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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

M.R. SHAH; B.V. NAGARATHNA; JJ.

CIVIL APPEAL NO. 2707 OF 2022; APRIL 20, 2022

Anil Kumar Upadhyay *Versus* The Director General, SSB and Others

Constitution of India, 1950; Article 226 - Disciplinary Proceedings - Scope of judicial review and interference of the courts in the matter of disciplinary proceedings and on the test of proportionality discussed. [Referred to *Om Kumar v. Union of India*, (2001) 2 SCC 386; *B.C. Chaturvedi v. Union of India*, (1995) 6 SCC 749; and *Lucknow Kshetriya Gramin Bank (Now Allahabd, Uttar Pradesh Gramin Bank) v. Rajendra Singh*, (2013) 12 SCC 372]

Service Law - Sashastra Seema Bal (SSB) - A member of the disciplined force is expected to follow the rules, have control over his mind and passion, guard his instincts and feelings and not allow his feelings to fly in a fancy. [Referred to *Union of India v. Diler Singh*, (2016) 13 SCC 71] (Para 9)

Disciplinary proceedings- Merely because one of the employees was inflicted with a lesser punishment cannot be a ground to hold the punishment imposed on another employee as disproportionate, if in case of another employee higher punishment is warranted and inflicted by the disciplinary authority after due application of mind. There cannot be any negative discrimination. The punishment/penalty to be imposed on a particular employee depends upon various factors, like the position of the employee in the department, role attributed to him and the nature of allegations against him. (Para 11)

Summary - Appeal against Gauhati High court judgment upholding the order of disciplinary authority removing the appellant from service - Dismissed If the conduct on the part of the appellant entering the Mahila Barrack of the Battalion in the midnight is approved, in that case, it would lead to compromising the security of the occupants of the Mahila Barrack. Therefore, the disciplinary authority was absolutely justified in imposing the punishment/penalty of 'removal from service' by modifying the earlier punishment of dismissal.

For Appellant(s) Ms. Astha Sharma, AOR Ms. Ankita Patnaik, Adv; For Respondent(s) Mr. B. V. Balaram Das, AOR

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 11.04.2018 passed by the Division Bench of the Gauhati High Court in Writ Appeal No. 346/2017, by which the Division Bench of the High Court has allowed the said appeal preferred by the respondents herein – Disciplinary Authority and has quashed and set aside the judgment and order 02.05.2017 passed by the learned Single Judge of the High Court in Writ Petition No. 3576 of 2014, by which the learned Single Judge allowed the said writ petition and interfered with the order of punishment of 'removal from service' inflicted upon the original writ petitioner and remitted the matter to the Disciplinary Authority, the original writ petitioner – delinquent has preferred the present appeal.

2. The appellant herein was serving as a Head Constable (Ministerial) in the 15th Battalion of the Sashastra Seema Bal (SSB), Bongaigaon. He was charged with violation of good order and discipline under Section 43 of the Shashastra Seema Bal Act, 2007 (hereinafter referred to as the 'SSB Act'), for having entered the Mahila Barrack of the Battalion at around 00:15 hours, on the intervening night of 14th – 15th April, 2013. He was charged with indiscipline and misconduct leading to compromising the security of the occupants of the Mahila Barrack. He was apprehended inside the Mahila Barrack by six female constables. The matter was reported to the superiors. He was placed under suspension. A departmental enquiry was initiated against him. The appellant pleaded not guilty to the charges and the Deputy Commandant of the Battalion was ordered to ensure the Record of Evidence (ROE). During the ROE, the statements of prosecution and defence witnesses were recorded. He was afforded an opportunity to cross-examine the prosecution witnesses. That the ROE was submitted by the Deputy Adjutant and after due consideration of the same, the Battalion Commandant heard the appellant and under the SSB Rules, the Summary Force Court (SFC) was ordered against the delinquent – Head Constable.

2.1 Before the SFC, the appellant pleaded not guilty to both the charges and accordingly the evidence was recorded. Thereafter, the SFC found the appellant guilty of the charges and initially ordered for his dismissal on 29.04.2013. But, subsequently, the penalty of dismissal was converted to 'removal from service' on 21.06.2013 by the Commandant of the Battalion. The departmental appeal filed by the delinquent – Head Constable came to be rejected at first, as time barred on 06.12.2013, but later on, the Appellate Authority upheld the disciplinary action under its order dated 24.01.2014.

2.2 Feeling aggrieved and dissatisfied with the order of removal from service passed by the disciplinary authority, the appellant – delinquent preferred a writ petition before the High Court. Number of submissions were made before the learned Single Judge on the legality and validity of the ROE and the SFC procedures. It was also submitted on behalf of the appellant that a female constable, Rupasi Barman, who was on sentry duty and who allowed entry of the delinquent during her sentry duty and against whom parallel proceedings were drawn up was also found guilty, she was inflicted the penalty of forfeiture of two years seniority in the rank of constable and also forfeiture of two years' service for the purpose of promotion only. Therefore, it was submitted that when a much lesser punishment was imposed against a female constable whereas her partner in crime (the appellant herein) was given the punishment of 'removal from service', the same can be said to be discriminatory and disproportionate punishment.

2.3 The learned Single Judge specifically observed and held that all due opportunities were afforded to the delinquent and the finding of guilt is found to have been based on cogent material and the evidence of both sides received due consideration and hence under the test of preponderance of probability, the delinquent has been held guilty. Therefore, the learned Single Judge opined that no prejudice was caused and it cannot be described a case of unreasonable procedure as there was due adherence to the SSB Rules. However, thereafter the learned Single Judge interfered with the order of punishment imposed by the disciplinary authority of 'removal from service' solely on the

ground that female constable, Rupasi Barman, who allowed the entry of the delinquent during her sentry duty, after holding her guilty, was inflicted a lesser penalty, whereas the appellant herein was inflicted the punishment of 'removal from service', which can be said to be disproportionate and therefore the learned Single Judge set aside the order of punishment imposed by the disciplinary authority of 'removal from service' and remitted the matter to the disciplinary authority to impose any lesser punishment which may facilitate the appellant herein Head Constable (Ministerial) to retain his job.

2.4 Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Single Judge, the disciplinary authority preferred writ appeal before the Division Bench. By the impugned judgment and order, the Division Bench of the High Court has set aside the judgment and order passed by the learned Single Judge.

2.5 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Division Bench of the High Court in quashing and setting aside the judgment and order passed by the learned Single Judge interfering with the order of punishment imposed by the disciplinary authority and remanding the matter back to the disciplinary authority to impose the lesser punishment, the delinquent has preferred the present appeal.

3. Ms. Ankita Patnaik, learned counsel has appeared on behalf of the appellant and Ms. Vaishali Verma, learned counsel has appeared on behalf of the respondents – disciplinary authority.

3.1 Ms. Ankita Patnaik, learned counsel appearing on behalf of the delinquent has made submissions on merits of the disciplinary proceedings and on the order of Summary Force Court (SFC) and has submitted that the convening order of SFC records no reasons/basis for conducting SFC. She has also submitted that no proper procedure was followed by conducting the SFC against the appellant and that the same was in breach of principle of natural justice. However, even the learned Single Judge had held against the appellant on the disciplinary proceedings. In paragraph 8, the learned Single Judge had specifically observed that all due opportunities were afforded to the delinquent; the finding of guilt is found to have been based on cogent material and the evidence of both sides received due consideration. The findings recorded by the learned Single Judge on the disciplinary proceedings had attained finality. Even otherwise, the findings recorded by the learned Single Judge as well as Division Bench of the High Court on the disciplinary proceedings are on appreciation of evidence on record which are not required to be re-appreciated by this Court in exercise of powers under Article 136 of the Constitution of India.

3.2 It is then submitted by the learned counsel appearing on behalf of the appellant that the learned Single Judge, while allowing the writ petition, had rightly held that all the attending circumstances including the evidence on record and the fact that a lesser punishment was inflicted upon the female constable Rupasi Barman, while the appellant's services were terminated, was grossly disproportionate and therefore the learned Single Judge had rightly remitted the matter back to the disciplinary authority to impose a lesser punishment which will enable the delinquent to retain his job.

3.3 It is submitted that the charges inflicted upon the appellant – delinquent as well as the female constable – Rupasi Barman were identical in nature and warranted similar punishments. It is submitted that the punishment of ‘removal from service’ awarded by the Commandant in the same facts and circumstances of the instant case is disproportionate to the charges levelled against the appellant. It is submitted that the female constable – Rupasi Barman has been awarded punishment of forfeiture of two years’ seniority in the rank of constable and forfeiture of two years’ service for the purpose of promotion. She was also tried by the SFC for an offence under Section 43 of the SSB Act. It is submitted that therefore the learned Single Judge rightly interfered with the punishment of ‘removal from service’ awarded by the disciplinary authority – Commandant holding that the same was disproportionate to the charges levelled against the appellant.

3.4 It is further submitted by the learned counsel appearing on behalf of the delinquent that during the service period up to 2013, the delinquent has received three cash rewards from the senior officers for good conduct. It is submitted that therefore to remove the appellant from service for a single delinquency would be too harsh and/or disproportionate to the charges and the misconduct held to be proved.

3.5 Learned counsel appearing on behalf of the appellant has submitted that as such the female constable – Rupasi Barman was the friend of the delinquent and the delinquent went to meet her in order to offer her a gift on New Year eve and therefore he entered the Mahila Barrack and she herself unlocked the barrack gate. It is therefore submitted that the intention of the appellant was not bad. It is submitted that therefore the order of punishment of ‘removal from service’ can be said to be disproportionate to the misconduct proved.

3.6 Making the above submissions and relying upon the decision of this Court in the case of *Ranjit Thakur v. Union of India, AIR 1987 SC 2386*, it is prayed to allow the present appeal and quash and set aside the impugned judgment and order passed by the Division Bench of the High Court and restore the well-reasoned judgment of the learned Single Judge, remitting the matter to the disciplinary authority for imposing a lesser punishment.

4. Ms. Vaishali Verma, learned counsel appearing on behalf of the respondents, while supporting the impugned judgment and order passed by the Division Bench of the High Court, has vehemently submitted that in the present case, even the learned Single Judge held that the disciplinary proceedings were conducted after following the due procedure as required under the law. It is submitted that in the disciplinary proceedings, a very serious charge and misconduct committed by the appellant entering into the Mahila Barrack in the midnight has been established and proved. It is submitted that only thereafter the disciplinary authority after considering the seriousness of the misconduct passed an order removing the appellant from service, which was not required to be interfered with by the learned Single Judge.

4.1 It is further submitted that the learned Single Judge interfered with the order of punishment imposed by the disciplinary authority of removing the appellant from service

solely on the ground that in the case of female constable – Rupasi Barman who allowed the entry of the delinquent during her sentry duty, parallel proceedings were drawn up and she was also found guilty of both the charges, however, she was inflicted a lesser punishment and therefore the punishment of ‘removal from service’ imposed on the delinquent can be said to be disproportionate. It is submitted that the misconduct committed by the appellant by entering the Mahila Barrack in the midnight cannot be equated with the misconduct committed by the female constable. It is submitted that the appellant was serving as a Head Constable in the disciplined force in the SSB. Therefore, his indisciplined conduct leading to compromising the security of the occupants of the Mahila Barrack cannot be tolerated. It is submitted that when a conscious decision was taken by the disciplinary authority to impose the punishment of ‘removal from service’, which was after the charges and misconduct held to be proved against him, thereafter it was not open for the learned Single Judge of the High Court to interfere with the same in exercise of powers under Article 226 of the Constitution of India. Reliance is placed on the decisions of this Court in the cases of *Om Kumar v. Union of India*, (2001) 2 SCC 386; *Union of India v. G. Ganayutham*, (1997) 7 SCC 463; *Union of India v. Dwarka Prasad Tiwari*, (2006) 10 SCC 388; and *Union of India v. Diler Singh*, (2016) 13 SCC 71, on the test of proportionality.

4.2 Learned counsel appearing on behalf of the disciplinary authority has also relied upon the decisions of this Court in the cases of *B.C. Chaturvedi v. Union of India*, (1995) 6 SCC 749; and *Lucknow Kshetriya Gramin Bank (Now Allahabd, Uttar Pradesh Gramin Bank) v. Rajendra Singh*, (2013) 12 SCC 372, on the jurisdiction of the courts interfering with the order of punishment imposed by the disciplinary authority.

4.3 It is further submitted that, apart from the fact that the case of the appellant cannot be compared with the misconduct committed by the female constable – Rupasi Barman, even otherwise merely because the female constable, who allowed the entry of the delinquent in the Mahila Barrack, was inflicted with the lesser punishment, cannot be a ground to impose a lesser punishment on the delinquent. The misconduct conducted by the appellant, being a member of the disciplined force, by entering the Mahila Barrack in the midnight and such an indisciplined conduct leading to compromising the security of the occupants of the Mahila Barrack can be said to be a grave and serious misconduct and therefore the disciplinary authority was absolutely justified in imposing the punishment of ‘removal from service’. It is therefore submitted that the learned Single Judge erred in interfering with the order of punishment imposed by the disciplinary authority, which is rightly set aside by the Division Bench of the High Court.

5. We have heard learned counsel for the respective parties at length.

6. The appellant herein, who at the relevant time was serving as a Head Constable, was subjected to disciplinary proceedings for having entered the Mahila Barrack of the Battalion at around 00:15 hours on the intervening night of 14-15th April, 2013. He was charged with an indisciplined conduct relating to compromising the security of the occupants of the Mahila Barrack. He was apprehended inside the Mahila Barrack by six female constables. Thereafter he was subjected to the disciplinary proceedings. All due

opportunities were afforded to him. He was found guilty based on cogent material and evidence and on appreciation of evidence led by both the sides. Only thereafter, the disciplinary authority initially imposed the punishment of dismissal, however, subsequently, the penalty of dismissal was converted to 'removal from service'. The punishment of 'removal from service' was challenged by the delinquent before the High Court. The learned Single Judge, though held that the disciplinary proceedings were conducted after following due procedure under the SSB Rules and due opportunities were afforded to him, thereafter interfered with the order of punishment imposed by the disciplinary authority by observing that as the female constable who allowed the appellant – Head Constable to enter the Mahila Barrack and who was also found guilty of both the charges was inflicted with the lesser punishment and the appellant was inflicted the punishment of 'removal from service', which can be said to be disproportionate and thereby the learned Single Judge interfered with the order of punishment imposed by the disciplinary authority and set aside the punishment of 'removal from service' and remitted the matter back to the disciplinary authority to impose a lesser punishment. The same has been interfered with by the Division Bench of the High Court and the order of punishment imposed by the disciplinary authority has been restored.

7. Therefore, the short question which is posed for the consideration of this Court is, "whether the learned Single Judge was justified in interfering with the order of punishment imposed by the disciplinary authority on the ground that the same was disproportionate as the female constable against whom also the disciplinary proceedings were initiated and the two charges were held to be proved against her, was inflicted with the lesser punishment?"

8. On the judicial review and interference of the courts in the matter of disciplinary proceedings and on the test of proportionality, few decisions of this Court are required to be referred to:

i) In the case of *Om Kumar (supra)*, this Court, after considering the *Wednesbury principles and the doctrine of proportionality*, has observed and held that the question of quantum of punishment in disciplinary matters is primarily for the disciplinary authority and the jurisdiction of the High Courts under Article 226 of the Constitution or of the Administrative Tribunals is limited and is confined to the applicability of one or other of the well-known principles known as '*Wednesbury principles*'.

In the *Wednesbury case, (1948) 1 KB 223*, it was observed that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. Lord Greene further said that interference was not permissible unless one or the other of the following conditions was satisfied, namely, the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered, or the decision was one which no reasonable person could have taken.

ii) In the case of *B.C. Chaturvedi (supra)*, in paragraph 18, this Court observed and held as under:

“18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

iii) In the case of *Lucknow Kshetriya Gramin Bank (supra)*, in paragraph 19, it is observed and held as under:

“19. The principles discussed above can be summed up and summarised as follows:

19.1. When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.

19.2. The courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority.

19.3. Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the court.

19.4. Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case.

19.5. The only exception to the principle stated in para 19.4 above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct were identical or the co-delinquent was foisted with more serious charges. This would be on the doctrine of equality when it is found that the employee concerned and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge-sheet in the two cases. If the co-delinquent accepts the charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable.”

9. In the present case, the appellant was imposed the penalty of ‘removal from service’ after the charges levelled against him stood proved by the disciplinary authority in an enquiry held against him after following the procedure prescribed under the SSB Rules. The nature of allegations against the appellant are grave in nature. He entered the Mahila Barrack in the midnight at around 00:15 hours, may be to meet his alleged friend Rupasi Barman, but such an indisciplined conduct leading to compromising the security of the occupants of the Mahila Barrack cannot be tolerated. As a member of the disciplined force – SSB, he was expected to follow the rules. He was apprehended inside the Mahila Barrack by six female constables. As observed by this Court in the case of *Diler Singh (supra)*, a member of the disciplined force is expected to follow the rules, have control over his mind and passion, guard his instincts and feelings and not allow

his feelings to fly in a fancy. The nature of misconduct which has been committed by the appellant stands proved and is unpardonable. Therefore, when the disciplinary authority considered it appropriate to punish him with the penalty of 'removal from service', which is confirmed by the appellate authority, thereafter it was not open for the learned Single Judge to interfere with the order of punishment imposed by the disciplinary authority.

10. From the judgment and order passed by the learned Single Judge, which has been interfered with by the Division Bench, it appears that what weighed with the learned Single Judge was that the female constable – Rupasi Barman, who allowed the entry of the delinquent and who was also subjected to disciplinary proceedings and was found guilty of both the charges, was inflicted with a lesser punishment and therefore punishment of 'removal from service' imposed on the delinquent official was disproportionate. However, the learned Single Judge did not appreciate that the misconduct committed by the delinquent official, being a male Head Constable cannot be equated with the misconduct committed by the female constable. The misconduct of entering the Mahila Barrack of the Battalion in the midnight is more serious when committed by a male Head Constable. Therefore, the learned Single Judge committed a grave error in comparing the case of female constable with that of the appellant – delinquent, male Head Constable.

11. Even otherwise, merely because one of the employees was inflicted with a lesser punishment cannot be a ground to hold the punishment imposed on another employee as disproportionate, if in case of another employee higher punishment is warranted and inflicted by the disciplinary authority after due application of mind. There cannot be any negative discrimination. The punishment/penalty to be imposed on a particular employee depends upon various factors, like the position of the employee in the department, role attributed to him and the nature of allegations against him. Therefore, the Division Bench of the High Court is absolutely justified in interfering with the judgment and order passed by the learned Single Judge, interfering with the order of punishment imposed by the disciplinary authority removing the appellant from service. If the conduct on the part of the appellant entering the Mahila Barrack of the Battalion in the midnight is approved, in that case, it would lead to compromising the security of the occupants of the Mahila Barrack. Therefore, the disciplinary authority was absolutely justified in imposing the punishment/penalty of 'removal from service' by modifying the earlier punishment of dismissal. The same cannot be said to be disproportionate at all to the misconduct held to be proved against the appellant – delinquent.

12. In view of the above and for the reasons stated above, the present appeal fails and the same deserves to be dismissed and is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.