

CASE DETAILS

RAM LAL

v.

STATE OF RAJASTHAN & ORS.

(Civil Appeal No. 7935 of 2023)

DECEMBER 4, 2023

[J. K. MAHESHWARI AND K.V. VISWANATHAN, JJ.]

HEADNOTES

**Issue for consideration:** Whether the dismissal of the appellant-constable from service pursuant to the departmental enquiry was justified; and what is the effect of the acquittal, ordered by the appellate judge in the criminal trial, on the order of dismissal passed in the departmental enquiry.

**Service law – Dismissal from service pursuant to the departmental enquiry on allegation of commission of fraud – Justification – Effect of acquittal ordered by the appellate judge in the criminal trial, on the order of dismissal – Allegation against the appellant-constable of altering his date of birth in his 8<sup>th</sup> standard marksheet to project himself as having attained majority at the time of recruitment to the post – Initiation of departmental proceeding – Dismissal from service – Conviction and sentence of the appellant u/s. 420 IPC by the trial court, however, acquittal by the appellate court – Writ petition seeking quashing of the dismissal order and re-instatement in service – Dismissed by the High Court – Correctness:**

**Held:** Inference drawn about the proof of the charges by ignoring the relevant and material evidence being the deposition of the prosecution witness, the marksheet of 8th class of the appellant enclosed in the chargesheet and the original marksheet which have direct bearing on the charge – Disciplinary Authority and the appellate authority merely reiterated the reasoning in the enquiry report – Explanation given by the appellant that overwriting in the application form was only due to correction of an inadvertent error is accepted – As long as the original 8th standard

marksheet reflected his date of birth as 21.04.1972 and there is no correction or manipulation in that document, the appellant cannot be penalised – Furthermore, reading of the entire judgment clearly indicates that the appellant was acquitted after full consideration of the prosecution evidence and after noticing that the prosecution miserably failed to prove the charge – Findings of the appellate judge in the criminal case clearly indicate that the charge against the appellant was not just, “not proved”, in fact the charge even stood “disproved” by the very prosecution evidence – Charges were not just similar but identical and the evidence, witnesses and circumstances were all the same – Thus, the order of termination, the order of the appellate authority, the orders refusing to reconsider and review the penalty, being illegal and untenable, are quashed – Judgment of the High Court is set aside – Issuance of direction to re-instate the appellant with all consequential benefits including 50% of the backwages.

**Judicial review – Order of the Disciplinary Authority – Power of writ court to review:**

**Held:** Is very limited – Scope of enquiry is only to examine whether the decision-making process is legitimate – Courts are entitled to consider whether the findings of the Disciplinary Authority have ignored material evidence and if so the courts can interfere – Mere acquittal by a criminal court would not confer on the employee a right to claim any benefit, including reinstatement – However, if the charges in the departmental enquiry and the criminal court are identical or similar, and if the evidence, witnesses and circumstances are one and the same, then the matter acquires a different dimension – Court would be entitled to exercise its discretion and grant relief, if it concludes that allowing the findings in the disciplinary proceedings to stand would be unjust, unfair and oppressive. [Para 11-13]

**Words and phrases – Expressions “benefit of doubt” and “honorably acquitted”, used in judgments – Effect:**

**Held:** Said expressions are not to be understood as magic incantations – Court of law will not be carried away by the mere use of such terminology – Court in judicial review is obliged to examine

the substance of the judgment and not go by the form of expression used. [Para 25]

**Evidence Act, 1872 – Fact, when said to be ‘disproved’:**

**Held:** A fact is said to be “disproved” when, after considering the matters before it, the court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist – Fact is said to be “not proved” when it is neither “proved” nor “disproved”. [Para 26]

**LIST OF CITATIONS AND OTHER REFERENCES**

*G. M. Tank vs. State of Gujarat & Others* (2006) 5 SCC 446 – relied on.

*State Bank of India v. A.G.D. Reddy* 2023:INSC : 766 = 2023 (11) Scale 530; *United Bank of India v. Biswanath Bhattacharjee* 2022:INSC:117 = (2022) 13 SCC 329; *Deputy Inspector General of Police and Another v. S. Samuthiram* (2013) 1 SCC 598; *State Bank of Hyderabad v. P. Kata Rao*, (2008) 15 SCC 657; *Vijayee Singh and Others v. State of U.P.* (1990) 3 SCC 190 – referred to.

**OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7935 of 2023.

From the Judgment and Order dated 05.09.2018 of the High Court of Judicature for Rajasthan at Jaipur in SA No.484 of 2011.

**Appearances:**

Adarsh Priyadarshi, Abhijeet Sinha, Sarthak Gaurav, Ms. Rimmi Bharadwaj, Advs. for the Appellant.

Vishal Meghwal, Mrs. Padhmalakshmi Iyenger, Ms. Neha Kapoor, Milind Kumar, Advs. for the Respondents.

**JUDGMENT / ORDER OF THE SUPREME COURT****JUDGMENT****K.V. VISWANATHAN, J.**

1. Leave granted.

2. Ram Lal (the appellant) was a Constable with the Rajasthan Armed Constabulary, 9<sup>th</sup> Battalion, Jodhpur. He was appointed on 15.12.1991. A First Information Report (F.I.R.) was registered on 2.9.2002 against him under Sections 420, 467, 468 and 471 of the IPC. Soon thereafter, on 02.04.2003, a chargesheet in a departmental enquiry was also issued.

3. The identical allegation in both the proceedings was that the Appellant altered his date of birth from 21.04.1974 to 21.04.1972 in his 8<sup>th</sup> standard marksheet. It was alleged that this was done to project himself as having attained majority at the time of the recruitment. The appellant denied the charges.

4. Asked about the overwriting in the application, the appellant stated that it was possible that in the application form he might have written initially as 21.04.1974 and thereafter corrected it to 21.04.1972. He however maintained that his date of birth was 21.04.1972.

5. Five witnesses were examined in the departmental proceeding. These very five witnesses were also examined in the criminal trial, apart from eight other witnesses who were also examined at the criminal trial. The Enquiry Officer in the departmental proceeding found the charges proved and the Disciplinary Authority, by an order of 31.03.2004, dismissed the appellant from service. The Appellate Authority also dismissed the appeal. Attempts to have the order reviewed and the penalty reconsidered were also in vain.

6. At the criminal trial, the trial Court convicted the appellant for the offence under Section 420 of the IPC and sentenced him to undergo three years' imprisonment along-with a fine of Rs.5,000/-. However, the Additional District and Sessions Judge, Jodhpur ['Appellate Judge'], vide judgment dated 24.08.2007, allowed the criminal appeal and acquitted the appellant.

7. The appellant, thereafter, represented for his reinstatement. Subsequently, he filed a writ petition in August, 2008 for quashing the dismissal order dated 31.03.2004, the order of the Appellate Authority, and the orders refusing to review and reconsider the above-said orders.

8. The learned Single Judge, by his judgment dated 13.08.2008, dismissed the writ petition by holding that the standard of proof in a criminal proceeding and departmental proceeding is different. The learned Single Judge found no infirmity in the order of the Disciplinary Authority. The writ appeal filed by the appellant has also been dismissed by reiterating the findings of the learned Single Judge and by further elucidating as to how the parameters for a judicial review against an order in a departmental proceeding are limited and circumscribed. Being aggrieved, the appellant is in appeal before us.

**Questions for consideration:**

9. The following two questions arise for consideration:

- a) Whether the dismissal of the appellant from service pursuant to the departmental enquiry was justified?
- b) On the facts of the case, what is the effect of the acquittal, ordered by the Appellate Judge in the criminal trial, on the order of dismissal passed in the departmental enquiry?

10. We have heard Mr. Adarsh Priyadarshi, learned counsel for the appellant and Mr. Vishal Meghwal, learned counsel for the State. Learned counsels have reiterated their contentions before the Courts below.

**Legal Position:**

11. We have examined both the questions independently. We are conscious of the fact that a writ court's power to review the order of the Disciplinary Authority is very limited. The scope of enquiry is only to examine whether the decision-making process is legitimate. [See ***State Bank of India*** vs. ***A.G.D. Reddy***, 2023:INSC:766 = 2023 (11) Scale 530]. As part of that exercise, the courts exercising power of judicial review are entitled to consider whether the findings of the Disciplinary Authority have ignored material evidence and if it so finds, courts are not powerless to interfere. [See ***United Bank of India*** vs. ***Biswanath Bhattacharjee***, 2022:INSC:117 = (2022) 13 SCC 329]

12. We are also conscious of the fact that mere acquittal by a criminal court will not confer on the employee a right to claim any benefit, including reinstatement. (See Deputy Inspector General of Police and Another v. S. Samuthiram, (2013) 1 SCC 598).

13. However, if the charges in the departmental enquiry and the criminal court are identical or similar, and if the evidence, witnesses and circumstances are one and the same, then the matter acquires a different dimension. If the court in judicial review concludes that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge, the Court in judicial review can grant redress in certain circumstances. The court will be entitled to exercise its discretion and grant relief, if it concludes that allowing the findings in the disciplinary proceedings to stand will be unjust, unfair and oppressive. Each case will turn on its own facts. [See G.M. Tank vs. State of Gujarat & Others, (2006) 5 SCC 446, State Bank of Hyderabad vs. P. Kata Rao, (2008) 15 SCC 657 and S. Samuthiram (supra)]

**Discussion:**

**Validity of the Disciplinary proceeding – Question No. 1:**

14. A brief analysis of the facts of the case is essential. The origin of this dispute, which does not inspire confidence at all, is as follows. The appellant's cousin Shravan Lal (PW-4 in the departmental enquiry and PW-6 in the criminal case), deposed as under before the enquiry officer :-

“Stated on enquiry that about 13 months ago, I was operating engine at Well. On that day at about 3.00 p.m., Ramlal after drinking liquor, came at well and switched off the engine. Thereafter, Ramlal abused me and scuffled with me and said that today I will operate the engine and you cannot do anything to me. I have received job by fooling the Government. When I enquired him that how you did that, then, Ramlal told me that I have received job by altering my date of birth as 21.04.1972 in my marksheet, whereas, my date of birth was 21.04.1974. Thereafter I went to school and enquired about this fact, whereupon I came to know that his date of birth was 21.04.1974. Due to this reason, I produced an application before the Superintendent of Police, Ajmer and made one report to the Commandant, 9th Battalion,

RAC, Tonk and I also made one report to the Hon'ble Chief Minister and one report to DIG, RAC, Rajasthan, Jaipur.....”

An F.I.R. was registered on 02.09.2002. A charge-sheet in the departmental proceeding was issued on 02.04.2003. It will be relevant to extract the two charges in the disciplinary proceedings:

“Charge No.1 :-

In the year 1991, an application for appointment on the post of constable was made by you, alongwith which, Marksheet of 8th pass issued by Government Secondary School, Tiloniya (Ajmer), bearing Roll No. 323 and Admission No. 2314, in which, your date of birth was mentioned as 21.04.1974, but you by altering it to 21.04.1972, fraudulently got recruited on the post of Constable.

Charge No.2:-

As a result of altering your date of birth from 21.04.1974 to 21.04.1972 in the Marksheet issued by the Government Secondary School, Tiloniya (Ajmer), Crime No. 183/02 under Section 420, 467, 468, 471 IPC was registered against you in P.S. Mandor, District -Jodhpur.”

15. Five witnesses were examined in the departmental enquiry, namely, PW-1 Jagdish Chand, Principal in Government Secondary School, Village Tiloniya, PW-2 Bhawani Singh (constable who was tasked to bring the school records), PW-3 Karan Sharma, who was Circle Officer and had recorded the statement of Shravan Lal; PW-4 Shravan Lal and PW-5 Raj Singh who conducted the investigation of the criminal case.

16. The evidence of PW-5/Raj Singh, as set out in the enquiry report taken as it is, is significant since he clearly disproved the charge. He stated the following in the cross-examination before the enquiry officer:

“Raj Singh you conducted investigation of Crime No. 102 and sent the copy to Commandant, 9th Battalion, RAC, Tonk, what documents you sent alongwith the same - The documents which were sent by me were copy of FIR, copy of chargesheet which was submitted in the Court and statements of witnesses recorded during the investigation and documents; whose photocopies were also given to the accused. Whether you had sent the copies of statements recorded in the aforesaid case to

the Commandant - I did not send the copies to Commandant Sahab. Which officer had submitted the chargesheet, order of result in the Court – the then SHO of P.S. Mandor, District - Jodhpur City namely Sh. Ram Pratap submitted result of investigation, order and chargesheet against the accused, in the Court.”

During the investigation, you had recorded statements of Dharmendra Kumar Jatav and Jairam Gurjar, did you record more statements and whether you would identify the copies of those statements - Yes, I recorded the statement of witnesses as it is. And I am producing herewith the statements of both the aforesaid witnesses. Whether those have been written by yourself - Yes, those statements have been written by me, which are Exh. D-1 and Exh. D-2. In Exh. D-1, I recorded statement of Teacher namely Rakishan Dev Murari on A to B part and I filled the marksheet of Ramlal, wherein, date of birth of Ramlal is mentioned as 21.04.1972 in C to D part, which has been written as per the dictation of Checking Teacher Ramkishan Dev Murari. Date of birth of 21.07.1972 mentioned on E to F part, was not mentioned in deliberate manner, in fact, same has been written due to the human error, whether you are agree with this statement - This statement is correct, whereas, at the time of filling up form for recruitment in Police RAC, Ramlal could enclose T.C. of 9th Pass, and he was studying in 10th class.”

Thereafter, referring to the Exh. D-2 [Statement of Jairam Gurjar], he deposed as under:-

“Similarly, in Exh. D-2, on A to B part, you have shown me the photocopy of 8th class marksheet of Ramlal S/o Sh. Tejuram Chaudhary, R/o Tiloniya, on which, signatures of it's issuer i.e. Teacher namely Sh. Dharmendra Kumar, Ramkishan Dev Murari and Headmaster Sh. Vishnu Miyani are mentioned. I am acquainted with their signatures.”

17. Most importantly dealing with the 8th class marksheet of the appellant, which formed the basis for his application seeking appointment as Constable, PW-5/Raj Singh stated as under:-



“The 8th class marksheet of Ramlal enclosed in the documents, which is **Exh. P-3**, (sic) in which, whether any alteration has been found in the date of birth anywhere, and whether date of birth has been mentioned as 21.04.1972 therein - Yes, no alteration has been made in the marksheet of 8th class and date of birth is 21.04.1972.”

18. It is very clear from the above that no alteration was found in the Appellant’s 8<sup>th</sup> class marksheet (which forms part of the enclosed documents sent to the Commandant) and the date of birth mentioned on it was 21.04.1972. Reference to ‘P-3’ in the above extract appears to be a mistake. The chargesheet and documents enclosed were Ex. P-12/1 to P-12/12. The defence also exhibited the original 8<sup>th</sup> class marksheet separately as Exh. D-3, as is clear from the chart of Exhibits set out in the enquiry report.

19. The Enquiry Officer, after setting out the depositions of the witnesses, set out the chart of the “P” series Exhibits and the Exhibits of the delinquent, namely the “D” series, and without any further discussion or marshaling of the evidence recorded the following with regard to charge-1:

“On perusal of statement of witnesses namely PW-1 PW-2, PW-3, PW-4, PW-5 and Exh. P-1 to P-12, it is clear that correct date of birth of delinquent constable was 21.04.1974. When, delinquent constable submitted application for recruitment on the post of Constable, at that time, he did not complete the age of 18 years, therefore, due to the apprehension of rejection of his application due to the less age, delinquent constable has altered his date of birth as 21.04.1972 from 21.04.1974, therefore, Charge No.1 stands proved.

Delinquent Constable has also passed 10<sup>th</sup> class, whose marksheet is Exh. P-4, in which, his date of birth is mentioned as 21.04.1974.”

In so far as charge-2 was concerned, it was merely noticed that challan had been filed in the criminal case as on 28.02.2004, the date of enquiry report, and that the trial had not concluded.

20. In the operative part of the enquiry report under the head, ‘conclusions’, there is no reference to the 8<sup>th</sup> class marksheet, (which was part of the enclosed documents sent by Constable Raj Singh with the chargesheet) or to Exh.D-3 [the original 8<sup>th</sup> class marksheet] exhibited by the defence. There is also no reference to the statement of Raj Singh PW-5

in the enquiry, who had acknowledged that there was no alteration in the marksheet of the 8<sup>th</sup> class. What is referred to in the chart of exhibits are letter of Jagdish Chand (Ex.P1); the duplicate marksheet of 8<sup>th</sup> class issued by Jagdish Chand (Ex.P2); the statement of Shravan Lal (Ex-P3); 10<sup>th</sup> class marksheet of Secondary Education Board Rajasthan, Ajmer, (Ex.P4); preliminary enquiry dated 16.10.2002 by Circle Officer, Kishangarh (Ex. P5); FIR No. 183/2000, (Ex.P6); application submitted by Ram Lal for recruitment to the post of constable (Ex.P-7); letter of appointment dated 08.11.1991 (ExP-8); verification letter filed by Ramlal (Ex.P9); appointment order dated 16.12.1991, (Ex-P-10); letter of Government School Tiloniya, Ex.P-11; and chargesheet dated 24.04.2003, Ex.P-12.

21. It is very clear that relevant and material evidence being, the deposition of PW-5/Raj Singh; the marksheet of 8<sup>th</sup> class of the appellant [enclosed to the chargesheet] and the original marksheet independently marked as Ex. D3 by the defence have been completely left out in the discussion and consideration. Inference has been drawn about the proof of the charges by ignoring crucial, relevant and material evidence which had come on record. The evidence of PW-5 Raj Singh and the marksheet enclosed in the documents annexed to the chargesheet and the original marksheet marked as Ex. D-3, were materials having a direct bearing on the charge. The Disciplinary Authority has merely reiterated the reasoning in the enquiry report. Equally so are the findings of the appellate authority. It is well settled that if the findings of the disciplinary authorities are arrived at after ignoring the relevant material the court in judicial review can interfere. It is only to satisfy ourselves to this extent, that we have scrutinized the material to see as to what was reflected in the record. We are satisfied that the disciplinary proceedings are vitiated and deserves to be quashed.

22. In this scenario, we are inclined to accept the explanation given by the appellant that overwriting in the application form was only due to correction of an inadvertent error. As long as the original 8<sup>th</sup> standard marksheet reflected his date of birth as 21.04.1972 and there is no correction or manipulation in that document, the appellant cannot be penalised.

**Effect of Acquittal in the Criminal Proceeding – Question No. 2:**

23. With this above background, if we examine the criminal proceedings the following factual position emerges. The very same witnesses, who were

examined in the departmental enquiry were examined in the criminal trial. Jagdish Chandra, Bhawani Singh, Shravan Lal, Raj Singh and Karan Sharma were examined as PW2, PW3, PW6, PW9 and PW13 respectively at the criminal trial. Apart from them, eight other witnesses were also examined. The gravamen of the charge in the criminal case was that the appellant had submitted an application for recruitment along with his marksheet and he, by making alteration in his date of birth to reflect the same as 24.04.1972 in place of 21.04.1974, and obtained recruitment to the post of Constable. Though the Trial Court convicted the appellant under Section 420 of IPC, the Appellate Court recorded the following crucial findings while acquitting the appellant:

“....Mainly the present case was based on the documents to this effect whether the date of birth of accused is 21.04.1972 or 21.04.1974. **Exh. P-3** is original Marksheet, in which, the date of birth of accused has been shown as 21.04.1972 and same has also been proved by the witnesses examined on behalf of the prosecution. Whatever the documents have been produced before the Court regarding the date of birth of 21.04.1974 are either the letters of Principal or are Duplicate T.C. or Marksheets. Neither the prosecution has produced any such original documents in the Subordinate Court to this effect that when the admission form of accused was filled, what date of birth was mentioned by the accused in it, what was the date of birth in Roll Register of School, what date of birth was mentioned by accused in the Examination Form of Secondary, and nor after bringing the original records from the concerned witnesses, same were got proved in the evidence. In these circumstances, this fact becomes doubtful that date of birth of accused was 21.04.1974, and accused is entitled to receive it's benefit. In the considered opinion of this Court, the conviction made by the Ld. Subordinate Court merely on the basis of oral evidences and letters or duplicate documents, is not just and proper. It is justifiable to acquit the accused.

Resultantly, on the basis of aforesaid consideration, the present appeal filed by the Appellant/Accused is liable to be allowed.”

[Emphasis supplied]

24. What is important to notice is that the Appellate Judge has clearly recorded that in the document Exh. P-3 – original marksheet of the 8<sup>th</sup> standard, the date of birth was clearly shown as 21.04.1972 and the other documents produced by the prosecution were either letters or a duplicate marksheet. No doubt, the Appellate Judge says that it becomes doubtful whether the date of birth was 21.04.1974 and that the accused was entitled to receive its benefit. However, what we are supposed to see is the substance of the judgment. A reading of the entire judgment clearly indicates that the appellant was acquitted after full consideration of the prosecution evidence and after noticing that the prosecution has miserably failed to prove the charge [*See S. Samuthiram (Supra).*]

25. Expressions like “benefit of doubt” and “honorably acquitted”, used in judgments are not to be understood as magic incantations. A court of law will not be carried away by the mere use of such terminology. In the present case, the Appellate Judge has recorded that Exh. P-3, the original marksheet carries the date of birth as 21.04.1972 and the same has also been proved by the witnesses examined on behalf of the prosecution. The conclusion that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge can only be arrived at after a reading of the judgment in its entirety. The court in judicial review is obliged to examine the substance of the judgment and not go by the form of expression used.

26. We are satisfied that the findings of the appellate judge in the criminal case clearly indicate that the charge against the appellant was not just, “not proved” - in fact the charge even stood “disproved” by the very prosecution evidence. As held by this Court, a fact is said to be “disproved” when, after considering the matters before it, the court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. A fact is said to be “not proved” when it is neither “proved” nor “disproved” [*See Vijayee Singh and Others v. State of U.P. (1990) 3 SCC 190*].

27. We are additionally satisfied that in the teeth of the finding of the appellate Judge, the disciplinary proceedings and the orders passed thereon cannot be allowed to stand. The charges were not just similar but identical and the evidence, witnesses and circumstances were all the same. This is a case

where in exercise of our discretion, we quash the orders of the disciplinary authority and the appellate authority as allowing them to stand will be unjust, unfair and oppressive. This case is very similar to the situation that arose in *G.M. Tank (supra)*.

28. Apart from the above, one other aspect is to be noted. The Enquiry Officer's report makes a reference to the appellant passing 10<sup>th</sup> standard, and to a 10<sup>th</sup> standard marksheet exhibited as Exh. P-4 referring to the date of birth as 24.07.1974. Jagdish Chandra-PW1 (in the departmental enquiry) clearly deposed that since the appellant was regularly absent from Class 10, his name was struck off and he did not even pass 10<sup>th</sup> standard. The appellant has also come out with this version before the disciplinary authority, stating that the 10<sup>th</sup> class certificate of Ram Lal produced before the Enquiry Officer, is of some other Ram Lal.

29. This issue need not detain us any further because it is not the case of department that the appellant sought employment based on 10<sup>th</sup> standard marksheet. It is their positive case that the appellant sought employment on the basis of his 8<sup>th</sup> standard marksheet. Shravan Lal-PW-4 in the departmental enquiry had also furnished the 10<sup>th</sup> standard marksheet procured from the Secondary Education Board, Ajmer. In cross-examination, on being asked, he admitted that the appellant was recruited on the basis of 8<sup>th</sup> standard marksheet, and he admitted that there was no alteration in the 8<sup>th</sup> standard marksheet.

30. In view of the above, we declare that the order of termination dated 31.03.2004; the order of the Appellate Authority dated 08.10.2004; the orders dated 29.03.2008 and 25.06.2008 refusing to reconsider and review the penalty respectively, are all illegal and untenable.

31. Accordingly, we set aside the judgment of the D.B. Special Appeal (Writ) No.484/2011 dated 05.09.2018. We direct that the appellant shall be reinstated with all consequential benefits including seniority, notional promotions, fitment of salary and all other benefits. As far as backwages are concerned, we are inclined to award the appellant 50% of the backwages. The directions be complied with within a period of four weeks from today.

32. The appeal is allowed in the above terms. No order as to costs.