

## **Dev Singh vs Punjab Tourism Development ... on 2 September, 2003**

**Equivalent citations: AIR 2003 SUPREME COURT 3712, 2003 (8) SCC 9, 2003 AIR SCW 4222, 2003 LAB. I. C. 3146, (2003) 7 JT 509 (SC), 2003 (7) JT 509, 2004 (1) ALL CJ 145, 2004 (1) UJ (SC) 220, 2004 ALL CJ 1 145, (2003) 11 ALLINDCAS 494 (SC), 2003 (3) UPLBEC 2613, 2003 (7) SCALE 122, 2003 (11) ALLINDCAS 494, 2003 (5) SLT 760, 2003 (3) BLJ 392.2, 2003 (3) JKJ 113, 2003 LAB LR 1025, (2003) 4 KHCACJ 493 (SC), (2003) 5 ALL WC 4343, (2003) 99 FACLR 111, 2003 SCC (L&S) 1198, (2003) 103 FJR 610, (2003) 3 LABLJ 823, (2003) 4 LAB LN 37, (2003) 4 SCT 249, (2003) 6 SERVLR 711, (2003) 3 UPLBEC 2613, (2003) 6 SUPREME 482, (2003) 7 SCALE 122, (2003) 5 ESC 95, (2003) 11 INDLD 534, (2003) 3 BLJ 392(2)**

CASE NO.:

Appeal (civil) 6918 of 2003

PETITIONER:

Dev Singh

RESPONDENT:

Vs.

Punjab Tourism Development Corporation Ltd. & Anr.

DATE OF JUDGMENT: 02/09/2003

BENCH:

N.Santosh Hegde)B.P.Singh

JUDGMENT:

**J U D G M E N T** Arising out of S.L.P.©No.8462 of 2002) SANTOSH HEGDE,J.

Leave granted.

Heard learned counsel for the parties.

The appellant while serving as a Senior Assistant in the respondent-Corporation was subjected to a disciplinary inquiry on the ground that he was responsible for the misplacement of a file which was entrusted to him, which according to the Corporation amounted to a misconduct under By-Law 18 of The Punjab Tourism Development Corporation Ltd. Service By Laws. In the inquiry that was held

pursuant to the above said charge, the appellant was found guilty of the said misconduct and the disciplinary authority as per his order dated 6th November, 2001 while confirming the finding of the Inquiry Officer found the case to be a fit one in which a punishment of dismissal was called for and accordingly he ordered the dismissal of the appellant from the service of the Corporation with immediate effect. The appellant challenged to the said order by way of a writ petition before the Punjab and Haryana High Court which came to be dismissed by the impugned order, hence, the appellant is in appeal before us. Though learned counsel for the appellant has challenged the finding of the Inquiry Officer on various grounds, having heard the arguments in this regard and having perused the record, we find no reason to disagree with the findings as to the misconduct committed by the appellant.

Learned counsel for the appellant, however, contended that the appellant has been serving the Corporation since 1981 with unblemished record and there was no earlier charge of misconduct prior to the present charge. He also contended that the charge against the appellant was that of misplacement of a file and no motive was attached for such misplacement of file. In such a situation to award the extreme punishment of dismissal according to the learned counsel would not only amount to a disproportionate punishment but also should disturb the conscience of this Court. The learned counsel in support of his argument, that it is open to the superior court to interfere with the quantum of punishment in a given set of facts, has relied upon the judgments of this Court in the case of *Bhagat Ram vs. State of H.P.* (1983 2 SCC 442), *Ranjit Thakur vs. Union of India* (1987 4 SCC 611) and *U.P.State Road Transport Corporation & Anr. vs. Mahesh Kumar Mishra & Ors.* (2000 3 SCC 450) A perusal of the above judgments clearly shows that a court sitting in appeal against a punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on penalty, however, if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court, then the court would appropriately mould the relief either by directing the disciplinary/appropriate authority to reconsider the penalty imposed or to shorten the litigation its may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof. It is also clear from the above noted judgments of this Court, if the punishment imposed by the disciplinary authority is totally disproportionate to the misconduct proved against the delinquent officer, then the court would interfere in such a case.

Applying the said principles laid down by this Court in the cases noted herein above, we see that in this case the appellant has been serving the respondent Corporation for nearly 20 years with unblemished service, before the present charge of misconduct was levelled against him. The charge itself shows that what was alleged against the appellant was of a misplacement of a file and there is no allegation whatsoever that this file was either misplaced by the appellant deliberately or for any collateral consideration. A reading of the charge sheet shows that the misplacement alleged was not motivated by any ulterior consideration and at the most could be an act of negligence, consequent to which the appellant was unable to trace the file again. The disciplinary authority while considering the quantum of punishment came to the conclusion that the misconduct of the nature alleged against the appellant should be viewed very seriously to prevent such actions in future whereby important and sensitive records could be lost or removed or destroyed by the employee under whose custody the records are kept. Therefore, he was of the opinion a deterrent punishment was called for. Forgetting for a moment that no such allegation of misplacing of important or sensitive record

was made in the instant case against the appellant and what he was charged of was misplacement of a file importance or sensitiveness of which was not mentioned in the charge sheet. Therefore, in our opinion, the disciplinary authority was guided by certain facts which were not on record, even otherwise, we are of the opinion that when the Service By-Laws applicable to the Corporation under Service By- Laws 17 provide various minor punishments, we fail to appreciate why only maximum punishment available under the said By-laws should be awarded on the facts of the present case. We think the punishment of dismissal for mere misplacement of a file without any ulterior motive is too harsh a punishment which is totally disproportionate to the misconduct alleged and the same certainly shocks our judicial conscience. Hence, having considered the basis on which the punishment of dismissal was imposed on the appellant and the facts and circumstances of this case, we think to avoid further prolonged litigation it would be appropriate if we modify the punishment ourselves. On the said basis, while upholding the finding of misconduct against the appellant, we think it appropriate that the appellant be imposed a punishment of withholding of one increment including stoppage at the efficiency bar in substitution of the punishment of dismissal awarded by the disciplinary authority. We further direct that the appellant will not be entitled to any back wages for the period of suspension. However, he will be entitled to the subsistence allowance payable upto the date of the dismissal order.

With the above modifications, this appeal is allowed, the impugned order of the disciplinary authority in so far as it directs the dismissal of the appellant, stands substituted as ordered by us herein above.

The appeal is allowed partly.