Devi Singh Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Mar-12-2008

Reported in : [2008(118)FLR985]; RLW2008(3)Raj2023

Judge : Narayan Roy, C.J. and; Mohammad Rafiq, J.

Appellant : Devi Singh

Respondent : State of Rajasthan and ors.

Advocate for Pet/Ap. : Shri. G.C. Gupta

Disposition : Appeal allowed

Judgement :

Mohammad Rafiq, J.

1. This appeal is directed against the judgment dated 13.10.2006 passed by the learned Single Judge whereby the writ petition filed by the appellant against the order of his compulsory retirement by way of penalty, has been dismissed.

2. Appellant was serving with the, respondents as a Constable having been appointed as such on 18.6.1976. While posted at Police Station, Dholpur, he was entrusted the duty of sentry at that Police Station on 9.5.1986 from 12 noon to 3 p.m. and thereafter again from 12 in the midnight to 3 a.m. The duty Officer, Shri Sita Ram, Assistant Sub-Inspector of Police made sudden inspection at about 1.20

p.m. on 9.5.1986 and found the appellant missing from his duty. He made ah entry to this effect in the police rojnamcha at S. No. 392. It is alleged that the appellant returned back to the Police Station at about 4.30 a.m. A chargesheet was served on the appellant on 1.8.1987 under Rule 16 of the Rajasthan Civil Services (CCA.) Rules, 1958 on account of his absence from duty. While the first charge against the petitioner was that he was found absent from the sentry duty from 12 in the mid night to 3 a.m. on 9.5.1986 and second that the rifle entrusted to him for sentry duty was found in damaged condition and that out of 10 cartridges, one was found missing and third charge was to the effect that he misused the rifle and one cartridge. The petitioner in his reply to the charge-sheet, explained that he had been having stomach disorder and dysentery for last three days and that at the relevant time he had gone to his quarter situated in the premises of the Police Station itself to answer the call of the nature. When he came back, the duty officer Sitaram (ASI) asked him about the reason of his absence. Though the appellant explained, but he became angry and made the entry in the rojnamcha and other proceedings were drawn and papers were prepared in his presence. He explained that when he had gone to answer the call of the nature, one of the cartridges slipped out of his pocket. Though in the night, it could not be traced but following morning, it was found and deposited. He denied that the rifle was ever used for firing and asserted that all the cartridges were found intact. There was thus no question of rifle being used in firing. His defense was that this very rifle was used in an encounter with the dacoits and was damaged at that time. The rifle which was given to the appellant during sentry duty was different, but because the Assistant Sub- Inspector of Police wanted to frame the appellant, this rifle was shown to have been entrusted to him. When the appellant was entrusted the duty of sentry, no entry of butt number of the rifle was made in the rojnamcha. This manipulation was made by the ASI when next man was put oh sentry duty.

3. The Enquiry Officer found all the three charges proved against the appellant and submitted his report to the disciplinary authority (Superintendent of Police, Bharatpur). The disciplinary authority vide his order dated 15.10.1987 while concurring with the finding of the Enquiry Officer awarded the penalty of removal from service to the appellant. He filed appeal there against before the Deputy Inspector General of Police, Dholpur Range, Dholpur. The appellate authority vide

his order dated 11.3.1988 found charge No. 1 proved, but charge No. 2 and 3 only partly proved. While, therefore, partly allowing the appeal, he modified the order of penalty and Instead of removal, diricted for compulsory retirement of the appellant by way of penalty on proportionate pension, The appellant filed review petition against the aforesaid two orders before the Governor of State of Rajasthan. The review petition, however, was dismissed by order dated 30.4.1992. It was thereafter that the writ petition filed by the appellant against the aforesaid three orders was dismissed by the learned Single Judge vide impugned order dated 13.10.2006. Hence this special appeal.

4. We have heard Shri G.C. Gupta, the learned Counsel for the appellant and Shri Harshvardhan Nandwana, learned Government Counsel for the respondents.

5. Shri G.C. Gupta, learned Counsel for the appellant although initially made submissions on other aspects of the matter too, but finally confined his arguments only to the correctness of findings recorded by the appellate authority holding charges No. 2 and 3 partly proved and on the question of quantum of punishment. We would also therefore, confine ourselves to examining the matter on the question of validity of conclusions arrived at by the appellate authority on charge No. 2 and 3 and the proportionality of punishment.

6. Shri G.C. Gupta, learned Counsel for the appellant has argued that the only charge, which has been found proved against the appellant is that while on sentry duty, he absented from his duties about 1.30 p.m. with a rifle and cartridges. It was submitted that the appellant was having stomach disorder and because of that, dysentery. He had merely gone to his quarter situated in the premises of the police station to answer the call of the nature. He carried the gun and cartridges with himself and one of the cartridges was accidentally dropped by him near his quarter which was traced and deposited back with the respondents on the following day. The rifle and all the cartridges were found intact. It was argued that this very rifle was used in an encounter with the dacoits. Learned counsel invited attention of the Court towards copy of rojnamcha report No. 1389 dated 29.4.1986 so as to show that the rifle with butt No. 161 and body No. V 013803 was used the police in the encounter. It was argued that the charge No. 1 was also framed with reference to

the very same rifle with butt No. 161. There was however no proof of the fact that this rifle was ever misused by the appellant and also no cartridge was found to have been fired from the rifle. Learned counsel also argued that in fact the appellate authority upheld the argument of the appellant that the rifle was never sent for examination by ballistic expert to substantiate that it was ever used. The appellate authority also held that if at all the rifle would have fired; the neighbours would have heard its sound because the fire sound of 303 gun or mark 4 gun can be heard from a distant place. The appellate authority also did not found that any cartridge was misused. Learned counsel therefore argued that though in the rojnamcha entry both, the absence of the petitioner from sentry duty from 1.30 a.m. and then his return back to police station at 4.30 p.m. were made. But in fact, the appellant returned to duty within half hour of his leaving and a false case was made out against him at the instance of the duty officer with whom the appellant had some altercation at the time of incident. Learned counsel therefore argued that even though butt number of rifle was not entered when the petitioner was put on sentry duty, but subsequently when another sentry was posted in his place, a false entry to this effect was made in the rojnamcha. Absence of the appellant was only for half an hour. Even If that is counted for duty hours, it would not be for more than one and half hours i.e. from 1.30 am to 3 a.m., till which time the appellant was to discharge the duty of sentry. In view of Charge of such minor nature, punishment of compulsory retirement from service is too harsh to be justified. Learned counsel therefore prayed that keeping in view the triviality of the only charge proved, humanitarian approach be taken and the penalty of compulsory retirement be sent aside and any other minor penalty in its place may be awarded.

7. Per contra, Shri Harshvardhan Nandwana, learned Government Counsel for the respondents opposed the writ petition and argued that it is not a mere case of absence from sentry duty, but what is found proved is that the appellant absented from his duty with the rifle and the cartridges, one of which was found missing. Learned Government Counsel argued that the appellant could not have absented from his duties without permission from the duty officer. Explanation offered by the appellant for his absence from duties cannot be accepted because police force is a disciplined force and a sentry discharges important duty of guarding the police

station. Contention of the appellant that only one charge has been proved is not correct because the appellate authority has found charges No. 2 and 3 also partly proved. Discussion made by the appellate authority as to non- sending of the rifle for examination of ballistic expert cannot be read out of context. Learned Government Counsel argued that the settled proposition of law is that this Court cannot interfere with the quantum of punishment, unless it is shown that there was some lacuna in the disciplinary proceedings. He further argued that the appellant authority has already taken a lenient view of the matter by reducing me penalty of removal to that of compulsory retirement, on account of which the appellant would now be entitled to receive pension. It was argued that there was no case for interference. This, appeal be therefore dismissed.

8. We have given our anxious consideration to the rival submissions and perused the material on record. -

9. Substance of the charge No. 1 which has been found proved against the appellant is that while he was deputed to act as a sentry at the Police Station, Kotwali, Dholpur from 12 in the midnight to 3 p.m., he absented from his duties at about 1.30 a.m. with the rifle and cartridges. Charge No. 2 is to the effect that the rifle having butt No. 161, which was entrusted to the appellant, was found damaged because the appellant had used it by opening fire. Charge No. 3 is to the effect that appellant misused the rifle and cartridges which was amounted to dereliction of duty and indiscipline on his part. While charge No. 3 is a complete extension of charge No. 1, charge No. 2 is also in part reiteration of what is alleged in charge No. 1 except the allegation of damage to the rifle and its misuse by opening fire. Though disciplinary authority has concurred with the view of the enquiry officer, but the appellate authority has categorically recorded a finding that later charges against the appellant are not fully proved because rifle was never sent for examination by a ballistic expert and without which, it cannot be taken to have been proved that the same was used for firing. The appellate authority observed that if at all the rifle had been fired, its sound could have been heard even from a distant place and nothing of this sort was proved. When we analyze findings on these charges, we find that charge of the alleged misuse of rifle is founded on the further allegation of causing fire and when the fire has not been

held to have been proved, misuse of the rifle also cannot be taken to have been proved. Consequently, it cannot be accepted that the rifle was damaged because of its being used for firing, When firing is not proved, its damage due to alleged firing also cannot be proved. This probablises the version of the appellant, when he asserts that this very rifle with butt No. 161 was used in firing during encounter with the dacoits on 29.4.1986. Alleged misuse of one cartridge was also not proved because the tenth and the last cartridge was recovered on the following day and was deposited back. The charge No. 3, which is to the effect that rifle and the cartridges were misused and this showed dereliction of duty and indiscipline on the part of the appellant, also therefore, falls fiat on the ground. When in a disciplinary enquiry certain charges are levelled against the delinquent employee, it is for the department to prove those charges, the delinquent cannot be expected to disprove them. As rightly held by the appellate authority that the core of the charge that the rifle was misused by causing fire therefrom has not been proved, how possibly charge No. 2 and charge No. 3 can be taken to have been proved in part is not understandable. Though this Court under Article 226 of the Constitution while examining validity of an order of penalty passed in a disciplinary proceeding cannot re-appreciate the evidence but in the face of apparent contradiction in the conclusions arrived at by the appellate authority on charge No. 2 and 3 which in our view no reasonable person of ordinary prudence could on available material reach, we are persuaded to uphold only that part of such findings which can be sustained on evidence available on record. We are therefore not inclined to uphold that part of the findings of the appellate authority that those charges were partly proved though at the same time we concur with the view taken by him with regard to failure of the department to prove misuse of the rifle and the cartridges.

10. Coming now to the question of proportionality of the punishment, we find that the only charge that has been found proved against the appellant is that he absented from his duties from 1.30 p.m. to 3 p.m. on 9.5.1986. Upon taking an overall conspectus of the matter, we find that the gravity of this charge is not so grave as would justify removal or even compulsory retirement by way of penalty of the appellant. In view of the explanation offered by the appellant for his absence, the disciplinary authority ought to have commended itself into taking a more rational and reasonable approach. Granted the fact that police is a disciplinary

force and its members are expected to display the highest degree of discipline on duty, the fact that Constable being the lowest employees in the hierarchy of the police department, the appellant could not be taken to have become liability for the department just because he absented from his duties for one and a half hours. We have not gone into correctness of the version that the appellant returned back in half an hour and that he had certain altercation with the duty officer and further that he was for this reason framed, but at the same time, we also cannot loose sight of the fact that removal/compulsory retirement of a police Constable for absence from duty only for one and a half hours is something which shocks our conscious. This penalty to our mind, is shockingly disproportionate to the gravity of the charges found proved against the appellant. Since the law which is settled on the subject is that this Court while interfering with the quantum of the penalty on the ground of its disproportionately to the proved misconduct, can substitute such penalty only in very exceptional and rare cases, we therefore while setting aside the order of penalty, deem it appropriate to remit the matter back to the disciplinary authority for reconsidering the matter on the question of penalty to be now awarded to the appellant.

11. In the result, this special appeal is allowed. The impugned order dated 15.10.1987 passed by the Superintendent of Police, Dholpur, the order dated 11.3.1988 passed by the appellate authority and the order dated 30.4.1992 passed by the reviewing authority are set aside and the appellant is held entitled to reinstatement in service with all consequential benefits with liberty to the disciplinary authority to pass a fresh order of penalty in accordance with law.

In the facts of the case, we leave the parties to bear their own costs.