DIRECTOR GENERAL R.P.F. AND ORS. A

v.

CH. SAI BABU

JANUARY 29, 2003

[SHIVARAJ V. PATIL AND ARIJIT PASAYAT, JJ.] B

Service Law:

Railway Protection Force Rules, 1987:

C

r.153—Misconduct—Delinquent a member of Railway Protection Force—Disciplinary proceedings—Removal from service—Writ petition by delinquent before High Court—Single Judge not disagreeing with the finding that charges stood proved, but substituting the punishment with stoppage of four increments with cumulative effect—Writ appeal filed by Department dismissed by Division Bench of High Court—Held, punishment imposed by disciplinary authority D *should not be disturbed by High Court or Tribunal except in appropriate cases that too only after reaching a conclusion that punishment imposed is grossly or shockingly disproportionate—If it is found that punishment imposed is shockingly disproportionate, the case may be remitted to disciplinary authority for reconsideration on the quantum of punishment—In the instant* E *case it does not appear that there has been a consideration of all the relevant facts by the Single Judge—No reasons recorded for modifying the punishment—Keeping in view the fact that the matter is pending for quite some time, case remitted to Division Bench of High Court to reconsider the case only on quantum of punishment and dispose of the writ appeal expeditiously.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4622 of 2000.

From the Judgment and Order dated 15.6.1999 of the High Court of A.P. in WA 952 of 1998.

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Mukul Rohatgi, Addl. Solicitor General, S. Wasim A. Quadri, Mrs. Anil Katiyar and Ms. Sushma Suri for the Appellants.

R.S. Hegde, Allam Nagabhushanam and Ms. N. Annapoorani for the Respondent.

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A The following Order of the Court was delivered :

Heard learned counsel for the parties.

This appeal is directed against the Order dated 15th June, 1999 passed by the Division Bench of the High Court of Andhra Pradesh the respondent B was given charge sheet under Rule 153 of the Railway Protection Force Rules, 1987 framing five charges relating to misconduct on his part. After enquiry report was submitted holding that all the charges levelled against him were proved. The disciplinary authority agreeing with the findings as recorded by the enquiry officer passed an order of removal of the respondent from service. He unsuccessfully challenged the said order of his removal from C service before the appellant and revisional authority. Thereafter he filed writ petition before the High Court challenging the order of removal from service on various grounds. The learned Single Judge after hearing the learned counsel for the parties did not find any good ground to disturb the finding of fact as to the charges which stood proved against the respondent. However, in relation D to the quantum of punishment, the learned Single Judge held thus:

> "It appears that the petitioner is a habitual offender, and due to dereliction of duties, punishment of stoppage of increment for three years was already ordered in the year 1984. But there is no improvement in the conduct of the petitioner. However, the present E charges, though repetitive are not so serious in nature as to warrant extreme punishment of removal from service. I want to give one more chance to him to improve his conduct. Therefore, I direct stoppage of four increments with cumulative effect by modifying the impugned order to this effect and he is directed to be reinstated into service with continuity of service, but he will not be eligible for any F back wages except for subsistence allowance."

The appellants called in question the validity and correctness of this order of the learned Single Judge before the Division Bench of the High Court. The Division Bench of the High Court agreeing with the order passed G by the learned Single Judge dismissed the appeal. Hence, the present appeal.

Shri Mukul Rohtagi, learned Additional Solicitor General appearing for the appellants urged that the learned Single Judge was not right and justified in modifying the order of punishment, having observed that the respondent was a habitual offender and due to dereliction of duties, the punishment of H stoppage of increments for three years was already ordered in 1984 and that

there was no improvement in the conduct of the respondent. He alternatively submitted even if the learned Single Judge was of the view that the punishment imposed was grossly or shockingly disproportionate, punishment could not have been modified but the matter could be remitted to the disciplinary authority to re-examined the issue in regard to the imposition of penalty on the respondent. He further submitted that the Division Bench of the High Court did not go into the merits of the contentions and simply endorsed the view taken by the learned Single Judge.

Per contra, Shri R.S. Hegde, learned counsel for the respondent made submissions supporting the impugned order. He contended that even the finding of fact also was not recorded after a proper enquiry. He also contended that the respondent was promoted even after the punishment was imposed on 13th November, 1988 before the framing of the present charges.

As is evident from the order of the learned Single Judge there has been no consideration of the facts and circumstances of the case including as to the nature of charged held proved against the respondent to say that penalty of removal from service imposed on the respondent was extreme. Merely because it was felt that the punishment imposed was extreme was not enough to disturb or modify the punishment imposed on a delinquent officer. The learned Single Judge has not recorded reasons to say as to how the punishment imposed on the respondent was shockingly or grossly disproportionate to the gravity of the charges held proved against the respondent. It is not that in every case of imposing a punishment of removal or dismissal from service a high court can modify such punishment merely saying that it is shockingly disproportionate. Normally, the punishment imposed by disciplinary authority should not be disturbed by high court or tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly of shockingly disproportionate, after examining all the relevant factors including nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of and discipline required to be maintained, and the department/establishment in which the concerned delinquent person works.

In the present case we do not find that there has been a consideration of all the relevant facts and the learned Single Judge has not recorded reasons in order to modify the punishment imposed. The Division Bench of the High Court also did not examine the matter in proper perspective but simply concurred with the order passed by the learned Single Judge. Normally in

A cases where it is found that the punishment imposed is shockingly disproportionate, high courts or tribunals may remit the cases to the disciplinary authority for reconsideration on the quantum of punishment. In this case the disciplinary proceedings were initiated in the year 1989 and to shorten the litigation we think it appropriate to set aside the impugned order and remit
B the writ appeal No. 952 of 1998 to the Division Bench of the High Court to reconsider the case only on the quantum of punishment imposed on the respondent having regard to all relevant factors including the facts that the respondent was a member of Railway Protection Force and in the light of the observations made above. Since the proceedings are pending for quite some time, we request the High Court to dispose of the writ appeal expeditiously.
C The impugned order is set aside and the appeal is ordered in the above terms. No costs.

R.P. Appeal disposed of.