

**State of Rajasthan and ors. Vs. Ramesh Chandra Soni**

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**Court :** Rajasthan

**Decided On :** Jul-03-2003

**Reported in :** RLW2004(2)Raj867; 2003(4)WLC486

**Judge :** S.K. Keshote and; K.S. Rathore, JJ.

**Acts :** Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 - Rule 16; [Constitution of India](#) - Article 226

**Appeal No. :** D.B. Special Appeal (Writ) No. 101 of 2003

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

**Respondent :** Ramesh Chandra Soni

**Advocate for Def. :** Rajendra Soni, Adv.

**Advocate for Pet/Ap. :** Virendra Lodha, Adv.

**Judgement :**

**S.K. Keshote, J.**

1. This special appeal under Section 18 of the Rajasthan High Court Ordinance, 1949 is directed by the appellants against the judgment dated 9th December, 2002 of the learned Single Judge in S.B. Civil Writ Petition No. 3955/1999. Under that judgment the learned Single Judge partly allowed the writ petition filed by the

petitioner respondent in the matter of the disciplinary proceedings.

2. The petitioner respondent in the writ petition prayed for following prayers,

'It is, therefore, most respectfully prayed that your Lordships may be pleased to allow this writ petition and may further be pleaded:-

(i) to quash the impugned orders dated 13.01.1999 and - 05. 1999 (Annexures & respectively) with all consequential benefits in favour of the petitioner;

(ii) to issue a writ of mandamus commanding the respondents to reinstate the petitioner in service and to allow and pay him all consequential service benefits to the petitioner forthwith;

(iii) to issue any other writ/order direction or declaration which this Hon'ble Court deems just fit and proper in the facts and circumstances of the case in favour of the petitioner;

(iv) to allow the cost of this writ petition.'

3. Reply to the writ petition filed by the appellants denying the averments made in the writ petition. It has further been pleaded that on the basis of the charge sheet served upon the petitioner respondent by the appellants purported to have been issued under Rule 16 of the Rajasthan Civil Services (Classification, Control & Appeals) Rules, 1958 (hereinafter shall be referred to as 'the Rules, 1958'), a departmental enquiry was held and after affording full opportunity of defence and hearing to the delinquent employee, the respondent herein, the enquiry officer submitted his report to the disciplinary authority and the disciplinary authority after taking into consideration the entire record of the enquiry officer, gave a show cause notice to the respondent and the enquiry report was enclosed thereto. Thereafter penalty of removal of service has been imposed upon the petitioner respondent. The petitioner respondent filed a departmental appeal in the matter but therein he remained unsuccessful. Before the learned Single Judge the learned counsel who appeared for the petitioner respondent, advanced only contention that extreme penalty of removal looking to the nature of the charge is highly disproportionate and it deserves to be modified. In support of his contention,

reliance has been placed by the learned counsel on the decision of this Court in R.S.R.T.C. v. Shri Ram Yadav (1).

4. The learned counsel for the appellant supported the orders passed by the disciplinary and the appellate authority. On behalf of the appellants the counsel has placed reliance on the following decision,

1. D.R. Arme Institution v. Educational Appellate Tribunal (2);

2. State of U.P. v. Nand Kishore (3);

3. State of Rajasthan v. Sujata Mehta (4);

4. U.O.I. v. Narain Singh (5);

5. Regional Manager v. S. Mohammed Gaffar (6);

6. State of U.P. v. Ashok Kumar Singh (7);

7. AEP Council v. A.K. Chaupra (8).

5. Shri Virendra Lodha, the learned counsel for the appellants, assailing the judgment of the learned single Judge, contended that it is settled proposition of law in service jurisprudence that in the matter of quantum of punishment this court under Article 226 of the [Constitution of India](#) may not interfere. In his submission it is exclusively within the domain of the disciplinary and the appellate authority to decide on proved misconduct what penalty has to be inflicted upon the delinquent employee/officer. This court sitting under Article 226 of the [Constitution of India](#) in the matter of quantum of the punishment cannot substitute its own punishment. In the case where the court sitting under Article 226 of the [Constitution of India](#) finds that the penalty inflicted upon the delinquent officer/employee by the disciplinary or the appellate authority shocking to its conscience in that case also it is not open to substitute its own penalty. The matter may be remanded to the disciplinary or appellate authority to consider on the question of quantum of punishment and pass the appropriate order. In his submission it is not the case where the penalty of removal imposed upon the petitioner respondent in the facts of this case can be said to be shockingly to the conscience of the court. The petitioner respondent

was the constable in the Police Department where much more standard of discipline is necessary. He remained absent wilfully for a long period and thus penalty of removal inflicted upon him on proof of the misconduct, is not shockingly disproportionate to the guilt for which he was charged. In support of his contention Shri Virendra Lodha has placed for our consideration those very authorities which were cited on behalf of the appellants before the learned Single Judge.

6. Lastly it is contended that the learned Single Judge has taken a very lenient view in the matter of imposition of penalty upon the delinquent employee/officer. The petitioner respondent herein, looking to his conduct remaining wilfully absent from time to time he was not fit to be retained in services. Retention in service of this employee is ultimately a loss to the public or a burden on the State exchequer. It is urged even if the lenient view is taken, he may not be ordered to be reinstated back in service. The penalty may be ordered for his compulsory retirement.

7. Shri Rajendra Soni, the learned counsel for the petitioner respondent supported the judgment of the learned Single Judge and submitted that he has given cogent and convincing reasons to interfere in that part of the order of the disciplinary authority under which the penalty of removal from services has been inflicted upon the delinquent employees, the petitioner respondent herein.

8. In his submission this Court under Article 226 of the [Constitution of India](#) exercising its extra ordinary equitable jurisdiction and where it is satisfied on the facts that the penalty given to the delinquent employee/officer on the proved misconduct levelled against him is shockingly disproportionate to the guilt for which he was charged, it can substitute proper penalty and that what precisely has been done in the present case, in which the court may not interfere in the appeal.

9. We have given our anxious and thoughtful consideration to the rival contentions made by the learned counsel for the parties.

10. It is not in dispute that the departmental enquiry has been conducted and finalized strictly in accordance with the Rules and principles of the natural justice. It is also not disputed that the findings recorded by the enquiry officer on the charges framed against the petitioner respondent did not suffer from any illegality

or perversity.

11. The petitioner respondent has accepted the enquiry report as well as the orders of the disciplinary and appellate authority. Only grievance made is that the penalty inflicted upon the petitioner respondent was disproportionate to the guilt for which he was charged.

12. We find from the record of the writ petition that the petitioner respondent remained absent from the duty for 178 days. In the Police Department wherein the discipline is utmost important, if a Constable remains absent from the duty for more than 178 days without informing the higher authorities and submitting any application and without sanction of the leave, it is a very serious and grave misconduct and it should have been approached, dealt with and considered in that perspective. The charge framed against the petitioner respondent has been proved in a regular departmental enquiry and that has not been challenged and thus it may not be a case where only on the grievance made on the quantum of punishment the interference is called for.

13. The learned Single Judge accepted that the petitioner respondent was a constable and was serving in the discipline force which demands strict adherence to the rules and procedure more than any other Department. After accepting this position the learned Single Judge totally ignoring the fact that the petitioner respondent has not questioned the enquiry conducted by the enquiry officer, the order of the disciplinary authority and the appellate authority so far as the same of the charges framed against him is concerned. After this admitted position we fail to see that any other consideration would have been available to take it to be a case of penalty inflicted upon the petitioner respondent to be disproportionate and shocking to the conscience of the court. We fail to see any justification in this approach, of the learned Single Judge that good and sufficient reasons were not there imposing drastic penalty of removal from the services. In case the petitioner respondent would have established to the satisfaction of the Enquiry Officer the circumstances that were beyond his control and forced him to remain absent from duty there would not have been any question of recording a finding on the alleged misconduct against him. Absence of 178 days of the petitioner respondent, a

member of disciplined force, was itself a factor sufficient to justify the imposition of the extreme penalty of removal from services. In the case where the petitioner respondent admitted his guilt and he has not questioned the enquiry report or the orders of the disciplinary authority or of the appellate authority on the merits and he has confined his contention only against the quantum of punishment, it was not a case where any interference of the court under Article 226 of the [Constitution of India](#) is called for and that too to the extent of substituting its own penalty for the proved misconduct against him in the enquiry conducted by the enquiry officer, on the basis of which penalty imposed by the disciplinary authority which has been confirmed by the appellate authority also in appeal. Catena of decisions of their Lordships of the Hon'ble Supreme Court have been cited before the learned Single Judge by the counsel for the appellant but except one the learned Single Judge did not think it proper to make reference of others. Even in the case of Regional Manager & Disciplinary Authority V. v. S. Mohd., Gaffar (9), their Lordships of the Hon'ble Supreme Court has given a clear mandate that in the departmental proceedings in so far as imposition of penalty or punishment is concerned, unless the penalty is either impermissible or shocking to the conscience of the High Court, it should not normally interfere with the same or substitute its own opinion and either impose some other punishment or penalty or direct the authority to impose a particular nature or category of punishment of its choice. From these observations made by their Lordships of the Hon'ble Supreme Court we fails to see how it can be taken that in the matter of quantum of punishment in a departmental proceedings any interference of the Court under Article 226 of the [Constitution of India](#) is permissible. Their Lordships of the Hon'ble Supreme Court in that case have given out that in such matters interference on the question of quantum of punishment is not called for. That normally cannot be read in a case where the delinquent officer has been charged with serious and grave misconduct, on enquiry that charge has been proved, the disciplinary authority has accepted the enquiry report considered it to be a fit case to impose a major penalty of removal from service, that order has been confirmed by the appellate authority in the departmental appeal and in the petition under Article 226 of the [Constitution of India](#) the delinquent employee has not challenged the same on merits, it is a case where interference is called for in the matter of the quantum of punishment. If this

way in such matters of the quantum of punishment. If this way in such matters the interference is made, then it is a matter of interference as a matter of course or right in each and every case which is not permissible to this Court under Article 226 of the [Constitution of India](#).

14. In the case of State Bank of India and Ors. v. Samarendra Kishore Endow and Anr. (10), their Lordships of the Hon'ble Supreme Court held that in the circumstances of the given case it may be that the punishment of removal imposed upon the delinquent employee is harsh but this is a matter which the disciplinary authority or the appellate authority should consider and not the High Court or the Administrative Tribunal. Their Lordships further said that in such matters the proper course to be adopted in such a situation would be to send the matter to existing in the disciplinary or the appellate authority to impose appropriate punishment. The imposition of appropriate punishment is within the discretion in the judgment of the disciplinary authority. It may be open to the appellate authority to interfere with it but not to this Court. The power under Article 226 of the [Constitution of India](#) is one of judicial review. It is not an appeal for decision but a review of the manner in which the decision was made. The power of judicial review is meant to ensure that the individual receives the fair treatment and not to ensure that the authority after according fair treatment, reaches on a matter which it is authorized by law to decide for itself a conclusion which is correct in the eyes of the Court.

15. Reference here may have to the judgment of the Hon'ble Supreme Court in the case of State of U.P. v. Ashok Kumar Singh (11). That was also a case of police constable who was removed from the service pursuant to a duly conducted departmental enquiry. The order of removal in that case was challenged by the delinquent constable before the U.P. Public Service Tribunal No. 5, Lucknow Bench. The Tribunal by its detailed and considered order declined to interfere with the order of removal for the reasons set out therein. The delinquent constable feeling aggrieved by the order of the Tribunal, moved the Allahabad High Court under Article 226 of the [Constitution of India](#) by filing a writ petition. Before the learned Single Judge the order of removal was challenged merely on the ground that he was not given a reasonable opportunity in the departmental inquiry. That

contention was rejected by the learned Single Judge, as the court was satisfied that full opportunity was given to him in the departmental enquiry. Not only this, further the court concurred with all the findings rendered on the charges levelled against the delinquent constable. Still the court interfered with the punishment of removal while concurring with the findings against the delinquent constable on the charges levelled against him, by observing as follows,

'The Presiding Officer of the Tribunal has passed a very detailed order in which he enumerated the circumstances under which the enquiry was conducted. The enquiry officer found the petitioner to have absented from duty on several occasions, totalling 251 days during the year 1981-82 while posted at Police Station Ram Sanahi Ghat, 93 days in 1982 while posted at Police Station Safdarganj and from 28.2.1984 onwards on being subsequently posted at Police Station Ram Sanahi Ghat. The petitioner has submitted before the Tribunal as well as here that during all along this period he had fallen ill and he sent regular applications for grant to leave along with the medical certification. No such proof was ever filed by the petitioner before the Tribunal.

In the present case the only charge against the petitioner was that he absented himself from duty for long periods although it was his case that he applied for grant of leave. Even if it is assumed that the petitioner, against whom there appears to be no charge of misconduct of grave nature, has proved his absence from duty would not amount to such a grave charge for which the extreme penalty of dismissal may be imposed. In view of the fact that the petitioner has offered/not to claim arrears of salary as well as he assurance (sic) this Court that he would discharge his duties faithfully and sincerely this Court is of the view that extreme penalty imposed against the petitioner does not commensurate with the gravity of the charge, hence this writ petition deserves to succeed on this point. However it will be open for the opposite parties to impose any minor punishment against the petitioner.

In view of what has been indicated hereinabove the writ petition succeeds. The order of dismissal passed against the petitioner contained in Annexure 3 is quashed. The opposite parties will reinstate the petitioner on duty. However, it will

be open for the opposite parties to impose any minor punishment upon the petitioner considering the charges. It is made clear that the petitioner will be entitled only to the extent of one fourth of the amount as back wages.'

16. That was also a case of remaining absent of the delinquent constable from the duty. Their Lordships of the Hon'ble Supreme Court held that the High Court has exceeded its jurisdiction in modifying the punishment while concurring with the findings of the Tribunal on facts. The Court has observed that the High Court has failed to bear in mind that the delinquent constable was a police constable and was serving in a disciplined force demanding strict adherence to the Rules and the procedure more than any other department. The court said-having noticed the fact that the delinquent constable has absented himself from duty without any leave on several occasions, we are unable to appreciate the court's observation that his absent from duty would not amount to such a grave charge. The court has further said even otherwise on the facts of that case there was no justification for the High Court to interfere with the punishment holding that 'the arrangement does not commensurate with the gravity of the charge, especially when the High Court concurred with the findings of the Tribunal on facts.'

17. The facts of this case in hand are almost similar to the facts of the case which were there for consideration before their Lordships of the Hon'ble Supreme Court in State of U.P. v. Ashok Kumar Singh's case (supra). Before the learned Single Judge the petitioner respondent has not challenged the findings of fact recorded on the charge levelled against him by the enquiry officer, disciplinary authority and the appellate authority. In the case before Hon'ble the Supreme Court the delinquent constable had challenged the findings also. That is a different matter that the High Court has concurred with the findings recorded by the Tribunal. This case has been cited before the learned Single Judge but curiously enough the same has not been referred.

18. In the case of Apparel Export Promotion Council v. A.K. Chopra (12), their Lordships of the Hon'ble Supreme Court observed that in that case neither the learned Single Judge nor the Division Bench found the findings recorded by the enquiry officer of the departmental appellate authority either arbitrary or even

perverse and thus the High Court fell in error in interfering with the punishment, which could be lawfully imposed by the departmental authorities on the respondent for his proven misconduct. Their Lordships of the Hon'ble Supreme Court further observed that the High Court should not have substituted its own discretion for that of the authority. What punishment was required to be imposed, in the facts and circumstances of the case, was a matter which fell exclusively within the jurisdiction of the competent authority and did not warrant any interference by the High Court. The entire approach of the High Court has been held to be faulty. In that case the interference with the quantum of punishment has been made by the High Court holding that since the respondent therein had not 'actually molested' and he had only tried to molest her and that he had 'not managed' to make the slightest physical contact with her. The penalty of removal, thus, was not held to be justified.

19. Here in this case also the interference made by the learned Single Judge in the quantum of punishment, on the ground that some application had been submitted by him and that has not been dealt with, is wholly perverse and uncalled for.

20. In the case of *State of Rajasthan v. Sujata Malhotra* (13), their Lordships of the Hon'ble Supreme Court held that the High Court was not within its power to interfere with the order of punishment inflicted in a departmental proceedings until and unless any lacuna in the departmental proceeding is noticed or found.

21. Here in this case it is to be stated at the cost of repetition that the delinquent petitioner respondent in the case in hand has not questioned the findings recorded on the charge framed against him by the enquiry officer, and confirmed by the disciplinary authority and appellate authority.

22. The reference here may have to yet another decision of Hon'ble Supreme Court in *Devendra Swami v. Karnataka State Road Transport Corporation* (14), wherein the Hon'ble Court held - unless the punishment is shocking disproportionate to the charge which have been proved, the punishment awarded by the disciplinary authority should not be interfered in exercise of the powers of judicial review.

23. In the case of B.C. Chaturvedi v. Union of India and Ors. (15), their Lordships of the Hon'ble Supreme Court held that the disciplinary authority and on appeal the appellate authority, being fact finding authorities, have exclusive power to consider evidence with a view to maintain discipline. They are vested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court while exercising the power of judicial review, cannot normally substitute its own conclusion on the penalty and impose some other penalty. Where the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court it would appropriately mould the relief either directing the disciplinary or appellate authority to, reconsider the penalty imposed or to shorten the litigation in exceptional and rare cases, it may itself impose appropriate punishment with cogent reasons in support thereof. In that case the Tribunal has interfered with the order of the disciplinary authority of imposing penalty upon the delinquent appellant on the ground that he had put in 30 years of services, he had brilliant academic record, he was successful in competitive examination and was selected as a Class I Officer, he was promoted after disciplinary proceedings were initiated, and it would be difficult to him to get a new job or to take a new profession after 50 years. Their Lordships of the Hon'ble Supreme Court held that these pleadings aforesaid are wholly unsupportable. These are not relevant nor germane to modify the punishment. The substitution of punishment by the Tribunal of dismissal from services to one of compulsory retirement was held to be illegal.

24. This is a matter where settled legal position has not been considered by the learned Single Judge in correct perspective and the interference has been made in the quantum of punishment. Merely because some of the applications sent by the delinquent petitioner respondent for leave without supporting evidence of his illness etc. may not be relevant nor germane to modify the punishment.

25. As a result of the aforesaid discussion we are satisfied that the matter needs to be reconsidered afresh by the learned Single Judge on the quantum of punishment in the light of the judgments referred above.

26. Accordingly, the order of the learned Single Judge is quashed and set aside. The matter is remanded back to the learned Single Judge for rehearing of the writ petition before the Regular Bench.

27. Accordingly, the special appeal stands disposed of with no order as to costs.

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