(2022) 01 GUJ CK 0086

In the Gujarat High Court

Case No : R/Special Civil Application No. 5015 Of 2021

Vinodrai Devjibhai Gohil APPELLANT

Vs

State Of Gujarat RESPONDENT

Date of Decision : 21-01-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Bombay Police (Punishments & Appeals) Rules, 1956 — Rule 3, 3(i)

Citation : (2022) 01 GUJ CK 0086

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Vaibhav A Vyas, Meet Thakkar

Final Decision : Allowed

Judgement

Biren Vaishnav, J

1. Rule, returnable forthwith. Mr. Meet M. Thakkar, learned Assistant Government Pleader waives service of notice of Rule for the respondents.

2. With the consent of the learned advocates appearing for the respective parties, the petition was taken up for its final disposal.

3. In this petition, under Article 226 of the Constitution of India, the petitioner has prayed for quashing and setting aside the punishment order dated

17.4.2020. He has also prayed for quashing and setting aside the appellate orders dated 3.7.2020 and 16.1.2021.

4. The facts in brief are as under:

4.1. The petitioner joined service as a Police Constable on 17.8.1994. He was promoted as Health Constable in the year 2010 and, thereafter,

promoted to the post of Assistant Sub Inspector on 10.4.2017.

4.2. A charge-sheet was issued to the petitioner on 8.6.2019. The charge-sheet inter-alia stated that the petitioner over a period of time, used his

mobile phone as well as one mobile number of Jashiben Shantibhai to make calls to listed bootleggers of Amreli District. The charge further was that

the use of such sim-cards was illegal and the petitioner did this to hide his identity and in order to have monetary benefits.

5. The petitioner filed a reply on 4.2.2019. A departmental inquiry was conducted and after the evidence adduced during the course of such inquiry, an

inquiry officer submitted his inquiry report dated 30.10.2019 holding the charge to be proved. Based on the inquiry officerâ??s report, a show cause

notice dated 4.12.2019 was issued to the petitioner asking the petitioner to show cause as to why the punishment of dismissal from service be not

passed. The petitioner filed a detailed reply dated 29.12.2019. By the order dated 17.4.2020, a penalty was imposed by which the petitioner was

placed in the minimum pay scale of police constable for two years with future effect. The petitioner preferred an appeal on 27.5.2020 which appeal

came to be dismissed by the Inspector General of Police, Surat Range. A revision was preferred and by an order dated 16.1.2021, the Director

General of Police rejected the revision. These orders are under challenge.

6. Mr. Vaibhav A. Vyas, learned counsel for the petitioner reading the charge-sheet would submit that the charges are ambiguous and did not contend

specific details. This amounts to violation of principles of natural justice.

6.1. He would further submit that except the allegation that the petitioner had from his mobile phone and that one of Jashiben talked to the listed

bootleggers of Amreli, no specific allegation as to what benefit the petitioner gained was imputed.

6.2. Mr. Vyas would further submit that there was no evidence worth the name to even remotely suggest that the petitioner obtained any monetary

benefit or pecuniary benefit from any of the bootleggers.

6.3. Mr. Vyas would take the Court through the statements recorded of Jashiben Shantibhai Chauhan, Rameshbhai Shambhubhai Solanki and Vishal

Chandrakantbhai Ruparel, documents which were given with the charge-sheet and submit that except the allegation that the mobile phone of Jashiben

was used which was given to her by her son-in-law; Rameshbhai Shambhubhai Solanki, no other misconduct was alleged.

6.4. Mr. Vyas would take the Court through the report of the Inquiry Officer and the findings thereof and submit that during the cross examination of

Jashiben, it had come on record that Jashiben had denied that the petitioner had used her sim-card for calling up bootleggers. That, she had never seen

the petitioner before the incident in question. Reading Rameshbhaiâ??s examination, Mr. Vyas would submit that Rameshbhai had admitted that the

petitioner would be engaged in conducting raids to discourage gambling and arresting the prohibition offenders and that is how he would know the

petitioner.

6.5. Taking the Court through the findings of the Inquiry Officer, Mr. Vyas would submit that it was a case of no evidence. The inquiry officer had

travelled beyond the charge-sheet, inasmuch as, it was a finding that the petitioner knew that Jashiben was a bootlegger despite which he used her

Sim-Card.

6.6. Mr. Vyas would submit that there was no material before the Inquiry Officer, which showed that the sim-card was used for any personal benefit

of the petitioner.

6.7. Mr. Vyas would also take the Court through the orders of the penalty dated 17.4.2020 and the appellate orders dated 3.7.2020 and 16.1.2021 and

submit that the orders are without any reasons. Detailed representation was made on 18.10.2019 and the revision and the memo of appeal were also

extensively relied which in the impugned orders have not been discussed.

6.8. Mr. Vyas would submit that the order of penalty is not in consonance with the provisions of Bombay Police (Punishments & Appeals) Rules,

1956 mainly Rule 3 thereof. Rule 3(i) talks about reduction in rank, grade or pay. The punishment placing him in the lower pay scale of a police

constable can never be done because it would amount to placing him in a pay scale of a cadre in which he was not working and it was not the

intention of the Disciplinary Authority to reduce him in rank.

6.9. Mr. Vyas would further submit that there were 47 cases which the petitioner had successively solved with regard to the prohibition offences and

the order therefore of penalty was unjustified.

7. Mr. Meet M. Thakkar, learned Assistant Government Pleader for the respondent-State would submit that the entire chain of events would indicate

that the sim-card was purchased by Rameshbhai, who happened to be the son-in-law of Jashiben. He would invite the Courtâ??s attention to page 68

of the Inquiry Officerâ??s Report and submit that from the question put by the Inquiry Officer to Rameshbhai it was evident that Rameshbhai had

antecedents in prohibition offences. Even in the cross examination of Rameshbhai, it was pointed out that a sim-card was given by force.

7.1. Mr. Thakkar would further submit that even Jashiben had admitted that she had given the sim-card as her son-in-law had no other number.

Admittedly, therefore, there was a direct connection between Rameshbhai through Jashiben and the petitioner knowing well that the two were

bootleggers used their sim-cards for making calls.

7.2. With regard to the orders under challenge, Mr. Thakkar, learned Assistant Government Pleader would submit that the order of penalty and the

two orders in appeal extensively set out the grounds raised by the petitioner in appeal and it may not therefore be said that the orders are without

reasons.

8. Mr. Thakkar submitted that it cannot be said that the charges are not proved and that they are vague. Considering the statements of the witnesses,

it has come on record that the sim-card was purchased in the name of Jashiben from the shop of Vishalbhai and the same was being used by the son-

in-law who gave the sim-card to the petitioner. He submitted that the petitioner being a responsible Police Officer could not have used the sim-card of

a bootlegger for the purpose of contacting bootleggers.

9. With respect to the limitations of this Court to exercise powers under Article 226 of the Constitution of India, Mr. Thakkar would rely on the

decisions of the Honâ??ble Supreme Court of India in the case of Deputy General Manager (Appellate Authority) and others v. Ajai Kumar

Srivastava reported in 2012(2) SCC, 612. He read the head note (a) and (c) in support of his submission that jurisdiction of the Court under Article 226

of the Constitution of India is circumscribed by limitation of correcting errors of law or procedural error. The Court cannot adjudicate the case on

merits as an appellate authority. He would also rely on the decision of the Honâ??ble Supreme Court in the case of State of Karnataka v. N.

Gangaraj reported in 2020(3) SCC 423, paragraph Nos.14 and 15 of the judgment in context of limitation of the High Court to interfere with the findings recorded by the disciplinary authority. He would submit that it is not a case of no evidence that the findings are perverse. Mere discrepancies

in evidence will not make it a case of no evidence.

10. Having considered the submissions made by the learned advocates for the respective parties what needs to be noted is thus:

(a) The charge levelled against the petitioner is that he used his mobile as well as mobile number 7283936484 for calling up at various times, listed

bootleggers of Amreli District. The imputation is that using his mobile as well as the sim-card of Jashiben for such calls tantamounts to misconduct. To

give the charge more teeth a statement of imputation is made that this was done to get monetary benefits by hiding his identity which exhibited corrupt

tendencies. The charge-sheet imputes corrupt motives to the petitioner. The case of the department is that the sim-card of Jashiben was used to call-

up bootleggers for monetary benefits. No further steps as to what and how the department has come to the petitionerâ??s motive to gain monetary

benefits is coming forth. Nothing is on record to show and demonstrate in what manner the petitioner derived monetary benefits. Merely because a

sim-card of the other person is used to call-up bootlegger itself may not be a misconduct especially when it has come on record through the testimony

of Rameshbhai, who gave the sim-card that he was an informer for the petitioner who had played a role in controlling gambling and prohibition

offences in the District and this was only possible through information received in a discreet manner since the charge-sheet itself lacks details and is

vague. Apparently merely because calls are made to bootleggers itself stand alone would not tantamount to a misconduct. There is no record or basis

to show that by usage of the sim-card the petitioner gained monetarily. No instances have been pointed out by leading evidence by the authority.

(b) The charge of using his phone and the sim-card of Jashiben which in turn was provided by Rameshbhai hinges on the statements of Jashiben and

Rameshbhai. In her statement recorded on 7.6.2019 Jashiben states that based on her documents the sim-card was purchased by a shop of Vishalbhai

and the card was being used by his son-in-law Rameshbhai. Rameshbhai in his statement recorded on the same day stated that the sim-card was

given by his mother-in-law for use and since he was an informant for the petitioner and was providing information the sim-card was therefore used for such purposes by the petitioner.

(c) Even during the course of the departmental inquiry Jashiben was cross-examined wherein she denied of the sim-card being used to call

bootleggers She also on a question put to her whether the petitioner made demands for monetary benefits stated that it was only at this time was she

made aware that the petitioner was a Police Officer. Even Rameshbhai, before the Inquiry Officer stated that he used to be the petitionerâ??s

informant.

11. To vilify the petitioner, a connection with bootlegger is sought to be made apparent through the submission of the learned AGP by relying on some

questions being put to Rameshbhai and Jashiben to indicate that the petitioner knew that they both were bootleggers and that itself was enough to

justify the charge. The Inquiry Officer also while recording a finding of guilt observed that it is established that the petitioner used the sim-card for

personal gain and that using a bootleggerâ??s sim card tantamounted to moral turpitude. This finding of the Inquiry Officer was clearly beyond the

imputation in the charge-sheet. The findings of the Inquiry Officer are therefore perverse.

12. Call records are produced as evidence to show that calls were made to listed bootleggers. Beyond this to come to a logical and reasonable

conclusion that such calls were made to gain monetary benefits should have been established by examining any of the call recipients to bring home the

charge of corrupt motive. The defence, of a charge being proved on the basis of pre-pondernace of probability is one thing but absence of evidence is

something which is writ large and even by such a yardstick it can safely be inferred to be a case of no evidence.

13. The argument of Mr. Vyas even on the doctrine of proportionality appears to be of some merit. Reduction in pay from that of a Assistant Sub-

Inspector to that of a Police Constable for two years with future effect is a grave financial loss for just the charge of using his sim-card to call

bootleggers. In the representations, it is brought on record that through his network of informants the petitioner had brought to light 47 cases of

gambling and / or prohibition. Also on record are orders of penalties imposed on delinquents with similar imputation which show the departmentâ??s

approach to such instances of misconduct. Taking the use charge of use of a sim-card of another per-se to be connected to bootlegger as a

misconduct, the penalty could have been less damaging.

14. For all the aforesaid reasons, the petition is allowed. The order dated 17.4.2020 is quashed and set aside. Consequentially so also the orders dated

3.7.2020 and 16.1.2021 set aside. The petitioner, on such orders being quashed, shall be entitled to all financial and other consequential benefits that

may accrue on the order of penalty being quashed. Rule is made absolute accordingly. No order as to costs.

Direct Service is permitted.

