GAHC010242512019

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/8724/2019

ARUNJYOTI THAKURIA
CONST/TE-COY/LMG AT CPK, S/O- SHRI NILAMONI THAKURIA, R/O- VILL-KUMOI KACHARIGAON, P.O. JAGI BHAKAT GAON, DIST- MORIGAON, ASSAM

VERSUS

THE UNION OF INDIA AND 3 ORS.
REP. BY THE SECY. TO THE MINISTRY OF RAILWAY, RAIL BHAWAN, NEW DELHI

2:THE CHIEF SECURITY COMMISSIONER
RAILWAY PROTECTION FORCE
MALIGAON

3:THE SENIOR DIVISIONAL SECURITY
COMMISSIONER/RPF
N.F.RAILWAT
LUMDING

4:THE ASSTT. SECURITY COMMISSIONER/RPF
N.F.RAILWAY
LUMDIN

Advocate for the Petitioner : MR. S NATH
Advocate for the Respondent : SC, NF RLY

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Date of hearing : **31.05.2022**
Date of Judgment : **21.06.2022**

JUDGMENT & ORDER

The extra-ordinary jurisdiction conferred upon this Court by Article 226 of the Constitution of India is sought to be invoked by means of this writ petition whereby the petitioner has put to challenge an order dated 29.12.2015 by which he was removed from his service as Constable in the Railway Protection Force (RPF). The departmental appeal preferred by the petitioner against the said order of removal was also dismissed vide order dated 08.04.2019 whereafter this writ petition has been filed.

2. Before going to deal with the grounds of challenge, the brief facts of the case may be stated.

3. The petitioner was appointed as Constable in the RPF on 22.05.1999. It is the projected case of the petitioner that he has been discharging his duties sincerely and without any blemish and was posted at TE-Coy/Lumding. In between, the petitioner was transferred to 15 RPF at Chaparmukh. On 07.01.2014, he was again transferred back to his original place of posting at Lumding with joining date as 10.01.2014. The petitioner has alleged that he could not join within the stipulated period of 3 days at Lumding as he had fallen ill and was under treatment. On such absence, the authorities had issued a memorandum of charges dated 04.02.2015. On receipt of notice about the said proceeding, the petitioner had appeared in the inquiry twice and could not appear thereafter. The inquiry culminated into a report dated 08.09.2015 holding the charges to be proved and the disciplinary authority, upon consideration of the facts and circumstances and the inquiry report, had passed the impugned order dated 29.12.2015 removing the petitioner from service. Against the impugned order, the petitioner had preferred a departmental appeal on 27.02.2017 which was lying unattended and accordingly, the petitioner had filed a writ petition, being WP(C)/3176/2017 in which a direction was issued for disposal of the departmental appeal with liberty. Consequently, the appeal was rejected vide order dated

08.04.2019. Thereafter, the present petition has been filed.

4. I have heard Shri S Nath, learned counsel for the petitioner whereas the respondents are represented by Shri BK Das, learned Standing Counsel, Railways. The materials placed before this Court have been carefully examined.

5. Shri Nath, learned counsel for the petitioner has submitted that the impugned order of penalty of removal from service is wholly unsustainable in law. It is submitted that the impugned order is bad, both on account of procedural infirmity as well as on the doctrine of proportionality. It is submitted that the petitioner was deprived from a fair and reasonable opportunity to defend himself in the departmental proceeding as a result whereof the impugned order has been passed causing immense prejudice and hardship to the petitioner. It is alleged that no proper notice of the inquiry was served upon him as a result of which, the petitioner could be present in the inquiry only on two dates. The petitioner was not made aware of his right to have the services of a defence assistant.

6. On the doctrine of proportionality, Shri Nath, learned counsel submits that the penalty in question is absolutely harsh and not at all commensurate to the nature of the allegation levelled against him. The charge of unauthorised absence from duties, though may constitute a misconduct, is not such a serious misconduct which would invite the most severe punishment of removal from service. It is, accordingly submitted that the impugned order be interfered with.

7. In support of his submissions, Shri Nath has placed before this Court a copy of the judgment of the Hon'ble Supreme Court reported in ***(2003) 4 SCC 331 (Director General, RPF and Others Vs. Ch. Sai Babu).***

8. In the aforesaid case, which dealt with a penalty of removal from service of an incumbent who was charged under Rule 153 of the Railway Protection Force Rules, 1987 (hereinafter the Rules), the Hon'ble Supreme Court has held as follows-

"6. As is evident from the order of the learned single Judge there has been

no consideration of the facts and circumstances of the case including as to the nature of charges held proved against the respondent to say that penalty of removal from service imposed on the respondent was extreme. Merely because it was felt that the punishment imposed was extreme was not enough to disturb or modify the punishment imposed on a delinquent officer. The learned single Judge has not recorded reasons to say as to how the punishment imposed on the respondent -was shockingly or grossly dis proportionate to the gravity of charges held proved against the respondent. It is riot that in every case of imposing a punishment of removal or dismissal from service a high Court can modify such punishment merely saying that it is shockingly disproportionate. Normally, the punishment imposed by disciplinary authority should not be disturbed -by High Court or tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including nature of charges proves against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of and disci pline required to be maintained, and the department/establishment in which the concerned delinquent person works.

7. In the present case we do not find that there has been a consideration of all the relevant facts and the learned single Judge has not recorded reasons in order to modify the punishment imposed. The Division Bench of the High Court also did not examine the matter in proper perspective but simply concurred with the order passed by the learned single Judge. Normally in cases -where it is found that the punishment imposed is shockingly disproportionate, High Courts or tribunals may remit the cases to the disciplinary authority for reconsideration on the quantum of punishment. In this case the disciplinary proceedings were initiated in the year 1989 and to shorten the. litigation we think it appropriate to set aside the impugned order and remit the writ appeal No. 952 of 1998 to the

Division Bench of the High Court to reconsider the case only on the quantum of punishment imposed on the respondent having regard to all relevant factors including the facts that the respondent was a member of Railway Protection Force and in the light of the observations made above. Since the proceedings are pending for quite some time, we request the High Court to dispose of the writ appeal expeditiously. The impugned order is set aside and the appeal is ordered in the above terms. No costs. Order accordingly."

9. The learned counsel for the petitioner accordingly submits that the present case being similar in nature, this Court may interfere and direct reinstatement of the petitioner in service.

10. *Per contra,* Shri BK Das, learned Standing Counsel, Railways submits that each case has to be decided on the attending facts and circumstances. In the instant case, the charge is of unauthorised absence and the period concerned is also significant by inordinate of about 2(two) years which is from 10.01.2014 to 29.12.2015 i.e. the date of passing of the termination order. By drawing the attention of this Court to the Rules holding the field, the learned Standing Counsel has referred Rule 147 (vi) of the Rules, it is contended that unauthorised absence is one of the prescribed offences. Rule 153 lays down the procedure for imposing major punishment. For ready reference, Rule 147(vi) is extracted hereinbelow-

*"**147. Offences relatable to duties of enrolled members:***

Commission of any of the following act or acts by an enrolled member of the Force-

(i)...

(ii)...

(vi) absenting himself without proper intimation to his controlling authority or without sufficient cause overstaying leave granted to him or failing without

reasonable cause to report himself for duty on the expiry of such leave.

(vii)...

(xxii)...

Shall render him liable for punishment under Section 9 or Section 17 or both."

11. The Standing Counsel contends that in the instant case the petitioner had admitted his misconduct and therefore, there was no requirement, whatsoever to carry on the ordeals of the detail procedure prescribed. By drawing the attention of this Court to paragraph 6 of the affidavit-in-opposition dated 08.10.2021, it is submitted that the present case was not the first instance of unauthorised absence of the petitioner and there were many previous instances of similar misconduct, the details of which were given in the said paragraph. For ready reference, paragraph 6 of the affidavit-in-opposition dated 08.10.2021 is extracted hereinbelow-

"6. That the statements made in paragraph 3 of the writ petition are not admitted and denied by the answering respondents. It is stated that the petitioner remained unauthorized absent/overstay from leave for several times which is stated as follows:-

(i). Unauthorized absent from 13.06.2007 to 25.07.2007= 43 days,

(ii) Unauthorized over stay from 18.01.2008 to 04.03.2008= 47 days,

(iii) Unauthorized absent from 21.01.2010 to 11.02.2010= 22 days,

(iv) Unauthorized absent from 20.10.2011 to 17.11.2011= 29 days,

(v) Unauthorized overstay from 19.05.2013 to 01.06.2013=14 days and

(vi) Unauthorized absent from 10.01.2014 till attending the DAR proceeding."

12. The learned Standing Counsel, Railways goes on to submit that on earlier three occasions of unauthorized absence, penalty has been imposed upon the petitioner. Interestingly, there is no denial from the side of the writ petitioner against such

serious allegation. Rather, in paragraph 5 of the rejoinder affidavit dated 26.11.2021, the petitioner has simply denied to say anything. For ready reference paragraph 5 of the rejoinder affidavit dated 26.11.2021 is extracted hereinbelow-

> *"5. That with regard to the statements made in paragraph 6, 7 and 8 affidavit-in-opposition are matter of records and as such the answering deponent has nothing to say in this regard".*

13. The learned Standing Counsel has submitted that there is no allegation which is discernible of the pleadings in the writ petition of any procedural infirmity in the departmental proceedings. Further, the vital and clinching point in this case is that the petitioner had admitted his misconduct in the departmental enquiry and even in the current writ proceedings, the specific statement made by the Department has not been denied.

14. The learned Standing Counsel for the Railways further submits that even on merits, the total number of days of unauthorised absence of the petitioner is 674. The petitioner has tried to take up the defence that he was suffering from illness and in this regard, he has annexed two documents which however do not inspire any confidence, apart from the fact such documents were not produced during the departmental enquiry. It is accordingly submitted that the writ petition ought to be dismissed.

15. In support of his submission, Shri Das, the learned Standing Counsel for the Railways has placed reliance upon the following case laws-

(i). ***(1995) 6 SCC 749 (B.C. Chaturvedi Vs. Union of India and Ors.)***

(ii). ***(2003) 3 SCC 583 (Latif Popli Vs. Canara Bank).***

16. In the case of ***BC Chaturvedi*** (supra), the Hon'ble Supreme Court has dealt with the scope of Courts / Tribunal to interfere with findings of facts based on evidence and substitute its own independent findings. Restrictions were also put on

the Court / Tribunals regarding re-appreciation of evidence and substituting its own findings.

17. In the case of ***Latif Popli*** (supra), it has been laid down that the High Court in exercise of power under Article 226 of the Constitution of India does not act as an Appellate Authority and therefore, cannot re-appreciate the evidence on record.

18. The rival submissions made on behalf of the parties have been duly considered and the materials placed before this Court have been carefully examined.

19. The issue which falls for determination is as to whether the penalty imposed upon the petitioner of removal from service is justified in law. Two corollary questions would arise, firstly as to whether the procedure prescribed to arrive at the impugned order has been followed and secondly, this Court is required to deal with the argument regarding proportionality of the penalty *vis-a-vis*, the nature of the charges levelled against the petitioner.

20. Before going into the aforesaid issue, it is necessary to remind ourselves that this Court in exercise of powers under Article 226 of the Constitution of India is only to examine as to whether the decision making process was carried out in accordance with law and there is no requirement, *stricto senso* to examine the decision as such.

21. In the landmark case of ***Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.***, decided in the year of 1947 by the Kings Bench, Lord Greene, M.R. has held that a decision of a public authority will be liable to be quashed or otherwise dealt with by an appropriate order in judicial review proceedings where the Court concludes that the decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it. The aforesaid principle which is more popularly known as "Wednesbury Principle of Reasonableness" has been referred to by the Hon'ble Supreme Court in a catena of decisions. In the case of ***Tata Cellular Vs. Union of India*** reported in ***(1994) 6 SCC 651,*** Hon'ble Supreme Court had laid down two other facets of irrationality:

"(1) It is open to the court to review the decision-maker's evaluation of the facts. The court will intervene where the facts taken as a whole could not logically warrant the conclusion of the decision-maker. If the weight of facts pointing to one course of action is overwhelming, then a decision the other way, cannot be upheld.

(2) A decision would be regarded as unreasonable if it is partial and unequal in its operation as between different classes."

22. By going through the law laid down on the subject of scope of judicial review, what is required to be examined can be summarized into the following facets-

i. Whether the decision has been taken by the incumbent authorized for the said purpose and having the jurisdiction to do so;

ii. Whether the decision arrived at is a reasonable one;

iii. Whether the relevant factors have been taken into consideration before arriving to the said decision;

iv. Whether the decision is based on irrelevant and extraneous consideration;

v. Whether the decision is vitiated by bias and *mala fide.*

23. In the backdrop of the law laid down and the principles governing the aspect of judicial review, let us examine the facts of the instant case. Though the scope is only to examine the decision making process, in the instant case the records clearly show that the misconduct has been admitted and as indicated above, even in this proceedings before this Court, there is no denial by the petitioner in the pleadings of such admission of misconduct. In that view of the matter, it is actually not required to go into the merits of the decision. However, to do substantial justice under Article 226 of the Constitution of India, the following aspects would also be relevant.

24. The charge is of unauthorized absence which may appear to be innocuous. However, each charge has to be examined *vis-a-vis* the employment of the delinquent.

In the instant case, the petitioner was serving as a Constable in the Railway Protection Force which is undoubtedly a disciplined service. Apart from the fact that unauthorized absence is a major offence prescribed under Rule 147 of the Rules, even otherwise such indiscipline from a personnel of the Railway Protection Force cannot be overlooked. Moreover, the present case, as indicated above, is not the first instance of unauthorized absence and on many other occasions, the petitioner had indulged in the same misconduct and on three earlier occasions, penalty was imposed upon him. Viewed from this aspect, the impugned penalty does not appear to be unjustified.

25. This Court is now required to deal with the argument regarding proportionality of the penalty imposed *vis-a-vis* the nature of the charge. There is no manner of doubt that the doctrine of proportionality is a well recognized doctrine which comes into play during exercise of judicial review of an order of penalty imposed in a disciplinary proceeding. The requirement is that the penalty imposed is such that it shakes the judicial conscience juxtaposition the charge levelled even on its face value. In the preceding paragraph, it has already been discussed that the present case is not the first instance of the petitioner being unauthorisedly absent and on three earlier occasions penalty was imposed upon him for such misconduct. Further, the charge is a serious one with respect to the employment of the petitioner which is that of Constable in the RPF, a discipline force. In view of the above, it cannot be said that the penalty imposed is disproportionate requiring judicial intervention.

26. In view of the aforesaid facts and circumstances, this Court is of the opinion that the present is not a fit case for exercise of powers under Article 226 of the Constitution of India. Accordingly, the writ petition stands dismissed.

27. No order as to cost.

JUDGE

Comparing Assistant