

**Khuman Singh Vs. State of Rajasthan and ors.**

**Khuman Singh Vs. State of Rajasthan and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/763056](http://sooperkanoon.com/763056)

**Court :** Rajasthan

**Decided On :** Jul-29-1997

**Reported in :** 1997(3)WLC258; 1997(2)WLN153

**Judge :** B.S. Chauhan, J.

**Appeal No. :** S.B. Civil Writ Petition No. 4768 of 1991

**Appellant :** Khuman Singh

**Respondent :** State of Rajasthan and ors.

**Advocate for Def. :** Shri. Rajendra Vyas

**Advocate for Pet/Ap. :** Shri. R.S. Saluja

**Disposition :** Petition dismissed

**Judgement :**

**B.S. Chauhan, J.**

1. In the Instant writ petition, the petitioner has challenged the order dated 13.6.89 contained in Annexure 4 to this writ petition by which he had been removed from service by the respondent No. 2 and order dated 10.1.1990 contained in Annexure 7 to this writ petition by which his appeal has been dismissed by the respondent No. 3.

2. The facts as revealed by the record of the case are that petitioner who was employed as a constable in Rajasthan Police was given a show cause notice on 23rd Jan, 1989 contained in Annexure 1 to the writ petition under Rule 7 of the Rajasthan Police Rules, 1961 and under Rule 6 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (hereinafter called the Rules, 1958), Reply to the show cause notice by the petitioner dated 23.9.1989 which is contained in Annexure 2 to the writ petition, was not found satisfactory and thus he was issued memo of charges dated 13.6.1989 contained in Annexure 4 to the writ petition, wherein the petitioner was charged that earlier the petitioner remained absent for 478 days without leave on 19 occasions and in all the said 19 occasions, the petitioner had been granted Extra Ordinary Leave i.e. Leave without pay. And secondly, when petitioner was posted at Police Station Sallopat on 9.11.1988 according to the Rojnamcha of the Police Station, he proceeded to search an accused namely Manmakshu but he remained absent from duty for 73 days and came back on 19.1.1989. Petitioner was asked to file the reply to the said memo of charges. In reply, the petitioner straight away made the confession that he remained absent on earlier 19 occasions as well as for the period of 73 days on 20th time and for the same he furnished justification that his mother was seriously ill and he proceeded to look after her. In the meanwhile, she died on 25th Dec, 1988 and after completing the rituals, he came back and joined the post. The said explanation dated 18th March, 1989 is contained in Ex.P-1 to the counter affidavit. In the another letter contained in Ex.P-2, the petitioner has made the confession of his absence for a period of 73 days. He had further stated that he was mentally upset and for that reason he could not communicate to any higher official and in the meanwhile his mother died on 25th Dec. 1988. He has further written as under:

My mistake is that I could not communicate to any higher official even by writing a letter and remained absent to look after my ailing mother and to do the rituals after her death. In future, I will not repeat. I beg for pardon and for the same I shall be obliged to you.

3. In pursuance of this, the Enquiry Officer held the inquiry, wherein the petitioner was given an opportunity to defend himself and after holding the enquiry, the

report was submitted to the respondent No. 2. authority. The Disciplinary Authority after considering the enquiry report came to the conclusion that the petitioner was habitual in absenting himself and for the last incident i.e. 2nd charge, he came to the conclusion that petitioner was habitual to remain absent from duty for a unreasonable long period and he was not fit to be retained in disciplinary force and his conduct had been contrary to the police service rules and for the reasons recorded above the petitioner was removed from service vide order dated 13.6.1989. However, his 73 days absence was regularised by granting E.O.L.

4. Being aggrieved and dis-satisfied, the petitioner preferred appeal before the respondent No. 3 under the provisions of Rule 16 of Rules 1958. The memo of appeal is contained in Annexure 6 to the petition and the respondent No. 3 dismissed the said appeal vide order dated 10.1.90 contained in Annexure 7 to the petition.

5. Being aggrieved and dis-satisfied the instant writ petition has been filed challenging the said two orders dated 13.6.89 and 10.1.90. The respondents have filed the counter affidavit wherein a specific plea has been taken that the petitioner is guilty of suppressing the material facts before this Court as the petitioner has preferred a Review before the respondent No. 1 which was disposed of by a speaking and reasoned order by the respondent No. 1 vide judgment and order dated 13.2.91 which is contained in Ex.P-3 and the respondents further submitted that the petition should be dismissed only on the ground of suppressing the material facts. It has further been averred in the counter affidavit that as the said two impugned orders dated 13.6.89 and 10.1.90 have finally merged into the order of the respondent No. 1 dated 19.2.91 and the said final order contained in Ex.P-3 has not been challenged before this Court the instant petition is not maintainable.

6. Heard Shri R.S. Saluja learned Counsel for the petitioner and Shri Rajendra Vyas learned Counsel for the respondents.

7. Shri Saluja has submitted that the petitioner had not been supplied the copy of the enquiry report which vitiate the impugned orders. The issue of non-supply of copy of the enquiry report has been considered by the Hon'ble Apex Court in various judgments particularly in Union of India and Ors. v. Mohd. Ramjan Khan :

(1991)ILLJ29SC ; S.P. Vishuanathan v. Union of India and Ors. 1991 Suppl. (2) SCC 269; Managing Director ECIL Hyderabad and Ors. v. B. Karunakaran and Ors. : (1994)ILLJ162SC ; Managing Director ECIL Hyderabad v. B. Karunakaran 1994 Suppl. (2) SCC 391; State of U.P. and Anr. v. Abhai Kumar Masta 1995(1) SCC 366; B.C. Chaturvedi v. Union of India and Ors. 1995 (8) JT 65 and in S.K. Singh v. Central Bank of India 1996(9) JT 542. The law on this issue is well settled that unless the delinquent employee shows how the non-supply of the enquiry report has adversely affected his cause, the order impugned does not vitiate. In the instant case, Shri Saluja has submitted that as petitioner was not supplied the copy of enquiry report, he could not prefer the memo of appeal effectively. The contention' raised by Shri Saluja is preposterous as in the instant case the petitioner himself has made a confession, begged for pardon and assured the respondents that he would not repeat it in future while making the reply to the show cause notice, I fail to understand what was the defence which remained available to the petitioner on this count. Moreover, I had carefully gone through the memo of appeal filed before the respondent No. 3, the petitioner has not taken this ground before the appellate authority. Not taking this ground at the appellate stage is also fatal to the petitioner. Had the issue been raised in the memo of appeal, the appellate authority could have examined whether it was supplied or not and even if it had not been supplied whether this had caused any prejudice to the petitioner. It is settled law that petitioner cannot take a new plea which requires investigation of facts first time in the writ Court.

8. In Ratanlal Sharma v. Managing Committee : (1993)ILLJ549SC , the Apex Court has observed as under':

A point not raised before the Tribunal or Administrative authority may not be allowed to be raised for the first time in writ jurisdiction, more so when the interference in the writ jurisdiction which is equitable and discretionary is not of course a must.

9. The same view has been taken by the Apex Court in the cases of St. Arunachalam Pillai v. Southern Roadways Ltd. and Anr. : [1960]3SCR764 ; A.M. Allison v. State of Assam : (1957)ILLJ472SC ; Cantonment Board Ambala v.

Pyarelal : 1966 CriLJ93 ; State of U.P. v. Dr. Anupam Gupta : [1992]1SCR643 ; Bhanwar Lal v. T.K.A. Abdul Karim : AIR 1992 SC2166 and Rajeshwari Amma v. Joseph AIR SC 719. Whether the enquiry report was given or not is immaterial as he failed to satisfy the Court that non-supply of the inquiry report has caused the prejudice to him.

10. The petitioner purported to have filed this petition against the order of removal and the order of first appellate authority without exhausting the statutory remedy. It is settled law that this Court can exercise its power under Article 226 of the Constitution entertaining a petition directly but as it is desirable that the statutory authority must apply mind and, therefore, statutory remedy should ordinarily and generally be exhausted before approaching the writ Court. (Vide Constitution Bench judgment of the Supreme Court in G. Virappa Pillai v. Raman & Raman Ltd. : [1952]1SCR583 ; H.B. Gandhi v. Gopinath 1992 Suppl. (2) SCC 31). The petitioner has infact filed the review application against the order of the appellate authority but has suppressed this material fact from the Court. The petitioner has not approached this Court with clean hands. The Hon'ble Supreme Court has consistently held that when a person approaches the Court of equity he should approach not only with clean hands but with clean mind, clean heart and with clean objectives and for this the reference may be made to the cases of the Ramjas Foundation and Ors. v. Union of India and Ors. : AIR 1993 SC852 ; G. Narain Swami Reddy v. Gout. of Karnataka and Ors. : [1991]2SCR563 and K.R. Srinivas v. R.M. Premchand and Ors., : (1994)6SCC620 . Thus the petitioner is guilty of suppressing the material facts from this Court. Nor he has challenged the last/final order passed by the respondent No. 1.

11. Shri Saluja has submitted that the impugned orders are not speaking orders and the respondents have not recorded the reasons for removing the petitioner from service. There can be no dispute regarding the preposition of law that even on the administrative side, the authorities are bound to pass the speaking and reasoned order.

12. In Shrilekha Vidyarthi v. State of U.P. and Ors. : AIR 1991 SC537 , the Apex Court has observed as under:

Every State action must be informed by reason and it follows that an act uninformed by reason is arbitrary. Rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that be you ever so high, the laws are above you.' This is what men in power must remember, always.

13. In *Life Insurance Corporation of India v. Consumer Education and Research Centre* 1995 (5) SCC 480, the Apex Court observed that the State or its instrumentality must not take any irrelevant or irrational factor into the consideration or appear arbitrary in its decision. 'Duty to act fairly is part of fair procedure envisaged under Articles 14 and 21. Every activity of the public authority or those under Public duty, obligation must be informed by reason and guided by the public interest.'

14. Same view has been taken by the Supreme Court in *Mahesh Chandra v. Regional Manager, U.P. Financial Corporation and Ors.* 1992(2) JT 327 and *Union of India v. M.L. Kapoor* : (1973) IILLJ504SC .

15. In *State of West Bengal v. Atul Krishna Shaw* 1991 Suppl. (1) SCC 414, the Supreme Court observed as under:

If the findings are based on no evidence or based on conjecture or surmise as no reasonable man would, on given facts and circumstances come to the conclusion reached by the ... authority on the basis of the evidence on record, certainly this Court would oversee whether the finding recorded by the...authority is based on no evidence or beset with surmise or conjecture. Giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review. Reasoned decision is not only for the purpose of showing that the citizen is receiving justice but also a valid discipline for the Tribunal itself. Therefore, statement of reason is one of the essentials of justice.

(emphasis added)

16. In *S.N. Mukherji v. Union of India* : 1990 CriLJ2148a it has been held that the object under-lying the rules of natural justice is to prevent mis-carriage of justice and secure fair play in action. The expanding horizon of the principles of natural justice provides for requirement to record reasons as it is now regarded as one of the principle of natural justice, and it was held in the above case that except in cases where the requirement to record reasons is expressly or by necessary implication dispended with, the authority must record reasons for its decision.

17. In *Krishna Swamy v. Union of India* : AIR 1993 SC1407 , the Apex Court observed that the rule of law requires that any action or decision of a statutory or public authority must be founded on the reason stated in the order or borne out from the record. The Court further observed as under:

Reasons are the links between the material, the foundation for these erection and the actual conclusions. They would also demonstrate how the mind of the maker, was activated and actuated and there rational nexus and syntheses with the facts considered and the conclusion reached. Lest it may not be arbitrary,. unfair and unjust, violate Article 14 or unfair procedure offending Article 21.

18. In *Mohinder Singh Gill v. Chief Election Commissioner* : [1978]2SCR272 , it has been held that every administrative or quasi-judicial order for invalidating the action taken should be based on reasons or grounds and there grounds or reasons must be contained in the order itself. The authority subsequently cannot be permitted to explain its action by way of affidavit or otherwise.

19. In the instant case, the competent/disciplinary authority i.e. respondent No. 2 has passed a speaking and reasoned order. He has also considered the entire aspect of the case and whatever has been dealt with by the respondent No. 2 is sufficient to him the requirement of law particularly in a case where the delinquent employee himself has made the confession of his guilt. Thus the only question left to be determined regarding the quantum of punishment which will be dealt with hereinafter.

20. The appellate authority i.e. respondent No. 3 has also disposed of the appeal by a speaking and reasoned order and it clearly shows that the appellate authority

has applied its mind wholly before passing the impugned order. The order passed in review which is a final order is also a speaking and reasoned order wherein reasons have been recorded to explain that the punishment awarded to the petitioner is proportionate to the delinquency committed by him. Thus there is no force in the submission of Shri Saluja that the respondents authorities have not passed the speaking and reasoned order.

21. Shri Saluja further submitted that Rule 16(10) provides in recording the reason as why a disciplinary authority chooses to impose the punishment as provided under Rule 14(iv) to (vii) which provide for major penalties and include reduction to a lower rank or a scale, compulsory retirement; removal and dismissal from service. In the instant case as the disciplinary authority has considered all the aspects of the case and taken into account the conduct of the petitioner wherein respondents had compounded the offences committed by the petitioner 19 times and this fact had been brought to the notice of the petitioner, he admitted the contents and gravity of the charges. It cannot be said that the respondent No. 2 has not recorded the reason as why he had chosen the punishment of removal. Shri Saluja has further contended that the punishment awarded to the petitioner is too severe. It is settled law that punishment should be proportionate to the gravity of the mis-conduct of the employee. If it is disproportionate, then the punishment order would become arbitrary and would be violative of the mandatory provisions enshrined in Article 14 of the Constitution of India, (vide Union of India and Ors. v. Giriraj Sharma 1994 Suppl. (3) SCC 755; S.K. Giri v. Home Secretary, Ministry of Home Affairs and Ors. 1995 Suppl. (3) SCC 519; Bhagat Ram v. State of Himachal Pradesh 1993 (2) SCC 442 and State of U.P. and Ors. v. Ashok Kumar : AIR 1996 SC736 ).

22. There is another aspect of the matter also. This Court does not function as a Court of appeal over the findings of the disciplinary authority and it is not permissible for the Court to examine whether the punishment awarded is proportionate to the misconduct or not as per the law laid down by the Supreme Court in Union of India v. Parmanand, : (1989)ILLJ57SC . In State of U.P. and Ors. v. Nand Kishore Shukla and Anr. 1996(3) JT 551, the Supreme Court has observed as under:

It is settled law that the Court is not a Court of appeal to go into the question of imposition of punishment. It is for the disciplinary authority to consider what would be the nature of punishment to be imposed on a Government servant based upon a proved misconduct against Government servant. Its proportionality also cannot be gone into by the Court. The only question is whether the disciplinary authority would have passed such an order. It is settled law that even one of the charges, if held proved and sufficient for imposition of penalty by the disciplinary authority or by the appellate authority, the Court would be loath to interfere with that part of the order.

(emphasis added)

23. Similarly, in *Rat Bareilly Kshetriya Gramin Bank v. Bholanath Singh and Ors.* 1997 (3) JT 717, the Apex Court has observed that the writ Court has a limited power of judicial review to the departmental proceedings as not being an appellate authority, it is not permissible under the law to appreciate the evidence. It can only review to correct errors of law of fundamental procedural requirement, which lead to manifest injustice or can interfere with the impugned order if the same has been passed in violation of the principle of natural justice. In the instant case the respondents have complied with the requirement of law and the punishment awarded is not disproportionate to the gravity of misconduct committed by the petitioner.

24. Shri Saluja further placed reliance upon a Circular issued by the Inspector General of Police, Rajasthan dated 20th February, 1982 contained in Annexure 8 to the writ petition, which provides that if the un-authorised absence of an employee had been regularised by granting him Extra Ordinary Leave, it cannot be a ground for initiating the disciplinary proceedings. In support of his contention, Shri Saluja referred to and relied upon the judgment of this Court in *Datar Singh v. State of Rajasthan* 1990(1)WLN 338 wherein this Court has held that the granting of leave of whatever nature it may be, tantamounts to considering the absence as justified or at any rate, the condonation and regularisation of the absence. After such regularisation and condonation, no disciplinary action lies. To arrive such a conclusion this Court considered the nature and degree of effectiveness of the

said circular and took the view that such circular was binding on all the officers of the police department and while holding so, this Court placed reliance upon the judgment of the Hon'ble Supreme Court in *Navneet Lal v. Income Tax Appellate Commissioner* : [1965]56ITR198(SC) .

25. In the instant case charge No. 1 was consisting of earlier incidents of 19 abstentions and the same were mentioned not to initiate the disciplinary proceedings on that basis. This was the second charge on which the respondents initiated the disciplinary proceedings but it was necessary to make the reference to the earlier incidents as it was found necessary to refer, to the said incidents just to determine whether the petitioner was habitual absenting himself without leave. Had this fact not been brought in the memo of charges, the order passed in the disciplinary proceedings initiated on the second charge alone could not have been appropriate as the second charge alone could not have been sufficient to determine whether petitioner was habitually absenting himself from duty without leave and in that case the judgment of this Court in *Phoolchand v. State of Rajasthan and Ors.* 1980 WLN(UC) 311 wherein this Court after placing reliance on the judgment of the Hon'ble Supreme Court in *State of Mysore v. Mancha Ghoda* : [1964]4SCR540 came to the conclusion that if the earlier conduct of an employee has been considered in the disciplinary proceedings without disclosing it to the delinquent employee, the impugned order would vitiate for want of compliance of the principles of natural justice. It was necessary to go to the root of the cause and decide the controversy involved in the case. Thus in view of the above, this contention is also not tenable.

26. The instant case presents some special features, which required to be highlighted even at the cost of repetitions and the same are as follows:

(a) Petitioner did not dispute that he remained absent on 19 occasions without leave for a total period of 478 days.

(b) Petitioner made confession that he remained absent for 73 days on the last occasion and in his defence he simply begged for the pardon and assured that he would not do it in future.

(c) Petitioner did not take the ground of non-supply of inquiry report in the Memo of Appeal.

(d) Petitioner could not explain how the non-supply of the inquiry report has caused any prejudice to him, particularly when he has made a confession and he further failed to explain how he could not make effective memo of appeal.

(e) Petitioner tried to improve his case stagewise and particularly before this Court.

(f) Petitioner suppressed the material fact of filing the Review before respondent No. 1 and could not furnish any explanation for doing so, when the order passed by the respondent No. 1 was brought to the notice of this Court by filing the same alongwith the counter affidavit and he has been guilty of suppressing the material facts from this Court and he did not approach this Court with clean hands.

(g) The two impugned orders merged in the final order passed by the respondent No. 1 which has not been challenged by the petitioner.

(h) Petitioner left the police station without leave and his mother died after 48 days. He has not explained the reasons even to remain absent for 25 days even after the date of her death.

27. On the other hand, the respondents have considered the case of the petitioner strictly in accordance with law and complied-with the mandatory requirement particularly the procedural fairness while holding disciplinary proceedings against the petitioner. All the authorities under the statute have passed the speaking and reasoned orders for not accepting the case of the petitioner and for awarding the punishment of removal. On the facts and circumstances of the case and looking to the gravity of charges, the punishment of removal is not dis-proportionate to the delinquency committed by the petitioner if the case is tested on touchstone of reasonableness. Thus, there is no illegality or infirmity with the impugned orders and no sympathetic view can be taken in favour of the petitioner for the reasons recorded above.

28. In view of the above, the petition is devoid of any merit and hence dismissed accordingly, However, there shall be no order as to costs.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**