Union Of India & Anr vs K.G. Soni on 17 August, 2006

Equivalent citations: AIRONLINE 2006 SC 563

Author: Arijit Pasayat

Bench: Arijit Pasayat, Lokeshwar Singh Panta

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           CASE NO.:
Appeal (civil)  3528 of 2006

PETITIONER:
Union of India &  Anr.

RESPONDENT:
K.G. Soni

DATE OF JUDGMENT: 17/08/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
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J U D G M E N T (Arising out of SLP (C) No. 19946 of 2004) ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to the judgment rendered by a Division Bench of the Madhya Pradesh High Court at Jabalpur holding that the punishment of compulsory retirement imposed on the respondent was disproportionate to the alleged misconduct. Therefore, the Appellate Authority was directed to consider the matter afresh with regard to the quantum of punishment.

Background facts in a nutshell are as follows:

> Respondent was a Store Attendant in the Bank Note Press, District Dewas (M.P). A charge-sheet was issued against him on the foundation that though he had got married with one Parvathibai in the year 1973, while filling up the attestation form on 16.3.1974, he did not show her name as his wife. It was further alleged that he got married for the second time in October, 1974 with one Ushabai. On the basis of this non-disclosure, which, authorities considered to be a misconduct, a disciplinary proceeding was initiated. It is to be noted that the non-disclosure came to the notice of the authorities when Parvathibai made a complaint about the second marriage. The enquiry was conducted under Central Civil Services (Classification, Control and Appeal) Rules, 1965 (in short the 'Rules'). The Enquiry Officer recorded findings in favour of the respondent. The Disciplinary Authority differed with the findings of the

> Inquiry Officer and came to hold that second marriage had in fact been performed and accordingly it issued show cause notice to the respondent and eventually came to hold that the respondent was guilty of misconduct and imposed the punishment of removal by order dated

2.4.1996.

The respondent being aggrieved preferred an appeal and the Appellate Authority converted the punishment of removal into one of compulsory retirement. The said order was passed on 15.4.1997.

Being aggrieved with the aforesaid order, the respondent approached the Central Administrative Tribunal, Jabalpur Bench (in short the 'Tribunal') on 13.12.1998. The Tribunal came to hold that the application was barred by limitation and accordingly declined to entertain the same. The Tribunal recorded a finding that no application for condonation of delay has been filed.

Assailing order passed by the Tribunal a Writ application was filed. It was submitted that the Tribunal had erroneously held that there was no application for condonation of delay. This is not one of those cases where cognizance cannot be taken by the Tribunal under Section 21(2) of the Administrative Tribunal Act, 1985 (in short the 'Tribunal Act'). It was, therefore, submitted that the Tribunal should have condoned the delay and dealt with the matter on merits. It was further submitted that the quantum of punishment awarded did not commensurate with the alleged misconduct.

The appellants took the stand that the punishment awarded was rather liberal and no interference was called for.

The High Court was of the view that ordinarily it would have remanded the matter to Tribunal for fresh consideration on merits but it was of the view that this is a fit case where the matter should be remitted to the Appellate Authority for reconsideration with regard to the quantum of punishment. The only basis for coming to the conclusion that the complaint was made by the wife about the alleged second marriage belatedly, and this is not such a misconduct which warrants compulsory retirement before his superannuation.

In support of the appeal learned counsel for the appellants submitted that the High Court has clearly lost sight of the scope for interference with the quantum of punishment.

In response, learned counsel for the respondent supported the judgment.

It is to be noted that the Appellate Authority had noted as follows:-

> "Although, after careful consideration of 22 years services rendered by him in Bank Note Press, the undersigned as an Appellate Authority has cordially considered the appeal using the powers conferred under Rule 27 of Central Civil Service (Classification, Central and Appeal) Rule, 1965 that the penalty imposed upon him

> the removal from services has been termed as cancelled and in place of this, Sh. K.G. Soni, Ex.Sr. Attendant has been awarded a penalty of Compulsory Retirement w.e.f. 02.04.1996. As a result of Compulsory Retirement, Sh. K.G. Soni has entitled for payment of full pension, Gratuity etc. under Rule Central Civil Services (Pension) Rule, 1972."

In B.C. Chaturvedi v. Union of India and Ors. (1995 [6] SCC 749) it was observed:

> "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 appropriately 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."

In Union of India and Anr. v. G. Ganayutham (1997 [7] SCC 463), this Court summed up the position relating to proportionality in paragraphs 31 and 32, which read as follows:

> "The current position of proportionality in administrative law in England and India can be summarized as follows:
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> (1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at.

The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury (1948 1 KB 223) test.

(2) The court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out. These are the CCSU (1985 AC 374) principles.

(3)(a) As per Bugdaycay (1987 AC

514), Brind (1991 (1) AC 696) and Smith (1996 (1) All ER 257) as long as the Convention is not incorporated into English law, the English courts merely exercise a secondary judgment to find out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3)(b) If the Convention is incorporated in England making available the principle of proportionality, then the English courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4)(a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the courts in our country will apply the principle of "proportionality" and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14."

The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in the Wednesbury's case (supra) the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

To put differently, unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed.

The above position was recently reiterated in Damoh Panna Sagar Rural Regional Bank and Others v. Munna Lal Jain (2005 (10) SCC 84).

The High Court has not kept the correct position in view. It has not even indicated as to why the punishment was considered disproportionate and why it considered the misconduct to be not serious.

The impugned order of the High Court is set aside and that of the Appellate Authority, the operative part of which has been quoted above, is restored.

The appeal is allowed without any order as to costs.