

(1998) 09 GAU CK 0021
In the Gauhati High Court
Case No : W.A. No. 131 of 1997

Union of India (UOI) and Others

APPELLANT

Vs

P.R. Bhattacharjee No. 738550011 Constable

RESPONDENT

Date of Decision : 08-09-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 3 LLJ 969

Hon'ble Judges : M. Sharma, J;D. Biswas, J

Bench : Division Bench

Advocate : K.N. Choudhury, for the Appellant; J.M. Chowdhury and P. Kataki, for the Respondent

Final Decision : Allowed

Judgement

D. Biswas, J.—This writ appeal is directed against the judgment and order dated September 11, 1996 passed by the learned single Judge in Civil Rule No. 3839 of 1991 quashing the order of dismissal of the petitioner and directing the respondent to reconsider and to impose lesser punishment other than the punishment of dismissal. Being aggrieved, the Union of India and others have preferred this writ appeal.

2. The writ petitioner, who is the respondent herein, filed the petition under Article 226 of the Constitution of India challenging the penalty of dismissal on the ground that the disciplinary authority (Pretty Security Force Court) acted beyond jurisdiction and awarded verdict of guilt without giving him reasonable opportunity of being heard. The petitioner who was Head Constable in the Border Security Force (A. Coy 22 Bn.) was indicted under four counts for misconduct and dereliction of duty and charges were framed accordingly. On completion of the departmental proceedings, the penalty of dismissal from service was imposed as the charges framed against him were proved. The penalty was also affirmed by the higher authority in due course. Learned single Judge by the judgment under appeal set aside the order of dismissal on the grounds that the lady who

had appeared in the witness box to give her statement did not make any statement indicting the petitioner for attempting to outrage her modesty. Learned Judge further held that the penalty of dismissal from service was too harsh and disproportionate to the offence committed and, therefore, directed the respondents to re-consider and impose lesser punishment.

3. Sri K.N. Choudhury, learned senior Central Govt. Standing Counsel appearing for the appellants argued that the petitioner was a member of the disciplinary force and, in that view of the matter, the penalty imposed upon him cannot be said to be disproportionate to the offence committed. Drawing attention of this Court to the nature of the charges, Sri Choudhury submitted that this is a case which does not warrant interference of this Court under Article 226 of the Constitution. Sri Choudhury also referred to the special provision embodied in Article 33 of the Constitution and submitted that this Court while exercising its power of judicial review is only to see the correctness of the decision-making process and not to act as a Court of Appeal evaluating the evidence in details.

4. There is no dispute with regard to the limitation of the power of this Court under Article 226 of the Constitution while dealing with an order passed in a departmental proceedings in respect of a member of "Force" charged with the maintenance of public order. Examination of evidence in a case of this nature like an Appellate Court is not permissible. Our scrutiny of the documents, therefore, has been restricted to the propriety and correctness of the decision-making process. On such examination, we do not find that there has been any error or illegality committed by the disciplinary authority in awarding the verdict of guilt. The charges framed against the petitioner are available at Annexures 2 and 3. The charges show that he was indicted for disobeying the orders of the Platoon Commander, indulging in toxication and for committing trespass into the house of Smt. Noor Maher Khatun with an intention to outrage her modesty. From para 6 of the affidavit in opposition, it would appear that the petitioner had pleaded guilty for the first three charges while he denied the 4th charge relating to the alleged attempt to outrage the modesty of Smt. Khatun.

5. Learned single Judge in para 3 of the judgment under appeal observed that the lady who had appeared in the witness box to give her statements did not make any charge of any attempt to outrage her modesty. According to the learned single Judge, the evidence given may only make out a case of assault. This observation of the learned single Judge goes unchallenged. In our opinion the charges admitted by the petitioner are no less significant, specially when he is a member of disciplined Force. Relating to the 4th charge, the fact remains that he had entered the residence of Smt. Khatun and demanded of her to hand over the VCR to him. From the statement of Smt. Khatun, we find that at that moment, the petitioner was drunk. Although the elements of outraging the modesty may not be strictly there, the fact remains unrebutted that in the dark hours of the night, the petitioner in a drunken state armed with weapons entered the house of a lady and demanded the VCR to be handed over to him. The

misconduct is apparent and, therefore, the findings of guilt awarded by the Pretty Security Force Court on over all consideration of the evidence cannot be faulted, with Examination of evidence to this extent to adjudicate the dispute at hand is in our opinion within the parameter of the ratio laid down in B.C. Chaturvedi Vs. Union of India and others, , Union of India (UOI) and Others Vs. Major A. Hussain (IC-14827),

6. Now the question remains whether the penalty of dismissal imposed upon the petitioner is disproportionate to the offence committed. The learned single Judge held that the order of dismissal was too harsh in the facts of the case and directed the respondents to impose lesser penalty other than the penalty of dismissal. But the disciplinary authority while imposing the penalty must have taken into consideration that the petitioner was earlier imposed with punishment on as many as seven occasions. In our opinion, in the given case, independent of the past service record of the petitioner, the imposition of penalty of dismissal cannot be said to be harsh and disproportionate to the offence committed. The instant case is definitely not one of such cases where the Court should interfere with the sentence imposed.

7. In the result, the appeal is allowed and the judgment and order dated September 11, 1996 passed in Civil Rule No. 3839 of 1991 is hereby set aside. Consequently the Civil Rule also stands dismissed.