

Jai Shanker and Another Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Apr-25-2001

Reported in : [2001(90)FLR160]; 2001LabIC3185; (2001)2UPLBEC1395

Judge : D.S. Sinha and ;Anjani Kumar, JJ.

Acts : [Police Act, 1861](#) - Sections 7

Appeal No. : C.M.W.P. No. 15419 of 1993

Appellant : Jai Shanker and Another

Respondent : State of U.P. and Others

Advocate for Def. : Sandeep Mukerjee, S.C.

Advocate for Pet/Ap. : S.K. Singh, ;N.S.N. Verma, ;V.K. Singh and ;V.K. Chaudhary, Advs.

Judgement :

D. S. Sinha and Anjani Kumar, JJ.

1. Heard Sri Nar Singh Narain Verma, holding brief of Sri V. K. Singh, the learned counsel appearing for the petitioners, and Sri Sandeep Mukerji, the learned standing counsel of the State of U. P., representing the respondents, at length and in detail.

2. Sri Jal Shanker and Babu Ram, the erstwhile police constables of the State of U. P., faced departmental inquiry under Section 7 of the Police Act on the charge that while serving under the control of Superintendent of Police. G.R.P. at Moradabad, they were found absent from train guard duty which amounted to dereliction in performance of duty.

3. The inquiry culminated into finding holding the petitioners guilty and led to passing of the order dated 1st August, 1983, inflicting upon them the punishment of removal.

4. Feeling aggrieved by the order of removal, the petitioners approached the U. P. Public Services Tribunal through a claim petition which was dismissed vide order dated 30th November, 1988. Hence, this petition.

5. Before the Tribunal, the order of removal was challenged by the petitioners on the ground of violation of principles of natural justice. The petitioners asserted that they were not given opportunity to defend themselves.

6. The Tribunal summoned the record of the departmental proceedings and scrutinised it. It found that the petitioners were duly served with the charge-sheet which was perfect and suffered with no infirmity. It also noticed that the petitioners had filed their reply to the charge-sheet. Apart from this, the Tribunal also found that the inquiry officer had specifically asked the petitioners whether they had to say anything beyond what they had already mentioned in the written reply to the charges, and that they had stated that they had nothing to say beyond what they had mentioned in the reply to the charge-sheet. The Tribunal further noticed that the prosecution witnesses were examined in presence of the petitioners, and that the petitioners did not choose to cross-examine the witnesses. It is not in dispute that the petitioners were present. Indeed, their presence is established by the fact that they had signed below the statement of prosecution witnesses.

7. On the facts and circumstances noticed above, the Tribunal recorded the finding of fact that there was no violation of any principle of natural justice ; and that the petitioners had been given ample opportunity to defend themselves.

8. Apart from the fact that the Tribunal has recorded the finding of fact that there was no violation of principle of natural Justice, there is another significant aspect, relevant in the context, namely, the confession of their guilt by the petitioners during the course of examination. Further, from the perusal of the judgment, it transpires that both the petitioners, in the course of their examination on 14th March, 1983, had clearly stated before the inquiry officer that they had no oral or documentary evidence to lead in their defence and that they had nothing to say against the testimony of the witnesses examined by the department. This is not in dispute.

9. Thus, the finding of the Tribunal that there was no breach of principle of natural justice : and that the petitioners were given adequate opportunity cannot be assailed.

10. Before this Court also, the contention on behalf of the petitioners is that the order of removal is bad for non-compliance of principle of natural Justice. In view of the clear finding of the Tribunal in that regard, the contention regarding non-compliance of the principles of natural justice is untenable. It may be relevant to note that in the pleadings set up by the petitioners, there is no where any attack on the finding recorded by the Tribunal on the question of violation of principle of natural -justice. Even during the course of arguments, no attempt has been made to demonstrate that the finding of the Tribunal suffers from any infirmity warranting Interference by this Court. Thus, the contention of the petitioners that their order of removal is bad for non-compliance of requirement of principle of natural justice fails.

11. Learned counsel appearing for the petitioners made feeble attempt to attack the order of removal on the ground that the punishment of removal was disproportionate to the charge.

12. It cannot be gainsaid that, normally, the quantum of punishment is to be decided by 'he punishing authority, and the High Court in exercise of its special and extraordinary jurisdiction under Article 226 of the Constitution of India should not interfere with the punishment imposed on the delinquent, except in rarest of rare cases where punishment awarded is such that it shocks the judicial

conscience or is so perverse that no reasonable person would inflict such punishment on the delinquent.

13. Instant case is not a case of that kind. It is rather otherwise. The petitioners were assigned a very responsible and sensitive duty of guarding the passengers travelling by train but they remained absent, and during their absence from duty, a dacoity was committed in the train wherein passengers were looted and injured by the assailants. If the petitioners had been present on duty, the incident might have been averted. Considering the nature of the charge and the nature of the duties expected from the petitioners who belonged to a disciplined force, it is difficult to conclude that the punishment of removal awarded to them is in any way excessive or disproportionate to the charge. Thus, the contention of the learned counsel of the petitioners in this regard also fails, and is rejected.

14. All told, the petition lacks merit. It is dismissed accordingly.

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