

S.K. Giri vs Home Secretary, Ministry Of Home ... on 21 August, 1995

Equivalent citations: AIR1996SC350, [1995(71)FLR679], JT1995(6)SC154, (1996)ILLJ814SC, 1995(5)SCALE22, 1995SUPP(3)SCC519, 1995(2)UJ580(SC), (1995)3UPLBEC1611, AIR 1996 SUPREME COURT 350, 1995 AIR SCW 4168, (1995) 6 JT 154 (SC), (1995) 3 ALL WC 1807, 1995 (6) JT 154, 1995 (3) SCC(SUPP) 519, (1996) 1 LAB LJ 814, (1995) 2 LAB LN 1110, 1995 SCC (L&S) 1299, (1995) 2 CURLR 597, (1996) 89 FJR 40, (1995) 71 FACLR 679, (1995) 4 SCT 597, (1995) 31 ATC 206

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Bench: N.P. Singh

ORDER

1. Heard counsel for the parties.
2. Leave granted.
3. This appeal has been directed against the judgment and order dated 11.11.1986, passed by the Delhi High Court dismissing the writ petition filed by the appellant against the order of his removal from service.
4. The appellant was appointed as Security Guard on 16.12.1970 in the Central Industrial Security Force. He was promoted as Head Constable in September, 1981. In January, 1983 the appellant was posted as Head Security Guard in the C.I.S.F. Unit Rourkela Steel Plant. On 25.1.1983 when the appellant was on duty in 'B' shift (from 1.00 PM to 9.00 PM) at 'C' post in the area known as N.R. Gate alongwith a Security Guard, a large number of persons totalling about 109 entered inside the Plant at about 7.45 PM and were found removing coal from the M.C.D. area which was the duty point of the appellant. The Crime Branch Staff seized 45 gunny bags filled with coal from the said intruders. It was alleged that at that point of time the appellant was found absent from his duty and he came to his duty point about 25 minutes after the aforesaid incident. Consequently, the appellant was charge sheeted for misconduct and gross negligence of duty and an enquiry against him was held. In the enquiry the appellant took the stand that the duty area was a jungle area with thick bushes and since a large number of persons had entered the Plant and the appellant and the Security Guard with him were unarmed and, therefore, he asked the Security Guard to keep an eye on the situation and he himself rushed to the nearest telephone wherefrom he reported the incident to the Shift Incharge and the Control Room whereafter the criminals were apprehended and the coal was seized from them. However, the enquiry officer found the appellant guilty of the said charge in pursuance of which the disciplinary authority after considering the findings of the enquiry officer

awarded the penalty of removal from service with effect from 24.4.1984. The appeal preferred by the appellant was dismissed on 13.9.1984 against which the appellant filed the writ petition in the High Court of Delhi which was also dismissed by the impugned order against which this appeal has been directed.

5. Learned counsel appearing for the appellant submitted that the appellant was not absent from duty on the relevant date and time but in fact had gone to convey message to the higher authorities and to make a report of the incident. He submitted that this short absence while he had gone to inform his superiors cannot be regarded as an act of absence from duty. He further submitted that in any case the punishment of removal from service is too harsh and disproportionate to the charge against him. He urged that the appellant deserved lenient punishment who had a clean and unblemished service record right from the year 1970.

6. After hearing the learned counsel for parties we are of the opinion that the punishment awarded to the appellant is no doubt severe and disproportionate and the same deserves to be set aside. Consequently, having regard to the facts and circumstances of the present case, we set aside the order of removal of the appellant from service dated 23.4.1984 and the impugned order of the High Court. We direct the respondents to reinstate the appellant with immediate effect. But the appellant will not be entitled to the arrears of his salary with effect from 24.4.1984, the date of removal from service up to 31.12.1994. The appellant shall however be entitled for the salary and all other benefits with effect from 1.1.1995. We also make it clear that the period from 24.4.1984 to the date of reinstatement of the appellant shall be treated in continuity of service. The respondents shall re-fix the salary of the appellant.

7. Consequently, the appeal is allowed to the extent indicated above. No order as to costs.