SUPREME COURT OF INDIA

Jai Bhagwan

Vs.

Commr. Of Police

C.A.Nos.5162-63 of 2013

(T.S.Thakur and Gyan Sudha Misra JJ.)

05.07.2013

JUDGMENT

T.S. THAKUR, J.

1. Leave granted.

2. These appeals by special leave arise out of an order dated 21st October 2010 passed by the High Court of Delhi whereby Writ Petition (Civil) No.5450 of 2005 filed by the appellant challenging his dismissal from the post of Assistant Wireless Operator has been dismissed. An order dated 18th February 2011 whereby the High Court dismissed Review Petition No.72/2011 filed by the appellant has also been assailed by the appellant.

3. The appellant was posted as an Assistant Wireless Operator at Patel Nagar Police Station, Delhi. A cabin was provided to him for that purpose. On the night intervening 28/29th July 2001 when Inspector Harjeet Singh went for checking the cabin used by the appellant he found the same locked from inside. The Inspector knocked at the door but got no response from within the cabin. He then knocked the door harder whereupon, the appellant shouted at him from inside saying, "KYA DARWAJE KO TOREGA BE" (Are you determined to break the door). When the door was eventually opened by the appellant, the Inspector found him wearing plain civilian clothes. He asked the appellant the reason for not being in proper uniform to which the appellant replied that he liked to dress like that only. The appellant also refused to give the log book to the Inspector when asked and snatched the same from him when the Inspector picked it up from the table. The

appellant was, in the above circumstances, charged with misconduct. The charge read as under:

> "I, Inspr. Anil Dureja, DE Cell. Delhi charge you HC Jai Bhagwan, No. 1212/Commn. That while discharging operator Duty at Radio a Radio Station P.S. Patel Nagar on the intervening night 28/297.2001 from 2000 hrs. to 0800 hrs. Inspr. Harjeet Singh who was night checking officer, approached for checking at the door of wireless cabin at 0035 hrs, The cabin was found locked from inside. The Inspector knocked the door with little force, you HC Jai Bhagwan shouted from inside in a very undisciplined manner "kya darwaje ko torego be" you were also found in plain clothes and when asked the reasons for the same you replied that you would like this only. You also refused to give the log book when asked to do so snatched the log book from him which the later had picked up from the table. You made irrelevant transmission on District No at 0130 hrs which aggravated your misconduct.
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> The above act of misbeaviour and misconduct on the part of you HC (AWO) Jai Bhagwan No. 1212/Comn. Renders you liable for punishment under Section 21 D.P. Act read with Delhi Police (Punishment and Appeal) Rules, 1980."

4. An inquiry followed in which the charges were held proved. The appellant found guilty and was dismissed from service by an order passed by the Disciplinary Authority on 29th March 2002. Aggrieved by the said order, the appellant preferred an appeal before the prescribed appellate authority which too failed and was dismissed on 9th January 2003. The appellant then approached the Central Administrative Tribunal for redress but remained unsuccessful even there. He next approached the High Court of Delhi in Writ Petition No.5450 of 2005 before whom he urged five distinct grounds against the order of dismissal. It was firstly urged by the appellant that a copy of the preliminary inquiry conducted by the DCP Communication and relied upon by the Inquiry Officer was never supplied to him thereby causing prejudice to the appellant. It was secondly urged that Inspector Harjeet Singh had improved upon his version inasmuch as the narrative given by him in the first report and that given in the second report were materially different. Thirdly, it was contended that DCP Communication could not act as the Disciplinary Authority inasmuch as it was he who had conducted the fact finding inquiry that gave rise to a likelihood of bias. The fourth submission urged on behalf of the appellant before the High Court related to the appellant's version that he was medically advised against wearing the police uniform on account of some

kind of skin allergy. It was lastly contended that the allegations that he was sleeping inside the wireless cabin was unsupported by any evidence and that the punishment of dismissal from service awarded to him was in any case much too harsh, unreasonable and disproportionate to the gravity of the misconduct, to be countenanced by the Court.

5. The High Court examined each of these contentions and rejected the same by an order that is impugned in the present appeals. The High Court took pains to look into the evidence on record to find out whether there was any perversity in the view taken by the disciplinary authority, the appellate authority, or the Tribunal and found none. Even on the question of quantum of punishment, the High Court held that the petitioner had no case inasmuch as the incident in question was one of gross indiscipline and the penalty of dismissal from service was justified.

6. We have heard learned counsel for the parties at some length and perused the orders under challenge. The charges framed against the appellant have been held proved by the disciplinary authority, the appellate authority and even by the Tribunal concurrently. The High Court reviewed those findings and found nothing perverse about the same. There is in that view no room for our interference on that account. In fairness to learned counsel for the appellant we must mention that even he did not make any serious attempt to assail the concurrent findings of fact recorded against the appellant. We have, therefore, no hesitation in affirming the said findings.

7. What was argued by learned counsel for the appellant with considerable tenacity was the dis-proportionality of the quantum of punishment imposed upon the appellant. It was contended that the charges against the appellant were limited to using rude language against a superior officer who had come to check the wireless cabin provided to the appellant. The fact that the appellant was not in proper uniform or took a little more time than necessary in opening the door also did not materially add to the gravity to the misconduct, if any. Dismissal from service for such a minor act of misdemeanor was according to learned counsel totally unreasonable and disproportionate even assuming that the charges had been satisfactorily proved. Relying upon the decision of this Court in Ram kishan v. Union of India (1995) 6 SCC 157 it was contended that the delinquent was in that case also charged with an act like the one alleged against the appellant. This Court had, however, stepped in to set aside the order of dismissal passed by the disciplinary authority and reduced the punishment to stoppage of two increments only. It was urged that a similar order in the instant case would meet the ends of justice.

8. On behalf of the respondent, it was submitted that the conduct of the appellant was highly objectionable and unbecoming of any one serving in the police force where the need for maintaining discipline is paramount. Any leniency towards those responsible for such misconduct was, according to the learned counsel, bound to encourage others to commit similar or more serious acts of indiscipline and misconduct which will not be in public interest as it is bound to undermine discipline as a value, erode the efficacy of the police force and shake the confidence of the people in its efficiency. It was also submitted that the appellant had not only sent out an unwarranted message on the wireless regarding the incident but had gone to the extent of making a false accusation against the Inspector, which aggravated the appellant's misconduct wholly unbecoming of a police officer. A false charge implicating his superior for using casteist remarks was a serious matter. Dismissal from service, in that view was the only punishment which the appellant deserved and with which this Court ought not to interfere.

9. What is the appropriate quantum of punishment to be awarded to a delinquent is a matter that primarily rest in the discretion of the disciplinary authority. An authority sitting in appeal over any such order of punishment is by all means entitled to examine the issue regarding the quantum of punishment as much as it is entitled to examine whether the charges have been satisfactorily proved. But when any such order is challenged before a Service Tribunal or the High Court the exercise of discretion by the competent Authority in determining and awarding punishment is generally respected except where the same is found to be so outrageously disproportionate to the gravity of the misconduct that the Court considers it be arbitrary in that it is wholly unreasonable. The superior Courts and the Tribunal invoke the doctrine of proportionality which has been gradually accepted as one of the facets of judicial review. A punishment that is so excessive or disproportionate to the offence as to shock the conscience of the Court is seen as unacceptable even when Courts are slow and generally reluctant to interfere with the quantum of punishment. The law on the subject is well settled by a series of decisions rendered by this Court. We remain content with reference to only some of them.

10. In Ranjit Thakur v. Union of India (1987) 4 SCC 611, this Court held that the doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision even as to the sentence is in defiance of logic, then the quantum of sentence would not be immune from correction. Irrationality and

perversity, observed this Court, are recognized grounds of judicial review. The following passage is apposite in this regard:

> "the doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision even as to sentence is an in defiance of logic, then the quantum of sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review".

11. Similarly, in Dev Singh v. Punjab Tourism Development Corporation limited (2003) 8 SCC 9, this Court, following Ranjit Thakur's case (supra) held:

> "…a court sitting in an 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 it 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."

12. Reference may also be made to the decisions of this Court in Union of India v. Ganayutham (1997) 7 SCC 463, Ex-Naik Sardar Singh v. Union of India (1991) 3 SCC 213 and Om Kumar v. Union of India (2001) 2 SCC 386, which reiterate the same proposition.

13. Coming to the case at hand we are of the view that the punishment of dismissal from service for the kind of misconduct proved against the appellant appears to us to be grossly disproportionate. There is no allegation that the appellant had manhandled the police Inspector who had gone to check the cabin. Delay of 10 minutes in opening the cabin door, which according to the appellant was open but had got stuck because of humidity leading to expansion of the wooden frame, was not a matter that ought to have led to the appellant's dismissal after he had served the police force for over 10 years. Even assuming that the version given by the appellant was not acceptable the same did not constitute a misconduct of a kind that would justify the appellant's dismissal from service leading to forfeiture of his

past service. That the appellant was not in uniform may also be breach of discipline calling for administrative action against him but not so severe as to throw him out of the police force. The analogy drawn by the appellant in this case and that of Ram Kishan's case (supra) is not, therefore, wholly misplaced. The delinquent in that case too was charged with misbehaviour with his superior leading to his dismissal from service which was found by this Court to be disproportionate to the nature of misconduct calling for moderation.

14. Having said that we cannot ignore the fact that the appellant had falsely accused the Inspector of having used casteist abuses to humiliate him which allegation on an inquiry was found to be totally false. It is obvious that the appellant had tried to use the caste card only to escape punishment for the misconduct and indiscipline committed by him. There is no manner of doubt that an allegation like the one made by the appellant could have resulted in his prosecution and dismissal of the superior officer from service. The appellant's case in that view is not on all four corners of Ram Krishna to call for such leniency as was shown to Ram Krishna.

15. In the totality of these circumstances, we are of the view that while dismissal from service of the appellant is a harsh punishment the order for dismissal could be substituted by an order of reduction to the rank of a constable with the direction that while the appellant shall have the benefit of continuity of service he shall not be entitled to any arrears of pay or other financial benefits for the period between the date of dismissal and the date of his reinstatement against the lower post of constable. We are conscious of the fact that this Court could in the ordinary course remit the matter back to the disciplinary authority for passing a fresh order of punishment considered proper but we are deliberately avoiding that course. We are doing so because the order of dismissal of the appellant was passed in the year 2001. A remand at this distant point of time is likely to lead to further delay and litigation on the subject which is not in the interest of either party. We have, therefore, upon an anxious thought as to the quantum of punishment that is appropriate taken the un-usual but by no means impermissible course of reducing the punishment to the extent indicated above.

16. These appeals are accordingly allowed in the above terms; with a further direction that the respondents shall do the needful expeditiously but not later than three months from the date of this order. No costs.