



IN THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

WRIT APPEAL No.52 OF 2019

1. The Union of India, represented by the Secretary to the Home Affairs, North Block, Central Secretariat, New Delhi, PIN – 110001.
2. The Deputy Inspector General of Police, Central Reserve Police Force, Khatkhathi, Assam, PIN – 782480.
3. The Commandant of 36 Bn. CRPF, Khonsa, PIN – 786630.
4. The Deputy Commandant-cum-Enquiry Officer, 36 Bn. Khonsa, PIN – 786630.

.....Appellants

-Versus-

Dharmeswar Seal,
Son of Late Amulya Seal,
Resident of Village: Namati, PO: Hati
Namati, District: Nalbari, Assam, PIN –
781337.

.....Respondent

- B E F O R E -

**HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SOUMITRA SAIKIA**

For the Appellants	: Mr. R.K.D. Choudhury, Deputy Solicitor General of India.
For the Respondent	: Mr. B.K. Das, Advocate. Mr. H.P. Guwala, Advocate.
Date of Hearing	: 21.03.2023.
Date of Judgment & Order	: 28th April, 2023.

JUDGMENT & ORDER

[Sandeep Mehta, C.J.]

The instant writ appeal has been filed by the appellant/Union of India (respondents in the writ petition) assailing the order dated 25.09.2018 passed by the learned Single Judge accepting WP(C) No.2799/2017 preferred by the writ petitioner (respondent herein) and setting aside the order of his removal from service dated 15.01.2015 passed by the Commandant 36 Battalion, CRPF, Khonsa, i.e. respondent No.3 in the writ petition.

2. The respondent/writ petitioner was handed down the said punishment pursuant to an enquiry held on the charge of prolonged unauthorized absence from duty. While accepting the writ petition, the learned Single Judge, set aside the orders passed by the Disciplinary Authority dated 15.01.2015 and 18.02.2017 passed by the Appellate Authority and as a consequence, the employer (Union of India) was directed to reinstate the respondent/writ petitioner in service along with 50% of back wages.

3. At this stage, it would be fruitful to reproduce the order dated 01.03.2019 passed by this Court while entertaining the present appeal:-

“The respondent has entered caveat. Hence, there is no need to issue notice to the respondent.

Heard Mr. SC Keyal, learned Assistant Solicitor General of India for the appellants. Also heard Mr. BK Das, learned counsel for the respondent.

At the outset, a perusal of the order passed by the learned Single Judge would disclose that the learned Single Judge has essentially arrived at the conclusion

that the punishment imposed was disproportionate to the charge and in that light re-instatement has been granted with the benefit of 50% of the salary.

Since a consideration of the matter is required with regard to other aspects, the appeal is admitted.

In the meanwhile, there shall be an interim stay in so far as the grant of 50% backwages subject to the appellants re-instating the respondent into service within three weeks from this day.”

A perusal of the said order would indicate that the appeal was entertained primarily on the aspect of grant of 50% of back wages, which part of the impugned order passed by the learned Single Judge was stayed.

4. Mr. R.K.D. Choudhury, learned Deputy Solicitor General of India representing the appellants candidly conceded that the respondent/writ petitioner has already been reinstated in service in compliance of the order passed by the learned Single Judge as the Division Bench, did not consider it proper to stay the same to this extent.

5. Mr. R.K.D. Choudhury was candid enough in conceding that a view has been consistently taken by the Apex Court in a catena of decisions that award of penalty of dismissal from service on the charge of absence from duty would be disproportionate to the gravity of charge and thus, to this extent, his challenge to the impugned order of reinstatement was not too convincing. However, fervent submission of Mr. Choudhury was that the award of 50% back wages to the respondent/writ petitioner was totally uncalled for because the respondent had remained unauthorizedly absent from service for a period of nearly 414 days.

6. In support of his contentions, Mr. Choudhury placed reliance on the judgments of the Hon'ble Apex Court in ***Metropolitan Transport Corporation -Vs- V. Venkatesan***, reported in ***AIR 2010 (SC) 206***; ***U.P. State Brassware Corporation Limited & Anr. -Vs- Uday Narain Pandey***, reported in ***(2006) 1 SCC 479***; ***M.P. State Electricity Board -Vs- Smt. Jarina Bee***, reported in ***AIR 2003 (SC) 2657***; ***General Manager, Haryana Roadways -Vs- Rudhan Singh***, reported in ***AIR 2005 (SC) 3966*** and ***J.K. Synthetics Limited -Vs- K.P. Agarwal & Anr.***, reported in ***(2007) 2 SCC 433***.

7. Per contra, Mr. B.K. Das, learned counsel representing the respondent/writ petitioner, supported the order rendered by the learned Single Judge and contended that the penalty of removal from service, as imposed by the Disciplinary Authority against the respondent/writ petitioner, was clearly disproportionate to the gravamen of charge. The respondent/writ petitioner offered genuine and plausible explanation for his absence from duty, which was primarily on account of grave medical issues which the respondent/writ petitioner faced during the corresponding period. He urged that the learned Single Judge was fully justified in causing interference into the unjust award of the major punishment of removal from service on this charge.

8. Mr. B.K. Das also supported the order of the learned Single Judge whereby, 50% of the back wages

were awarded to the respondent/writ petitioner by placing reliance on the judgments of the Hon'ble Apex Court in ***Pyare Lal Sharma -Vs- Managing Director & Ors.***, reported in ***(1989) 3 SCC 448*** and ***Krushnakant B. Parmar -Vs- Union of India & Anr.***, reported in ***(2012) 3 SCC 178***. On these submissions, learned counsel for the respondent/writ petitioner implored the Court to affirm the order passed by the learned Single Judge and dismiss the appeal.

9. We have given our thoughtful consideration to the submissions advanced at Bar and have gone through the impugned order/materials placed on record and the judgments cited at Bar.

10. At the outset, we may note that even while entertaining the appeal, this Court, vide order dated 01.03.2019 has virtually approved the conclusion of the learned Single Judge that the punishment of removal from service imposed by the Disciplinary Authority was disproportionate to the charge. Having so noted, the Division Bench, admitted the appeal with regard to the other aspects and stayed the direction to pay 50% back wages to the delinquent employee subject to the condition that the appellants would reinstate the respondent/writ petitioner into service. Thus, for all practical purposes, the judgment of the learned Single Judge to the extent, the respondent/writ petitioner was ordered to be reinstated in service, has been affirmed by the *interim* order itself.

11. Otherwise also, the law is well settled by a catena of judgments rendered by Hon'ble Supreme Court that major punishment of removal from service would not be justified unless it is proved that the unauthorized absence was willful. In the case of **Krushnakant B. Parmar** (supra), the Hon'ble Apex Court considered a similar controversy and held as below:-

"17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant.

18. In a departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in the absence of such finding, the absence will not amount to misconduct.

19. In the present case the inquiry officer on appreciation of evidence though held that the appellant was unauthorisedly absent from duty but failed to hold that the absence was wilful; the disciplinary authority as also the appellate authority, failed to appreciate the same and wrongly held the appellant guilty."

The crucial observation of the Apex Court in the said judgment was that neither the Enquiry Officer nor the Appellate Authority found the absence of the appellant to be willful.

12. In the present case also, the Disciplinary Authority, while concluding the charge of absence from

duty against the respondent employee, simply observed that the delinquent officer was an undisciplined worker and his action tantamounted to an offence punishable under Section 11(1) of the CRPF Act, 1949 read with Rule 27(a) of the CRPF Regulations, 1955. The period of absence of 414 days was treated as *dies non* and the penalty as aforesaid was handed down to the delinquent. There is no pertinent finding of the Disciplinary Authority in the order dated 15.01.2015 that the absence of the delinquent employee was willful. Thus, the factual aspect of the case is squarely covered by the ratio of the judgment in the case of **Krushnakant B. Parmar** (supra) and hence, the order of the learned Single Judge to the extent, the order of removal from service was reversed and he was ordered to be reinstated in service is fully justified in the eyes of law. At the cost of repetition, it may be noted that the direction to reinstate the respondent employee has already been complied with.

13. Now, coming to the aspect of award of 50% back wages to the respondent/writ petitioner. In this regard, the judgments cited by Mr. R.K.D. Choudhury, learned counsel representing the appellants are now being considered.

In the case of **Metropolitan Transport Corporation** (supra), Hon'ble Supreme Court considered the aspect that the delinquent employee was gainfully employed during the period of 12.12.2000 to 15.06.2004. Thus, the back wages to the tune of Rs.6,54,766/- awarded to the respondent were reduced to Rs.4,00,000/-.

Thus, even in that case, the Apex Court partially approved award of back wages to the dismissed employee, who was later on reinstated in service.

In the case of ***U.P. State Brassware Corporation Limited*** (supra), the issue was arising from retrenchment of a daily wage workman. The Labour Court directed reinstatement and awarded full back wages to the workman on account of non-compliance of mandatory provisions of the U.P. Industrial Disputes Act. The award of back wages was interfered with by Hon'ble Apex Court observing that the respondent did not raise any plea in his written statement that he was not gainfully employed during the period he remained out of job.

In the present case, no such situation is prevailing. The respondent/writ petitioner was serving in the Paramilitary Forces and not even a whisper was made by the employer at any stage of proceedings regarding the respondent/writ petitioner being gainfully employed during the period he remained out of service. Even in the memo of writ appeal, there is no such assertion that the respondent was gainfully employed during the period he remained out of service. Rather, a perusal of the pleadings of the appeal would indicate that the challenge of the appellants is focused against the setting aside of the punishment of removal from service by the learned Single Judge.

In the case of ***M.P. State Electricity Board*** (supra), the award of full back wages to the reinstated

employee was interfered with and payment of Rs.85,000/- awarded towards back wages to the family members of the deceased/workman was considered to be serving the ends of justice. Thus, the above judgment was rendered in the peculiar facts of the case.

In the case of **General Manager, Haryana Roadways** (supra), Hon'ble Apex Court did not find favour with the award of back wages in favour of the terminated workman observing that regular service of permanent character could not be compared to short or intermittent daily wage employment when the aspect of payment of back wages is being considered. Needless to say that in the present case, the respondent/writ petitioner is a member of the Paramilitary Forces and hence, the said judgment is also inapplicable to the facts of the case at hand.

In the case of **J.K. Synthetics Limited** (supra), the original award was silent on the issue of back wages. However, subsequent application for claim of back wages was entertained and back wages were awarded. In these circumstances and considering the fact that the charge against the employee was in respect of a serious misconduct, the award of back wages pursuant to reinstatement was held to be unjustified. Thus, the said case is also distinguishable on facts of the present case.

14. As a consequence, we are of the firm opinion that the impugned order dated 25.09.2018 passed by the learned Single Judge in WP(C) No.2799/2017 whereby, the learned Single Judge interfered with the order of the

Disciplinary Authority as affirmed by the Appellate Authority and set aside the direction to remove the respondent/writ petitioner from service while awarding him 50% back wages is based on an appropriate appreciation of the factual and legal matrix prevailing in the case. The impugned order dated 25.09.2018 does not suffer from any infirmity warranting interference.

15. Hence, the writ appeal fails and is dismissed as being devoid of merit.

JUDGE

CHIEF JUSTICE

Comparing Assistant