Jang Bahadur Singh Vs U.P. Public Services Tribunal and Others

Court: Allahabad High Court

Date of Decision: Oct. 13, 2003

Acts Referred: Constitution of India, 1950 â€" Article 226
Police Act, 1861 â€" Section 7

Citation: (2003) 6 AWC 5227

Hon'ble Judges: Umeshwar Pandey, J; A.K. Yog, J

Bench: Division Bench

Advocate: N.L. Srivastava, for the Appellant;

Final Decision: Dismissed

Judgement

Umeshwar Pandey, J.
The Petitioner, a constable in Civil Police, has challenged the impugned orders dated 22.5.1992 (Annexure-17) and

31.8.1992 (Annexure-18), passed by Respondent Nos. 4 and 3 (Senior Superintendent of Police, Agra and Deputy Inspector General of Police,

Agra Range respectively) and also the judgment and order dated 17.1.2000 (Annexure-19) passed by Respondent No. 1, U.P. Public Services

Tribunal under Article 226 of the Constitution of India and has prayed for issuance of a writ in the nature of certiorari to quash the same.

2. In short facts of the case disclosed in the petition are that the Petitioner in the year 1987 was transferred from district Allahabad to district Agra.

While posted at Agra, he took ten day"s casual leave on 5.7.1990 to come to his village in district Varanasi to see his ailing wife. He had to report

back on duty at Agra on 17.7.1990, but he made request for extension of leave and could join the duties at the Police Lines, Agra on 22.8.1990.

Thereafter on 18.9.1990, he applied and took casual leave of 14 days with effect from 19.9.1990 for coming to his village to see his ailing mother.

As disclosed in para 6 of the petition, the Petitioner on this occasion also extended his leave on account of his own illness and could join his duties

at Agra only on 1.9.1991 after about ten months. Thereafter on 14.1.1992 he took earned leave of seven days and came to his village home

where he stayed till the date when his services were dismissed by the impugned order after the disciplinary inquiry, passed by Respondent No. 4,

Senior Superintendent of Police, Agra. It is stated in para 7 of the petition that after he came to his village on seven days earned leave, he sustained

fracture of his leg bone and that made him confined to bed. Meanwhile, he received charge-sheet dated 25.1.1992. In the disciplinary inquiry u/s 7

of the Police Act, he was asked to explain those charges which pertained to his unauthorised absence from duty for 36 days, i.e., from 16.7.1990

to 22.8.1990 and 324 days, i.e., from 4.10.1990 to 1.9.1991. The Petitioner has further contended that he could not submit his reply to the

charge sheet on account of his confinement to bed and he had been seeking time to submit the same through different request letters sent to the

Inquiry Officer, Respondent No. 5. Meanwhile, he received letters dated 9.2.1992, 18.2.1992 and 13.3.1992 (Annexures-7, 9 and 11) from the

Inquiry Officer reminding him to submit his explanation and to present his defence at the inquiry, which, in case of his failure, could proceed ex

parte. He thereafter received a show cause notice dated 16.4.1992 (Annexure-13) from Respondent No. 4 directing him to show cause within

eight days before the punishing authority (Senior Superintendent of Police, Agra). To this show cause also, as stated in para 17 of the petition, the

Petitioner by sending a letter expressed his inability to appear and explain on account of his illness. Thereafter on 30.5.1992, the Petitioner

received his order of dismissal dated 22.5.1992 (Annexure-17). After receipt of this dismissal order, the Petitioner filed appeal which was also

dismissed by the impugned order dated 31.8.1992 (Annexure-18) of Respondent No. 3, Deputy Inspector General of Police, Agra Range.

3. It is contended that the Petitioner could not attend to the inquiry instituted against him on account of his illness and he was deprived of

opportunity of making his defence before the Inquiry Officer. There is violation of principle of natural justice committed by Respondent No. 4. The

punishment of dismissal from service is extremely disproportionate to the misconduct with which the delinquent was charged. While dealing with

the claim petition of the delinquent, the Respondent No. 1, U.P. Public Services Tribunal did not consider all these points and the claim petition

was dismissed.

4. The aforesaid petition has been contested and counter-affidavit has been filed on behalf of Respondent Nos. 2 to 5. It is contended in the

counter-affidavit that the impugned orders including the judgment of the Tribunal have been passed on justified grounds and they do not call for any

interference. The Petitioner had not sustained such injury, which could make him so serious as to call for his complete confinement to bed for such

a long period. The entire efforts of the Petitioner have been towards avoiding the disciplinary proceedings. He was given sufficient opportunity and

was afforded-every possible occasion to present his defence and meet the inquiry, but he deliberately avoided and did not participate. The whole

conduct of inquiry and findings recorded against him by Inquiry Officer and the consequent order of the punishment passed by the punishing

authority are fully justified.

5. In reply to the counter-affidavit, the Petitioner also filed rejoinder-affidavit. While reiterating the contentions made in the petition, it has been

again disputed by the Petitioner that he deliberately avoided participation in the disciplinary proceedings.

6. We have heard the learned Counsel for the parties at length and have also perused the records of the case.

7. Learned Counsel for the Petitioner has contended that the disciplinary inquiry proceedings u/s 7 of the Police Act against the Petitioner have

been done behind his back and, therefore, there is complete violation of principles of natural justice as no opportunity to meet the charges have

been afforded to the delinquent. In this context, it is noticeable that the Petitioner himself admits the service of charge sheet upon him and has

stated in the petition that he could not go to attend to the inquiry in spite of the reminders of the Inquiry Officer (Annexures-7, 9 and 14) which had

been received by him through special messenger asking him to appear before the Inquiry Officer to submit his reply/defence and to cross-examine

the witnesses who were to be produced from the side of prosecution. In this context the excuses which have been taken by the Petitioner in the

petition are that he could not go to attend to the proceedings of inquiry because of his illness and consequent confinement to bed. In the impugned

report of inquiry as well as in the punishment order, it is not mentioned that any justification or excuse was ever advanced by the Petitioner to the

Inquiry Officer for his absence or for not submitting his explanation to the charges served upon him. The appellate order passed by the Deputy

Inspector General of Police, Agra Range (Annexure-18) shows that the Petitioner, if at all, was ill and confined to his bed it was incumbent upon

him under the provisions of Police Regulations that he should have attended the local police hospital of the district and he should have sent the

information of his illness and the ongoing treatment through the Superintendent of Police of that district to the Senior Superintendent of Police,

Agra. It is also clear from the said appellate order that no document was made available by the Petitioner to the office of Senior Superintendent of

Police, Respondent No. 4 about the cause of his non-appearance before the inquiry proceedings, which had to be ultimately concluded in absentia.

It was in the background of aforesaid facts that the Tribunal vide its impugned judgment dated 17.1.2000 (Annexure-11) has recorded the findings

that the Petitioner failed to submit any medical certificate during entire proceedings of inquiry to show that he was actually down with fracture of his

leg at his village home/hospital and he was thus deprived of presenting his defence before the Inquiry Officer or before the punishing authority.

8. Since the impugned order of punishment and that of the appellate authority have recorded factual findings about the absence of the Petitioner at

the inquiry leading the Inquiry Officer to conclude it ex parte ; we are constrained to hold that acting in writ jurisdiction, it would not be proper to

reverse those factual findings recorded by the departmental authorities or the Tribunal. In this context the case B.C. Chaturvedi Vs. Union of India

and others, , has been relied upon from the side of the Respondents. The Apex Court has laid down the following principles:

Judicial review is not an appeal from a decision but a review of the matter in which the decision is made. Power of judicial review is meant to

ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of

the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the

inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on

some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion.

But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein,

apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is

entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate

authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the

authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules

prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion

or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and

mould the relief so as to make it appropriate to the facts of each case.

The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the

evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant.

Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal.

9. In the light of the aforesaid observation of the Supreme Court, it is quite obvious that the High Court has no power to appreciate the evidence

and reach its own contra conclusions. The interference of the Court under Article 226 of the Constitution of India is possible only if it is found that

the proceedings against the delinquent have been held in a manner inconsistent with the rules of natural justice or in violation of statutory rules

prescribing the mode of inquiry or where the conclusions or findings recorded by the authority is based on no evidence.

10. In the present case, the proceedings of the inquiry and final pronouncement of the award of punishment if have been made ex parte, the

reasons for the same recorded in those impugned orders and findings cannot be further scrutinized on facts by us. Therefore, the contention of the

Petitioner that he was not afforded opportunity to present his defence in the inquiry and present his explanation before the punishing authority, has

absolutely no strength.

11. The learned Counsel for the Petitioner relying upon the case law of Union of India and others Vs. Giriraj Sharma, ; Chiranji Lal v. Presiding

Officer, Industrial Tribunal-cum-Labour Court, Gurgaon, (1999) 7 SLR 528 and Messers Jai Maakali Aluminum Metal Works, Agra v. Sri Tilak

Raj and Ors. (1996) 1 ESC 82 , has contended that the punishment of dismissal awarded to the Petitioner was shockingly disproportionate and

the authorities were not justified in awarding such punishment. This Court under Article 226 of the Constitution of India, would be fully justified in

interfering the quantum of punishment.

12. As we have seen the charges for which the Petitioner has been tried, he being a member of disciplined force, is said to have unauthorisedly

absented from duty on two occasions. Once from 16.7.1990 to 22.8.1990 for 36 days and then on a subsequent occasion from 4.10.1990 to

1.9.1991 for 324 days. These charges are said to have been fully established against the Petitioner. As a member of police force, the Petitioner is

supposed to maintain the standards of discipline and if he does not stick to the strict discipline and absents himself without obtaining prior sanction

from the authorities, it would definitely constitute a misconduct of grievous in nature warranting his dismissal from service. The misconduct has not a

precise definition of its own. Its reflection receive its connotation from the context, the delinquency in its performance and its effect on the discipline

and the nature of duty. Such misconduct may involve improper or wrong behaviour, forbidden act, a transgression of established and definite rule

of action or code of conduct. The police service is obviously a disciplined service and it requires to maintain strict standard of such discipline.

Laxity in this behalf erodes established norms of the service causing serious effects in the maintenance of law and order.

13. It is a settled view enunciated in several judgments of the Supreme Court that in departmental proceedings, insofar as imposition of penalty or

punishment is concerned, unless the punishment or penalty imposed by the disciplinary or appellate authority is either impermissible or such that it

shocks the conscience of the Court, it should not normally be interfered with or substituted by its own opinion and either impose some other

punishment or penalty or direct the authority to impose a particular nature or category of punishment of its choice. This view finds formation in the

case The Regional Manager and Disciplinary Authority, State Bank of India, Hyderabad and Another Vs. S. Mohammed Gaffar,

14. In B. C. Chaturvedi''s case (supra), also the Hon''ble Apex Court in its majority view has held as below:

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 appropriate 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.

15. Since the long unjustified absence of the Petitioner from duty on two occasions as detailed above, have been found by the disciplinary

authorities as misconduct of very grave nature, we, while sitting in writ jurisdiction do not feel inclined to interfere with the quantum of punishment

awarded to him in the present matter.

16. In the aforesaid view of the matter, the impugned orders of the disciplinary authorities (Annexures-17 and 18) and the judgment of Respondent

No. 1 (Annexure-19) confirming the inquiry report and consequent award of punishment against the Petitioner, do not warrant any interference in

the present writ petition, which must fail for want of merits.

17. The petition is hereby dismissed within no order as to costs.