

SUPREME COURT OF INDIA

Dev Singh

Vs.

Punjab Tourism Development Corporation Ltd.

C.A.No.6918 of 2003

(N. Santosh Hegde and B. P. Singh JJ.)

02.09.2003

JUDGEMENT

Santosh Hegde, J.

1. Leave granted.
2. Heard learned counsel for the parties.
3. The appellant while serving as Senior Assistant in the respondent- Corporation was subjected to a disciplinary inquiry on the ground that he was responsible for the misplacement of a file which was entrusted to him, which according to the Corporation amounted to a misconduct under By-Law 18 of The Punjab Tourism Development Corporation Ltd. Service By Laws. In the inquiry that was held pursuant to the abovesaid charge, the appellant was found guilty of the said misconduct and the disciplinary authority as per his order dated 6th Nov. 2001 while confirming the finding of the Inquiry Officer found the case to be a fit one in which a punishment of dismissal was called for and accordingly he ordered the dismissal of the appellant from the service of the Corporation with immediate effect. The appellant challenged to the said order by way of a writ petition before the Punjab and Haryana High Court which came to be dismissed by the impugned order, hence, the appellant is in appeal before us.
4. Though learned counsel for the appellant has challenged the finding of the Inquiry Officer on various grounds, having heard the arguments in this regard and having perused the record, we find no reason to disagree with the findings as to the misconduct committed by the appellant.
5. Learned counsel for the appellant, however, contended that the appellant has been serving the Corporation since 1981 with unblemished record and there was no earlier charge of misconduct prior to the present charge. He also contended that the charge against the appellant was that of misplacement of a file and no motive was attached for such misplacement of file. In such a situation to award the extreme punishment of dismissal

according to the learned counsel would not only amount to a disproportionate punishment but also should disturb the conscience of this Court. The learned counsel in support of his argument, that it is open to the superior court to interfere with the quantum of punishment in a given set of facts, has relied upon the judgments of this Court in the case of *Bhagat Ram v. State of H.P.*¹, *Ranjit Thakur v. Union of India*² and *U.P. State Road Transport Corporation and another v. Mahesh Kumar Mishra and others*³.

6. A perusal of the above judgments clearly shows that a court sitting in appeal against a punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on penalty, however, if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court, then the Court would appropriately mould the relief either by directing the disciplinary/appropriate authority to reconsider the penalty imposed or to shorten the litigation its may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof. It is also clear from the above noted judgments of this Court, if the punishment imposed by the disciplinary authority is totally disproportionate to the misconduct proved against the delinquent officer, then the Court would interfere in such a case.

7. Applying the said principle laid down by this Court in the cases noted hereinabove, we see that in this case the appellant has been serving the respondent-Corporation for nearly 20 years with unblemished service, before the present charge of misconduct was levelled against him. The charge itself shows that what was alleged against the appellant was of a misplacement of a file and there is no allegation whatsoever that this file was either misplaced by the appellant deliberately or for any collateral consideration. A reading of the charge sheet shows that the misplacement alleged was not motivated by any ulterior consideration and at the most could be an act of negligence, consequent to which the appellant was unable to trace the file again. The disciplinary authority while considering the quantum of punishment came to the conclusion that the misconduct of the nature alleged against the appellant should be viewed very seriously to prevent such actions in future whereby important and sensitive records could be lost or removed or destroyed by the employee under whose custody the records are kept. Therefore, he was of the opinion a deterrent punishment was called for. Forgetting for a moment that no such allegation of misplacing of important or sensitive record was made in the instant case against the appellant and what he was charged of was misplacement of a file importance or sensitiveness of which was not mentioned in the charge-sheet. Therefore, in our opinion, the disciplinary authority was guided by certain facts which were not on record, even otherwise, we are of the opinion that when the Service By-Laws applicable to the Corporation under Service By-Laws 17 provides various minor punishments, we fail to appropriate why only maximum punishment available under the said Bye-laws should be awarded on the facts of the present case. We think the punishment of dismissal for mere misplacement of a file without any ulterior motive is too harsh a punishment which is totally disproportionate to the misconduct alleged and the same certainly shocks our judicial conscience. Hence, having considered the basis on which the punishment of dismissal was imposed on the appellant and the facts and circumstances of this case, we think to avoid further prolonged litigation it would be appropriate if we modify the punishment ourselves. On the said basis, while upholding the

finding of mis-conduct against the appellant, we think it appropriate that the appellant be imposed a punishment of withholding of one increment including stoppage at the efficiency bar in substitution of the punishment of dismissal awarded by the disciplinary authority. We further direct that the appellant will not be entitled to any backwages for the period of suspension. However, he will be entitled to the subsistence allowance payable up to the date of the dismissal order.

8. With the above modifications this appeal is allowed, the impugned order of the disciplinary authority in so far as it directs the dismissal of the appellant, stands substituted as ordered by us hereinabove.

9. The appeal is allowed partly.

Order accordingly.

¹(1983 2 SCC 442)

²(1987 4 SCC 611)

³(2000 3 SCC 450)