

Ram Bachan Yadav Vs. Commandant, P.A.C. 20th Batallion and ors.

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Court : Allahabad

Decided On : Sep-25-1997

Reported in : (1998)1UPLBEC730

Judge : O.P. Garg, J.

Acts : Army Act; [Constitution of India](#) - Articles 14 and 226

Appeal No. : Civil Misc. Writ Petition No. 7685 of 1994

Appellant : Ram Bachan Yadav

Respondent : Commandant, P.A.C. 20th Batallion and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : R.G. Padia and ;Prakash Padia, Advs.

Disposition : Petition allowed

Judgement :

O.P. Garg, J.

1. The petitioner Ram Bachan Yadav has prayed by means of the present writ petition under Article 226 of the Constitution to quash the order of his dismissal from service, dated 4.6.1986, passed by respondent No. 1, contained in Annexure 26, and the orders dated 10.7.1987 and 17.1.1994, contained in Annexures 28

and 31, respectively dismissing the appeal of the petitioner by respondent No. 4 and claim petition by respondent No. 5.

2. Counter and rejoinder affidavit have been filed. Heard Dr. R.G. Padia learned Counsel for the petitioner and Sri D.P. Singh learned Standing Counsel.

3. The case of the petitioner is that he was appointed as a Constable in the Provincial Armed Constabulary on 27.6.1969. In 1985, while the petitioner was posted in the 20th Battalion of the Provincial Armed Constabulary (for short 'PAC', at Azamgarh. Though the petitioner was working as a Driver, but he was holding the lien in the substantive post of Constable under the provisions of Police Act, 1861. The petitioner was served with a charge-sheet dated 15th November, 1985, containing three charges (i) the petitioner damaged the vehicle No. USS-3486 on 1.9.1985 while going to Punjab, (ii) misused 10 litres of diesel and (iii) misbehaved with Head Constable Ram Asrey Shukla by beating him. Subsequently the suspension order of the petitioner was revoked on 7.2.1986. However, another charge-sheet was served on him on 10.2.86 containing the same charges, as said above. The allegation of the petitioner is that despite repeated requests made by him, he was not supplied the copies of necessary documents and the enquiry officer rejected his prayer for documents by his order dated 11.3.1986, which is contained in Annexure 10 to the writ petition. The statements of the witnesses were recorded without prior intimation to the petitioner and the petitioner was not even allowed to cross-examine the witnesses. As a protest, he did not sign the proceedings. Thereafter, all entreaties of the petitioner for free and impartial enquiry went a begging and without following the basic principle of audi alteram partem, the services of the petitioner were dismissed by the impugned order dated 4.6.1986 by the Commandant-PAC, 20th Bn. Azamgarh-respondent No. 1. The appeal against the aforesaid order, as well as claim petition before the U.P. Public Services Tribunal, Lucknow met the same fate and hence this petition.

4. Though a number of grounds have been taken to challenge the procedure adopted in the conduct of enquiry, in the instant writ petition, and the petitioner has also assailed the order of punishment, Dr. R.G. Padia, learned Counsel for the petitioner frankly conceded that he has nothing to say about the findings of enquiry

officer or with regard to the procedural irregularities, which might have taken place in the present case, but he confined his submissions only to the quantum of punishment. As it is, I have perused the documents relating to enquiry and find that the enquiry was conducted perfectly in accordance with law and it does not suffer from any infirmity. At every stage, the petitioner was afforded sufficient opportunity, in accordance with law, but it was petitioner himself who for one reason or the other, did not co-operate in the enquiry proceedings, perhaps, it is for this reason that Dr. Padia refrained from challenging the validity of the enquiry conducted against the petitioner. Now the only question involved in the present writ petition is whether the punishment awarded to the petitioner is disproportionate to the proved delinquency and misconduct on his part.

5. I was, during the course of arguments, addressed at great length by learned Counsel on both sides on the doctrine of proportionality in the matter of awarding punishment. Having heard learned Counsel for the parties I have no hesitation to come to the conclusion that the punishment of removal from service on three counts, namely, damaging the vehicle No. USS-3486 on 1.9.1985 while going to Punjab, misuse of 10 litres of diesel and misbehaviour with Head Constable Ram Ashrey Shukla is not only too harsh but disquieting in nature as it would be shown presently. The petitioner was a permanent constable and was assigned the duties of driver on the basis of his knowledge and experience in the field. So far as the first charge of damaging the vehicle No. US-3488 on 1.9.1985 is concerned, it has been proved in enquiry that the aforesaid vehicle was given to the petitioner perfectly in running condition but while on way, it went out of order due to the negligence and carelessness on the part of the petitioner. The second charge of misusing 10 litres of diesel too is an example of carelessness and negligence. The third charge of misbehaviour with Head Constable Ram Asrey Shukla is also unbecoming of a Government Servant. All these charges, which are proved, go to show that the petitioner did not perform his duty with devotion, honesty and sincerity; rather he treated the responsibilities and the job assigned to him by his superior officers for mere ride. On the facts and in the circumstances, as bear out from the documents on record, it is crystal clear that the petitioner did not form his duties with due diligence, and faithfulness which is always expected from a Government employee, in general, and a personnel of the Armed Force, in

particular. He has been found to be most negligent and careless. Since he did not want to go to Punjab on the fateful day, he created all the aforesaid troubles resulting in his removal from service. Despite all these delinquencies on the part of the petitioner, the fact remains whether for such a misconduct the petitioner who is a petty employee and perhaps did not realise the consequences of his misdeeds, should be visited with the extreme penalty of removal from service.

6. An unsavoury feature of this case, which stares at out face is that the order of punishment of removal from service not only pricks conscience but rocks and shocks it. If the impugned order of dismissal from service is allowed to stand, it is not only that the petitioner shall be punished but his family members would be worst hit. Their pain, agony and sufferings cannot, but, be imagined.

7. The law is well settled that the penalty imposed must be commensurate with the gravity of misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution. Myriad of orders of punishment have been subjected to judicial review to ascertain whether severe or the extreme penalty was called for in the circumstances of the case or not. In *Ranjit Thakur v. Union of India*, AIR 1987 SC 2386, Hon'ble Supreme Court considered the question of doctrine of proportionality in the matter of awarding punishment under the Army Act and it was observed thus :-

'The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality as part of the concept of judicial review, would ensure that even on an aspect which is otherwise, within the exclusive province of the Court Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review.'

8. *Bhagat Ram v. State of Himachal Pradesh*, (1983)2 SCC 422 and *Ex- Naik Sardar Singh v. Union of India*, AIR 1992 SC 417, are other decisions of the

Supreme Court on the point. A reference may also be made to 1989 (2) SLR 351; Dr. P.N. Varman v. The Punjab Agriculture University, Ludhiana and Ors., and 1989 (5) SLR 569, Dharam Pal v. State of Haryana (P&H;), in which it was found that the penalty imposed was disproportionate to the charges levelled and proved. The extreme penalty of dismissal or removal from service was quashed and the matter was remanded to the disciplinary authority for reconsideration on the point of quantum of punishment. Therefore, it is well-recognised principle of Jurisprudence which permits penalty to be imposed for mis-conduct and the penalty must be commensurate with the gravity of the offence charge. This Court is empowered to interfere with the award of punishment if it is found that looking to the facts and circumstances of the case and the gravity of the proved misconduct, the extreme penalty of removal or dismissal from service was not called for and was disproportionate to the guilty of the employee. In the light of foregoing discussion, I have come to an unexcapable conclusion that the order of dismissal from service of the petitioner is disproportionately heavy or excessive to the proved misconduct of the petitioner.

9. Now the question is whether after setting aside the order of dismissal of the petitioner, should this Court leave the matter of punishment to be determined by the disciplinary authority or it should itself finally pass the order of punishment. In Ramakant Misra v. State of U.P., 1983 UPLBEC 71, the Supreme Court did not feel the necessity of leaving the matter on the disciplinary authority. It set aside the penalty imposed by the disciplinary authority and an order was passed substituting the penalty by withholding of two increments with future effect.

10. The learned Standing Counsel, however, pointed out that if this Court is going to set aside the order of dismissal, the natural consequence flowing from such direction would be that the petitioner will be entitled to full wages during all these years of his remaining out of employment, i.e. from 4.6.1986 till date. According to the learned Standing Counsel, the petitioner is a driver by profession and he must have been engaged somewhere else during all these years for gainful employment. Therefore, it would not be proper to burden the State exchequer by awarding him back wages. On the other hand, Dr. Padia vehemently repelled the submissions made by the learned Standing Counsel, and contended that the

petitioner has been out of employment throughout and has incurred pecuniary liabilities with a view to meet both ends meet and that if the petitioner, who is a petty employee, is deprived of his back wages, he would suffer undue hardship and it would be too difficult for him to tide over the financial crisis and to wipe off the financial obligations which he incurred during the period he remained out of employment.

11. I have given thoughtful consideration to the rival submissions. Neither the submission of Dr. Padia nor that of learned Standing Counsel can be brushed aside. Their arguments are appealing and forceful. True it is that the petitioner is an able-bodied person and a skilled driver. It cannot be accepted that he would have remained without any engagement throughout the period he was out of employment. He must have engaged himself in some casual engagements with a view to earn money to meet his fillial obligations and to maintain his family. But, at the same time, this Court is not unmindful of the fact that the petitioner must have passed his days in chill penury during all these years of remaining out of employment. He is now about 53 years of age. In this age, generally a person is required to discharge his fillial obligations; his daughter(s) may be marriageable, son(s) may be having higher education apart from other financial commitments and liabilities. The petitioner was sacked on 4.6.1986. Legal battle originated in 1986. comes to a logical end in 1997. During all these 11 long years, the petitioner must have incurred considerable expenses towards litigation. The instant writ petition itself remained pending at the admission stage for three long years. Had this petition been decided in 1994 at the admission stage, the petitioner would have been in service for these three years. It is another example of law's delay, the ultimate sufferer of which is not only the poor litigant but also the State, which has to bear the financial burden. At this stage, it would not be out of place to mention that as Judge of this Court, I cannot but view with extreme perturbation the prospect of a high degree of congestion in the cause lists of this Court, and the pilling up of arrears which will, in my calculation, engage all the available Judges for several decades to come. I can only trust that steps will be taken to consolidate such actions wherever possible. Particularly, those cases involving dismissal from service. Should be given top priority and endeavor should be made to ensure that such cases should not go out of list for long. The petitioner Ram Bachan Yadav,

should thank his stars that he is fortunate enough to get positive result in 11 years of legal battle. On the other hand, during all these eleven years, the Department has been deprived of the services of the petitioner and in his place, some other arrangement must have been made at the cost of State exchequer. Thus, the burden on State exchequer is another important aspect in the present case, which cannot be ignored.

12. In view of foregoing discussions, I am of the considered opinion that emphatic denunciation of misconduct of the petitioner, who is a low-paid employee, shall be amply reflected it instead of removing him from service, his five increments with future effect are stopped and from the date of his dismissal from service till the date of reinstatement, he be treated under suspension and be held entitled only to the extent of subsistence allowance, subject to maximum of 50 per cent of basic salary plus allowances. This punishment would meet the ends of justice.

13. In the result, the writ petition succeeds and is allowed. The impugned order dated 4.6.1986, contained in Annexure 26 to the writ petition, passed by respondent No. 1, removing/dismissing the petitioner from service is hereby quashed. By way of punishment, five increments of the petitioner, with future effect, shall be withheld and from 4.6.1986 till the date of reinstatement, the petitioner shall be paid the subsistence allowance subject to maximum of 50 per cent of basic salary plus allowances. The petitioner is reinstated in service from to day.