

(2000) 05 GAU CK 0012
In the Gauhati High Court
Case No : Write Appeal No. 140 of 1997

Union of India (UOI) and Others

APPELLANT

Vs

Mithilesh Singh

RESPONDENT

Date of Decision : 25-05-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Railway Protection Force Act, 1957 — Section 15, 9

Railway Protection Force Rules, 1959 — Rule 104.3, 156, 41.1, 44

Citation : (2000) 3 GLT 62

Hon'ble Judges : Brijesh Kumar, C.J;D. Biswas, J

Bench : Division Bench

Advocate : B.K. Sarma, for the Appellant; R.D. Lal, for the Respondent

Final Decision : Allowed

Judgement

Brijesh Kumar, C.J.—This appeal is preferred against the judgment and order dated 23.8.96 passed by the learned Single Judge in Civil Rule No. 949/90.

2. The brief point involved in the case is about the scope of interference by Courts under Article 226 of the Constitution of India in the quantum of punishment awarded to a delinquent.

3. The Petitioner-Respondent Mithilesh Singh was appointed as a constable in Railway Protection Special Force on 16.4.78. Disciplinary proceedings were initiated against him by means of a notice dated 4.7.87 served upon him u/s 9(i) of the Railway Protection Force Act, 1957 read with Rule 44 of the Railway Protection Force Rules, 1959. The statement of allegation giving details of the charge was that by letter dated 24.5.87, IPF/IC "D" Coy reported that Constable Mithilesh Singh of "D" Coy was detailed with Ors. for Quarter Guard cum Station static Guard duty on 22.5.87 at area Tarantaran (Punjab) under the command of Naik Janardhan Choudhry. At about 1125 hours the charged official asked the Guard Commander to keep his arms and ammunition telling that he was proceeding home. The Guard Commander asked him not to go without

permission. But disobeying the order, he left his duty as well as the Station Tarantaran without any permission. In the charge it was indicated that it was gross indiscipline and carelessness in duty on the part of Constable Mithilesh Singh. The defence of the Petitioner-Respondent was that there was marriage of his brother-in-law and that he was like his guardian. Therefore, he had to leave in connection with that marriage in any case. It is further his case that on 22.5.87 he informed the Inspector in-charge that. Adjutant had assured him about leave, but the Inspector in-charge declined to grant leave, faced with the above situation, he left on 23.5.87 only with a view to keep the honour of the family since the marriage had already been fixed. It was also his case that he handed over his arms and ammunition for safe custody. He returned after 25 days whereafter the proceedings were initiated.

4. Admittedly there is no dispute that the Petitioner had left his duty without sanction of any leave. After the disciplinary proceedings, charge was found proved and penalty of removal from service was inflicted upon the Petitioner-Respondent Aggrieved by the order of punishment the Petitioner filed Civil Rule as indicated above in this Court, namely, Civil Rule No. 949/90. The learned Single Judge by means of the impugned order observed that no infirmity or procedural impropriety was found in conducting the disciplinary enquiry. It is further observed that despite some Commissions, the enquiry was conducted in a fair manner. Thus the legality of the enquiry proceedings was upheld. The learned Single Judge thereafter made an observation that though there may not be any unfairness in the conduct of the enquiry proceedings, but the order of removal from service on the facts and circumstances of the case seemed to be unjust and unreasonable. It was held that the punishment awarded was disproportionate and unjust and, therefore, violative of Article 14 of the Constitution. The learned Single Judge also found that discretion of the administrative authority is not beyond the purview of judicial control and arbitrary exercise of discretionary power can well be examined. Ultimately the learned Single Judge observed that Petitioner had been serving in the force since 1978 and, therefore, in that view of the matter, punishment awarded to the Petitioner was disproportionate. Accordingly the order of removal was set aside. The authority was required to apply its mind and pass an appropriate order of punishment other than order of removal, dismissal or compulsory retirement from service in accordance with law keeping in mind the past service of the Petitioner. The petition was thus allowed to the limited extent as indicated in the judgment itself. Aggrieved by the order passed by the learned Single Judge interfering in the quantum of punishment awarded, the present appeal has been preferred by the Union of India and Ors. .

5. Shri B.K. Sarma, learned Counsel appearing for the Appellants submits that the quantum of punishment is in the discretion of the competent authority empowered to inflict the punishment. Such discretion is not to be interfered with unless some good or cogent reasons are assigned for the same. He has placed reliance upon certain decisions on the point, namely, B.C. Chaturvedi Vs. Union

of India and others, (B.C. Chaturvedi v. Union of India and Ors.), State of U.P. and others Vs. Ashok Kumar Singh and another, (State of U.P. and Ors. v. Ashok Kumar Singh and Anr.) Sanchalakshri and Another Vs. Vijayakumar Raghuvirprasad Mehta and Another, (Sanchalakshri and Anr. v. Vijayakumar Raghuvir Prasad Mehta and Anr.), Union of India (UOI) and Others Vs. Kulamoni Mohanty and Others, (Union of India and Ors. v. Kulamoni Mohanty and Ors.) and Union of India and another Vs. G. Ganayutham (Dead) by LRs., (Union of India and Anr. v. G. Ganayutham). On the basis of the decisions indicated above, it is submitted that as observed in the case of B.C. Chaturvedi, unless Court finds that punishment is shockingly disproportionate to the misconduct imputed or is totally arbitrary and unreasonable which no prudent person would inflict it may not be possible to interfere in the quantum of punishment awarded to the delinquent. Reliance has also been placed on Union of India (UOI) Vs. Parma Nanda, (Union of India v. Parma Nanda) as well as Union of India (UOI) Vs. J.R. Dhiman, in support of the submission that the Court itself cannot substitute any punishment and it has to be left in the discretion of the punishing authority.

6. The learned Counsel for the Appellant then submits that except the fact that the delinquent had already put in 10 years of service, no Ors. reason or circumstance has been indicated in the impugned order on the basis of which it could be said that the punishment was so harsh so as to be shocking to the judicial conscience or totally illegal, arbitrary or unreasonable. On the other hand, it is submitted that he belongs to a disciplined force. Our attention has been drawn to different provisions of the Railway Protection Force Act, 1957. Section 9 has been referred to indicate that the punishment of dismissal, removal, etc. can be awarded in case of remiss or negligence by a member of the force in the discharge of his duties as well as in case of carelessness or negligence which may render him unfit to discharge the duties. It is submitted that being a member of the disciplined force, the Petitioner left the duty as Quarter Guard without permission or leave. Section 15 has been referred to indicate that the officers and members of the force are to be considered always on duty. Our attention has been drawn to the Railway Protection Force Rules, 1987. Rule 41.1(d) has been referred to indicate that the members of the force are to perform other functions of an armed forces of the Union. It will not be necessary to refer to other rules relating to grant of leave, their cancellation or recall from leave etc. except Rule 104.3 to indicate that no member is permitted to leave his station even on holidays without the specific permission of the authority empowered to grant him casual leave. A member of the force has also to record his leave address in office before proceeding on leave. Our attention has then been drawn to Rule 156. It reads as follows:

156. Imposing of punishment of dismissal, etc.:

Before coming to any lower punishment, the disciplinary authority with a view to ensuring the maintenance of integrity in the force shall consider the award of punishment of dismissal or removal from service to any member of the Force in

the following cases, namely:

(a) Dismissal:

(i) conviction by a criminal Court;

(ii) serious misconduct or indulging in committing or attempting or abetting an offence against railway property;

(iii) discreditable conduct affecting the image and reputation of the Force;

(iv) negligent of duty resulting in or likely to result in loss to the railway or danger to the lives or persons using the railways;

(v) insolvency or habitual indebtedness; and

(vi) obtaining employment by concealment of his antecedents which would ordinarily have debarred him from such employment.

(b) Removal from service:

(i) any of the misconduct for which he may be dismissed under Clause (a) above ;

(ii) repeated minor misconducts ;

(iii) absence from duty without proper intimation or overstay beyond sanctioned leave without sufficient cause.

From the above provision it is clear that penalty of removal from service is prescribed under Rule 156(b)(iii) of the Rules for absence from duty without proper intimation or overstay beyond sanctioned leave without sufficient cause. On the basis of the above provision it has been vehemently urged that since Rules themselves prescribe penalty of removal particularly in case of absence from duty without proper intimation, or even in case of overstay beyond sanctioned leave, it would be difficult to say that order passed for removal of the Petitioner Respondent from service would be arbitrary or shockingly disproportionate to the misconduct imputed and proved. The misconduct for which such penalty can be inflicted is prescribed wider statutory provision. The provision or its validity is not in question. In connection with the submission, reliance has also been placed upon a decision reported in Vidya Parkash Vs. Union of India (UOI) and Others, . In the said case an Army soldier was dismissed from service for remaining absent from duty without taking leave. Army Rules prescribed penalty of removal from service for unauthorised absence. The Court found it could not be said to be disproportionate to the misconduct imputed and found proved against the delinquent.

7. Shri R.D. Lal, learned Counsel for the Respondent submits that while awarding the punishment, reliance has been placed by the authorities on alleged previous lapses on the part of the Respondent. His absence or overstay on earlier occasions has been made basis of punishment and such punishment has been awarded so as to deter Ors. from committing such misconduct. The submission is

that the Petitioner was never made known about the alleged previous misconduct which the authorities were to take into consideration while inflicting the punishment. It is further submitted that had this been made known to the Petitioner, the Petitioner could very well explain the circumstances in which on earlier occasions he may have overstayed the sanctioned leave or may have absented himself without leave. It thus violates the principles of natural justice. We, however, find no force in the submission. It is not a condition precedent that the punishment or removal from service could be inflicted only in case of it being a repeated misconduct of the same type. Even for first absence of the kind, as envisaged under the Rules, more particularly Rule 156(b)(iii), it would be open for the competent authority to inflict punishment of removal from service. A mention of such circumstances may have been made, but no way it makes the order of punishment illegal since, as indicated earlier, such a punishment is prescribed by the statutory rules for the misconduct which was imputed against the Petitioner-Respondent. It is again difficult for us to be perused that mere absence from duty would be a very trifling matter. We would like to observe that it would all depend upon the facts and circumstances of a case. An important aspect which falls for consideration is the service to which the delinquent belongs and the responsibility and strictness with which the delinquent has to perform his duties. The statutory provisions clearly show that members of the Railway Protection Force are like members of the armed Force of the Union. They have very responsible duties to discharge. There is no dispute that the Petitioner was detailed for Quarter Guard duty. He absented himself without permission, much less with any sanction of leave, rather against the advice of his superiors. He remained absent for 25 days. In such circumstances if Rule 156(b)(iii) is found attracted or the punishment is relatable to that statutory provision, it may not be open for the Petitioner to submit that the order is shockingly disproportionate to the misconduct imputed. As a matter of fact such punishment is envisaged in this kind of misconduct for which it has been awarded to the Petitioner.

8. Learned Counsel for the Petitioner then submits that the enquiry proceedings had not been properly and fairly held and has also made a passing reference about the territorial jurisdiction of this Court in deciding the appeal. Suffice it to say that it was the Petitioner who preferred the writ petition initially in this Court, so no such question would obviously arise. So far other aspect about the proceedings being unfair, it may be observed, that part of the petition is to be taken as dismissed since the petition has been allowed only to the extent of quantum of punishment which is quite clear from the order itself. It will, therefore be too late to turn back and attack the validity of the proceedings. Shri R.D. Lal, learned Counsel for the Respondent has also referred to two decisions on the quantum of punishment, namely, 1987 (5) SLR 381 (Mohd. Akhter Ali v. The Andhra Pradesh Electricity Board, Hyderabad) and 1992 (1) SLR 174 (The State of Punjab v. Prakash Chand, Constable). Needless to mention that since thereafter the law relating to quantum of punishment and interference by the High Court has well been laid down in the later decisions of Apex Court which

have been referred to in the earlier part of the judgment.

9. In view of the discussion held above, the appeal is allowed and the order of the learned Single Judge is set aside. There would, however, be no order as to costs.