

A BRIJESH CHANDRA DWIVEDI (DEAD) THR. LRS.

v.

SANYA SAHAYAK AND ORS.

(Civil Appeal No. 7382 of 2021)

B JANUARY 25, 2022

[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

C *Service law: Armed service – Misconduct – Dismissal from service – Appellant- employee was driver in the Military and was posted at the 12<sup>th</sup> Battalion, P.A.C. at Fatehpur – Allegation against him was that on the fateful day, he was driving the vehicle under the influence of liquor when the truck/vehicle was carrying P.A.C. personnel and the said vehicle/truck met with an accident with a jeep – His defence that due to the brake failure, the accident took place and the truck dashed to the backside of the jeep was disbelieved and disciplinary authority awarded punishment of dismissal from service – Held: The fact that he was driving the truck under the influence of alcohol was established and proved, even on the medical examination conducted on the same date – Driving a truck carrying the P.A.C. personnel under the influence of alcohol is a very serious misconduct and such an indiscipline cannot be tolerated and that too in the disciplined Military – However, at the same time, in view of statement of appellant at the time of the enquiry and the explanation given by him that on going to duty on taking the vehicle from battalion, he had not consumed the liquor and after the accident with the objective to suppress the fear on coming to battalion and on parking the vehicle, he went directly to bus terminal, Ghazipur and consumed 100 ml of country made wine, though not accepted but may be plausible and in view of his 25 years of long service and it being a minor accident which resulted into some loss to the vehicle and the fact that the employee has since died, the punishment of dismissal would be too harsh and is converted into compulsory retirement.*

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**Partly allowing the appeal, the Court**

**HELD: 1. Merely because there was no major loss and it was a minor accident cannot be a ground to show leniency. It was sheer good luck that the accident was not a fatal accident. It could**

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have been a fatal accident. When the employee was driving a truck carrying the P.A.C. personnel, the lives of those P.A.C. personnel who were travelling in the truck were in the hands of the driver. Therefore, it can be said that he played with the lives of those P.A.C. personnel, who were on duty and travelling from Fatehpur to Allahabad on Kumbh Mela duty. Even otherwise, driving a vehicle under the influence of alcohol is not only a misconduct but it is an offence also. Nobody can be permitted to drive the vehicle under the influence of alcohol. Such a misconduct of driving a vehicle under the influence of alcohol and playing with the life of the others is a very serious misconduct. There are also other misconducts earlier committed by the employee. [Paras 10, 11][244-B-E]

2. However, at the same time, considering the statement of the employee at the time of the enquiry and the explanation given by him that on going to duty on taking the vehicle from battalion, he had not consumed the liquor and after the accident with the objective to suppress the fear on coming to battalion and on parking the vehicle, he went directly to bus terminal, Ghazipur and consumed 100 ml of country made wine, though has not been accepted but that might be plausible and considering his 25 years of long service and fortunately it was a minor accident which resulted into some loss to the vehicle and considering the fact that the employee has since died, the punishment of dismissal can be said to be too harsh and may be treated one for compulsory retirement. [Para 12][244-E-G]

CIVIL APPELLATE JURISDICTION: Civil Appeal No.7382 of 2021.

From the Judgment and Order dated 16.11.2018 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No.35483 of 2002.

Manohar Pratap, Ms. Pallavi Sharma, Advs. for the Appellants.

Rajesh Mani Tripathi, Sanjay Kumar Tyagi, Advs. for the Respondents.

A The Judgment of the Court was delivered by

**M. R. SHAH, J.**

B 1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Judicature at Allahabad in Civil Miscellaneous Writ Petition No. 35483 of 2002 by which the High Court has dismissed the said writ petition refusing to set aside the order of dismissal passed by the Disciplinary Authority, the employee (now the heirs of the deceased employee) has preferred the present appeal.

C 2. That the employee Brijesh Chandra Dwivedi (since deceased) was a driver posted at the 12<sup>th</sup> Battalion, P.A.C. at Fatehpur. While he was on duty driving a truck carrying the P.A.C. personnel from Fatehpur to Allahabad on Kumbh Mela duty, it was involved in a motor accident with a jeep. He was charged for having caused the accident by dashing his truck on the back side of the jeep while driving under the influence of alcohol. On medical examination conducted on the same date, i.e., 02.02.2000, he was found to have been under the influence of alcohol. A departmental enquiry was initiated against him. On completion of the departmental enquiry, Inquiry Officer proposed punishment of dismissal. Second show-cause notice was issued by the Disciplinary Authority and after considering his reply thereto the punishment of dismissal was awarded which was confirmed by the Appellate Authority.

E 3. Feeling aggrieved and dissatisfied with the award of punishment of dismissal, the employee filed a writ petition before the High Court being Civil Miscellaneous Writ Petition No. 35483 of 2002. Before the High Court, it was also submitted that punishment of dismissal is disproportionate to the misconduct proved. By the impugned judgment and order, the High Court has dismissed the writ petition and has also held that in the facts and circumstances of the case, a punishment of dismissal cannot be said to be disproportionate to the misconduct committed. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the employee had preferred the present appeal. During the pendency of the proceedings before this Court, the employee has died and thereafter his heirs were brought on record and the present appeal is being prosecuted by the heirs of the deceased.

G 4. Learned counsel appearing on behalf of the appellant/s has submitted that considering the fact that it was a minor accident, which resulted into some loss to the vehicle and considering his 25 years long

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service, the order of dismissal is disproportionate to the misconduct proved. A  
It is, therefore, requested to take the lenient view and to convert the  
dismissal into compulsory retirement.

5. Learned counsel appearing on behalf of the respondent/s has  
submitted that the aspect of disproportionate punishment imposed has B  
been considered by the High Court in detail and having considered the  
past record and the misconduct committed by the deceased employee in  
the past and having found that he was a habitual consumer of liquor and  
he was remaining absent and even in the year 1987, when he was  
appointed in the 33<sup>rd</sup> Battalion in P.A.C. Jhansi, he misbehaved with the  
senior officers and was punished with one parininda lekh, the award of C  
punishment of dismissal cannot be said to be disproportionate.

6. It is submitted that driving the vehicle carrying the soldiers  
under the influence of alcohol cannot be tolerated and it can be said to  
be gross indiscipline. It is submitted that it was fortunate that nobody  
died in the accident because of the good luck of those soldiers, who D  
were travelling in the vehicle. It is submitted that accident could have  
been fatal if somebody had died. It is submitted that driving a vehicle  
under the influence of alcohol is not only a misconduct but it is an offence  
also. It is therefore submitted that the deceased employee is not entitled  
to any leniency.

7. Heard the learned counsel for the respective parties at length. E

8. At the outset, it is required to be noted that in the disciplinary  
proceedings, the misconduct of driving the vehicle under the influence  
of the alcohol and when the employee was driving the vehicle under the  
influence of alcohol the vehicle met with an accident has been held to be F  
proved and therefore the Disciplinary Authority awarded the punishment  
of dismissal. The only prayer on behalf of the appellant/s is that the  
punishment of dismissal is disproportionate to the misconduct proved  
and leniency may be shown and the order of dismissal be converted into  
compulsory retirement.

9. However, it is required to be noted that the employee was the G  
driver posted in the Military and he was posted at the 12<sup>th</sup> Battalion,  
P.A.C. at Fatehpur. The allegation against the employee is at the time  
when the employee was driving the vehicle under the influence of liquor,  
the truck/vehicle was carrying P.A.C. personnel and the said vehicle/  
truck met with an accident with a jeep. His defence that due to the H

- A break failure, the accident took place and the truck dashed to the backside of the jeep has been disbelieved. The fact that he was driving the truck under the influence of alcohol has been established and proved, even on the medical examination conducted on the same date. Driving a truck carrying the P.A.C. personnel under the influence of alcohol is a very serious misconduct and such an indiscipline cannot be tolerated and that too in the disciplined Military.

10. Merely because there was no major loss and it was a minor accident cannot be a ground to show leniency. It was sheer good luck that the accident was not a fatal accident. It could have been a fatal accident. When the employee was driving a truck carrying the P.A.C. personnel, the lives of those P.A.C. personnel who were travelling in the truck were in the hands of the driver. Therefore, it can be said that he played with the lives of those P.A.C. personnel, who were on duty and travelling from Fatehpur to Allahabad on Kumbh Mela duty.

11. Even otherwise, driving a vehicle under the influence of alcohol is not only a misconduct but it is an offence also. Nobody can be permitted to drive the vehicle under the influence of alcohol. Such a misconduct of driving a vehicle under the influence of alcohol and playing with the life of the others is a very serious misconduct. There are also other misconducts earlier committed by the employee.

12. However, at the same time, considering the statement of the employee at the time of the enquiry and the explanation given by him that on going to duty on taking the vehicle from battalion, he had not consumed the liquor and after the accident with the objective to suppress the fear on coming to battalion and on parking the vehicle, he went directly to bus terminal, Ghazipur and consumed 100 ml of country made wine, though has not been accepted but that might be plausible and considering his 25 years of long service and fortunately it was a minor accident which resulted into some loss to the vehicle and considering the fact that the employee has since died, we find that the punishment of dismissal can be said to be too harsh and may be treated one for compulsory retirement.

13. In view of the above and for the reasons stated hereinabove and in the peculiar facts and circumstances of the case, narrated hereinabove, the award of punishment of dismissal can be said to be too harsh, the punishment of dismissal is directed to be converted into compulsory retirement of the employee. As the employee has since died,

and on converting the punishment of dismissal to that of compulsory retirement, death-cum-retirement benefits as also the benefit of family pension, if any, shall be paid to the legal heirs of the deceased employee in accordance with law and bearing in mind that punishment of dismissal has now been converted into one of compulsory retirement. The present appeal is partly allowed to the aforesaid extent. However, there shall be no order as to costs.

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Devika Gujral

Appeal partly allowed.