

11. It is not in dispute that the petitioner was working as Cook in a battalion posted in anti-extremist fields and he remained absent from duty on a number of occasions without prior information and without sanction of leave, but that was due to his chronic ill-health. As seen from the charge-memo dated 13.02.1998, the periods, relevant to the present case, during which he was absent to duty are as follows:

(i) From 09.02.1997 to 11.03.1997 - 31 days (ii) From 15.03.1997 to 07.5.1997 - 54 days (iii) From 19.09.1997 to 10.10.1997 - 22 days (iv) From 09.11.1997 to 26.11.1997 - 18 days Total - 125 days

From the above, it is clear that he was absent from duty for 125 days. We have

perused the record produced by the learned Government Pleader, including the explanation dated 25.03.1998 submitted by the petitioner and it shows that the petitioner produced required medical certificates before the respondents in regard to his absence.

12. Further, it is settled law that the scope of judicial review in the matter of interference with imposition of penalty as a result of disciplinary proceedings is very limited and the Court can interfere with the punishment only if it is satisfied that the punishment is shockingly disproportionate to the proved charges.

13. Having regard to the facts and circumstances of the case, especially, in view of the fact that the petitioner was absent just for 125 days as mentioned in charge-memo 13.02.1998; that he was aged about 43 years with a remaining service of about 17 years; that he is suffering from chronic ill-health and he has obligation to look-after his family consisting of eight members including sick mother, we are of the view that the punishment imposed on him is on the higher side and that interests of justice would suffice if the punishment of compulsory retirement is modified to that of withholding of five increments with cumulative effect and denial of back-wages.

14. With the above modification of punishment, the Writ Petition is allowed. There shall be no order as to costs.