
(2014) 12 AHC CK 0198

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 61519 of 2014

Union of India and Others

APPELLANT

Vs

Jalaludeen Khan

RESPONDENT

Date of Decision : 09-12-2014

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19 — Constitution of India, 1950 - Article 14

Citation : (2015) 4 ADJ 266 : (2015) 3 ESC 1361

Hon'ble Judges : Dilip Gupta, J; Narayan Shukla, J.

Bench : Division Bench

Advocate : Sudhir Bharti and A.K. Gaur, for the Appellant; M.A. Khan, for the Respondent

Final Decision : Partly Allowed

Judgement

1. Original Application was filed by the respondent Jalaludeen Khan under Section 19 of the Administrative Tribunal Act, 1985 before the Central Administrative Tribunal, Allahabad Bench at Allahabad (the Tribunal) for setting aside the order dated 4 December 2004 by which he was dismissed from service for unauthorized absence. The orders dated 21 June 2005 and 28 March 2007 by which the Appeal and the Revision filed by the respondent were dismissed, were also assailed in the said Original Application. The said Original Application has been allowed by the Tribunal by judgment dated 15 April 2013 and the respondent has been reinstated without any back wages. It is this order that has been assailed in this writ petition. The Tribunal examined whether the punishment of dismissal from service that had been imposed on the respondent was disproportionate to the gravity of the charges levelled against him. In this connection the Tribunal, after noticing the defence taken by the respondent, came to the conclusion that the punishment imposed on the respondent was disproportionate. However, without remitting the matter to the Disciplinary Authority and without even recording any reason for reducing the punishment, the Tribunal set aside the orders dated 4 December 2004, 21 June 2005 and 28

March 2007 and issued a direction to the petitioners to reinstate the respondent within two months but without any back wages.

2. Learned counsel for the petitioners has submitted that in the first instance, the punishment that was imposed on the respondent was not disproportionate to the gravity of the charges levelled against the respondent and secondly even if it was so, then too it was necessary for the Tribunal to have remitted the matter to the Disciplinary Authority for imposing any lesser punishment but the Tribunal could not itself have reduced the punishment. In support of his contention, learned counsel for the petitioners has placed reliance on the decisions of the Supreme Court in *Union of India (UOI) and Others Vs. Dwarka Prasad Tiwari, and S.R. Tewari Vs. Union of India (UOI) and Another, .*

3. Sri Ashok Khare, learned Senior Counsel for the respondent has, however, submitted that the respondent had initially gone on leave authorizedly but he could not join in time since his two sons had fallen down from the roof of the house and that he also became mentally ill about which his wife had informed the Department. Learned Senior Counsel also pointed out that in fact the petitioners had referred the respondent to the Railway doctor for check up for mental problem and he was given a fitness certificate only on 7 January 2004. It is, therefore, his submission that the Tribunal committed no illegality in recording a finding that the punishment imposed on the respondent was disproportionate to the charges levelled against him. It is also his submission that when the punishment is grossly in excess of the allegations contained in the charge-sheet, the Courts can interfere under the limited scope of judicial review. In support of his contention, learned Senior Counsel has placed reliance upon the judgment of the Supreme Court in *Chairman cum Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and Others, .*

4. We have considered the submissions advanced by the learned counsel for the parties.

The first issue that arises for consideration is whether the Tribunal was justified in holding that the punishment imposed on the respondent was disproportionate to the charges levelled against him. In this connection, we deem it appropriate to reproduce the observations made by the Tribunal in this regard and the same are as follows:

"Taking into considerations all the facts and circumstance of the case, we are of the considered view that the mental problem which was occurred to the applicant seeing the serious injuries sustained by his children is not disputed by the respondents. It is also not disputed that the applicant was undergoing treatment for the said mental problem and it is the doctor of the respondents themselves who had declared him fit on 7.1.2004 and after that he was allowed to resume his duties by the respondents themselves. It was also not disputed by the respondents that wife of the applicant informed about the situation and also about the mental health of the husband by sending registered letters. Only it

may be the case of the respondent that information was received by them a litter letter. Hence it is our considered opinion that the punishment imposed on the applicant hits the doctrine of proportionality....."

5. In *Mukul Kumar Choudhari* (supra), the Supreme Court after taking into consideration number of its earlier decisions, observed as follows:

"19. 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.

20. 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 exclude irrelevant matters before imposing punishment.

21. In a case like the present one where the misconduct of the delinquent was unauthorized absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reasons for his absence by stating that he did not have any intention nor desired to disobey the order of higher authority or violate any of the Company's Rules and Regulations but the reason was purely personal and beyond his control and, as a matter of fact, he sent his resignation which was not accepted, the order of removal cannot be held to be justified, since in our judgment, no reasonable employer would have imposed extreme punishment of removal in like circumstances. The punishment is not only unduly harsh but grossly in excess to the allegations."

6. In *Dwarka Prasad Tiwari* (supra), on which reliance has been placed by the learned counsel for the petitioners, the Supreme Court observed:

"15. The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in the *Wednesbury*'s case (supra) the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

16. To put differently unless the punishment imposed by the Disciplinary

Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed."

7. In *S.R. Tewari (supra)*, on which reliance has also been placed by the learned counsel for the petitioners, the Supreme Court observed:

"The question of interference on the quantum of punishment, has been considered by this Court in a catena of judgments, and it was held that if the punishment awarded is disproportionate to the gravity of the misconduct, it would be arbitrary, and thus, would violate the mandate of Article 14 of the Constitution....."

8. It is, therefore, clear from the aforesaid decisions of the Supreme Court that the doctrine of proportionality is now a well recognised concept of judicial review and that punishment which is grossly in excess to the charges remains open for interference under the limited scope of judicial review. It has also to be remembered that Courts can exercise the power of judicial review if there is a manifest error in the exercise of the power by the Authority or the exercise of power by the Authority is manifestly arbitrary or if the power has been exercised by the Authority on the basis of facts which do not exist, in which case it would be a patently erroneous exercise of power.

9. In the instant case, the Tribunal has taken into consideration various factors in coming to the conclusion that the punishment imposed on the respondent was disproportionate to the gravity of the charges. It has taken into consideration the fact that the respondent was suffering from mental problem because of the serious injuries sustained by his children when they fell down from the roof of the house. The Tribunal has also noted that it was the Railway doctor who had examined the respondent and ultimately declared him fit for service on 7 January 2004. The Tribunal also taken into consideration the fact that the wife of the respondent had informed the petitioners about the situation by registered letters.

10. *Mukul Kumar Choudhari (supra)* was also a case of unauthorized absence from duty for a period of six months. The Supreme Court noticed that the delinquent had fairly admitted his guilt and explained the reasons for his absence by stating that he did not have any intention nor any desire to disobey the order of the higher authority or to violate any Rule. It is in such circumstance that the Supreme Court held that the order of removal cannot be justified since no reasonable employer would have imposed such a punishment of removal.

11. In the present case also, we are satisfied that the explanation offered by the respondent for unauthorized absence of eleven months did not really warrant the punishment of dismissal from service. The Tribunal, therefore, committed no illegality in recording a finding that the punishment of dismissal from service was

disproportionate to the gravity of the charges levelled against the respondent.

12. The next issue that arises for consideration is whether the Tribunal could itself have reduced the punishment or it should have remitted the matter to the Disciplinary Authority for its consideration.

13. It is well-settled that normally the Tribunal or the Courts should remit the matter to the Disciplinary Authority and it is only in exceptional circumstance and for reasons to be recorded that the Courts reduce the punishment. This is what has been observed by the Supreme Court in *S.R. Tewari (supra)* and *Dwarka Prasad Tiwari (supra)*. In the instant case the Tribunal, after holding that the punishment was disproportionate to the gravity of the charges, has reduced the punishment by reinstating the respondent without any back wages but without recording any reason. The Tribunal was required to give some reason as to why it was necessary for the Tribunal to itself reduce the punishment instead of sending the matter back to the Disciplinary Authority. We, therefore, find force in the submission advanced by learned counsel for the petitioners that the Tribunal committed an illegality in itself reducing the punishment. We, therefore, modify the order of the Tribunal to the extent that the Disciplinary Authority shall now consider what lesser punishment, other than the punishment of dismissal from service, should be imposed on the respondent. However, as the Tribunal has reinstated the respondent and any punishment lesser than dismissal has to be imposed on the respondent, we maintain that portion of the order of the Tribunal by which the respondent has been reinstated in service. We, however, grant liberty to the Disciplinary Authority to impose any lesser punishment.

At this stage, learned counsel for the petitioners states that a direction may be issued to the Disciplinary Authority to decide the matter expeditiously. We have no reason to doubt that the Disciplinary Authority shall make all endeavours to pass an order after hearing the parties concerned expeditiously and preferably within a period of four months from the date a certified copy of this order is served on the Disciplinary Authority.

The writ petition is allowed to the extent indicated above.