Shri Bhagwan Lal Arya vs Commissioner Of Police Delhi & Ors on 16 March, 2004

Equivalent citations: AIR 2004 SUPREME COURT 2131, 2004 (4) SCC 560, 2004 AIR SCW 2288, 2004 LAB. I. C. 1748, 2004 (3) ACE 315, 2004 (2) SERVLJ 460 SC, 2004 (3) SCALE 356, (2004) 3 JT 384 (SC), 2004 (2) SLT 601, (2004) 17 ALLINDCAS 604 (SC), 2004 (3) JT 384, (2004) 2 SERVLJ 460, (2004) 2 CTC 301 (SC), (2004) 2 PAT LJR 208, (2004) 3 SCALE 356, (2004) 4 ESC 520, (2004) 2 WLC(SC)CVL 226, (2004) 2 CURLR 6, (2004) 75 DRJ 71, (2004) 2 LAB LN 7, (2004) 2 SCT 253, (2004) 2 SUPREME 677, 2004 SCC (L&S) 661, (2004) 105 FJR 256, (2004) 101 FACLR 193, (2004) 2 JLJR 184, (2004) 110 DLT 360, (2004) 17 INDLD 311

Author: Ar. Lakshmanan

Bench: R. C. Lahoti, Ar. Lakshmanan

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           CASE NO.:
Appeal (civil)  1625 of 2004

PETITIONER:
Shri Bhagwan Lal Arya

RESPONDENT:
Commissioner of Police Delhi & Ors.

DATE OF JUDGMENT: 16/03/2004

BENCH:
R. C. Lahoti & Dr. AR. Lakshmanan

JUDGMENT:
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J U D G M E N T Arising out of SLP (C) No. 14614 of 2002 Dr. AR. Lakshmanan, J.

Leave granted.

The above appeal was filed against the final judgment/order dated 16.3.2002 passed by the High Court of Delhi in C.W.P No.6261 of 1998. The main issue relates to the alleged unauthorised absence for 2 months and 8 days for which penalty of removal from service was imposed by the respondents on the appellant.

The appellant was recruited as a Constable in Delhi Police. While undergoing the prescribed training, the appellant fell down on the parade ground on 07.10.1994. Thereupon, he was sent to

police dispensary as ordered by the Chief Drill Inspector of the parade. Since his condition did not improve, his relative took him to his home town in Gwalior. He remained under treatment of Government Doctors there and sent applications for leave on medical grounds supported with the medical certificates from competent medical authorities in accordance with the leave rules. The competent police authority passed an order on 16.1.1995 sanctioning leave without pay for the period of his illness from 7.10.1994 to 14.12.1994 as no other leave was due to him. According to the appellant since the competent authority had granted the leave, the question of issuing any charge sheet subsequently for unauthorised absence for the same period would not arise. On 15.11.1994, notice of termination from service was issued stating that his services shall stand terminated with effect from the date of expiry of a period of one month from the date notice is received by the appellant. The appellant resumed duty on 15.12.1994 after submitting fitness certificate from government dispensary, Gwalior, where he had taken treatment. The services of the appellant were terminated with effect from 31.12.1994 under Rule 5 of clause (1) of the Temporary Service Rules. On 16.1.1995, the competent authority sanctioned leave without pay for his illness from 7.10.1994 to 14.12.1994 after the receipt of the termination order. The appellant made representation for reinstatement. After a gap of more than 4 months, the Commissioner of Police reinstated him in service forthwith with the provision that intervening period from 1.1.1995 till he was reinstated will be decided at the time of finalisation of his disciplinary enquiry. The appellant retained service after reinstatement order dated 25.5.1995. However, he again fell ill and was on leave for several days on medical grounds and was granted leave by the respondents. On 24.07.1995, disciplinary enquiry was initiated against the appellant under Delhi Police (Punishment & Appeal Rules, 1980). The disciplinary enquiry officer served a charge sheet dated 24.02.1996 on the appellant. The enquiry officer submitted his findings on 22.04.1996. The enquiry officer concluded that acts of the appellant are highly reprehensible and untenable and, therefore, the charge against him stands fully proved. On 25.06.1996, the disciplinary authority imposed the penalty of removal from service on the appellant. The appellant submitted his appeal on 05.07.1996 which was rejected by the 2nd respondent herein. The appellant submitted a fresh revision and the mercy petition which were rejected on 02.06.1997 and 27.06.1998 respectively. The appellant approached the Central Administrative Tribunal, New Delhi which also dismissed the O.A. No.1195 of 1998. Thereupon the appellant filed the writ-petition in the High Court which was also dismissed. Being aggrieved, the appellant preferred this Special Leave Petition/Appeal.

The learned counsel for the appellant Mr.Harbans Lal Bajaj submitted that the appellant never committed any misconduct as alleged in the charge sheet and did not absent himself from duty willingly or deliberately or acts of negligence and, therefore, the disciplinary authorities were wrong in holding the appellant guilty. He further submitted that it is a case of absence from duty due to appellant's long illness supported by application for leave along with medical certificate by competent medical authority of government department followed by fitness certificate which was countersigned by the CMO, Gwalior. It is further contended that no reasonable disciplinary authority would term absence on medical grounds with proper medical certificate from Government Doctors as grave misconduct in terms of Delhi Police (Punishment & Appeal Rules, 1980).

It is further submitted that the decision of competent authorities to remove the appellant from service is against the spirit of Rule 8 and 10 of Delhi Police (Punishment & Appeal Rules, 1980). It is

also contended that the punishment of removal from service awarded was totally unjust, unfair, inequitable and arbitrary.

Per contra, Mr. Ashok Bhan, learned counsel for the respondents submitted that the appellant had absented himself for a period of 2 months, 7 days and 17 hours unauthorisedly and wilfully without any information/permission of the competent authority and left the station without any permission of the competent authority. The disciplinary enquiry initiated against him was proper and the punishment awarded is just and proper. It is contended that since the disciplinary authority, appellant authority, revisional authority and the Central Administrative Tribunal, New Delhi and the High Court rejected the representation/appeal, this Court shall not interfere with the orders passed by the authorities and court.

We have perused the pleadings and the orders passed by all the authorities including the High Court and the medical certificate and the fitness certificate issued by the medical officer of the government department of Gwalior, M.P. On the above pleadings, the following questions of law arise for consideration :-

> (a) Whether the punishment of removal from service is grossly disproportionate to the alleged acts of misconduct can be awarded to an employee of the police organisation as government departments/organisations are supposed to be model employees?
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> (b) Whether the major penalty of removal from service inflicted on the appellant is grossly disproportionate to the misconduct alleged against him and, therefore, is totally unjust, unfair and inequitable as contended?
>
> (c) Whether the punishment imposed is in breach of the relevant Rules 8 and 10 of the Delhi Police (Punishment and Appeal Rules, 1980) which provide that the penalty aforementioned can be imposed only in cases of grave misconduct and continued misconduct indicating incorrigibility and complete unfitness for police servants?

We have perused the relevant orders passed by the disciplinary authorities, the Central Administrative Tribunal and of the High Court. It is seen from the records that the domestic enquiry has been conducted properly and the principles of natural justice has been strictly followed. There is no denial of reasonable opportunity. We, therefore, hold that the findings are based on evidence and is not liable to be interfered with. We also hold that disciplinary action initiated against the appellant is in accordance with the rules and regulations and not vitiated by any mala fides. However, we find that there is merit and substance in regard to the next contention i.e. punishment is totally disproportionate to the proved misconduct of the appellant. It is contended that the punishment order passed is against the statutory provisions of Rule 8 and 10 of the Delhi Police (Punishment & Appeal, Rules 1980).

Rule 8 (a) and 10 of the Delhi Police (Punishment & Appeal, Rules 1980) reads as under:

> "Rule 8. Principles for inflicting penalties (1) Dismissal/Removal the punishment of dismissal or removal from service shall be awarded for the act of grave misconduct rendering him unfit for police service.
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> xxxx xxxx xxxx "Rule 10. Maintenance of discipline The previous record of an officer, against whom charges have been proved, if shows continued misconduct indicating incorrigibility and complete unfitness for police service, the punishment awarded shall ordinarily be dismissal from service. When complete unfitness for police service is not established, but unfitness for a particular rank is proved, the punishment shall normally be reduction in rank."

xxxx xxxx xxxx In the instant case, the appellant had absented himself for 2 months, 8 days and 17 hours on medical grounds. The above two rules provide that penalty of removal can be imposed only in cases, if grave misconduct and continued misconduct indicating incorrigibility and complete unfitness for police service. The absence of the appellant on medical grounds with application for leave as well as sanction of leave can under no circumstances, in our opinion, be termed as grave misconduct or continued misconduct rendering him unfit for police service.

The order dated 16.01.1995 passed by the respondents was produced by the respondents themselves in their reply to C.W.P. before the High Court of Delhi that they had sanctioned leave without pay for the period from 7.10.1994 to 15.12.1994, the period of alleged unauthorised absence. The High Court has failed to appreciate and evaluate this aspect of the matter. The High Court also did not appreciate that after issuing sanction for leave for the period in question, the employee's legitimate expectation would be that no stern action would be taken against him with respect to the alleged act of misconduct which by no stretch of imagination can be considered act of gross misconduct or continued misconduct indicating incorrigibility and complete unfitness for police service. It is not the case of the respondents that the appellant is a habitual absentee. He had to proceed on leave under compulsion because of his grave condition of health and, therefore, the punishment of removal from service is excessive and disproportionate. We are of the view that the punishment of dismissal/removal from service can be awarded only for the acts of grave nature or as cumulative effect of continued misconduct proving incorrigibility of complete unfitness for police service. Merely one incident of absence and that too because of bad health and valid and justified grounds/reasons cannot become basis for awarding such a punishment. We are, therefore, of the opinion that the decision of the disciplinary authority inflicting a penalty of removal from service is ultra vires of Rule 8 (a) and 10 of the Delhi Police (Punishment & Appeals Rules, 1980) and is liable to be set aside. The appellant also does not have any other source of income and will not get any other job at this age and the stigma attached to him on account of the impugned punishment. As a result of not only he but his entire family totally dependant on him will be forced to starve. These are the mitigating circumstances which warrant that the punishment/order of the disciplinary authority is to be set aside.

The disciplinary authority without caring to examine the medical aspect of the absence awarded to him the punishment of removal from service since their earlier order of termination of appellant's service under Temporary Service Rules did not materialise. No reasonable disciplinary authority

would term absence on medical grounds with proper medical certificates from government Doctors as grave misconduct in terms of Delhi Police (Punishment & Appeal Rules, 1980). Non-application of mind by quasi-judicial authorities can be seen in this case. The very fact that respondents have asked the appellant for re-medical clearly establishes that they had received applicant's application with medical certificate. This can never be termed as wilful absence without any information to competent authority and can never be termed as grave misconduct.

In B.C.Chaturvedi vs. Union of India [AIR 1996 SC 484 , (three Judges Bench)] the question posed for consideration was as to whether the High Court/Tribunal can direct the authorities to reconsider punishment with cogent reasons in support thereof or reconsider themselves to shorten the litigation. In this case, at para 18, this Court has observed as under:-

> "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."

Thus, the present one is a case wherein we are satisfied that the punishment of removal from service imposed on the appellant is not only highly excessive and disproportionate but is also one which was not permissible to be imposed as per the Service Rules. Ordinarily we would have set aside the punishment and sent the matter back to the disciplinary authority for passing the order of punishment afresh in accordance with law and consistently with the principles laid down in the judgment. However, that would further lengthen the life of litigation. In view of the time already lost, we deem it proper to set aside the punishment of removal from service and instead direct the appellant to be reinstated in service subject to the condition that the period during which the appellant remained absent from duty and the period calculated upto the date on which the appellant reports back to duty pursuant to this judgment shall not be counted as a period spend on duty. The appellant shall not be entitled to any service benefits for this period. Looking at the nature of partial relief allowed hereby to the appellant, it is now not necessary to pass any order of punishment in the departmental proceedings in lieu of the punishment of removal from service which has been set aside. The appellant must report on duty within a period of six weeks from today to take benefit of this judgment.

The appeal is allowed in the terms abovesaid. No costs.