(1995) 05 AHC CK 0118

Allahabad High Court

Case No: C.M.W.P. No. 2945 of 1995

Vijay Bahadur Singh		APPELLANT
	Vs	
State of U.P. and Others		RESPONDENT

Date of Decision: May 25, 1995

Acts Referred:

- Constitution of India, 1950 - Article 226
- Penal Code, 1860 (IPC) - Section 323, 324
- Police Act, 1861 - Section 7

Hon'ble Judges: S.P. Srivastava, J

Bench: Single Bench

Advocate: S.P. Singh, for the Appellant;

Final Decision: Allowed

Judgement

S.P. Srivastava, J.

Feeling aggrieved by an order removing him from service passed by the Superintendent of Police, Respondent No. 5, which was affirmed in appeal with the dismissal thereof vide the Order dated 24.11.94 passed by the Inspector General of Police, Respondent No. 1, the Petitioner has now approached this Court seeking redress praying for the quashing of the aforesaid orders.

2. I have heard learned Counsel for the Petitioner and the learned standing counsel representing the Respondents.

3. It appears that while the Petitioner was posted as Assistant Inspector (Civil Police) at Police Station Baraut, district Meerut, he was sent to obtain an X-ray report in connection with crime case No. 547-A/1992, u/s 323/324, I.P.C. from P.L. Sharma Hospital, Meerut on 11.9.1992 but he did not return to report for duty till 20.1.1993 after having remained absent for a period of 132 days. In the disciplinary proceedings initiated against the Petitioner, his explanation that he had fallen ill and was suffering from Jaundice which prevented him from report to duty was not

accepted for want of compliance of the requirements contemplated under the Regulations and it was found that the Petitioner had remained absent in an unauthorised manner without sanction of any leave. The disciplinary authority being of the view that the Petitioner who was a member of disciplined force had remained absent in an unauthorised manner which constituted a grave misconduct awarded the punishment of removal from service on him. The appellate authority endorsing the finding of the disciplinary authority observed that the unauthorised absence of the Petitioner indicated negligence in the performance of duties which could not justify his retention in service. The appellate authority also found that the disciplinary proceedings were not vitiated on account of any procedural error. The order imposing the penalty of removal from service passed by the disciplinary authority was, therefore, affirmed.

4. In the counter-affidavit filed by the Respondents, It has been stated that since the Petitioner had remained absent from duty against the service conduct rules, he had been removed from the service. It has so been asserted that the quantum of punishment Is not disproportionate to the gravity of the misconduct.

5. The learned Counsel for the Petitioner has tried to assail the findings recorded by the disciplinary authority as well as appellate authority negative the defence set up by the Petitioner. I have carefully perused the enquiry report as well as the orders passed by the disciplinary authority as well as the appellate authority. The concurrent findings rejecting the defence of the Petitioner are based on an appraisal of evidence and materials on the record which findings do not appear to suffer from any such legal infirmity which may justify any interference by this Court therein while exercising the extraordinary jurisdiction Under Article 226 of the Constitution of India.

6. Learned Counsel for the Petitioner has, however, strenuously urged that the punishment awarded to the Petitioner for his unauthorised absence for a period of 132 days in the circumstances of the case Is grossly disproportionate to the gravity of the misconduct. The Petitioner''s service is, governed by the provisions contained in the Police Act, 1861 and the provisions contained in the Police Regulations framed there under as applicable in the State of U. P. as well as the provisions contained in U. P. Subordinate Police Officers (Punishment and Appeal) Rules, 1991.

7. A perusal of the provisions contained in Section 7 of the Police Act indicates that the Inspector-General, Deputy Inspector General, Assistant Inspectors-General and District Superintendents of Police may at any time dismiss, suspend or remove any police officer of the subordinate ranks whom they shall think remiss or negligent In the discharge of his duty or unfit for the same. The provisions contained in the aforesaid section further provide that the said authorities may award any one or more of the punishment specified therein to any police officer of the subordinate rank who will discharge their duty in a careless or negligent manner or who by any act of his own shall render himself unfit for the discharge thereof. Under the

aforesaid provision, the nature of the remissness or negligence which will entail in dismissal and the nature of remissness or negligence which may entail awarding of the lesser punishment provided for In the second part of the section have not been indicated and the question of determining in the quantum of punishment commensurate with the gravity of the remissness or negligence etc., is left subject to the provisions contained in the Regulations at the discretion of the punishing authority.

8. As observed in decision of this Court rendered by a Division Bench in the case of Lalta Prasad Vs. Inspector General of Police and Others, , the use of the word ''think'' In Section 7 referred to above is somewhat deliberate. As clarified by this Court in the aforesaid decision, the process by which the authorities mentioned in Section 7 of the Act must think'' have been indicated by the Regulations and it is through the essential process as prescribed In the Regulations that they are required to arrive at their thought.

9. It may further be noticed that the provisions contained in the Regulations clearly Indicate that the punishing authority while determining the quantum of punishment has to consider whether the punishment to be inflicted is absolutely necessary In the interest of discipline and whether the delinquent has become Incorrigible or that his conduct has rendered his retention in the force undesirable.

10. Obviously, therefore, there has to be an application of mind to assess as to whether the punishment proposed is commensurate to the gravity of the misconduct and as to whether the delinquent has become incorrigible and his retention in the force Is undesirable. In this connection, it will not be out of place to notice that in the exercise of disciplinary jurisdiction in departmental proceedings, punishment is not and cannot be the ''end'' in Itself. Punishment for the sake of punishment is never contemplated. It should not be overlooked that ordinarily the main purpose of a punishment is to correct the fault of the employee concerned by making him more alert in the future and to hold out a warning to the other employees to be careful in the discharge of their duties so that they may not expose themselves to similar punishment. The degree of the severity of the punishment varies with the gravity of the misconduct.

11. As observed by this Court in its decisions in the case of Shamsher Bahadur Singh v. State of Uttar Pradesh and Ors reported in (1993) UPLBEC 488, ordinarily the maximum penalty resulting in an economic death of an employee could be awarded only in cases of grave charges where lesser punishment would be inadequate and may not have any curative effect or where the charge is such that in the exigencies of the case a lesser punishment may not be found fit in the Interest of administration or where considering the charge and the conduct of the delinquent indicating his incorrigibility and complete unfitness for police service, it becomes necessary to dispense with the services of the delinquent.

12. In the present case, the punishing authority itself has not chosen to impose the penalty of dismissal contemplated in the first part of Section 7 of the Police Act. This shows that the District Superintendent of Police was not satisfied that the misconduct In question was sufficient to warrant the award of the punishment of dismissal.

13. In the circumstances of the present case, what I find is that the Impugned punishment is too harsh and is clearly disproportionate to the charge established against the Petitioner. The penalty of removal from service awarded under the impugned order is too severe and grossly excessive. Moreover, I further find that the Respondent authority has not at all taken Into consideration the effect of the relevant provisions regulating the procedural safeguards and the factors Indicated In the decision of Shamsher Bahadur Singh v. Stale of U.P. (supra) which have to be taken note of, while determining the quantum of punishment. In the circumstances, therefore, the impugned orders passed by the Respondent authorities clearly stand vitiated in law.

14. Sufficient ground has, therefore, been made out for Interference by this Court and the matter requires to be remanded on the question of awarding any of the lesser punishments.

15. Accordingly, in view of the conclusions indicated hereinbefore, the writ petition succeeds In part. The impugned punishment is set aside and the matter is remanded to the punishing authority which shall award any of the lesser punishments having due regard to the nature and circumstances of the case and in the light of the observations made hereinbefore with a further direction that the matter should be disposed of as expeditiously as possible, preferably within three months.