

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 513 of 2017**

Prakash Chand Jain S/o Late Badri Prasad Jain, Aged About 65 Years
Constable No. 114, Radio Station Police Deptt. Raipur (Since Removed From
Service) **---- Appellant**

Versus

1. State Of Chhattisgarh Through The Secretary, Ministry Of Home Affairs, Vallabh Bhawan, Bhopal
2. Inspector General Of Police, Headquarters, Bhopal Chhattisgarh
3. Sr Superintendent Of Police, Radios M. P. Bhopal
4. Superintendent Of Police Radios , Bhilai Zone, Bhilai M. P.

---- Respondents

For Appellant	:	Mr. Malay Shrivastava, Advocate
For Respondents	:	Ms. Richa Shukla, Dy. G.A.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Sanjay K. Agrawal, Judge****Order on Board****P.R. Ramchandra Menon, C.J.****27.06.2019**

1. The correctness and sustainability of the verdict passed by the learned Single Judge declining interference with regard to the punishment imposed upon the appellant, as affirmed by the Appellate Authority, is the subject matter of challenge in this appeal.
2. Heard Mr. Malay Shrivastava, learned counsel for the appellant and Ms. Richa Shukla, Dy. G.A. for the Respondents.
3. The sequence of events reveals that the appellant, on satisfying his credentials, got selected and appointed as a Police Constable in the State Police way back in the year 1981 and was continuing as above. While so, according to the appellant, he could not attend his duties properly by virtue of some serious ailments, besides the serious ailments to his son as well.

4. In the said circumstance, though the factual aspect was allegedly brought to the notice of the higher officials, referring to the misconduct of unauthorized absence, disciplinary proceedings were initiated against him, ordering a domestic enquiry. It is stated that the employee, though submitted the medical records, it was not properly acted upon. Similarly, he also could not properly participate in the domestic enquiry because of the same reasons. In spite of producing the relevant submissions and documents, no sufficient opportunity and time was granted to defend the case and the enquiry was finally ex parte, in turn, leading to submissions of enquiry report finding him guilty for his unauthorized absence of nearly 6 months. Based on such finding, dismissal from service was inflicted upon the appellant, which though was taken up before the Appellate Authority, did not yield any positive result and the appeal came to be dismissed.
5. The appellant herein took up the matter by filing Original Application before the State Administrative Tribunal and the matter was pending. Thereafter the matter came to be transferred to this Court, where it was numbered as WPS No. 1364/2005. The matter was heard finally by a learned Single Judge of this Court. Observing that, sufficient opportunity was already given to the petitioner/ appellant and the documents sought to be laid down were not substantiated interference was declined and the appeal was dismissed.
6. The punishment imposed is too harsh and the course pursued is not correct or proper, submits the learned counsel for the appellant.
7. The learned State counsel submits with reference to the contents of the reply, that the proceedings were finalized by the authorities concerned,

strictly in accordance with law and there was no violation of any known principles of natural justice. It is also pointed out that the factum of absence of the appellant is conceded and in spite of the opportunities given, there was no effective step from the part of the appellant/delinquent employee to prove his innocence. It was accordingly, that the punishment of dismissal was imposed. In such circumstances, the course pursued by the respondents is not assailable under any circumstance, submits the learned counsel.

8. It is brought to the notice of this Court by the learned counsel for the appellant that, when the matter came up for consideration before this Court earlier, an order was passed on 23.01.2018, which reads as follows.

“We have seen the records of the writ petition. It disclosed the treatment graph of one Pankaj, son of the petitioner. We think that this case may require deeper look to consider whether the administration could be required to revisit the penalty that has been imposed.

Learned Dy. A.G. seeks adjournment.”

From the above, it is seen that, at least a *prima facie* finding was rendered by the Bench after going through the records of the writ petition that the treatment of the son of the petitioner namely Pankaj was disclosed therefrom. It was observed that the case might require a deeper look, to consider whether the administration could be required to revisit the penalty that has been imposed. There is no dispute with regard to the factual sequence. The first question is whether the enquiry was conducted in conformity with the principles of natural justice and whether there is any violation of the relevant rules. The discussion of facts and figures by the learned Single Judge clearly gives a picture that

the enquiry was conducted by the Competent Authority in accordance with the relevant provisions of law and hence there is no violation of the principles of natural justice. However, it has to be considered whether the punishment imposed upon the appellant, by way of dismissal, in respect of the misconduct of unauthorized absence of 6 months; that too when the appellant's plea is that it was only because of his illness and the illness of his son, was proportionate to the gravity of the proven misconduct.

9. The above exercise is not seen done by the authorities at different levels and in particular, by the Appellate Authority; especially when there was a duty cast upon the appellate authority to have the matter considered on all relevant aspects, in terms of Rule 27 of **The Civil Services (Classification, Control & Appeal) Rules, 1966**. The said rule reads as follows:

27. Consideration of appeal. - (1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of Rule 9 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 10 or enhancing any penalties imposed under the said rule, the appellate authority shall consider :-

(a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe.

10. On going through the contents of the order of the Appellate Authority, it is not revealed that the proportionality of the punishment was ever considered. Coming to the verdict passed by the learned Single Judge, the discussion is more with reference to the lapse on the part of the appellant/ petitioner in not making use of the opportunity to prove his innocence in the enquiry. In other words, this is in response to the contention of the writ petitioner that no sufficient opportunity was afforded to him to prove his innocence in the enquiry which was conducted *ex parte*. The finding given by the Learned Single Judge was to the effect that, sufficient opportunity was given and that there was nothing wrong on the part of the Authority in conducting the enquiry; in turn, leading to the affirmation of the order passed by the disciplinary authority and also the appellate authority.

11. To put it more clear, there is no discussion at all by the learned Single Judge with regard to the sustainability of the version of the writ petitioner as to the reason for his absence with reference to the medical records as aforesaid. Further, there is no discussion at all, with regard to the proportionality of the punishment and in particular, whether 'capital punishment' of dismissal should have been given or sustained. This made the Court to observe in the interim order dated 23.01.2018, that this was a fit matter where the Authorities might be required to reconsider the gravity of the punishment.

12. After hearing both the sides, we affirm the view expressed by the

Bench as per the order dated 23.01.2018 and we are of the view that the appellant is not be justified in contending that the enquiry was conducted in violation of relevant provisions of law and principles of natural justice. We affirm the order passed by the learned Single Judge in this regard. However, with regard to the proportionality of the punishment, we find that interference is necessary. Accordingly, we set-aside the punishment of dismissal as affirmed by the Appellate Authority and given effect to by the learned Single Judge. We direct the Disciplinary Authority (Respondent No. 4) to reconsider this aspect, after taking note of all the relevant facts and figures, lest the family of the appellant should be thrown to streets.

13. We make it clear that it is open for the Respondent No. 4 to mould the relief in appropriate manner as to the extent of relief to be given to the appellant herein in accordance with law; particularly with regard to the manner in which the period of absence from the date of termination of service, till the modified punishment is imposed upon him, be given effect to. The said exercise shall be completed as expeditiously as possible within two months from the date of receipt of a certified copy of this order. The verdict passed by the learned Single Judge will stand modified to the said extent.

14. Accordingly, the writ appeal stands disposed of.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Sanjay K. Agrawal)
Judge