

State of Rajasthan Vs. Ranvir Singh

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Court : Rajasthan

Decided On : May-09-2001

Reported in : 2001(3)WLC152; 2001(4)WLN445

Judge : P.P. Naolekar and; Gyan Sudha Misra, JJ.

Acts : Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 - Rule 16; [Constitution of India](#) - Articles 226 and 323A; [Administrative Tribunals Act, 1985](#); Army Act - Sections 130

Appeal No. : D.B. Civil Special Appeal (Writ) No. 608 of 1999

Appellant : State of Rajasthan

Respondent : Ranvir Singh

Advocate for Def. : M.M. Ranjan, Adv.

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

Disposition : Appeal allowed

Judgement :

Misra, J.

1.This special appeal has been preferred by the State of Rajasthan against the Judgment and order of the learned Single Judge passed in a writ petition bearing

No. 2418 of 1995 whereby the respondent-Ranvir Singh who had been a Constable in the IVth Battalion of the Rajasthan Armed Constabulary (RAC for short) and was removed from service on the charge of willful absence from duty for more than a period of one year, has been ordered to be reinstated in service but without backwages. However, the period of his absence from duty has been ordered to be treated as extraordinary leave and this period has further been ordered to be considered for the purpose of pension. The learned Single Judge has further desired that the conduct of the respondent be watched so that he should be put on duty befitting his medical status. Thus the order of removal of the respondent from service of the Commandant IVth Battalion, RAC, Jaipur, was set aside and the writ petition was allowed.

2. The aforesaid order of removal dated 30.4.1982 had been passed against the respondent after an enquiry was held against him and a finding was recorded that he had remained wilfully absent from duty ever since 29.10.1980 and yet never cared to submit any application or conveyed any information to the concerned officer regarding the reasons for his absence. The RAC, IVth Bn., therefore, had initiated a proceeding against him under Rule 16 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 and a notice alongwith a charge-sheet with statement of allegations was served personally on the respondent on 16.11.1981 on which he had affixed his signature acknowledging the receipt of the papers. The respondent, however, did not participate in the enquiry proceeding inspite of service of notice and hence the enquiry proceeded ex-parte against him, wherein it was recorded that the respondent for the first time had submitted the application about his leave on 28th November, 1981 with medical certificate which also was not worth accepting as it appeared to be fake since it had not been issued on a printed letter head and was signed by an Ayurvedic practitioner. Besides this the respondent also did not submit any prescription or any bill of medicine to believe about his illness. A conclusion, therefore, was drawn that the respondent's story regarding his mental illness was an after-thought which was set-up merely as his defence to explain his absence from duty. The respondent, however, had also submitted an application on 26.12.1981 regarding his illness but that was not supported by any medical certificate nor it declared that it will be supported with medical certificate later. After considering entire aspects, the

enquiry report was submitted against the respondent stating that he remained absent from duty for more than a year without prior permission and left the headquarters without sanction of leave which amounted to disobedience of service rules which was bound to have affect on the public service as also on the discipline of other Government servants. Thereafter, the disciplinary authority issued a notice to the respondent regarding the proposed punishment and an order of him removal from service was then passed on 30.4.1982 against which the departmental appeal failed.

3. The respondent herein had thereafter prepared further appeal before the Governor of Rajasthan against his removal from service which was rejected on 27.3.1984 but partial relief was granted to him as it was ordered that his removal be made effective from 30.4.1982 instead of 29.10.1980 as this period was ordered to be adjusted as extraordinary leave of the respondent.

4. The respondent challenged the order of his removal from service as also the order of the Governor by which he was refused to be reinstated in service by filing a writ petition in this court (against which this appeal arises) wherein it was contended on behalf of the respondent-Ranvir Singh that he was infact mentally ill during all this period and was undergoing treatment and he had informed the appellatant that he would be unable to join duties on account of his mental condition and that the enquiry also be kept pending; yet the enquiry was conducted ex-parte against him and he was ultimately removed from service. It had also been contended before the learned Single Judge that since his absence from duty was ultimately regularised vide order dated 17.10.1984 by treating his absence from 16.4.1981 to 30.4.1982 as leave without pay, there was hardly and reason for treating the delinquent-Ranvir Singh as wilfully absent from duty.

5. The appellatant-State of Rajasthan, however, relying on the written statement and the enquiry report asserted that the respondent had absented from 29.10.1980 and until the notice was served on the respondent on 16.11.1981, the respondent had not submitted any leave application nor had informed about his whereabouts. It was stated by the appellatant-State that it was for the first time on 28.11.81 that the respondent submitted the medical certificate and hence he cannot be allowed

to contend that he had offered plausible explanation for his absence.

6. The learned Single Judge after considering their submissions was pleased to allow the writ petition and ordered the respondent's reinstatement in service as already recorded hereinbefore vide the judgment and order dated 21st April, 1999 which is under challenge in this appeal, essentially on the ground that the respondent's absence from duty from 16.4.1981 to 30.4.1982 has already been regularised as a period of leave due and the charge of the respondent regarding absconding from duty without leave prior to this period was held as perverse which was considered fit to be set aside. This was so held as it was found by the learned Single Judge that the respondent had first of all left his duties on 29.10.1980 which information was received in the office on 1.11.1980 and thereafter an information was received on 10.11.1980 about the respondent's illness who had asked for 5 days rest from 1.11.1980 and then he had also sent a letter dated 15.12.1980 with a certificate of his illness asking for leave of 40-45 days with effect from 18.11.1990. The learned Single Judge therefore, held that the respondent did not abscond from duty and even if he was absent without information, it was at the most an irregularity committed by the delinquent but it cannot be said that he had absconded. He was, therefore, ordered to be reinstated in service but without backwages with further directions as already recorded hereinbefore.

7. The Appellant-State of Rajasthan through the Commandant IVth Bn., RAC, Jaipur feeling aggrieved with the aforesaid judgment and order of the learned Single Judge has preferred this appeal on the ground that the impugned order and judgment of the learned Single Judge is perverse, illegal and arbitrary as the learned Single Judge ought not to have interfered with the findings of fact recorded in the enquiry report as it was clearly proved that the respondent remained wilfully absent from duty ever since 29-10.1980 due to which a charge-sheet dated 16.11.1981 was served upon him and an enquiry officer was appointed, yet the respondent did not participate in the enquiry proceeding after which an enquiry report was submitted. It was contended inter alia that the findings recorded by the enquiry officer regarding willful absence from duty for a sufficiently long period without cogent reasons was not fit to be interfered with and did not deserve any sympathy for his reinstatement in service as it was not disproportionate looking

into the grave nature of charge. It was also submitted that once the complete procedure was followed by the appellant-State before passing the order of removal, wherein a finding had been recorded by the enquiry officer regarding the respondent's willful absence from duty, the same could not have been treated as perverse, so as to interfere with it and set it aside. It was still further submitted that the learned Single Judge should not have interfered with the order of punishment imposed against the delinquent once the charges were held to have been proved. In support of his submissions learned counsel for the appellant relied upon several authorities of the Supreme Court. The first decision cited is reported in State of U.P. and Ors. v. Nand Kishore Shukla and Anr. (1), wherein it was contended by the delinquent-respondent that in view of the finding given by the enquiry officer that five charges are proved and in view of the fact that charges 1, 3, 4 and 5 could not be gone into due to non-availment of opportunity on the part of the respondent, it could not be predicted with certainty that the disciplinary authority would have passed the order of removal from service on the basis of charge No. 2 alone. This contention of the respondent was rejected and allowing the appeal of the State of U.P., the learned Judges of the Supreme Court held that it is settled law that the court of appeal could not go into the question of imposition of the punishment. It is for the disciplinary authority to consider what would be the nature of the punishment to be imposed on a government servant based upon the misconduct proved against him. Its proportionality also cannot be gone into by the court.

8. The counsel for the appellant further placed reliance on the judgment reported in State of Tamilnadu and Anr. v. S. Subramanim (2), in order to reinforce his submission that the Administrative Tribunal cannot reappreciate the evidence and reach its own conclusion since the power of judicial review of the High Court under Article 226 of the Constitution was taken away by the power under Article 323-A and invested in the Tribunal by the [Administrative Tribunals Act, 1985](#). The court further held as under :-

'That the Tribunal has only power of judicial review of the administrative action of the appellant on complaints relating to service conditions of employees and it is the exclusive domain of the disciplinary authority to consider the evidence on

record and to record findings whether the charge has been proved or not.' The learned Judges further held that in judicial review the Court or Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in view of the Court or Tribunal. When the conclusion reached by the authority is based on evidence, the Tribunal is devoid of power to reappreciate the evidence and come to its own conclusion on the proof of the charge. The only consideration, the Court/Tribunal has in its judicial review is whether the conclusion is based on evidence on record and supports findings or whether the conclusion is based on no evidence.'

9. The counsel for the respondent on the other hand relied upon the reasonings assigned by the learned Single Judge while allowing the writ petition and in support of the case of the respondent, he further relied upon a decision *Ranjit Thakur v. Union of India (3)*, which is a case relating to proceedings under Section 130 of the Army Act of 1940 regarding summary court-martial for imposition of punishment. In this matter, the delinquent Ranjit Thakur who was in the Army service and was posted as a Single Man, had not commended himself well to the commanding Officer of the Regiment and was serving out a sentence of 28 days rigorous imprisonment imposed on him for violating the norms for presenting the representation to the higher officers. He was stated to have sent representation complaining of ill-treatment at the hands of Commanding Officer directly to the higher officer. The delinquent was punished for that by the Commanding Officer and he was held in the quarters cell in handcuffs to serve that sentence of R.I. While serving this sentence he was stated to have committed another offence of refusing to eat food although he was ordered to do so for which also a summary court-martial was held. The charge was held proved and a sentence of R.I. for one year was imposed and he was immediately sent to the civil prison to serve out the sentence which he served but thereafter he was also dismissed from service with the added disqualification of being declared unlit for any future civil employment. The representation of the delinquent was rejected by the General Officer Commanding on 24.5.86 against

which he filed a writ petition before the High Court which was dismissed in limine against which a Special Leave Petition was preferred before Supreme Court which was admitted and allowed in favour of the delinquent Ranjit Thakur. The learned Judges of the Apex Court therein had held that judicial review generally speaking is not directed against a decision but is directed against 'the decision making process'. The court also held that 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 and 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. Hon'ble Justice M.N. Venkatchaliah speaking for the Court observed as follows: '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 as irrationality and perversity are recognised ground of judicial review.' Thus the ratio of this judgment was that irrationality and perversity are recognised grounds of judicial review and since in this case the punishment was held strikingly disproportionate to the charge, interference was held justified as it could not have been allowed to remain uncorrected in judicial review.

10. While testing the merits of this appeal on the anvil of the facts of this case in the light of the ratio of the decisions relied upon, we noticed that the respondent-delinquent Ranvir Singh first of all had left duty on 29.10.80 after which he asked for sanctioning leave for 5 days to take rest and thereafter on 10.11.80 he asked for 40-45 days leave. But thereafter he had totally disappeared from the scene till the notice regarding enquiry proceeding was served on him on 16.11.81 and it was for the first time on 28.11.81 that he submitted his medical certificate of an Ayurvedic Doctor that he was a mental patient and was under treatment. Certificate although had also been placed on record to show that the delinquent Ranvir Singh was a patient of paranoid Schizophrenia who had been under treatment of Psychiatric doctor of government hospital at Jaipur, the information was furnished only on 28th November 1981 after a period of one year of absence from duty and that too when the notice regarding initiation of enquiry proceeding

was served on him. In our opinion when the delinquent respondent had failed to appear in the enquiry proceedings inspite of service of notice on him which is not disputed and failed to appear before the enquiry officer to explain his absence despite of opportunity having been granted to him, it was not open for him to challenge the enquiry report on facts for the first time in the writ petition although no defect in the enquiry could be pointed out on behalf of the delinquent. Once the procedure for holding the enquiry was duly followed and opportunity was granted to the respondent to appear in the enquiry which he failed to avail, it is difficult to appreciate under what authority of law he could have been allowed to challenge the findings recorded by the enquiry officer for the first time in the writ petition expecting the learned Single Judge to traverse into the finding of fact recorded by the enquiry officer as it is not the decision but the decision making process which is open to challenge. However, even assuming that the same was done on the plea of perversity, it is difficult to ignore that the last communication by the respondent to the authorities was made on 10.11.80 when he had asked for 45 days leave which too expired in December 1980, and there is absolutely nothing to infer that thereafter he had communicated to the authorities about his illness or absence and for the first time in November, 1981 he appeared with a Medical Certificate that he was suffering from mental illness all this time. It is not the case of the respondent-delinquent Ranvir Singh that he was unwell at the time when he had received the notice regarding enquiry on 16.11.1981 and yet there is no explanation why he did not participate in the enquiry as the enquiry officer was not bound to defer the enquiry merely at his request without reason although the delinquent was duty bound to participate in it on the relevant date which he failed to do. Besides this, the regularisation of his leave during which he was absent was merely done in pursuance of the order of the Governor who had granted partial relief to the respondent by granting him the benefit of leave to which he was entitled but this regularisation cannot be held to have the effect of wiping out the charge of willful absence from duty neither there was any explanation about his absence at least from December 1980 to November 1981 as counting the leave period for the purpose of availing the benefit of leave may be one thing but that cannot have the effect of simplifying the situation to the extent of explaining the absence from duty without information to the authorities of the Rajasthan Armed

Constabulary where discipline is the hallmark of service. In view of this it is difficult to hold that the findings recorded by the enquiry officer holding the delinquent guilty of the charge of wilful absence from duty without information could be held perverse so as to interfere with the punishment imposed on him. It is quite true that perversity and irrationality of an order of punishment may justify interference of the court with it but in the facts and circumstances of this case it difficult to concur with the view that the delinquent was fit to be reinstated in the service on the ground of perversity of the findings recorded by the enquiry officer for the reasons recorded hereinbefore.

11. We, therefore, do not feel persuaded to agree with the view of the learned Single Judge that the order of removal of the respondent from service was fit to be interfered with on the ground of perversity as we are clearly of the opinion with the respondent had failed to establish that the charges regarding willful absence from duty could be held to be perverse although it is clear from the facts that after December 1980, there was absolutely no information from him about his disappearance for more than a year. We, also do not subscribe to the view that merely because his absence from duty was adjusted towards his extra-ordinary leave, he could be held to have succeeded in explaining his absence from duty, hence we set aside the order of his reinstatement in service but looking into the fact that the respondent-delinquent had served for more than 14 years and appears to have suffered the attack of paranoid Schizophrenia which might have been the reason for his absence from duty so long, we feel, only in the interest of equity and substantial justice that he should not be denied the benefit of pension for the services rendered by him and to that extent the order of removal from service will not affect him. He would be entitled to the benefit of pension under the relevant Rules and the period of leave to his credit which has already been regularized, will also be counted for the purpose of pension. Thus he will also be entitled to arrears of pension from the date of his removal from service which is 30.4.1982. The appeal accordingly stands allowed but without cost subject to the relief granted to the respondent.