G.C. Verma Vs. Uoi and ors

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Court : Delhi

Decided On : Dec-21-2012

Judge : Siddharth Mridul

Appellant : G.C. Verma

Respondent : Uoi and ors

Judgement :
IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment pronounced on:

21. 12.2012 W.P.(C) 2220/2001 G.C. VERMA .. Petitioner versus UOI AND ORS .. Respondents Advocates who appeared in this case: For the Petitioners For the Respondent : Mr S.D. Singh with Mr Vijay Kumar, Ms Bharti Tyagi and Mr Rahul Kumar Singh : Mr Sachin Dutta CORAM: HONBLE MR JUSTICE BADAR DURREZ AHMED HONBLE MR JUSTICE SIDDHARTH MRIDUL JUDGMENT SIDDHARTH MRIDUL, J.

1. The present petition assails the order dated 24.10.2004 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (Tribunal) in O.A. No.858/1995, whereby the Tribunal dismissed the said O.A. filed by the petitioner herein, challenging the order dated 13.10.1994, imposing the penalty of removal from service upon the petitioner.

2. The facts as are necessary for the adjudication of the present petition are as follows:- (i) The petitioner was an Indian Police Officer of the 1973 batch, allotted

to the State of Punjab and Haryana. (ii) From the year 1977 to 1985 the petitioner is said to have raised loans from various banks and individuals thereby leading to habitual indebtedness. On 28.02.1985, a charge sheet alleging grave misconduct unbecoming a member of the Indian Police Service was issued to the petitioner. The petitioner admitted most of the charges barring one. (iii) The petitioner did not participate in the enquiry proceedings and the Enquiry Officer after numerous communications addressed to the petitioner at his last known address, which were not responded to, proceeded ex parte with the enquiry and submitted his report on 13.04.1991. (iv) The said report dated 13.04.1991 was communicated by the Disciplinary Authority to the petitioner to which the latter submitted a representation. (v) The President after considering the report of the Enquiry Officer and after due consultation with the UPSC in accordance with the rules, was of the opinion that by raising loans and making purchases on credit, the petitioner had failed to so manage his private affairs as to avoid habitual indebtedness and had hence contravened the provisions of sub Rule (1) of Rule 15 of All India Service (Conduct) Rules, 1968 (hereinafter referred to as the said Conduct Rules). (vi) As above said, the petitioner challenged the order of removal dated 13.10.1994 by filing the said O.A. No.858/1995 before the Tribunal. The Tribunal dismissed the said O.A. No.858/1995 by way of its impugned order dated 24.10.2004.

3. On behalf of the petitioner counsel raised the following submissions:- (i) (ii) (iii) Non-payment of subsistence allowance. (iv) 4. Non-consideration of Rule 15(3) of the said Conduct Rules. The inordinate delay of nearly 6 years in consideration of the case of the petitioner by the Enquiry Officer and subsequently a period of 3 years by the Disciplinary Authority. Disproportionate punishment. With regard to the first submission made on behalf of the petitioner it would be relevant to consider Rule 15 of the said Conduct Rules. The 15. INSOLVENCY AND HABITUAL INDEBTEDNESS.(1) A member of the Service shall so manage his private affairs as to avoid habitual indebtedness or insolvency. (2) A member of the Service against whom any legal proceeding is instituted for recovery of any debt due from or for adjudging him as an insolvent, shall forthwith report the full acts of such legal proceedings to the Government. (3) The burden of proving that indebtedness or insolvency is the result of circumstances which, with the exercise of ordinary diligence, the member of the Service could not have foreseen or over

which he had no control, and has not proceeded from extravagant or dissipated habits, shall be upon him.

5. From a plain reading of the above Rules it is clear that every member of the service is required to manage his private affairs so as to avoid habitual indebtedness or insolvency and that every member of the service against whom any legal proceeding is instituted for the recovery of any debt shall forthwith report the full facts of such legal proceedings to the Government.

6. It is clear that the burden of proving that indebtedness or insolvency of the member of the service is the result of circumstances which he could not have foreseen and over which he had no control, and did not come about from his extravagant and dissipated habits, is upon the member of the service.

7. The learned counsel for the petitioner contended that the Tribunal overlooked an important aspect while considering Rule 15 of the said Conduct Rules by holding that once it is proved that the loans alleged were taken and not paid it would ipso facto be misconduct under the said Conduct Rules. In this behalf the finding of the Tribunal is relevant and is extracted below:9. The impugned order was passed holding that the applicant failed to so manage his private affairs as to avoid his habitual indebtedness and thus contravened sub Rule (1) of Rule 15 of the Rules. The charge of raising loans and making purchases on credit has been established by the enquiry officer. The same has also been admitted by the applicant in his statement of defence. The only question to consider, therefore, is whether the proof of mere indebtedness would be sufficient proof of the misconduct in terms of sub rule (1) of Rule 15 of the Rules and whether the justification of the indebtedness should also be required to be gone into for establishing the charge. It is the case of the applicant that while he was undergoing training in 1975 he was blessed with a son. But due to meningitis suffered by his son heavy expenditure was incurred for saving the life of the child but his efforts could not save the life of his child and the child succumbed to the disease and for that reason the applicant had to raise loans. This explanation apparently cannot be relevant as it is too distant from the event in aspect of the allegations levelled in the charge sheet. The alleged loans shown in the charge

sheet are in respect to the year 1984-85 and thereafter. The facts in this case and the findings of the enquiry officer show that the applicant had raised several loans right from 1984 to 199495 from which it could be deduced that he was habitually raising loans to manage his affairs. A reading of the above rule shows that the misconduct comprises in falling into habitual indebtedness by the officer as not able to manage his private affairs in a proper manner, to keep the expenditure within the confines of the income of the family. It is expected of an officer to manage his affairs whatever they may be to avoid habitual indebtedness. If an employee crosses that limit then he commits the misconduct. It is, therefore, not necessary to establish the misconduct to examine the explanation given, which necessitated to fall into indebtedness. The rule does not absolve an officer if the indebtedness was for good and sufficient reasons. In our view, therefore, it cannot be said that the allegations made would not constitute misconduct in law or that the misconduct was not established or that the enquiry officer erred in not considering the explanation given by the applicant in justification of the allegations.

8. In this behalf it is observed that Rule 15 of the said Conduct Rules makes it clear that the mere fact of habitual indebtedness does not make the delinquent employee guilty of misconduct. However, sub-Rule 3 of Rule 15 of the said Conduct Rules clearly postulates that the burden of proving that such habitual indebtedness is not the result of extravagant or dissipated habits, shall be on the member of the service.

9. In the present case it is noticed that the charge of raising loans and making purchases on credit had been admitted by the petitioner himself in his statement of defence in response to the charge sheet. The petitioner was, therefore, required to prove through cogent and justifiable reasons, that such indebtedness was not a result of extravagant or dissipated habits. However, the petitioner by his own act of not participating in the enquiry failed to discharge the onus of establishing that the petitioner had no control, with the exercise of ordinary diligence, to avoid indebtedness or insolvency.

10. From the facts of the present case, it is seen that although the petitioner had put forth an explanation to demonstrate that his habitual indebtedness was a result

of loans raised for medical bills due to the ill health of his wife and child, the said explanation was not relevant, inasmuch as, it was too distant from the event in respect of the allegations.

11. In this behalf it would be relevant to note that the petitioners son was born in the year 1975 and unfortunately died due to meningitis in the year 1977, however, the allegations in the charge sheet against the petitioner related to loans raised right from the year 1978 onwards till the issuance of the charge sheet in 1985. Therefore, the first contention raised by the petitioner is devoid of merit and deserves to be rejected.

12. With regard to the second submission made on behalf of the petitioner, that there was inordinate delay in the consideration of the petitioners case by the Enquiry Officer, it is observed that the petitioner after having replied to the charge sheet did not participate in the enquiry. In this behalf it is pertinent to note that the Enquiry Officer sent a registered letter dated 04.01.1988 on the last available addresses of the petitioner at Ludhiana and Allahabad and through the IG Police, PAP, Jalandhar, to which the petitioner did not respond. Further, the Enquiry Officer had an advertisement published in the newspaper Tribune on the 10.01.1988 which also did not elicit a response or participation of the petitioner in the enquiry. Furthermore, letters dated 16/22.09.1989 were sent on the last residential address of the petitioner as indicated by the DGP, Punjab, but the petitioner did not join the enquiry.

13. In this behalf the learned counsel for the petitioner had relied on the decision of the Supreme Court in Dr Ramesh Chandra Tyagi vs. Union of India & Ors. : (1994) 2 SCC 41.it is observed as below:7.The Enquiry Officer himself stated that the notices sent were returned with endorsement 'left without address' and on other occasion, 'on repeated visits people in the house that he has gone out and they do not disclose where he has gone. Therefore, it is being returned'. May be that the appellant was avoiding it but avoidance does not mean that it gave a right to Enquiry Officer to proceed ex parte unless it was conclusively established that he deliberately and knowingly did not accept it. The endorsement on the envelope that it was refused, was not even proved by examining the postman or any other

material to show that it was refusal by the appellant who denied on oath such a refusal. The Supreme Court also observed that:- 7. ..No effort was made to serve in any manner known in law. Under Postal Act and Rules the manner of service in provided. Even service rules take care of it. Not one was resorted to.

14. The decision in Dr Ramesh Chandra Tyagis case (supra) does not come to the aid of the petitioner since in the present case despite repeated communications in this behalf and despite being aware of the pendency of the enquiry against him, the petitioner did not make any effort to participate in the enquiry. The conduct of the petitioner, therefore, clearly evidences a deliberate attempt to somehow delay and frustrate the enquiry proceedings. In view of the same it does not lie in the mouth of the petitioner to urge that the delay in completing the enquiry and imposing the penalty of removal vitiates the proceedings.

15. With regard to the third submission made on behalf of the petitioner that subsistence allowance, being a valuable right, was not paid to him and that its non-payment amounts to breach of natural justice, it is observed that the petitioner himself was absconding and staying away since the date of his suspension and repeated attempts to summon him to participate in the proceedings went un-heeded. Therefore, the petitioner cannot contend that the right for payment of subsistence allowance has been denied to him owing to non-payment. In our view since the petitioner is not shown to have made any grievance in this behalf pending his suspension or during the enquiry for payment of subsistence allowance as per rules, it cannot be said that there was any violation of principles of natural justice in this behalf.

16. Further, it is also noticed that after his suspension w.e.f. 26.02.1985, the applicant never returned to his Headquarters in Jalandhar and that the petitioner disappeared thereafter and did not appear in spite of the various communications by the Enquiry Officer at his last known address. Thus, it is clear beyond doubt that the petitioner despite being given various and proper opportunities to defend himself and fully knowing that the disciplinary proceedings were in progress against him, did not make any attempt to participate in the said enquiry. Therefore, we do not find any merit in the submission of the petitioner that the non-payment

of subsistence allowance was in violation of principles of natural justice. The judgment cited on behalf of the petitioner i.e. Jagdamba Prasad Shukla vs. State of U.P. & Others : JT 200.(9) SC 457.in the facts and circumstances of the present case, does not come to the aid of the petitioner.

17. We now come to the last submission made on behalf of the petitioner that the punishment of removal from service is highly excessive and disproportionate in view of the fact that all charges were not proved against the petitioner. In this behalf the learned counsel for the petitioner had cited the case of B.C. Chaturvedi vs. UOI & Ors. :

1995. (6) SCC 74.and Union of India vs. Giriraj Sharma : AIR 199.SC 215.

18. The Supreme Court in B. C. Chaturvedis case (supra) has held that if the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court, it can appropriately mould the relief, either directing the Disciplinary/Appellate Authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

19. Similarly, in Giriraj Sharmas case (supra) the Supreme Court had modified the order of dismissal in view of the fact that the incumbent had not wilfully overstayed his leave period and it was due to circumstances beyond his control.

20. In this behalf it is noticed that the petitioner had been charged with having raised loans from various banks and individuals leading to habitual indebtedness constituting grave misconduct unbecoming a member of the service. The above charges it is noticed had also been admitted by the petitioner in his statement of defence. Further, the report of the Enquiry Officer had established and proved the charges made against the petitioner of being habitually in debt. Thus, the petitioner has contravened the provisions of Rule 15 of the said Conduct Rules by his failure to manage his private affairs so as to avoid habitual indebtedness. Consequently, the petitioner has been held to be guilty of grave misconduct unbecoming a member of the Indian Police Service. In our view, the order of punishment of removal from service cannot be said to be either excessive or

disproportionate in view of the proven misconduct. The said penalty, does not fall within the definition of exceptional and rare cases as laid down in B.C. Chaturvedi (supra) for us to reconsider it. The decisions cited on behalf of the petitioner do not support his case.

21. In view of the foregoing discussion we find no infirmity in the impugned order of the Tribunal so as to warrant interference in this petition. The petition being devoid of merit is hereby dismissed.

22. No costs. SIDDHARTH MRIDUL, J.

BADAR DURREZ AHMED, J.

DECEMBER 21 2012/dn