

Court No. - 1

Case :- SPECIAL APPEAL No. - 286 of 2024

Appellant :- Union Of India Thru. Its Secy. Ministry. Of Railway
New Delhi And 4 Others

Respondent :- Dinesh Kumar @ Dinesh Kumar Sharma

Counsel for Appellant :- Ajit Kumar Dwivedi

Counsel for Respondent :- Vijay Vikram Singh, Amit Kumar Singh

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri S.B. Pandey, the learned Deputy Solicitor General, assisted by Sri Ajit Kumar Dwivedi, learned counsel for the Union of Union of India - appellant and Sri Upendra Nath Mishra Senior Advocate assisted by Sri Neel Kamal Mishra Advocate - the learned counsel for the respondent.
2. By means of the instant intra court appeal filed under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952, the appellant - Union of India has challenged validity of the judgment and order dated 11.11.2024 passed by an Hon'ble Single Judge in Writ-A No. 7013 of 2021, whereby the writ petition filed by the respondent in this special appeal (who shall hereinafter be referred to as the petitioner) was allowed and the punishment order dated 16.03.2020 passed by the appellant No. 5 imposing punishment of withholding of two annual increments with non-cumulative effect and the appellate order dated 23.02.2021 passed by the Chief Security Commissioner, RPSF on the employee's appeal enhancing the punishment to compulsory retirement have been quashed.
3. Briefly stated, facts of the case are that the petitioner was appointed as a Recruit Trainee in Railway Protection Special Force (RPSF) in the year 1995. He was promoted to the post of Sub inspector in the year 2010.
4. On 02.02.2010 the Ministry of Railways, Government of India, issued a transfer policy which *inter alia* provided for transfer of Railway

employees so as to make it convenient for them to live with their spouse as far as possible, in case the spouse is also in service. While the petitioner was posted at Jalpaigudi, West Bengal, he made a representation for his transfer to some place near Bulandshahar, as his wife was working at Bulandshahar. This request was not entertained and, therefore, he filed Writ Petition No. 3750 of 2013 before Delhi High Court, which was disposed off by issuing a direction for consideration of the petitioner's request. When nothing was done in spite of the direction issued by the Delhi High Court, the petitioner filed a contempt petition, whereafter he was transferred to Lucknow.

5. On 12.06.2018 the petitioner was transferred to Delhi, a place near the present place of posting of his wife at Anup Shahar, Bulandshahar. Thereafter the petitioner was again transferred to Lucknow, which is about 400 kilometers from Anup Shahar, Bulandshahar. The petitioner submitted a representation dated 17.03.2018 requesting for transfer to a place near Bulandshahar.
6. The appellant's contention is that the representation was accompanied by a certificate dated 21.04.2017 issued by the Block Education Officer Anupsheher stating that the petitioner's wife is working as an Assistant Teacher since 30.05.2015. The petitioner disputes this fact and contends that he had not submitted any such certificate alongwith the representation dated 17.03.2018. He contends that this certificate had been given alongwith his previous representation submitted in the year 2017, when his wife was working as an Assistant Teacher. A copy of the representation dated 17.03.2018 submitted by the petitioner to the Principal Chief Security Commissioner, RPSF has been annexed as Annexure-8 to the writ petition, which has also been annexed with the Special Appeal and it mentions only one enclosure to the representation, i.e., a copy of the order passed by Delhi High Court. This representation does not state that the petitioner's wife is working as an Assistant Teacher and it does not make any reference to the certificate dated 21.04.2017. In furtherance to the aforesaid representation, the petitioner was transferred to Delhi by means of an order dated 12.06.2018.

7. On 17.07.2019 a preliminary inquiry was instituted against the petitioner on the allegation that he had not furnished correct information to the department while seeking his transfer on the ground that his wife was working. The petitioner was found guilty of concealment of relevant facts in the preliminary inquiry and thereafter a full-fledged inquiry was conducted against him. The charge-sheet dated 09.10.2019 issued to the petitioner contains the following charges:

“1. SI/03SF9625216 Dinesh Kumar has applied for transfer on 17.03.2018 from 3rd BN to 6th BN on spouse ground with an old & invalid service certificate of his wife issued on 21.04.2017 by the BEO/Anupshehar, concealing the fact that, in compliance of judgment of Supreme Court dated 25.07.2017 and in compliance to the direction of administration of Uttar Pradesh, the appointment of Smt. Minu Devi working as Assistant teacher has been dismissed circulated vide District Basic Education Officer Bulandshehar, letter No. Shiksha Mitra Samayojan/2018-17/2017-18 dated 03002047. Further Shri Budhsen Singh, BEO, Anupshehar vide his letter dated 21.06.2019 has informed that at present Minu Devi is not working as Assistant Teacher instead she is working on the post of Shiksha Mitra on temporary basis at Primary School Laxman Nagar Vikash Kashtrya. Anupshehar. Thus he knowingly mislead the administration, willfully produced an old & invalid document in order to manipulate the system which is prejudicial to the discipline, as member of the force,

2. SI/Dinesh Kumar failed to carry out his duty of producing valid documents in such manner which has brought discredit to the Force. Thus being supervisory officer of the force he committed discreditable conduct..

3. SI/03SF9625216 Dinesh Kumar willfully violated the provisions of Directives and transfer policy made for the bona fide purpose on spouse ground transfer.”

8. The petitioner submitted his reply to the aforesaid charge-sheet on 24.01.2020 *inter alia* stating that the allegation of submission of a certificate dated 21.04.2017 is absolutely false. His representation should be perused, which does not make any mention of the aforesaid certificate. Copy of the said certificate was not annexed to the representation. The petitioner stated in his reply that he had referred to an order passed by the Delhi High Court and had annexed a copy thereof only.

9. The petitioner had also stated that the purport of the directives issued by the Government regarding transfer policy is regarding the spouse being in Government service. The petitioner's wife was working as Shiksha Mitra. She had been adjusted on a post of Assistant Teacher, which decision was subsequently set aside, but she continued to work as Shiksha Mitra - the duties whereof are akin to the duties performed by an Assistant Teacher.
10. On 16.03.2020, the Commanding Officer passed a final order agreeing with the findings of the inquiry officer and holding the petitioner guilty of the charges leveled against him. The punishment of withholding of increments for a period of two years with non-cumulative effect was imposed upon the petitioner. The petitioner challenged the punishment order by filing an appeal, which has been decided by means of an order dated 23.02.2021 passed by the Chief Security Commissioner, R.P.S.F. - the appellant No. 4. The appellate authority held that the punishment imposed by the disciplinary authority is too lenient, and not commensurate with the gravity of the charges leveled against the petitioner. The appellate authority found the petitioner guilty of committing forgery and enhanced the punishment of stoppage of two increments with non cumulative effect awarded by the disciplinary authority to compulsory retirement with immediate effect.
11. The Hon'ble Single Judge has held that the petitioner has not stated in his representation that his wife is serving as an Assistant Teacher. Although he should have stated that his wife is serving as Shiksha Mitra, but the petitioner's failure to make such a statement would not warrant awarding of any punishment to him. Had the petitioner's wife been not working anywhere, enclosing an old service certificate might have attracted a punishment for providing wrong information, but when undisputedly she is serving as Shiksha Mitra and is getting honorarium from the public exchequer, the petitioner has not committed any misconduct. The Hon'ble Single Judge has further held that the petitioner had earlier submitted a representation after coming into force of the guidelines dated 02.02.2010 and at that point

of time, his wife was serving as Shiksha Mitra. Later on, she became an Assistant Teacher and continued as such till 03.10.2017, whereafter she was again made Shiksha Mitra.

12. It is recorded in the order passed by the Writ Court that the learned counsel for the Union of India had admitted before the Writ Court that the petitioner has not stated in the representation that his wife was serving as Assistant Teacher. The learned counsel for the Union of India further admitted that even if the petitioner's wife was serving as Shiksha Mitra, he could have preferred a representation seeking benefit of guidelines dated 02.02.2010.
13. The Writ Court further held that the appellate authority has enhanced the punishment on the charge that the petitioner has committed forgery by suppressing the factual information to mislead the Administration to seek his personal benefits, whereas this charge has not been leveled in the charge-sheet. No departmental inquiry was conducted against the petitioner to prove this charge. Therefore, enhancement of punishment on the basis of such a charge, is not sustainable in law as no punishment order could have been passed in respect of a charge that had not been levelled against the petitioner.
14. While assailing validity of the order passed by the writ court, the learned counsel for the appellant - Union of India has submitted that the scope of judicial review of an order of punishment imposed by the disciplinary authority, which has been enhanced by the appellate authority, is very limited. He has relied upon a decision of Hon'ble the Supreme Court in the case of **Union of India & ors. v. Subrat Nath**: 2022 SCC Online SC 1617, wherein the Hon'ble Supreme Court referred to a previous judgment in the case of **Union of India & ors. v. P. Gunasekaran**: (2015) 2 SCC 610, wherein the Hon'ble Supreme Court has held as follows: -

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by

the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- (i) the finding of fact is based on no evidence.*

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) reappreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*
- (v) interfere, if there be some legal evidence on which findings can be based.*
- (vi) correct the error of fact however grave it may appear to be;*
- (vii) go into the proportionality of punishment unless it shocks its conscience.”*

15. After referring to numerous other judgments the Hon’ble Supreme Court summarized the law in **Subrata Nath** (Supra) as follows: -

“22. To sum up the legal position, being fact finding authorities, both the Disciplinary Authority and the Appellate Authority are

vested with the exclusive power to examine the evidence forming part of the inquiry report. On finding the evidence to be adequate and reliable during the departmental inquiry, the Disciplinary Authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct. However, in exercise of powers of judicial review, the High Court or for that matter, the Tribunal cannot ordinarily reappreciate the evidence to arrive at its own conclusion in respect of the penalty imposed unless and until the punishment imposed is so disproportionate to the offence that it would shock the conscience of the High Court/Tribunal or is found to be flawed for other reasons, as enumerated in P. Gunasekaran (supra). If the punishment imposed on the delinquent employee is such that shocks the conscience of the High Court or the Tribunal, then the Disciplinary/Appellate Authority may be called upon to re-consider the penalty imposed. Only in exceptional circumstances, which need to be mentioned, should the High Court/Tribunal decide to impose appropriate punishment by itself, on offering cogent reasons therefor.”

16. *Per contra*, the learned counsel for the petitioner has relied upon a decision of Hon’ble the Supreme Court in the case of **Roop Singh Negi v. Punjab National Bank & ors.**: 2009 (2) SCC 570, wherein the Hon’ble Supreme Court referred to a previous decision in the case of **Narinder Mohan Arya v. United India Insurance Co. & ors.**: 2006(4) SCC 713, in which it was held that the inquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of finding which was not the subject matter of the charges, is only illegal.
17. We have considered the submissions made by learned counsel for the parties and have perused the record.
18. It is correct that the scope of judicial review is limited, but while exercising the power of judicial review this court certainly has the power to examine whether the alleged misconduct is even *prima facie* borne out from the material relied upon by the disciplinary authority.
19. A copy of the transfer policy dated 02.02.2010 indicates that where one of the spouses is a Railway Servant (All India Service) and the other is working in Central/State/Public Sector Undertaking/Autonomus Body/Private Sector, the Railway Servant

may apply to the controlling authority for a posting at the place of posting of his/her spouse, which may be considered favourably by the competent authority.

20. When spouses of persons working even in the Private Sector are entitled to claim preferential transfer as per the policy, the petitioner, whose wife is working as a Shiksha Mitra and is getting honorarium from the State Exchequer, is certainly entitled to claim preferential transfer. In response to a specific query put by the court learned counsel for the appellant - Union of India admitted that even if the petitioner had disclosed that his wife was working as Shiksha Mitra, he would be entitled to claim benefit of the transfer policy on the ground of his spouse being in service.
21. Further, a perusal of the representation dated 17.03.2018 submitted by the petitioner for his transfer indicates that neither there is any mention that his wife was working as an Assistant Teacher nor a copy of the certificate dated 21.04.2017 has been annexed with the said representation. The only document annexed with the representation is a copy of the order passed by the Delhi High Court.
22. The record does not reveal that while seeking transfer the petitioner had claimed that his wife was working as an Assistant Teacher. Even if the petitioner's wife was working as a Shiksha Mitra, he was entitled to claim preferential transfer. The petitioner would not get any benefit by misrepresenting that his wife was working as an Assistant Teacher, as the petitioner would be entitled to seek preferential transfer, even if his wife was working as a Shiksha Mitra.
23. Therefore, there was absolutely no material available on record to establish that the petitioner had obtained the transfer order by misleading the authorities, so as to make them believe that his wife was working as an Assistant Teacher. When the punishment order has been passed in absence of absolutely any material to establish the petitioner's guilt, this court can certainly interfere in such a punishment order in exercise of its power of judicial review.

24. The disciplinary authority held the petitioner guilty of the charges leveled, which have been reproduced in para 7 of this judgment and awarded the punishment of stoppage of two increments with non cumulative effect. The petitioner filed an appeal for setting aside the punishment order. While deciding the petitioner's appeal, the appellate authority held the petitioner guilty of committing forgery, which charge has neither been leveled against the petitioner, nor was there any occasion of the charge being proved. The appellate authority has enhanced the punishment of stoppage of two increments with non-cumulative effect to compulsory retirement.
25. In his endeavor to justify the appellate order passed, the learned counsel for the appellant - Union of India submitted that the appellate authority has mentioned in the order that the conduct of the petitioner in suppressing the factual information to mislead the Administration and seeking his personal benefits, amounts to commission of forgery. Regarding this point, a specific ground, namely, 'Ground M' is taken in the memo of special appeal, which is as follows: -

“M. Because the Hon'ble Single Judge failed to appreciate that the appellate authority used the term forgery not as it is defined in the Indian Penal Code. The usage of the word 'forgery' by the Appellate Authority was not an additional charge and connotation thereof was duly explained in the order itself.”

26. We cannot lose sight of the fact that the appellate authority, regarding whom a defence of misunderstanding the meaning of the term 'forgery' is being put up by the learned Counsel for the Union of India, is holding the responsible post of Chief Security Commissioner, RPSF. Forgery is a legally defined term and when the Chief Security Commissioner, RPSF held the petitioner guilty of committing forgery, it cannot be accepted that the Chief Security Commissioner, RPSF misunderstood the term 'forgery' in some manner other than in which it is defined in law. The conduct of the appellate authority in enhancing the punishment awarded to the petitioner while deciding his own appeal by holding the petitioner guilty of forgery, is absolutely illegal and it reflects against the competence of the appellate authority.

27. In view of the aforesaid discussion, we find ourselves in complete agreement with the view taken by the Hon'ble Writ Court and there is absolutely no ground to make any interference in the order passed by the writ court. The special appeal lacs merits and the same is **dismissed**. All necessary consequences to follow.

(Subhash Vidyarthi, J.) (Attai Rahman Masoodi, J.)

Order Date: 13.12.2024

A.Nigam