

Mani Kumar Vs. the State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Sep-01-2000

Reported in : 2001(1)WLC311; 2001(1)WLN344

Judge : B.J. Shethna and; S.K. Garg, JJ.

Appeal No. : D.B. Civil Special Appeal No. 407 of 1999

Appellant : Mani Kumar

Respondent : The State of Rajasthan and ors.

Disposition : Appeal dismissed

Judgement :

B.J. Shethna, J.

1. That the appellant/petitioner was serving as Police Constable. He was served with a charge-sheet dated 25.9.1987 under Rule 16 of the Rajasthan Civil Service (Classification, Control and Appeal) Rules, 1958 (for short 'the CCA Rules'). It was alleged against the petitioner that in the night of 30.8.1987, he was making bad gestures to the wife of a constable by sitting on the wall and seeing her husband, he ran away. When he was called by S.H.O., Sadar Bazar, Police Station, Jodhpur, he was found fully drunk. He ran away from the police station and thereafter produced forged medical certificate from M.G. Hospital, Jodhpur for

remaining absent from duty without any prior leave from 25.8.1987 to 30.8.1987. After recording the evidence and giving him full opportunity of cross-examining them, the enquiry officer found the charges levelled against him proved. On the basis of the enquiry report, the respondent No. 3 removed him from service by an order dated 30.3.1988. He preferred an appeal before the D.I.G., Jodhpur Range, Jodhpur who was also dismissed on 14.7.1988. The review petition filed before the State of Rajasthan was also dismissed on 15.9.1990. Therefore, he filed writ petition No. 778/92 before this Court. The same was dismissed by the learned Single Judge of this Court on 6.8.1997. Hence, this special appeal.

2. Learned Counsel Mr. Harish Purohit for the appellant submitted that while passing the impugned order of removal from service, the disciplinary authority had not supplied him the enquiry report, therefore, the impugned order is bad and liable to be set aside. this very argument was raised before the learned Single Judge and the same was rejected in view of the judgments of the Hon'ble Supreme Court in the cases of Union of India and Ors. v. Mohd. Ramjan Khan 1991 (1) SCC page 588; S.P. Vishvanathan v. Union of India and Ors. 1991 (Suppl. 2) SCC page 269; Managing Director ECIL Hyderabad and Ors. v. B. Karunakaran and Ors. 1993(4) SCC page 727 and S.K. Singh v. Central Bank of India 1996 (9) JT page 542.'

3. It may be stated that when the petitioner had filed regular departmental appeal before the respondent No. 2, he had never made any grievance about the non-supply of the enquiry report. He had never come up with the case that the 'prejudice' was caused to him in successfully arguing his appeal before the appellate authority in absence of the enquiry report. In fact, in his presence, the enquiry officer recorded the statements of witnesses. Thus, he was very much in know of the evidence against him. Thus, mere non-supply of the enquiry report before passing the removal order would not make the order bad unless and until it is proved by the appellant that a serious prejudice was caused to him in his defence by not supplying the enquiry report.

4. It was next contended by learned Counsel Mr. Harish Purohit that the impugned orders passed by the disciplinary authority and the appellate authority were not

speaking orders, therefore, the same were required to be quashed and set aside. It may be stated that the disciplinary authority has passed a speaking order. It may be a brief order but at the same time, it cannot be said that the disciplinary authority has not passed a speaking order. They are not required to pass detailed judgments like Courts, particularly when the disciplinary authority is agreeing with the findings recorded by the enquiry officer. From the impugned order passed by the respondent No. 3, it is clear that after considering the entire facts and circumstances of the case, the order of removal was passed against the appellant. We must also state that when the appellate authority is agreeing with the disciplinary authority, then the appellate authority is not required to pass a detailed order while dismissing the appeal. From the record of the case, it is clear that while dismissing the appeal of the appellant, the appellate authority has fully applied its mind to the relevant facts of the case. In revision, the authority was not supposed to write a detailed order when it agrees with the order of the disciplinary authority, which was confirmed by the appellate authority.

5. It was then contended by Mr. Harish Purohit that while passing the impugned order, the disciplinary authority was required to record the reasons as to why he has chosen to pass the maximum penalty of removal. We are afraid, we cannot accept this submission. The charges levelled against the appellant were of very serious nature. He was a constable in the police department who was found to be mis-behaving with the wife of his neighbour constable. Not only that he was also found fully drunk when he was called at the police station and thereafter he ran away. In support of his defence, he has produced forged medical certificate from the Government Hospital. Thus, the charges are of so serious nature that such a person cannot be continued in service even for a minute once it is found by the authority that the charges are proved against him. In fact, the disciplinary authority was a little bit lenient as instead of passing the dismissal order of service, it has passed removal order from service. It was half heartedly submitted that the punishment was too severe. We have already said that in such type of cases, the maximum penalty of dismissal was warranted whereas the disciplinary authority has passed the order of removal from service. Thus, it cannot be said that the punishment was too severe. Hence, this contention is also rejected.

6. Lastly, it was submitted by Mr. Harish Purohit that the penalty of removal be reduced and a lesser penalty of stoppage of increments with cumulative effect or any other penalty except the penalty of removal be passed. This submission also cannot be accepted for the simple reason that the Hon'ble Supreme Court has held time and again in catena of decisions that it is not open to the Court to interfere with the punishments passed by the disciplinary authority. The same can be interfered only when it is found that the order of penalty is highly disproportionate. At the cost of repetition, we may state that the order of removal was a little bit lenient. Hence, there is no question of reduction of penalty by us.

7. Except the aforesaid contentions, no other contention was raised.

8. In view of the above discussion, this appeal fails and is dismissed.

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