

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4059/2015

UNION OF INDIA & ANR.

Appellant(s)

VERSUS

R.K SHARMA

Respondent(s)

O R D E R

The Union of India through Ministry of Steel and the Director of the said Ministry are aggrieved by the order dated 06.12.2012 passed by the High Court of Delhi whereby the High Court set aside the dismissal order dated 14.07.2000 as well as the order dated 18.02.2002 passed by the Central Administrative Tribunal, ("The Tribunal", for short), upholding the said dismissal order passed against the respondent.

2. It is not necessary to give the factual matrix in detail and suffice it is to mention that the respondent was working as a Daftry (appears to be Grade-IV post). After the respondent had served for about seven years or so, he was served with a charge-memo dated 04.12.1998 proposing to hold an inquiry under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 ("1965 Rules" for short).

3. The charge-memo contained the following articles of charge against the respondent:

Article I: That Shri R.K. Sharma while functioning as Daftry was absent from duty during following periods without prior permission of the competent authority:

From 09.02.1998 to 23.03.1998

From 24.03.1998 to 23.05.1998

Article II: That Shri R.K. Sharma while functioning as Daftry did not receive intentionally the letter No. 11(6)/98-HSM dated 16.04.1998 sent to him by registered post and in this manner he kept the office in dark about his residential address.

Article III: That Shri R.K. Sharma functioning as Daftry/Adhoc LDC was absent continuously from duty without prior sanction and intimation during the period 1993-98.

Article IV: That Shri R.K. Sharma while functioning as adhoc LDC/Daftry was not loyal towards his duties by keeping himself continuously absent from duty without prior sanction of leave."

4. An inquiry was conducted and after concluding that charge Nos. I, III & IV had been proved, the Disciplinary Authority concurred with the Inquiry Report and imposed the punishment of dismissal from service of the respondent vide order dated 14.07.2000.

5. The respondent assailed the dismissal order before the Tribunal but his Original Application was turned down vide order dated 18.02.2002. Still aggrieved, the respondent approached the High Court. The Division Bench of the High Court vide impugned judgment dated 06.12.2012 allowed the Writ Petition and set aside the orders impugned therebefore. As a

consequence thereto, the respondent was directed to be reinstated in service but without any back-wages.

6. The appellants have now laid challenge to the aforesaid order of the High Court through the instant appeal.

7. We have heard Mr. Jayant Sud, learned Additional Solicitor General and Mr. R. Balasubramanian, learned Senior Advocate assisted by Mr. Rajan Kumar Chourasia, Advocate on behalf of the appellants. No one represents the respondent.

8. The short question which falls for consideration is whether the punishment of dismissal from service on account of absence from duty for the period mentioned in Article 1 of the Charge-memo, is proportionate, reasonable and in conformity with Articles 14 and 16 of the Constitution of India?

9. Learned counsel for the appellants have rightly pointed out that besides the absence period, the respondent had on several occasions remained on Casual Leave/Earned Leave or other sanctioned leave also. It is pointed out that such leave was sanctioned by the officers who were not competent to do so. However, the appellants have not proved that the respondent was "willfully" absent from service during those periods. It remains a possibility that respondent merely acted under the faith that the officer in question had the power to approve his requests for leave. It is also undeniable that no action was taken against the officers who purportedly granted leave to the respondent despite not being competent to sanction the same.

10. In view of the above, we are of the considered opinion

that no misconduct can be attributed to the respondent for the periods he availed one or the other sanctioned leave.

11. As regards to the period for which the respondent was absent from duty, we are satisfied that the punishment of dismissal from service is too harsh, disproportionate and not commensurate with the nature of the charge proved against the respondent. We are, therefore, of the view that the ends of justice would have been adequately met by imposing some lesser but major penalty upon the respondent.

12. The misconduct attributed to the respondent is based on the charge-memo dated 04.12.1998 with respect to which he was dismissed from service in the year 2000. We, therefore, do not deem it necessary to remit the case to the disciplinary authority after such a long spell of 22 years. Instead, we are inclined to invoke our power under Article 142 of the Constitution, keeping in mind the doctrine of proportionality and with a view to do complete justice between the parties. This Court has utilized Article 142 on numerous occasions in the past, such as in *Hind Construction & Engineering v. Their Workmen*¹ and *Management of the Federation of Indian Chambers of Commerce v. Their Workmen*² to ensure that the punishment meted out to a public sector employee for a violation of the applicable service laws/rules is not disproportionate to the infraction that he/she has committed. The doctrine of proportionality is employed to examine whether the penalty that

1 AIR 1965 SC 917

2(1972) 1 SCC 763

is imposed upon is congruent with the charges brought against the delinquent employee.

13. We, thus, allow this appeal in part and dispose of the same in the following terms:

(i) The order of the High Court dated 06.12.2012 to the extent of setting aside the dismissal dated 14.07.2000 is upheld.

(ii) The respondent is ordered to be reinstated in service but he shall be deemed to have remained in service till he completed minimum "qualifying service" of 20 years to earn pension and other retiral benefits.

(iii) The respondent shall be deemed to have been 'compulsorily retired from service', with entitlement to pension, gratuity and other retiral benefits on completion of minimum qualifying service.

(iv) No arrears of pay shall be paid to the respondent from the date of dismissal from service i.e. 14.07.2000 till he is deemed to have completed the minimum "qualifying service".

(v) The respondent, however, shall be entitled to arrears of pension and other retiral benefits, without any interest, provided that such arrears are paid within a period of four months from today. In the event of delay, the respondent shall be entitled to interest @ 6% per annum on delayed payment.

(vi) It is made clear that the above stated order shall not constitute a precedent as the same has been passed by invoking power under Article 142 of the Constitution.

14. The Civil Appeal is disposed of in the aforesaid terms.

..... J.
[SURYA KANT]

..... J.
[J.B. PARDIWALA]

New Delhi,
June 30, 2022

ITEM NO.102

COURT NO.2

SECTION XIV-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 4059/2015

UNION OF INDIA & ANR.

Appellant(s)

VERSUS

R.K SHARMA

Respondent(s)

Date : 30-06-2022 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE J.B. PARDIWALA
(VACATION BENCH)

For Appellant(s)

Mr. Jayant Sud, ASG
Mr. R. Balasubramanian, Sr.Adv.
Mr. Rajan Kumar Chourasia, Adv.
Ms. Swati Ghildiyal, Adv.
Mr. Raj Bahadur Yadav, AOR
Mr. Amrish Kumar, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

The appeal is disposed of in terms of the signed order.

Pending applications, if any, shall stand disposed of.

(INDU MARWAH)
COURT MASTER (SH)(RENU BALA GAMBHIR)
COURT MASTER (NSH)

(SIGNED ORDER IS PLACED ON THE FILE)