Central Industrial Security Force And ... vs Abrar Ali on 14 December, 2016

Equivalent citations: AIR 2017 SC 200, 2017 (4) SCC 507, 2017 (2) ADR 91, (2017) 1 SCT 682, (2017) 152 FACLR 431, (2017) 1 CURLR 637, (2017) 1 KCCR 40, (2017) 1 LAB LN 603, (2017) 3 ESC 423, (2016) 12 SCALE 853, (2017) 3 SERVLR 98, AIR 2017 SUPREME COURT 200, 2017 LAB. I. C. 916, AIR 2017 SC (CIVIL) 746, 2017 (11) ADJ 10 NOC

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Bench: L. Nageswara Rao, D. Y. Chandrachud, T. S. Thakur

Non-Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 2148 of 2015

CENTRAL INDUSTRIAL SECURITY FORCE & ORS.

.... Appellant(s)

Versus

ABRAR ALI

….Respondent

J U D G M E N T

L. NAGESWARA RAO, J.

The Respondent was appointed as a Constable in Central Industrial Security Force (CISF) on 10.09.1990. By a memorandum dated 08.10.1999, an inquiry was proposed under Rule 36 of the C.I.S.F. Rules, 1969 for allegations of misconduct and misbehavior for the following Charges:

> "Article of Charge-I No.903190893, Ct. Abrar Ali, Area No. IV, Central Industrial Security Force, BCCL Unit, Dhanbad was granted 2 days casual leave from 12.08.1999 to 13.08.1999 and 14.08.1999 was a second Saturday. He had to resume his duty on 15.08.1999 (F/N). But, he reported for his duty at 1730 hrs. Thereafter, Asstt. Commandant of Area No. 4 directed the said Abrar Ali to remain inside the Camp as there was apprehension of danger to his life from the residents of nearby Basti. At about 1900 hrs when Abrar Ali was searched by C.H.M. to serve his suspension order, he was again found absent from the Camp. The said member of the force did not even deposit his leave Certificate in the Unit Office after coming back

from leave.

Therefore, Abrar Ali No.903190893 being a member of armed forces, is grossly negligent towards his duties and has disobeyed the Orders/directions of the Superior Officers, which amounts to gross misconduct and indiscipline on the part of the said member. Hence, this Charge.

Article of Charge-II No.903190893, Ct. Abrar Ali, Area No. IV, Central Industrial Security Force, BCCL Unit, Dhanbad was granted 2 days casual leave from 12.08.1999 to 13.08.1999 and 14.08.1999 was a second Saturday. The said member of the force while proceeding on leave took one girl named Anita Kumari D/o Shri Rajendr Rajbar R/o Lalten Basti, Angarpathra (Dhanbad), aged about 15-16 years with him to Delhi on the pretext of getting her married to a Hindu boy and come back after leaving the said Anita Kumari at the house of an old man. The brother of the said force member, Jamaruddin, who also is a member of the Delhi Armed Police took Anita Kumari to Dhanbad. On 20.08.1999, Anita Kumari made a statement before the Judicial Magistrate, Dhanbad, in FIR No.260/99 dated 13.08.1999. Thereafter, the said force member Abrar Ali surrendered in the Court of C.J.M., Dhanbad on 20.08.1999 from where he was sent to jail for committing the said offence. No. 903190893 Ct. Abrar Ali being a member of me force has committed an act of indiscipline and has maligned the image of the force, which is a serious misconduct. Hence, this Charge.

Article of Charge - III Ct. Abrar Ali No. 903190893, Area No.IV, Central Industrial Security Force, BCCL Unit, Dhanbad, has already been awarded three punishments, 2 major punishments (deduction in pay) and one minor punishment (deduction of 7 days' salary) for various acts of indiscipline and negligence during the short span of his service. Despite the aforesaid, he has failed to improve himself and to abide the rules, which shows that the said member is habitual of committing indiscipline. Hence this Charge.

The Commandant, Central Industrial Security Force, BCCL Unit, Dhanbad by a final order dated 28.11.2000 held the Respondent guilty of all the Charges. Finding the Respondent unworthy of retention in Force due to his acts of indiscipline and misconduct, the Disciplinary Authority dismissed the Respondent from service. Aggrieved by the Order of dismissal, the Respondent filed an appeal to the Deputy Inspector General, Central Industrial Security Force, BCCL Unit, Dhanbad. The Appellate Authority rejected the appeal by Order dated 01.02.2001. The Respondent was exonerated of Charge 2 and held guilty of Charges 1 and 3. The Revision Petition filed by the Respondent was dismissed by the Inspector General, E.S. Headquarters, Patna by an Order dated 31.12.2010. The punishment of dismissal from service imposed on the Respondent was found to be proportionate to the gravity of the misconduct by both the Appellate and Revisional Authorities. The Respondent filed Writ Petition no. 1241 of 2001 in the High Court of Delhi challenging the Order of dismissal dated 28.11.2000 as well as the Orders dated 01.02.2001 of the Appellate Authority and 31.12.2010 of the Revisional Authority. By its judgment dated 11.08.2014, the High Court of Delhi allowed the Writ Petition and directed the Respondent to be reinstated forthwith as Constable C.I.S.F. with notional seniority in his rank. There was a direction for payment of the entire arrears of his salary and other allowances within 2 months from the date of the judgment. The Respondent was also held entitled for costs quantified at Rs. 15,000/-. Aggrieved by the said judgment dated 11.08.2014 of the High Court of Delhi, the Appellants preferred this Appeal.

Mr. Yashank Adhyaru, learned Senior Counsel appearing for the Appellants submitted that the Order of dismissal ought not to have been interfered with by the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India. He further submitted that there is no bar of holding a departmental inquiry in spite of an acquittal by a Criminal Court. The past conduct of the delinquent employee could, still, be a subject matter of a Disciplinary Proceeding. He contended that the penalty of dismissal from service is proportionate with the delinquency.

Dr. L.S.Chaudhary, Advocate appearing for the Respondent submits that the Respondent was acquitted by the Criminal Court and he should not have been tried for the same Charge by way of a departmental inquiry. He also relied upon a judgment of this Court in G.M. Tank v. State of Gujarat & Ors., reported in (2006) 5 SCC 446 in support thereof. He further submitted that Charge No. 1 did not warrant a penalty of dismissal and penalizing the Respondent for Charge No. 3 would amount to double jeopardy. The relevant facts for adjudication of this case are as follows:

> The Respondent was appointed as a Constable in C.I.S.F. on 10.09.1990. While working at C.I.S.F., BCCL Unit, Dhanbad, he was granted casual leave for 2 days on 12.08.1999. On 13.08.1999, FIR No. 260/99 was registered under Section 366 A and 376 of the Indian Penal Code, 1860 in Katras Police Station on a complaint by the residents of Lalten Basti that the Respondent kidnapped Anita Kumari, a minor girl. The Respondent reported back to duty at 1730 hrs on 15.08.1999. He was informed by the Assistant Commandant that there was danger to his life from the people living in Lalten Basti and he was ordered to remain in the unit lines. He was not found in the unit lines at 1900 hrs on 15.08.1999 when a suspension order was sought to be served on him. The authorities were informed that the Respondent surrendered before the Officer-In-Charge of Angarpathra Police Station at around 2000 hrs on 20.08.1999. Though the victim Anita Kumari made a statement which was recorded under Section 164 Cr. P.C. by the Magistrate, she retracted from the statement in the trial. The other witnesses were declared hostile. The Respondent was acquitted of the Charges under Section 366 A and 376 IPC by a judgment dated 29.03.2001 of the Sixth Addl. Sessions Judge, Dhanbad.

The point that arises for our consideration is whether the finding of the Disciplinary Authorities holding the Respondent guilty of Charges 1 and 3 was justified and whether the penalty of dismissal was proportionate. Charge No.1 pertains to the act of indiscipline of the Respondent in leaving the unit line on 15.08.1999 in spite of a specific order. There is evidence on record to show that the Respondent reported for duty at 1730 hrs on 15.08.1999 and disappeared thereafter in spite of instructions not to leave the unit line. Even according to the Respondent, the situation was tense and there was danger to his life from the residents of the Basti who lodged FIR against him. The Respondent submitted in the departmental inquiry that he did not resume duty on 15.08.1999 after being informed about the registration of FIR. He further stated that he fell ill and was taking treatment from a local doctor from 15.08.1999 to 20.08.1999 at Tutalmari. He surrendered before the Police at 2000 hrs on 20.08.1999. The Respondent's brother Jamaruddin, who is a member of Delhi Police Force, was examined as PW-9 and Kaniz Fatima, wife of the Respondent was examined as PW-2. They supported the version of the Respondent that he availed leave for two days, did not

resume duty in view of the registration of FIR and that he surrendered before the Criminal Court on 20.08.1999. PW-8 Bijender Singh, HC/GD deposed before the Inquiry Officer that the Respondent was directed by the Assistant Commandant, Ansuman Gaur, to stay in the unit line. He was asked to serve a copy of the suspension order on the Respondent at 1900 hrs. on 15.08.1999. However, the Respondent was not traceable in the camp or at his official residence. Court Witness No.1, SB Mishra, Inspector stated in the departmental inquiry that he was the Company Commander who granted leave for two days to the Respondent on 11.08.1999. He deposed that officer-in-Charge of Angarpathra Police Station visited him at 1200 hrs. on 12.08.1999. The officer informed that the Respondent had kidnapped Anita Kumari from Lalten Basti and FIR was registered at the behest of the residents. He reported the incident to his higher officers. He also stated that the Respondent disobeyed the order of his superiors and left the unit line on 15.08.1999. On appreciation of the evidence on record, the Disciplinary Authority concluded that Charge 1 was proved. The desertion from 15.08.1999 to 20.08.1999 is an act of gross indiscipline warranting a penalty according to the Disciplinary Authority.

The High Court held that the Respondent resumed duty and left the unit line in view of the fear for his life from the residents of the locality due to the registration of FIR. The High Court found that no misconduct was committed by the Respondent in disobeying the directions of his superiors not to leave the unit line. The High Court was of the opinion that any prudent person would have acted in the same manner. The High Court held that the Charge proved was not serious for which the Respondent should be punished.

Contrary to findings of the Disciplinary Authority, the High Court accepted the version of the Respondent that he fell ill and was being treated by a local doctor without assigning any reasons. It was held by the Disciplinary Authority that the Unit had better medical facilities which could have been availed by the Respondent if he was really suffering from illness. It was further held that the delinquent did not produce any evidence of treatment by a local doctor. The High Court should not have entered into the arena of facts which tantamounts to re-appreciation of evidence. It is settled law that re-appreciation of evidence is not permissible in the exercise of jurisdiction under Article 226 of the Constitution of India. In State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaiya reported in (2011) 4 SCC 584, this Court held as follows:

> "7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic inquiry, nor interfere on the ground that another view is possible on the material on record. If the inquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on

extraneous considerations. (Vide B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749: 1996 SCC (L&S) 80: (1996) 32 ATC 44], Union of India v. G. Ganayutham [(1997) 7 SCC 463: 1997 SCC (L&S) 1806], Bank of India v. Degala Suryanarayana [(1999) 5 SCC 762: 1999 SCC (L&S) 1036] and High Court of Judicature at Bombay v. Shashikant S. Patil." In Union of India & Ors. v. P. Gunasekaran reported in (2015) 2 SCC 610, this Court held as follows:

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the inquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

(a) the inquiry is held by a competent authority;

(b) the inquiry is held according to the procedure prescribed in that behalf;

(c) there is violation of the principles of natural justice in conducting the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person 13.could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

13.(i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) re-appreciate the evidence;

(ii) interfere with the conclusions in the inquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience." We are in agreement with the findings and conclusion of the Disciplinary Authority as confirmed by the Appellate Authority and Revisional Authority on Charge No. 1. Indiscipline on the part of a member of an Armed Force has to be viewed seriously. It is clear that the Respondent had intentionally disobeyed the orders of his superiors and deserted the Force for a period of 5 days. Such desertion is an act of gross misconduct and the Respondent deserves to be punished suitably.

Charge No. 3 was that the Respondent had become habitual in committing indiscipline and disorderliness. A reference was made to two major penalties of deduction of pay and one minor punishment of reduction of seven days salary earlier. The Disciplinary Authority found that the Respondent did not improve in spite of being punished earlier. The High Court agreed with the contention of the Respondent and held that a fresh enquiry cannot be initiated into a misconduct for which a delinquent had already suffered a penalty. The High Court found that any penalty imposed under Charge No. 3 would amount to double jeopardy. We disagree with the finding of the High Court as we are of the view that the Respondent was not being tried again for previous misconduct. As the Respondent did not improve in spite of being punished earlier and had become habitual in indiscipline and disorderliness, the Disciplinary Authority rightly found Charge No. 3 as proved. The desirability of continuance of the Respondent was considered on the basis of his past conduct which does not amount to double jeopardy. In any event, past conduct of a delinquent employee can be taken into consideration while imposing penalty. We are supported in this view by a Judgement of this Court in Union of India v. Bishamber Das Dogra, reported in (2009) 13 SCC 102 held as follows:

"30. ..... But in case of misconduct of grave nature or indiscipline, even in the absence of statutory rules, the authority may take into consideration the indisputable past conduct/service record of the employee for adding the weight to the decision of imposing the punishment if the facts of the case so require."

The Respondent was exonerated of Charge No. 2 by the Appellate Authority. The Revisional Authority confirmed the order of the Appellate Authority. The judgment relied upon by the Respondent in G.M. Tank Vs. State of Gujarat and Ors.(supra) is not relevant as in that case the point for consideration was whether the departmental proceedings can be held after acquittal of a public servant in a criminal case on similar set of facts.

12. Though we are of the view that the High Court ought not to have interfered with the order passed by the Disciplinary Authority, the penalty of dismissal from service is not commensurate with delinquency. The Respondent was found guilty of desertion of the Force for a period of five days and not improving his conduct in spite of imposition of penalties on three occasions earlier. For the above delinquencies, the penalty of dismissal from service is excessive and harsh. In our view, the penalty of compulsory retirement would meet the ends of justice. We are informed by the counsel for the Appellants that the Respondent is entitled for pension as he has completed 10 years of service. In order to avoid any controversy, we direct that the Respondent shall be entitled for notional continuity of service till the date of completion of minimum service required to make him eligible for pension. He will not be entitled for payment of salary and allowances for that period.

13. For the aforesaid reasons, the Appeal is allowed with the above modification in the penalty.

.....CJI [T. S. THAKUR] .....J [Dr. D. Y. CHANDRACHUD] .....J [L. NAGESWARA RAO] New Delhi, December 14, 2016