

(2019) 08 CHH CK 0011

Chhattisgarh High Court

Case No: WA No. 412 Of 2016

Manoj Sharma

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision: Aug. 1, 2019

Acts Referred:

- Indian Penal Code, 1860 - Section 376, 376(1)
- Chhattisgarh Civil Services (Control, Classification And Appeal) Rules, 1966 - Rule 14(6)

Hon'ble Judges: P.R. Ramachandra Menon, CJ; Parth Prateem Sahu, J

Bench: Division Bench

Advocate: Sunil Pillai, Richa Shukla

Final Decision: Dismissed

Judgement

Parth Prateem Sahu, J

1. Appellant has filed this appeal against the order dated 18.4.2016 passed by the learned Single Judge in WP No.4080/2004 dismissing writ petition

filed by petitioner/appellant challenging his order of dismissal from service.

2. The appellant, who was appointed as Constable in the Police Department of the State, was served with a charge sheet levelling three charges

against him i.e. (i) he remained absent unauthorisedly for 43 days (from 21.9.2002 to 4.11.2002); he misbehaved with one victim lady; and that the

appellant had not improved his behaviour in spite of previous punishments/warnings in enquiry. After conclusion of departmental enquiry, the

Disciplinary Authority found the appellant guilty of charges levelled against him and accordingly an order of dismissal from service was passed against

him on 11.3.2003. Appellant preferred departmental appeal against the order of dismissal from service and the same was dismissed vide order dated

5.6.2003. Mercy petition preferred by the appellant has also been dismissed by respondent No.2. After dismissal of appeal and mercy petition, the

appellant filed a petition before the writ Court bearing WPC No.4080/2004 seeking following substantial reliefs:-

I. The Hon'ble Court may kindly be pleased to call the entire record of the petitioner's case from the respondent authority.

II. The Hon'ble Court may kindly be pleased to set aside/ quash the orders of respondent No.4 (Annexure P/3), respondent No.3 (Annexure P/4) and the order of respondent no.2 (Annexure P/5).

III. The Hon'ble Court may kindly be pleased to direct the respondents authority to reinstate the petitioner in the post of Constable and pay all the consequential benefit to the petitioner IV. The Hon'ble Court may kindly be pleased to direct the respondent authority to pay the back salary/wages to the petitioner with an interest @ 18% p.a.

The learned Single Judge, after hearing the parties in the matter, dismissed the writ petition vide impugned order.

3. Learned counsel for the petitioner/appellant submits that one of the charges based on which order of dismissal from service was passed against the

appellant is with regard to misbehaviour with one woman namely Smt. Nand Kumari, but in the criminal case registered against the appellant under

Section 376 of IPC on the basis of complaint of said Smt. Nand Kumari, he stood acquitted by the Court and after acquittal by the competent Court,

he cannot be punished for the said charge in departmental proceeding. He also argued that he has filed an application for grant of leave to attend his

ailing mother but in the meantime he was arrested in connection with a criminal case and therefore he could not attend his duties. This absence cannot

be termed as 'wilful or unauthorized absent' from duty. Further, the appellant cannot be punished taking into consideration earlier orders of punishment

passed against appellant by the department. He also raised a ground that departmental proceeding was vitiated for the reason that the 'Presenting

Officer' was not appointed as provided under Rule 14 (6) of the Chhattisgarh Civil Services (Control, Classification and Appeal) Rules, 1966 (for short

'the Rules of 1966') and the Enquiry Officer himself has examined the witnesses.

4. Per contra, learned counsel representing the State submits that the standard of proof in a criminal case is entirely different from that in a

departmental proceeding. Appellant after issuance of charge sheet appeared in departmental proceeding, submitted his reply, examined & cross-

examined witnesses and victim lady has made a clear statement before the Enquiry Officer that the appellant had made forceful relationship with her.

She further argued that punishment of dismissal from service is not on account of punishments earlier imposed on the appellant in departmental

proceedings, but the said charge is to assess the conduct/behaviour of the appellant that he did not bring any change in him even after imposition of

punishments imposed on earlier occasions. She also submits that departmental proceeding was conducted strictly in accordance with law and the

Enquiry Officer after considering the material and evidence before him has recommended for imposition of appropriate punishment and based on

which, the Disciplinary Authority passed the order of dismissal from service.

5. We have heard learned counsel for the parties and perused the record of writ petition as well as writ appeal.

6. First ground raised by learned counsel for the appellant is that when once appellant has been acquitted of a criminal charge by the competent Court,

he cannot be punished on the same ground in the disciplinary proceeding. The standard of proof in a disciplinary proceeding is different from that in a

criminal trial. While the charge in a disciplinary proceeding is to be proved on the basis of preponderance of probability, whereas charge in a criminal

trial is required to be proved beyond reasonable doubt. Judgment passed by the criminal Court has been filed along with writ petition as Annexure P-6

and a glance of the same would show that the appellant has been acquitted of the charge on the ground that the prosecution failed to properly prove

the charge under Section 376 (1) of the Indian Penal Code.

Before the Enquiry Officer complainant appeared as witness and stated against appellant and even before criminal Court complainant gave evidence

against him.

While considering this issue, learned Single Judge has taken into consideration the judgements passed by Hon'ble Supreme Court in Noida

Entrepreneurs Association vs. Noida & ors reported in (2007) 10 SCC 385 and Divisional Controller, Karnataka State Road Transport Corporation v.

M.G. Vittal Rao reported in (2012) 1 SCC 442. In the aforementioned judgements, it has been held in clear terms by Supreme Court that standard of proof required in departmental proceeding is not the same as required to prove a criminal charge and even if there is an acquittal in criminal proceeding, the same does not bar departmental proceeding.

The other aspect of the case is that the appellant was in uniform service i.e. police department, and there was complaint by a woman alleging against appellant that he committed forceful intercourse with her, which is a serious offence, particularly when the duty of the appellant is to protect the public at large from any criminal act by any person.

In view of the above facts and dictum of the Hon'ble Supreme Court, the argument raised by learned counsel for the appellant that if the appellant is once acquitted of a criminal charge by the Court, he cannot be punished on the same allegation in a departmental proceeding, is not sustainable in law and is hereby repelled.

7. Next ground raised by learned counsel for appellant is that absence of 43 days was not wilful absence from duty. Perusal of record would show that this issue has also been dealt with by learned Single Judge and after considering the material on record, the same was decided against the appellant. The appellant has placed reliance on judgment delivered in the matter of Krushnakant B. Parmar v. Union of India & another reported in (2012) 3 SCC 178. In the said case, the employee was not permitted to sign register which was complained by him to superior officer, the complainant, who complained about unauthorized absence, refused to appear as witness before Enquiry Officer in spite of service of summons and other two witnesses examined not supported the charge. In the aforementioned circumstances, Hon'ble Supreme Court held that disciplinary authority failed to prove that absence was wilful. In the present case, there is no such allegation that appellant was not permitted to work. Apart from this, it is not the only charge against the appellant, but the other charge was more serious i.e. offence against women.

8. So far as technical ground raised by learned counsel for the appellant that 'Presenting Officer' was not appointed, as required under Rule 14 (6) of

the Chhattisgarh Civil Services (Control, Classification & Appeal) Rules, 1966, vitiates the entire disciplinary proceeding, is concerned, we have

minutely gone through the writ petition filed by appellant and found that appellant appeared before the Enquiry Officer without raising any objection

and also cross- examined the witness. There was no allegation of bias against the Enquiry Officer in the pleadings in earlier proceeding initiated by

appellant. No prejudice on account of non-compliance of Rule 14 (6) of the Rules of 1966 has been pleaded and stated by appellant.

9. No such ground in the petition has been raised by appellant as raised by him in this appeal. As a specific ground in specific term has not been taken

by the appellant before the writ Court, therefore, there was no occasion for the learned Single Judge to consider and decide said technical issue /

ground raised by appellant with respect to non-compliance of provisions of Rule 14 (6) of the CCA Rules, 1966. Since the appellant has not raised this

technical ground since inception i.e. from the stage of disciplinary proceeding, he cannot be allowed to raise such a ground, for the first time, at this

stage, more so when no ground of prejudice caused to him was pleaded and stated in specific terms.

10. In a writ appeal we have to consider the legality and propriety of the order passed by the writ Court on the basis of facts and grounds pleaded

before it. Appellant in the writ appeal cannot be allowed to take a new ground to challenge departmental proceeding and punishment imposed therein.

Appellant has an occasion to raise the ground of procedural irregularity in conducting departmental enquiry in the course of departmental enquiry itself

as also before the appellate authority and writ Court, but he failed to plead and raise such ground. Perusal of other material available on record further

shows that the appellant had participated in departmental enquiry without raising any objection whatsoever. Even before the appellate authority or the

writ Court he did not raise any such objection. Most importantly, the appellant has not pleaded and also failed to show as to how the procedural

irregularity pointed out by him had caused prejudice to him.

11. In the matter of Jagdish Lal Gambhir v. Punjab National Bank & ors reported in (2016) 1 SCC 488 the Hon'ble Supreme Court has held thus:-

21.....That being the position, it is now too late in the day for Gambhir to content that his placement in PNB was erroneous and therefore issuance

of charge sheet by the Assistant General Manager in PNB was vitiated in any manner.

12. In the case at hand, the appellant after issuance of charge sheet had participated in departmental enquiry without any protest whatsoever, nor

raised ground in appeal or writ petition, therefore, after completion of departmental enquiry, he cannot be allowed to raise said technical ground in his

defence, particularly when he failed to plead and establish that non-appointment of Presenting Officer has caused prejudice to him.

13. The last ground argued by learned counsel for the petitioner is that in enquiry report the Enquiry Officer has not mentioned the question put by the

petitioner in cross-examination to complainant lady and answer given by her but only mentioned that two questions were put to her to which she

answered. Non-mentioning of the questions and answers goes to show that there was no material before the Disciplinary Authority to appreciate the

report of the Enquiry Officer. We are not convinced with the submission made by learned counsel for the appellant because the CCA Rules envisages

that the enquiry officer has to forward all materials including charges, reply, evidence, proceeding etc. to the Disciplinary Authority and after

considering the whole record, he has to pass appropriate order. Mere non mentioning of the entire evidence in enquiry report has not caused any

prejudice to the petitioner.

14. For the foregoing discussion, we do not find any illegality or infirmity in the impugned order passed by learned Single Judge warranting

interference by this Court in exercise of its appellate Jurisdiction. The writ appeal sans merit and is accordingly dismissed.