Ram Kishan vs Union Of India & Ors on 1 September, 1995

Equivalent citations: 1996 AIR 255, 1995 SCC (6) 157, AIR 1996 SUPREME COURT 255, 1995 (6) SCC 157, 1995 AIR SCW 4027, (1995) 7 JT 43 (SC), (1996) 1 CURLR 26, (1995) 4 SCT 657, (1995) 71 FACLR 929, (1996) 1 LAB LN 14, (1996) 1 LABLJ 982, (1995) 31 ATC 475, 1995 SCC (L&S) 1357

Author: K. Ramaswamy

Bench: K. Ramaswamy, B.L Hansaria

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           PETITIONER:
RAM KISHAN

        Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT01/09/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)

CITATION:
 1996 AIR  255            1995 SCC  (6) 157
 JT 1995 (7)    43        1995 SCALE  (5)431


ACT:



HEADNOTE:



JUDGMENT:
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O R D E R Leave granted.

The appellant, while working as constable under the charge of Additional Deputy Commissioner of Police, Central District, New Delhi, was charged with two-fold grave misconduct: (i) while he was in charge of the sub-jail (naib court) he facilitated one Puran, s/o Rama, undertrial prisoner, to drink alcohol before being taken to the Court; and (ii) he had abused the superior officer and created an

ugly scene in their presence. The inquiry officer in his report dated July 20, 1985 found that the second charge was partly proved and the first charge had not been proved. The disciplinary authority, viz., Additional Deputy Commissioner, disagreeing with the conclusions reached by the inquiry officer, issued a show cause notice on August 16, 1985 as to why both the charges should not be taken to have been proved. The appellant submitted his explanation and thereon by order dated September 6, 1986, the Additional Deputy Commissioner dismissed him from service. After unsuccessful appeal and revision, he approached the Central Administrative Tribunal in May, 1986. The Tribunal in its order dated September 17, 1990 dismissed the O.A. Thus this appeal by special leave.

Mr. Shyam Babu, the learned counsel for the appellant, raised three-fold contention. First, that the Additional Deputy Commissioner is not the Deputy Commissioner in charge of the District and, therefore, he was not competent to impose the punishment on the appellant. It is next contended that the disciplinary authority had not given any reason in the show cause notice to disagree with the conclusions reached by the inquiry officer and that, therefore, the findings based on that show cause notice are bad in law. Lastly, it is contended that even on proved facts the punishment imposed is disproportionate to the gravity of the alleged misconduct.

The learned counsel for the respondents has refuted the contentions by submitting that the Additional Deputy Commissioner is of the same rank as the Deputy Commissioner and perusal of Rule 4 of the Delhi Police (Appointment & Recruitment) Rules, 1980, [for short 'the Rules'] shows that Additional Deputy Commissioner of Police is also an authority on whom the power of appointment has been delegated. Therefore, he is competent to impose the punishment of dismissal from service. It is also urged that in the dismissal order the disciplinary authority had given reasons why he did not agree with the disciplinary authority and therefore, the show cause notice is not invalid in law. Lastly, it is contended that the conduct of the appellant is unbecoming of the disciplined police force. Therefore, dismissal from service is the appropriate punishment.

The first question that arises is whether the Additional Deputy Commissioner of Police is the competent authority. It is true that Section 11 of the Delhi Police Act, 1978 enumerates the authorities, viz., Additional Deputy Commissioners and Assistant Commissioners who assist the Deputy Commissioner of the District. That section provided:

> "11. Officers in charge of the police district and police sub-divisions and police stations.
>
> (1) Each police district shall be under the charge of a Deputy Commissioner of Police who may be assisted in the discharge of his duties by one or more Additional Deputy Commissioners of Police.
>
> (2) Each police sub-division shall be under the charge of an Assistant Commissioner of police and each police station shall be under the charge of an Inspector of Police."

It would be seen that the Deputy Commissioner of Police is in charge of the district and one or more Additional Deputy Commissioner of Police has/have been authorised to assist the Deputy Commissioner. Section 19 of the General Clauses Act, 1887 lays down thus:

> "19. Official Chiefs and subordinates.- (1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of expressing that a law relating to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior."

So, it would be clear that where a superior officer has been authorised to perform some duties under an Act or a regulation, a subordinate or deputy officer lawfully performing those duties in the place of his superior is equally empowered to perform the duties of the office of the superior. Rule 4 of the Rules states that not only the Deputy Commissioner but Additional Deputy Commissioner also has been delegated the power of appointing Sub-Inspectors, Assistant Sub-Inspectors, Head Constables and Constables. An Additional Deputy Commissioner is thus competent to pass an order of dismissal qua a police constable, as is the petitioner, Our attention is then invited to Rule 6 of the Delhi Police (Punishment and Appeal) Rules, 1980 [for short, 'the Appeal Rules'], which reads:

> "6. Classification of punishments and authorities competent to award them. - (1) Punishments mentioned at Serial Nos.
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> (i) to (vii) above shall be deemed 'major punishment' and may be awarded by an officer of the rank of the appointing authority or above after a regular departmental enquiry."

It is, therefore, contended that the Rule indicates that an officer of the inferior rank cannot exercise the power to impose major punishment. It is already seen that under Rule 4 of the Rules, the Additional Deputy Commissioner of the police is also one of the appointing authorities; and by the force of Section 19 of the General Clauses Act, he can exercise the powers of the Deputy Commissioner of Police, So, in a given case, even Additional Deputy Commissioner can pass order of dismissal, if what has been provided in Section 19 of the General Clauses Act is also borne in mind. The exercise of power with the aid of the Rules and the Appeal Rules by the Additional Deputy Commissioner in the present case cannot be said to be without authority of law or void. He is competent to pass the order.

The next question is whether the show cause notice is valid in law. It is true, as rightly contended by the counsel for the appellant, that the show cause notice does not indicate the reasons on the basis of which the disciplinary authority proposed to disagree with the conclusions reached by the inquiry officer. The purpose of the show cause notice, in case of disagreement with the findings of the enquiry officer, is to enable the delinquent to show that the disciplinary authority is pursuaded not to disagree with the conclusions reached by the inquiry officer for the reasons given in the inquiry report or he may offer additional reasons in support of the finding by the inquiry officer. In that situation, unless the disciplinary authority gives specific reasons in the show cause on the basis of

which the findings of the inquiry officer in that behalf is based, it would be difficult for the delinquent to satisfactorily give reasons to pursuade the disciplinary authority to agree with the conclusions reached by the inquiry officer. In the absence of any ground or reason in the show cause notice it amounts to an empty formality which would cause grave prejudice to the delinquent officer and would result in injustice to him. The mere fact that in the final order some reasons have been given to disagree with the conclusions reached by the disciplinary authority cannot cure the defect. But, on the facts in this case, the only charge which was found to have been accepted is that the appellant had used abusive language on the superior authority. Since the disciplinary authority has said that it has agreed partly to that charge, the provisional conclusion reached by the disciplinary authority in that behalf even in the show cause notice, cannot be said to be vague. Therefore, we do not find any justification to hold that the show cause notice is vitiated by an error of law, on the facts in this case.

It is next to be seen whether imposition of the punishment of dismissal from service is proportionate to the gravity of the imputation. When abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of the abusive language. No straight jacket formula could be evolved in adjudging whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts. What was the nature of the abusive language used by the appellant was not stated.

On the facts and circumstances of the case, we are of the considered view that the imposition of punishment of dismissal from service is harsh and disproportionate to the gravity of charge imputed to the delinquent constable. Accordingly, we set aside the dismissal order. We hold that imposition of stoppage of two increments with cumulative effect would be an appropriate punishment. So, we direct the disciplinary authority to impose that punishment. However, since the appellant himself is responsible for the initiation of the proceedings, we find that he is not entitled to back wages; but, all other consequential benefits would be available to him.

The appeal is accordingly allowed. No costs.