

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-1238-2017

Date of decision : 19.01.2023

Gurdev Singh

..... Petitioner

versus

PRTC & another

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Amandeep Saini, Advocate
for the petitioner.

Mr. Anupam Singla, Advocate
for the respondents.

PANKAJ JAIN, J. (Oral)

Petitioner herein is aggrieved of the order dated 14.01.2015 (P-2) whereby his services stand dismissed and further order dated 03.10.2016 (P-4) whereby the order of dismissal stands affirmed.

2. Petitioner joined services with the respondent-department in 1987. On 27.10.2008, while petitioner was driving bus No.PB-11-9633, the same met with an accident causing loss of life of one Ashok Kumar. Petitioner was prosecuted vide FIR No.516 dated 27.10.2016 for offences punishable under Sections 279, 427 and 304-A IPC at Police Station Sadar, Patiala.

3. The petitioner was acquitted vide judgment dated 01.10.2013 (P-1). He was proceeded against by the department as well. Admittedly, despite having been served with the chargesheet, the petitioner opted not to respond to the same. Inquiry officer held petitioner guilty for having caused loss of Rs.17,31,361/- as the amount was paid as compensation to the family of the deceased as assessed by Motor Accident Claims Tribunal,

Patiala. The punishing authority vide impugned order dated 14.01.2015 (P-2) while concurring with the finding of guilt, ordered dismissal of his services with immediate effect. Petitioner filed departmental appeal (P-3). Appellate Authority dismissed the appeal while relying upon the past conduct of the petitioner. Even though the same was never put to him.

4. Counsel for the petitioner submits that though the right of employment to proceed against the petitioner departmentally, cannot be faulted with yet the punishment awarded to the petitioner is highly disproportionate to the misconduct. It has been contended that from the date of his appointment in the year 1987 till the present occurrence on 27.10.2008, the petitioner always remained a safe driver. For the single instance that too after acquittal was earned by the petitioner by Court of competent jurisdiction, present order of dismissal is shockingly disproportionate. Reliance is being placed upon Rule 7.3 of the Punjab Civil Service Rule Vol. I Part 1. He further relies upon law laid down by Apex Court in the case of ***Surendra Prasad Shukla vs. State of Jharkhand and others, reported as (2011) 5 SLR 695 and Mohd. Yunus Khan vs. State of U.P. and others 2010 (6) SLR 88.***

5. Per contra, counsel for the respondents submits that this Court cannot sit over the inquiry proceedings as a Court of Appeal. The petitioner having opted not to appear in the inquiry proceedings cannot be allowed to cry foul. The petitioner cannot deny loss caused to the Corporation owing to his negligence and thus the order of dismissal passed by the punishing authority is adequate punishment commensurating to the misconduct of the petitioner which resulted in loss of life.

6. I have heard counsel for the parties and have gone through the records of the case.

7. There is no denial to the general proposition of law that the punishing authority as exclusive power to impose appropriate punishment as it is for the authority to maintain discipline in the organization/department. However, the aforesaid general rule is not absolute. Trite it is that the punishment awarded by the punishing authority has to be in proportion to the magnitude and gravity of misconduct and the proportionality of punishment is not beyond judicial review. The Court can interfere if punishment is found shockingly disproportionate and/or when a procedural infirmity/illegality is discovered. Decision of a public authority is unlawful if it is disproportionate. Where a decision maker fails to attain fair balance of relevant considerations or where the impact of decision is unduly oppressive, the decision can be turned down as disproportionate. Now, the question arises as to:

- “(i) whether the punishment in the present case can be said to be disproportionate and;
- (ii) whether the appellate authority while dismissing the appeal preferred by the petitioner was justified in considering the past conduct of the appellant to justify the order of punishment without bringing it to the notice of the petitioner.”

8. For the sake of repetition, this Court must remind itself that the petitioner stands acquitted in criminal trial on merits. The petitioner was never involved in any accident in his 21 years of long career prior to the date of accident. Apex Court in the case of ***Surendra Prasad Shukla's case (supra)***, while dealing with the similar situation held as under:-

- “6. The question which however arises for our decision is whether such negligence of the appellant was sufficient for the disciplinary authority to dismiss him from service. There was no charge against the

appellant that he had in any way aided or abetted the offence under Section 392 IPC or that he knew that his son had stolen the car and yet he did not inform the police. The appellant, as we have held, was guilty of negligence of not having enquired from his son about the car kept in front of the government quarters occupied by him. The appellant had served the government as a Constable and thereafter as a Head Constable from 07.08.1971 till he was dismissed from service on 28.02.2005, i.e. for 34 years, and for such long service he had earned pension. In our considered opinion, the punishment of dismissal of the appellant from service so as to deprive him of his pension for the service that he had rendered for long 34 years was shockingly disproportionate to the negligence proved against him.”

9. Likewise, while distinguishing between element of criminality with the misconduct and the misconduct based on negligence vis-a-vis proportionality of punishment, Apex Court in the case of ***Girish Bhushan Goyal vs. BHEL and another 2014 (1) SCC 82*** held as under:-

“xx xx xx

11. While deciding on this issue, it is pertinent for us to ascertain the responsibility of the appellant against which he has been held negligent and also his role in the same. As per the Enquiry Report produced against him which is annexed with the appeal by the appellant, he was held negligent under Rules 5(5) and 5(9) of the BHEL Conduct, Discipline and Appeal Rules, 1975 (hereinafter referred to as the "BHEL Conduct Rules") for being negligent while performing his duty and acting in a manner which is prejudicial to the interest of his employer. The Enquiry Report reads as under:

"As in-charge of the canteen [HR- Canteen], it was incumbent responsibility of Shri G.B. Goyal to conscientious discharge on his side responsibility as the

irregularities stated above amply prove has complicity beyond any shadow of doubt in the sordid state of affair present in the canteen operations.

XXX XXX XXX

Mr. G.B. Goyal has admitted the charges leveled against him as contained in the Article of charges as elaborated in Statement of Imputations of Misconduct stating that he had been negligent in the performance of his duties in the capacity of overall in-charge of canteen by placing blind reliance upon his subordinates operating in a three tier system of checking and verification".

12. xx xx xx

13. The major punishment which is awarded to the appellant through the order of dismissal dated 18.3.2009, is covered under Rule 23(i) of BHEL Conduct Rules considering that the appellant had reached the age of superannuation. However, the order of termination does not mention any form of criminal charges against him, which is necessary to attract penalty under Rule 23(i) of BHEL Conduct Rules amounting to dismissal from service. On the other hand, the nature of charges leveled against the appellant was such that he omitted from performing his duty of being a responsible vigilant officer which amounted to being negligent as against being an active participant in colluding with the employees against his employer and acting against the interest of the Company.

14. The consequence of the dismissal order served on him at the end of his service tenure not only results in inflicting disproportionate punishment on him in terms of bad name and reputation, but also deprives the appellant of his retiral benefits for which he has got statutory entitlement for rendering three decades of service to the Company whereas his negligence attracts minor penalty under Rule 23 of BHEL Conduct Rules. It is pertinent to mention the observation made on this issue by this Court on the premise of similar facts and

circumstances. In the case of ***Surendra Prasad Shukla v. State of Jharkhand & Ors., 2011(4) S.C.T. 118 : (2011) 8 SCC 536***, at paras 9-10, this Court held as under:

"9. There was no charge against the appellant that he had in any way aided or abetted the offence under Section 392 I.P.C. or that he knew that his son had stolen the car and yet he did not inform the police. The appellant, as we have held, was guilty of negligence of not having enquired from his son about the car kept in front of the Government quarters occupied by him. The appellant had served the Government as a Constable and thereafter as a Head Constable from 7-8-1971 till he was dismissed from service on 28-2-2005 i.e. for 34 years, and for such long service he had earned pension. In our considered opinion, the punishment of dismissal of the appellant from service so as to deprive him of his pension for the service that he had rendered for 34 long years was shockingly disproportionate to the negligence proved against him.

10. We accordingly, allow this appeal in part and modify the punishment of dismissal from service to compulsory retirement. The LPA and the writ petition filed by the appellant before the High Court are allowed in part. There shall be no order as to costs."

15. Therefore, in view of the principle laid down by this Court in the above referred case, we are of the opinion that dismissal order served on the appellant just 6 days prior to his retirement date is exorbitant and disproportionate to the gravity of misconduct particularly, because he was not involved in active collusion with the other employees of the Company who were involved in this incident, for causing financial loss to the respondent-Company but was negligent by an act of omission. We also should not lose sight of the fact that the appellant took steps to retrieve the materials which were due against the Bill from the suppliers which rectified the error. Accordingly, the order of dismissal served on him is liable to be quashed

and is accordingly, quashed. However, we cannot lose sight of the fact that his negligence has caused financial loss to the respondent-Company. Therefore, keeping at par with the punishment awarded to Sh. B.S. Rana on ground of misconduct in terms of demotion to lower grade for 3 years as per letter dated 6.6.2011 from Central Public Information Officer, we award the similar punishment of deduction of one year increment on the appellant as per Rule 23 (b) of the BHEL Conduct Rules since the appellant already reached the age of superannuation when the order of dismissal was served on him. Accordingly, the Civil Appeals arising out of SLP (C) Nos.30883- 30884 of 2012 are allowed.”

10. Keeping in view the aforesaid ratio of law, this Court finds that while granting punishment of dismissal, the punishing authority ought have considered the effect of judicial acquittal earned by the petitioner and his 21 year long service prior thereto.

11. Coming on to the appellate order passed by the appellate authority, this Court finds that the petitioner was also not treated by the appellate authority fairly. Appellate Authority while dismissing the appeal preferred by the petitioner held as under:-

“From the above stated facts it is evident that accident happens due to rash and negligent driving of Gurdev Singh as a result of which PRTC has to pay Rs: 17,31,361/- as claim. Employee has been imposed token recovery for 25 times, unsatisfactory service one time, warning 7 times and 4 annual increments have been stooped without cumulative effect. His services has been appreciated also for 6 times. It transpires that service record of the employee is also no good. Appeal of the employee is not based on facts and same is hereby rejected.”

12. The issue regarding consideration of past service by the appellate authority and thereby justifying order of punishment came up for consideration before Apex Court in case of ***Mohd. Yunus Khan (supra)***. After considering the plethora of judgments on the points held as under:-

“xx xx xx

34. This Court in ***Union of India & Ors. vs. Bishamber Das Dogra, (2009) 13 SCC 102, considered the earlier judgments of this Court in State of Assam v. Bimal Kumar Pandit, AIR 1963 SC 1612; India Marine Service (P) Ltd. v. Their Workmen, AIR 1963 SC 528; State of Mysore v. K. Manche Manche Gowda, AIR 1964 SC 506; Colour-Chem Ltd. v. A.L. Alaspurkar & Ors., AIR 1998 SC 948; Director General, RPF v. Ch. Sai Babu, (2003) 4 SCC 331, Bharat Forge Co. Ltd. v. Uttam Manohar Nakate, (2005) 2 SCC 489; and Govt. of A.P. & Ors. v. Mohd. Taher Ali, (2007) 8 SCC 656*** and came to the conclusion that it is desirable that the delinquent employee be informed by the disciplinary authority that his past conduct could be taken into consideration while imposing the punishment.”

13. In the present case, counsel for the respondent-Corporation does not dispute that the petitioner was never put to notice regarding consideration of his past service record. Prior to dismissing the appeal preferred by the petitioner on the basis of past conduct of the petitioner, appellate authority was not diligent enough to inform the petitioner of his past conduct and the fact of considering the same while dismissing his appeal. No opportunity was granted to the petitioner to respond to the same.

14. As a sequel of discussion made hereinabove, this Court finds that the impugned orders passed by the punishing authority and the

appellate authority cannot be sustained and have found to be wanting when tested the touchstone of the proposition and fairness in the light of settled law.

15. Resultantly, the present writ petition is allowed. The order of dismissal passed against the petitioner dated 14.01.2015 (P-2) and the order dated 03.10.2016 (P-4) passed by the appellate authority dismissing his appeal are hereby ordered to be set aside. The matter is remanded back to the punishing authority to decide the same afresh in accordance with law.

16. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

19.01.2023

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No