

Hameeda Akhter and Others Vs. State and Others

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Court : Jammu and Kashmir

Decided On : Jun-11-2014

Judge : The Honourable Chief Justice Mr. Justice M.M. Kumar & Muzaffar Hussain Attar

Appeal No. : LPA 175 of 2012 IA 290 of 2012

Appellant : Hameeda Akhter and Others

Respondent : State and Others

Judgement :

Muzaffar Hussain Attar, J.

01. One SGCT Abdul Hamid, No. 630/S, now dead, whose legal heirs have been brought on record, was ordered to be reduced to the rank to which he was first appointed, i.e. Constable, vide order No. 1708 of 2002 dated 22-11-2002. This order was challenged by him (Abdul Hamid) in SWP 1518/2002, which has been dismissed by the learned writ Court vide its order and judgement dated 02-08-2012.

02. It is this order and judgement, which is called in question in this Letters Patent Appeal (LPA).

03. SGCT Abdul Hamid was charge sheeted by SSP, Srinagar, on the charge that on 26-05-2002, while he was working as driver in Flying Squad No. 9, he misused

the wireless set installed in his vehicle by putting into circulation host of abuses. The said charge was denied by SGCT Abdul Hamid, which resulted in initiation of regular enquiry against him. After conclusion of the departmental enquiry, as already stated, he was reduced to the rank of Constable.

04. Mr. M.A.Qayoom, learned counsel appearing for the Appellant, submitted that order dated 22-11-2002 is illegal, in as much as, the Disciplinary Authority has not conducted the enquiry in accordance with the mandate contained in Rule 359 of the Police Rules. Learned counsel invited attention of the Court to the statements of the witnesses, who were examined during the departmental enquiry and submitted that two witnesses have not been cross examined by the deceased employee and the other witnesses have not said anything against the deceased employee. Learned counsel submitted that this being case of no evidence, the learned writ Court ought to have allowed the writ petition and quashed the order dated 22-11-2002. Learned counsel, in support of his contention, referred to a Constitutional Bench judgement of Honble the Supreme Court rendered in case titled State of Orissa and another “ Appellants versus Murli Dhar Jena, reported in AIR 1963 SC 404. Learned counsel prayed for setting aside of the impugned judgement and allowing the writ petition. Reference was also made at bar to the judgements reported in AIR 2011 SC 1931, 2013 SC 1513 AND 2000(1) SCC 416.

05. Mr. R.A.Khan, learned AAG, appearing for the respondents, vehemently argued that the deceased SGCT Abdul Hamid had committed serious misconduct by flashing abuses and other unparliamentary words on the wireless set, which was in his possession and which he used to handle. Mr. Khan further submitted that the Constitutional Court does not act as a Court of Appeal to re-appreciate evidence recorded in a departmental enquiry. He further submitted that the sufficiency and insufficiency of material/evidence cannot be looked into by a writ Court and consequently the punishment order issued after conducting of regular departmental enquiry cannot be set aside.

06. It is the settled legal position that the enquiry, conducted in departmental proceedings and consequent orders issued, can be interfered with when there is non compliance with the prescribed statutory procedure and also in case the order

inflicting punishment is supported by no evidence. In order to consider the case on hand on the touch stone of settled legal principles, the statements of the witnesses, who have been examined during the departmental enquiry, are summarized as under :

œa) Shri Abdul Rashid, ASI, who was posted in Communication Control Room of Police Control Room, Srinagar, during departmental enquiry, has stated :

œOn asking stated that I am discharging my duties as Duty Officer in Communication Control Room of Police Control Room. The duty of Control Room is :

to maintain net discipline ;

to keep communication through ;

to receive and deliver informations.

While performing my daily duties on 26-05-2002 at 1.45pm, one illegal song was heard on the wireless. Immediately thereafter, the words œShahmat chhai shahmat chhai? were relayed and thereafter abuses were hurled. Since at that point of time, the superior Officers are available at the network, we, therefore, while keeping in mind the abuse, called all the stations. The abuses continued for 40 minutes. After calling all the stations, it was found that the said voice had emanated from Flying Squad 9, which, according to our Call Line, is called D-18. After this, the Operator of D-18 was questioned, who at that time was sorry for his action and was praying for forgiveness. The illegal words were heard by all the superior Officers, as such, we could not deal with it at our own level. The IGP, Kashmir, himself asked SP, South, under whose supervision the said Flying Squad was working, to initiate departmental enquiry. The SP, South, asked for the number of the concerned Operator from SHO, Shergadi and found that the SGCT, Abdul Hamid had acted in a silly manner. As to who was Abdul Hamid Constable, we have no knowledge about it. However, the abusive language was relayed from D-18. The illegal action was not repeated after the said episode. Not only this, even before abusive relays were heard twice from D-18 and superior Officers were

informed about the same. What action was taken, we do not know about it. In the first two episodes, D-16 and D-11 were also alleged to have committed the said act.

On cross examination :

Question : How could you say that it was my voice ?

Answer : We had complaint against the entire D-18 and had requested the SHO to look out for the name as we were not knowing who were posted in D-Station.

Enquiry Officer :

Question : Could you recognize the voice of the accused?

Answer : We do not have any mechanism for recording the voice. Since the incident took place three months before, so the voice cannot be recognized.

Question to accused : You were allotted H-69 Channel. How were you on RR Channel ?

Answer : I have no knowledge about it. I am a driver and not an Operator.

Statement of Constable Nisar Ahmad recorded on 04-09-2002 :

On asking stated that the call sign of Flying Squad 9 is called D-18. I am performing my duties. Our duty is to keep the road clear when there is VIP movement, to see that no untoward incident takes place. On 26-05-2002, SP, South, came to Police Station Shergadi and told us as to who used the indecent and abusive language on the wireless set. We stated that we were discharging our duty and do not know who has committed this mistake. The SP ordered for lodging Abdul Hamid, Driver, in the Police Lockup. Abdul Hamid, Driver, told him that you first register the case and then keep him in the Lockup. This is what is known to me.

On cross examination by Enquiry Officer :

Question : You know it that concealing of offence and telling lies is legally and morally an offence. Why dont you tell the truth as to who has committed this mistake which has been proved by the Wireless Control ?

Answer : I do not know.

Driver Abdul Hamid was given opportunity to question the witnesses but he did not put any question.?

Perusal of the statement would show that the following one line, in different ink and by some other person, has been inserted in the statement before the last line recorded therein :

œThe Enquiry Officer put more questions, for which separate questionnaire has been issued.?

œIn the questionnaire as many as eleven questions have been put to Constable Nisar Ahmad, which have been answered by him. Though nothing has been specifically stated about Abdul Hamid Driver, but from the record it appears that neither the questionnaire nor the answers thereto were within the knowledge of Abdul Hamid, Driver and he was not afforded opportunity to cross examine the witnesses in respect of answers given by them to the questionnaire.?

Statement of Mohammad Muzaffar

Constable 1903/S recorded On 04-09-2002 :

œOn asking stated that for about one year, I have been part of Flying Squad No.9 which has call sign D-18. Our duty is to clear the road when ever there is VIP movement so as to see that no untoward incident takes place. On 26-05-2002, SP, who was in Police Station Shergadi, called us and enquired as to who used abusive language on the wireless set. We told that we do not know who has committed this mistake. Three police men used to be in the vehicle and the name of the driver is Abdul Hamid. At the time of incident, viz. 1.30 pm, we were standing away from the vehicle and the driver was also standing outside the vehicle. We do not know who committed the mistake and at what time. This much I

know.?

On cross examination by Enquiry Officer :

Question : why are you repeatedly using the expression œwe?. Say it ?

Answer : This way I have answered.

Question : It appears that because of understanding between you, you have used the expression œwe?.

Answer : Silence.

The Enquiry Officer put some more questions which were issued as separate questionnaire. The accused, Abdul Hamid, Driver, was given opportunity to question the witnesses but he did not put any question.

A separate questionnaire, comprising of eleven questions, have been served on Muzaffar Ahmad, Constable, who has answered them. He has categorically denied his involvement in the said incident. He has not said anything incriminating against Abdul Hamid, Driver, excepting that he was outside the vehicle but was standing close to it.?

07. From perusal of the record and the statements of the aforesaid witnesses, whose statements have been recorded during the enquiry, following factual and legal facts arise :

a) None of the witnesses have said in their statements that it was Abdul Hamid, Driver, who used abusive language and played songs on the wireless set. The Questionnaire issued separately and served on two witnesses to which they have answered, do not also indict the deceased Abdul Hamid, Driver. These questionnaires and answers thereto, even otherwise, cannot be considered because the deceased Abdul Hamid, Driver, has not been provided opportunity to cross examine the said witnesses in respect of these questions and answers given thereto.

b) Chapter XI of the Police Rules deals with punishment. Rule 334 of the Police Rules provides that no Police Officer shall be departmentally punished other than as prescribed in these Rules. Rule 359 prescribes the procedure to be followed in the departmental enquiries. Sub rule (4) of Rule 359 provides that if the accused Police Officer does not admit the misconduct, the Officer conducting the enquiry shall proceed to record such evidence, oral or documentary, any proof of accusation as is available and necessary to support the charge. Whenever possible, witnesses shall be examined direct and in presence of the accused, who shall be given opportunity to cross examine them. The Officer conducting the enquiry is empowered, however, to bring on record the statement of any witness, whose presence cannot, in the opinion of such Officer, be produced without undue delay and expense or inconvenience, if he considers such statement necessary and provided that it has been recorded and attested by a Magistrate and is signed by the person making it. The accused shall be bound to answer questions, which the Enquiry Officer may deem appropriate to put to him, with a view to elucidate the facts referred to in the statements or documents brought on record as herein provided.

08. Admittedly, during the enquiry, the Disciplinary Authority/Enquiry Officer, has committed breach of sub rule (4) of Rule 359 of Police Rules, in as much as, the deceased Abdul Hamid, Driver, has not been afforded opportunity to cross examine the two witnesses in respect of the questionnaire which was served on them. Even in their answers, they have not indicted the deceased Abdul Hamid, Driver.

09. The evidence recorded during the enquiry does not, in any manner whatsoever, connect the deceased Abdul Hamid, Driver with the charge, which were framed against him. The punishment has been inflicted on the deceased Abdul Hamid, Driver, in complete violation of the procedure prescribed by Rule 359 of the Police Rules and is based on no evidence. The enquiry proceedings and the consequential punishment order are, thus, rendered illegal.

10. For our above detailed discussion, we allow this LPA, set aside the impugned order/judgement of the learned Single Bench dated 02-08-2012. Consequently,

order No. 1708 of 2002 dated 22-11-2002 passed by SSP, Srinagar, is quashed.

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