SUPREME COURT OF INDIA

Rajasthan Tourism Devt. Corp. Ltd.

Vs.

Jai Raj Singh Chauhan

C.A.No.4221 of 2011

(G.S.Singhvi and Asok Kumar Ganguly,JJ.,)

09.05.2011

ORDER

1. Leave granted. While he was posted as Chief Inspector in the Mount Abu office of the Rajasthan Tourism Development Corporation (for short, 'the Corporation'), the respondent submitted an application for grant of leave for 66 days from 27.10.1999 to 31.12.1999 by stating that he was to go to Trinidad, West Indies to meet his wife, who was working there as a doctor. The application of the respondent was forwarded to the competent authority. However, before the leave could be sanctioned, the respondent went abroad and that too without seeking permission from the concerned authority. He was placed under suspension vide order dated 2.12.1999 and was served with charge sheet dated 26.2.2000 for holding an enquiry under the Rajasthan Tourism Development Corporation (Conduct, Discipline and Appeal) Rules, 1989 (for short, "the Rules") on the charges of remaining absent from duty and going to a foreign country without taking permission from the competent authority.

2. The respondent neither filed reply to the charge sheet nor joined duty. Instead, he sent an application for extension of leave. His request was rejected vide telegram dated 28.2.2000. On the next day, the respondent reported for duty. After one month, he filed reply dated 22.3.2000 and pleaded that his absence was due to reasons beyond his control inasmuch as he had to leave the country to settle his wife at Trinidad, West Indies.

3. Shri S.M. Kedwal, who was appointed as an Enquiry Officer, submitted report with the finding that both the charges are proved against the respondent. A copy of the enquiry report was sent to the respondent along with show cause notice dated 27.8.2000.

4. In the meanwhile, the respondent again applied for leave for one year with effect from 1.8.2000. This time, the officers of the Corporation including its Executive Director exhibited extraordinary sympathy with the respondent, which resulted in sanction of leave on 28.7.2000 for a period of 90 days subject to the following conditions:

> "1. He will not stay more than the period of leave sanctioned as above.

2. He will not accept any assignment in any foreign country.

3. He will not apply for extension of leave while abroad.

4. He will not apply for seeking voluntary retirement while abroad.

5. He will not delay the process of D.E. Pending against him."

5. In terms of the sanction, the respondent was required to report for duty at the end of 90 days period but he did not do so and sent repeated representations for extension of leave by putting forward one or the other excuse. He submitted joining report on 15.5.2002 i.e. after more than one year and six months of the expiry of the sanctioned leave.

6. During the interregnum, notice dated 17.8.2001 was sent to the respondent requiring him to appear for personal hearing. He responded to the notice vide letter dated 28.8.2001 and expressed his inability to come to India by pretending illness. Therefore, after considering the enquiry report, the disciplinary authority passed order dated 14.5.2002 and dismissed the respondent from service.

7. The appeal preferred by the respondent against the order of dismissal from service remained pending for almost five years and was disposed of by the appellate authority i.e. the Board Committee only when a direction to this effect was issued by the High Court in S.B.Civil Writ Petition No.858/2007. The Board Committee dismissed the appeal on 15.6.2007 by observing that the misconduct found proved against the respondent was serious and there was no warrant for reducing the punishment.

8. The respondent challenged the orders of the disciplinary and appellate authorities in Writ Petition No.5665 of 2007 mainly on the ground that the punishment of dismissal from service was arbitrary, unreasonable and wholly disproportionate to the misconduct found proved. The respondent also pleaded that his absence of duty was not deliberate and that he could not report for duty due to reasons beyond his control.

9. The learned Single Judge adverted to the factual matrix of the case, referred to the Rules and held that the order of punishment was unsustainable because the disciplinary authority had travelled beyond the scope of the charges inasmuch as it had taken into consideration the so-called misconduct committed by the respondent by not reporting for duty after expiry of 90 days' sanctioned leave. The learned Single Judge also noted that there was considerable delay in the disposal of appeal preferred by the respondent and partly allowed the writ petition.

10. The relevant portion of order dated 18.5.2009 passed by the learned Single Judge is extracted below:

"In the present case, since the petitioner's wife was working in Trinidad, he had no other option, but to ensure that she is safely settled in Trinidad. Therefore, he had a

valid reason for leaving the country. It is not the case of the department that the petitioner had gone to Trinidad to seek employment, or the petitioner was employed in the Trinidad while he had a lien over his post in India. The Department should have appreciated the fact that there are compelling family conditions which force a person to temporarily leave his job and to go abroad. Moreover, according to the inquiry officer himself, the department was slack in dealing with the petitioner's application for grant of leave. Furthermore, even when the application for leave was rejected, the said rejection letter could not reach the petitioner as a wrong address had been typed on the letter. Since the application for leave had been forwarded by the Manager, since the petitioner did not hear from the Department, he was under a bona fide belief that his leave must have been sanctioned back home. In these circumstances, the absence of sixty-six days is not such a grave misconduct which should invite the infliction of the harshest punishment upon the petitioner. In catena of cases, the Hon'ble Supreme Court has observed that while imposing a punishment, the economic death-knell of the employee should not be caused unnecessarily. However, in the present case, for absence of sixty-six days, the economic death-knell of the petitioner has been caused by the impugned orders. Therefore, this Court is of the opinion that the punishment is shockingly disproportionate to the nature of the misconduct committed by the petitioner."

As a sequel to the above, the learned Single Judge quashed the orders of punishment as well as the appellate order and substituted the punishment of dismissal from service with stoppage of two increments with cumulative effect. The learned Single Judge directed reinstatement of the respondent with 75% back wages and other service benefits.

11. The special appeal preferred by the appellants was dismissed by the Division Bench of the High Court by a rather cryptic order, the relevant portions of which are extracted below:
"Having regard to the facts and circumstances of the case, which have been dealt with in detail by the learned Single Judge in the judgment impugned, we find no reason to interfere with the judgment of the learned Single Judge.

In the facts and circumstances, this appeal is dismissed summarily."

12. On 28.3.2011, Rajasthan Tourism Development Corpn. Ltd. v. Jai Raj Sinh Chauhan, SLP (C) No. 23808 of 2010 order dated 28.3.2011 (SC), this Court, after hearing learned counsel for the parties, directed the appellants' counsel to file an affidavit of the Managing Director of the Corporation disclosing the reasons for sanction of leave applied for by the respondent in July, 2000. In compliance of that order, Smt. Usha Sharma, Managing Director of appellant No.1-Corporation, filed affidavit dated 6.5.2011 and disclosed that the leave was sanctioned by the Executive Director Shri N.P. Sharma.

13. We have heard learned counsel for the parties and perused the record.

14. In our opinion, the order passed by the learned Single Judge, which has been confirmed by the Division Bench of the High Court, is legally unsustainable. The learned Single Judge

diluted the gravity of the misconduct committed by the respondent by citing lethargy and laxity on the part of the Corporation to decide the appeal filed against the order of punishment. It may not be possible to find any fault with the observation of the learned Single Judge that the Corporation had unduly delayed disposal of the appeal filed by the respondent but that could not be made a ground for recording a finding that the respondent had been subjected to unjust treatment.

15. Undisputedly, the respondent was holding a responsible position in the administration of the Corporation and he was expected to lead by example. However, the manner in which the respondent conducted himself was indicative of his total contempt for the conduct rules. He applied for leave and proceeded abroad by assuming that the competent authority was bound to sanction the leave and that it did not matter even if he left the country without seeking permission from the competent authority. The breach of discipline by a senior officer like the respondent was bound to have serious adverse impact on the administration. If the disciplinary authority had not placed the respondent under suspension and initiated inquiry against the respondent, the disease of indiscipline would have spread like an epidemic. The gravity of misconduct committed by the respondent acquired serious dimension by his subsequent conduct of remaining absent from duty for a period of more than one year and six months after expiry of the sanctioned leave.

16. Unfortunately, the learned Single Judge altogether ignored the recalcitrant attitude exhibited by the respondent by remaining absent from duty after expiry of 90 days period for which leave was sanctioned on 28.7.2000 and observed that the disciplinary authority had travelled beyond the scope of charges enumerated in the notice dated 26.2.2000. The two episodes of absence from duty in immediate succession were so interlinked that the disciplinary authorities had every right to take note of the respondent's subsequent absence from duty while determining the gravity of misconduct.

17. The learned Single Judge was also not right in substituting the punishment of dismissal from service with stoppage of two increments with cumulative effect and directing the Corporation to pay 75% back wages to the respondent. It appears that attention of the learned Single Judge was not drawn to the judgments of this Court in *Union of India v. Sardar Bahadur*[1] *Union of India v. Parma Nanda*[2] *B.C. Chaturvedi v. Union of India*[3] *and Apparel Export Promotion Council v. A.K. Chopra*[4]

18. In Sardar Bahadur's case, this Court observed:

> "15...Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court, exercising its jurisdiction under Article 226, to review the materials and to arrive at an independent finding on the materials. If the enquiry has been properly held, the question of adequacy or reliability of the evidence cannot be canvassed before the High Court."

19. In Parma Nanda's case, this Court while dealing with the scope of the Tribunal's jurisdiction to interfere with the punishment awarded by the disciplinary authority observed as under:

> "27 We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the enquiry officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority."

20. In B.C.Chaturvedi's case, the Court reviewed some of the earlier judgments and held:

> "18. A review of the above legal position would establish that the disciplinary authority, and on appeal, the appellate authority, being fact- finding authorities, have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/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."

21. In A.K. Chopra's case, the Court again referred to the earlier judgment and observed:

> "16. The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental

proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well- settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the court, in exercise of the power of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process. Lord Hailsham in Chief Constable of the North Wales Police v. Evans (1982) 1 WLR 1155: (1982) 3 All England Reporter 141 (HL) observed: "The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorised or enjoined by law to decide for itself, a conclusion which is correct in the eyes of the court."

17. Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority."

22. We have no doubt that if the learned Single Judge and the Division Bench were apprised of the law laid down by this Court, the former may have instead of substituting the punishment of dismissal from service with that of stoppage of two increments with cumulative effect remitted the matter to the disciplinary authority with a direction to pass fresh order keeping in view the fact that the writ petitioner had already suffered by remaining out of employment for a period of about seven years.

23. At this juncture, we may note that learned counsel for the appellants fairly agreed that ends of justice will be served by remitting the matter to the disciplinary authority with a direction that the respondent be awarded a minor punishment provided an undertaking is given by him not to claim wages for the period between the dates of dismissal and reinstatement. Learned counsel for the respondent that his client will not claim pay and allowances for the period during which he remained out of employment.

24. In the result the appeal is allowed, the orders passed by the learned Single Judge and the Division Bench of the High Court are set aside and the following directions are given:

> "1. The Corporation is directed to reinstate the respondent within a period of 15 days from the date of receipt/production of a copy of this order.
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> 2. The respondent shall not be entitled to wages for the period between the dates of dismissal and reinstatement.
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> 3. The disciplinary authority shall reconsider the entire matter and pass fresh order and impose any of the minor punishments enumerated in the 1989 Rules.
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> 4. The respondent may represent to the Corporation for regularisation of the period of absence from duty as also the period between the dates of dismissal and reinstatement by grant of extraordinary leave.
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> 5. Once the competent authority grants extraordinary leave, the intervening period shall be counted for the purpose of the service benefits which the respondent may be entitled under the relevant Rules. Appeal allowed."

Judgment Referred.

[1]*(1972) 4 SCC 0618*
[2]*(1989) 2 SCC 0177*
[3]*(1996)1 S.C.T. 0617: (1995) 6 SCC 0749*
[4]*(1999) 1 S.C.T. 0642 : (1999) 1 SCC 0759*