(2007) 04 CAL CK 0005

Calcutta High Court

Case No: FMA No. 2905 of 2002 with W.P. No. 157 (W) of 2002

Gopal Chandra Maity		APPELLANT
	Vs	
Union of India and Others		RESPONDENT

Date of Decision: April 12, 2007

Acts Referred:

- Constitution of India, 1950 - Article 20, 311
- Railway Protection Force Act, 1957 - Section 17, 9

Citation: 111 CWN 578

Hon'ble Judges: Tapan Mukherjee, J; Ashim Kumar Banerjee, J

Bench: Division Bench

Advocate: Sumanta Chakraborty and Sukanta Chakraborty, for the Appellant; D. Purkayastha and Binod Kumar Gupta, for the Respondent

Final Decision: Dismissed

Judgement

Ashim Kumar Banerjee, J.

The appellant was a constable in Railway Protection Force (hereinafter referred to as "RPF"). He left the barrack during the weekend in the month of April, 1987 without informing his superiors and overstayed for about 1 and 1/2 months on the alleged plea of wife''s illness. He was absent on and from April 15, 1987. According to him, he went to join his duty on June 21, 1987 with medical certificate for him as well as his wife and he was allowed to join service on June 23, 1987. Again on July 9, 1987 he went to his native place and overstayed on the alleged plea of being not well. He ultimately joined on July 21, 1987.

2. The authority issued a chargesheet on September 7, 1987. He was given ample opportunity to defend himself in the proceeding. Ultimately he was removed from service vide order dated September 21, 1988.

3. The charge sheet was issued on September 7, 1987 under which he was proceeded with departmentally which resulted in an order of removal from service.

In the meantime the Railway Protection Force Rules 1959 (hereinafter referred to as "said rules of 1959") was repealed and Railway Protection Force Rules 1987 came in force with effect from 3rd December, 1987.

4. The writ petitioner accepted the order of removal from service so affirmed by the Appellate Authority in 1989 by not challenging the same to any higher forum for about 13 years. In 2002 he filed a writ petition being W.P. No. 157(W) of 2002, inter alia, asking for setting aside the order of removal from service.

5. Paragraph 11 of the said writ petition is quoted below :

"That your petitioner states that there has been no intentional delay or latches on his part as he constantly sent on making representation both written and oral to all the respondents despite his life being striken by object poverty, the burden of getting his daughters married (2 still unmarried) and his wife''s sickness (his wife is bed ridden). Therefore, your petitioner submits that if there is any fault of his part let it be condoned.''''

6. Apart from the aforesaid paragraph there is no other averment made on behalf of the appellant explaining the delay in approaching this court.

7. The writ petition was opposed by the railway authorities.

8. The writ petition was ultimately heard and disposed of by the learned Single Judge by judgment and order dated February'' 11. 2002 appearing at page 53-60 of the Paper Book.

9. On perusal of the judgment and order of the learned Single Judge it appears that the following contentions were raised on behalf of the appellants :

(i) Since at the time of issuance of the charge sheet 1959 Rules was in force, the entire proceeding should have been proceeded with under 1959 Rules and not under 1987 Rules. Hence, the proceeding as well as the order of removal culminating therefrom under the 1987 Rules was vitiated by illegality and void and could not be given effect to.

(ii) The charges so leveled against the appellant were vague and indefinite and could not have been proceeded with. Assuming that those charges could be brought under the 1959 Rules those would attract minor punishment as contemplated u/s 17 of the Railway Protection Force Act, 1957.

10. The respondent contended as follows :

(i) The writ petition was grossly delayed as the appellate authority affirmed the order of removal in 1989 whereas the writ petition was filed after about 13 years in 2002.

(ii) The charge-sheet was issued under 1959 Rules and Rule 44 of the 1959 Rules was followed and it was not pursued under 1987 Rules as such the proceeding could not

be said to be illegal or void.

(iii) On the issue of minor punishment, it was contended that there was nothing to prevent under the Act of 1957 or 1959 Rules to impose punishment of removal from service on the charges leveled against the appellant.

11. The learned Single Judge considered each and every contention of the parties and ultimately came to the conclusion that the order of removal did not deserve any interference by this court in the writ proceeding. His Lordship, however, reserved the right of the appellant to approach the Chairman, Railway Board, by making appropriate representation in accordance with law.

12. Being aggrieved by and dissatisfied with the judgment and order of the learned Single Judge the appellant preferred the instant appeal. The appeal was heard by us on the above mentioned dates.

13. Mr. Sumanta Chakraborty, learned counsel appearing for the appellant contended as follows :

(i) Once the charge-sheet was issued under 1959 Rules it should have been proceeded with under 1959 Rules and not under 1987 Rules.

(ii) Assuming it was proceeded with under 1959 Rules Rule 44 could not be applied as Section 17 of the said Act of 1957 did not contemplate any major punishment for unauthorized absence. Hence the entire proceeding and the order culminated therefrom were vitiated by illegality.

(iii) Under Article 20 of the Constitution no one could be punished for an offence more than the punishment which could be inflicted under the law in force for the offence so committed by the delinquent. In the instant case, u/s 17 minor punishment was contemplated. Hence, the order of removal was bad.

(iv) Even if Rule 44 did contemplate such major punishment such rule could not override the provisions of the statute being Section 17 of the said Act of 1957.

(v) u/s 9 of the said Act of 1957 removal from service could not be effected for unauthorized absence. Hence, such order was bad in law and was liable to be set aside.

14. In support of his contention Mr. Chakraborty relied upon the following decisions :

(i) AIR, 1954. TC 469 (Mahadeva Iyer vs. State).

(ii) AIR 1964. P&H 337 (S. Gurmej Singh Hira Singh vs. The Election Tribunal, Gurdaspur & Ors.)

(iii) State of Punjab Vs. Madan Singh and Others,

(iv) Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others,

(v) S.K. Mastan Bee Vs. The General Manager, South Central Railway and Another,

15. Mr. D. Purkayastha, learned counsel appearing for the respondents contendended as follows :

(i) The appellant was a habitual absentee as would appear from the sequence of events. He was proceeded with departmentally by affording adequate opportunity to defend himself in the said proceeding and there after he was removed from service.

(ii) Challenge to the order of removal was grossly delayed and such belated challenge could not have been entertained by the learned Single Judge and the learned Single Judge was right in refusing to entertain such challenge.

(iii) The appellant being a habitual defaulter did not deserve any sympathy from this court at this belated stage in as much as the order of removal was challenged after about 13 years.

16. In support of his contention Mr. Purkayastha cited the Apex Court decision in the case of North Eastern Karnataka R. T. Corpn. vs. Ashappa, reported in 2006, Volume-V, Supreme Court Cases, Page 137.

17. We have perused the judgment and order of the learned Single Judge. We are of the view that despite the fact that the appellant approached the court after about 13 years His Lordship took immense pain in deciding each and even,'' issue raised by the petitioner as well as the respondent. His Lordship, in our view, approached the problem accurately and came to a right decision which did not leave any scope of interference by the court of appeal. Even then, being the last court of the State, since the learned advocate appearing for the appellant raised certain legal issues once again we feel it appropriate to deal with the same.

18. Article 20 of the Constitution provides for protection of an individual being a citizen of the country from any greater penalty to be inflicted against him other than the punishment to be suffered by him under the laws of the land for the offence, if any, committed by him. In the instant case the appellant was a habitual defaulter. From his own averment so recorded by us above it would appear that from April to October, 1987 he was in the habit of visiting his native place without informing his superiors and overstaying unauthorisedly by absenting himself from duty. RPF is a disciplined Force. Being a member of the said Force the appellant was duty bound to follow discipline. In case he was not proceeded with by his superiors wrong signal would have followed therefrom to the other disciplined members of the Force. The authority rightly initiated the proceeding as against him.

19. Section 9 of the Act of 1957 provides an additional power to the superior officer to dismiss or suspend or reduce in rank or impose any other punishment to a member of the Force in respect of an offence of negligence in discharge of duty subject to the provision of Article 311 of the Constitution.

20. It was sought to be contended before us that unauthorized absence could not be said to be negligence in discharging official duty. We are unable to appreciate such contention of the appellant. Being a member of a disciplined force he was duty bound to join his service. If he was otherwise indisposed, provisions were made in the appropriate service rules for his treatment in the hospital belonging to the Force. In case the delinquent needed any leave there was prescribed method for obtaining such leave. Appellant did not follow any of such methods and of his own absented himself from duty not only once but also on repeated occasions which compelled the authority to proceed against him departmentally. If this could not be termed as negligence in discharging duty we do not know what more it could be.

21. Section 17 of the said Act of 1957 was relied upon. Under the said provision without prejudice to the rights of the authority u/s 9, minor penalities could be inflicted for an offence for unauthorized absence without reasonable cause. This is a power given to the superior officers to inflict minor punishment. Such power is in addition to the provisions contemplated u/s 9. In the instant case the authority decided to proceed against him departmentally for habitual absence u/s 9. He was proceeded with departmentally after affording him adequate opportunity to defend himself in the said proceeding and ultimately he was removed from service. Such punishment was appropriate in the instant case and could not be said to be a greater penalty which could be termed as "void" under Article 20 of the Constitution.

22. Rule 44 was attacked on the ground that this should be read with Section 17. Since Rule 44 dealt with major penalty which was not contemplated u/s 17 the said Rule could not have been applied in the instant case. We are of the view that the learned counsel was under misconception. Section 17 was never invoked in the instant case. The authority was entitled to invoke Section 9. They did so. They proceeded under Rule 44 of the old Rules which they were entitled to. Hence, the proceeding and/or the order as culminated there from could not be said to be illegal or void.

23. Let us now came to the decisions cited by the learned counsel for the appellant.

24. On the issue of delay the learned counsel relied upon the decision in the case of S. Gurmej Singh Hira Singh (Supra) and Ramchandra Shankar Deodhar (Supra). The decision in the case of S. Gurmej Singh Hira Singh (Supra) was a full bench decision of the Punjab High Court whereas in the case of Ramchandra Shankar Deodhar (Supra) the five judges'' bench of the Apex Court held that the rule belated claims should not be entertained is a rule of practice and not of law. The Apex Court was of the opinion that when any fundamental right is violated it goes to the root of the

matter and no amount of delay could deny the relief to the petitioner.

25. The judgment in the case of State of Punjab (Supra) was also relied upon on the issue of delay. In paragraph 5 of the said decision a three judges'' bench of the Apex Court observed that where the High Court condoned the delay in filing the writ petitioner by exercising its discretion the Supreme Court would decline to interfere with the exercise of such discretion.

26. The learned judge did not dismiss the writ petition only on the ground of delay. His Lordship dealt with each and every contention raised by the parties on merits as well as on law. We have also allowed the appellant to argue on merits which we have dealt with in the instant judgment. We are of the view that apart from the inordinate unexplained delay the order of removal from service passed by the disciplinary authority so affirmed by the appellate authority did not deserve any interference and the learned judge was right in refusing to entertain the same. Similarly we do not find any scope of interference.

27. The appeal thus fails and is hereby dismissed.

28. There would however be no order as to costs. Urgent xerox certified copy would be given to the parties, if applied for.

Tapan Mukherjee, J.

I agree.