
(2016) 08 BOM CK 0046
In the Bombay High Court
Case No : Writ Petition No.1477 of 2000

Union of India

APPELLANT

Vs

Saradhi Ramanand Rao

RESPONDENT

Date of Decision : 25-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 5 ALLMR 892 : (2016) 6 MhLJ 828

Hon'ble Judges : B.R. Gavai and V.M. Deshpande, JJ.

Bench : Division Bench

Advocate : Mr. N.P. Lambat, Advocate, for the Petitioner; None, Though served, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Deshpande, J.—The Indian Railways is before this Court in the present writ petition. The challenge in the petition is to the judgment and order of the Central Administrative Tribunal in Original Application No.1238/1994 dated 16.06.1999.

2. By the impugned judgment, the tribunal had partly allowed the original application filed by the respondent and thereby respondent's dismissal from service was converted into the compulsory retirement with effect from the date of order of dismissal.

3. Such of the facts, which are necessary to address the challenge raised by the petitioner in respect of the judgment impugned borne out from the record are stated hereunder.

4. The respondent herein was working as Travel Ticket Examiner in the South Eastern Railways. On 04.05.1983, a memorandum bearing No.COM/OS/CIIII/TTE/NGP/SR/83/14 was issued to the respondent from the office of Divisional Commercial Superintendent, Nagpur South Eastern Railway. By the said memorandum, it was informed to the respondent that the authority proposed to

hold an inquiry against him under Rule 9 of the Railway Services (Discipline and Appeal) Rules, 1968. Along with the said, memorandum statement of imputations and article of charges framed against the respondent were also communicated. As per the said article of charges, the respondent remained absent from the duty unauthorisedly on and from 28.08.1981 onwards and has thus rendered himself liable for disciplinary action under Rule 6 of the Railway Services (Discipline and Appeal) Rules, 1968. The statement of imputations of misconduct and mis-behaviour of the respondent was also attached which states that the respondent, by remaining absent from duty unauthorisedly on and from 28.08.1981 without obtaining prior sanction of leave and without informing the administration about the reasons of his absence from the duty. Hence, his absence from the duty from 28.08.2011 is without any authority.

5. Vide order dated 07.07.1983, B.R. Londhekar, Assistant Commercial Superintendent (I), S.E. Rly, Nagpur was appointed as Inquiry Officer to inquire into the charges framed against the respondent.

6. Various communications were given to the respondent pointing out the date and time and place of the inquiry. Last of such a communication is dated 17.05.1984 by which it was informed to the respondent that the inquiry is fixed on 31.05.1984 at Nagpur and, therefore, the respondent shall attend the inquiry along with his defence counsel. The respondent was also made aware that in case he chooses to remain absent, the decision will be taken ex parte.

7. On 31.05.1984, the Inquiry Officer held the inquiry. The respondent was absent. Two witnesses were examined to prove the charge.

8. The Inquiry Officer submitted his inquiry report with the disciplinary authority. The Inquiry Officer recorded a finding that after going through the record and examination of the witnesses, he found that the charge levelled against the respondent stands proved.

9. On 16.04.1985, a punishment notice bearing No. CON/OS/CI.III/TTE/NGP/SR/84/14 was issued by which the authority concurred with the finding of the inquiry Officer and therefore punishment of dismissal was taken as a disciplinary measure and it was to take effect from 17.04.1985.

10. The respondent approached before the Central Administrative Tribunal by filing Original Application No. 1238/1994. The Division Bench of the tribunal vide judgment dated 16.06.1999, though recorded a finding that the charge levelled against the respondent stands proved, the punishment awarded against the respondent is disproportionate to the charge which he has committed and therefore the tribunal modified the order of punishment from dismissal from service to the compulsory retirement with effect from the date of order of dismissal. Hence, this writ petition.

11. We have heard Mr. N.P. Lambat, learned counsel for the petitioners. Nobody appears on behalf of the respondent though he was served.

12. Though various grounds are raised in the memorandum of writ petition, the only ground that was pressed into service by learned counsel for the petitioners at the time of hearing before us is that the tribunal had exceeded its jurisdiction in modifying the punishment of dismissal of the respondent awarded by the disciplinary authority after the departmental inquiry. In order to buttress his submission, he placed reliance on the authoritative pronouncement of the Hon'ble Apex Court in *B.C. Chaturvedi v. Union of India and others*; (1995) 6 SCC 749.

13. The finding of the tribunal that the charges against the respondent stood proved is not challenged by the respondent by filing the proceedings before this Court. Thus, to that extent the judgment of the tribunal has attained finality.

14. The only question which is required to be address is as to whether the Central Administrative Tribunal has exceeded the jurisdiction in modifying the sentence awarded the respondent by disciplinary authority.

15. While modifying the order of punishment, the tribunal has also placed reliance on *B.C. Chaturvedi v. Union of India and others*; (supra).

It is to be noted that in the said reported case the appellant before the Hon'ble Apex Court, was working as Income Tax Officer, had come under cloud on the investigation made by the Central Bureau of Investigation (CBI). The investigating agency stated that though the evidence collected during investigation disclosed that the appellant had assets disproportionate to his known source of income, as the evidence was not strong enough to lay prosecution under Section 5 (1) (e) of the Prevention of Corruption Act, 1947, the competent authority might proceed against the appellant in a departmental enquiry.

In furtherance thereof, the departmental proceedings were initiated against the appellant. After giving a reasonable opportunity, the Inquiry Officer submitted his report holding that the charges were proved. After consultation with the Union Public Service Commission, the appellant was dismissed from service. The order of dismissal was questioned by the appellant before the tribunal. The tribunal, after appreciating the evidence, upheld all charges as having been proved but converted the order of dismissal into one of compulsory retirement. Two different appeals were filed before the Hon'ble Apex Court, one by the appellant B.C. Chaturvedi and another by the Union of India.

Their Lordships of the Apex Court noticed that the tribunal while modifying the sentence has found that the appellant had put 30 years of service and had a brilliant academic record and was successful in competitive examination and was selected as Class-I officer. He was promoted after the disciplinary proceedings were initiated. It would be difficult to get the new job or new profession after 50 years and therefore the punishment was substituted. The Hon'ble Apex Court found that these reasons are not relevant nor germane to modify the punishment. The Apex Court was of the view that the gravity of misconduct

namely; the appellant having been found to be in possession of the assets disproportionate to the known source of his income, the interference with the imposition of the departmental inquiry was wholly unwarranted.

16. By now, it is settled principle of law that if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court or the Tribunal, it would appropriately mould the relief either directing the disciplinary/appellate authority to reconsider the penalty imposed or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

17. In the case at hand, the charge against the respondent was that he remained absent from duty without any authorisation. From the judgment of the tribunal and it is also admitted by the learned counsel for the petitioner that after the order of dismissal, an appeal was presented by the respondent before the appellate authority on 03.01.1991. The said appeal was rejected as time barred, therefore, a revision was also preferred before the revisional authority, which met with the same result. However, the tribunal noticed that the reason was pointed out by the respondent that due to his illness, he remained absent. The petitioner has annexed the copy of the inquiry report, which shows that the respondent was sick from 20.09.1980 up to 28.08.1981 and he submitted the private medical certificate and when he reported to the duty he was directed to submit his fitness certificate which he failed. The tribunal while modifying the order observed that the respondent has brought to the notice of the appellate authority in respect of his illness and therefore, the dismissal from service is disproportionate to the offence he committed namely, remaining absent from the duty.

18. While concurring, Hon"ble Justice B.C. Hansaria has also gave a separate judgment in B.C. Chaturvedi v. Union of India and others; (supra). His Lordship has observed as under:

"25. No doubt, while exercising power under Article 226 of the Constitution, the High Courts have to bear in mind the restraints inherent in exercising power of judicial review. It is because of this that substitution of High Court's view regarding appropriate punishment is not permissible. But for this constraint, I would have thought that the law makers do desire application of judicial mind to the question of even proportionality of punishment/penalty. I have said so because the Industrial Disputes Act, 1947 was amended to insert section 11A in it to confer this power even on a Labour Court/Industrial Tribunal. It may be that this power was conferred on these adjudicating authorities because of the prevalence of unfair labour practise or victimisation by the management. Even so, the power under section 11A is available to be exercised, even if there be no victimisation or taking recourse to unfair labour practise. In this background, I do not think if we would be justified in giving much weight to the decision of the employer on the question of appropriate punishment in service matters relating to Government employees or employees of the public corporations. I have said

so because if need for maintenance of office discipline be the reason of our adopting a strict attitude qua the public servants, discipline has to be maintained in the industrial sector also. The availability of appeal etc. to public servants does not make a real difference, as the appellate/revisional authority is known to have taken a different view on the question of sentence only rarely. I would, therefore, think that but for the self-imposed limitation while exercising power under Article 226 of the Constitution, there is no inherent reason to disallow application of judicial mind to the question of proportionately of punishment/penalty. But then, while seized with this question as a writ court interference is permissible only when the punishment/penalty is shockingly disproportionate."

19. The learned tribunal while exercising the powers has considered the ratio laid down by the Hon''ble Apex Court in B.C. Chaturvedi v. Union of India and others; (supra).

20. The charge levelled against the respondent was not of misappropriation of any public fund nor due to his act or omission to do any act, the Indian Railways had to suffer any financial loss. The charge against the respondent was that he remained absent from the duty without there being any authorisation for the same. It is to be noted that the respondent was not charged that due to his unauthorized absence from duty, Indian Railways was put to any inconvenience causing disturbance to its day to day functioning.

21. In that view of the matter, we are of the view that though the respondent was liable for punishment, surely looking to the nature of charge, dismissal from service was disproportionate. Therefore, in our view, the approach of the tribunal in modifying the said order of dismissal which is clearly disproportionate to the guilt, should not be raised any eyebrows, warranting interference from this Court.

22. In that view of the matter, the writ petition is dismissed. Rule is discharged. However, there shall be no order as to the costs.