

Court No. - 39

Case :- WRIT - A No. - 15295 of 2023

Petitioner :- Union Of India And 3 Others

Respondent :- Yashpal

Counsel for Petitioner :- Gopal Verma

Counsel for Respondent :- Praveen Kumar, Parashar
Pandey

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Arun Kumar Singh Deshwal, J.

1. Heard Shri Gopal Verma, learned counsel for the petitioner-Union and Shri Parashar Pandey, learned counsel for the respondent.
2. Present petition has been filed against the order of the Central Administrative Tribunal, Allahabad Bench, Allahabad, dated 29.05.2023 passed in Original Application No. 972 of 2012 (Yash Pal Vs. Union of India and others).
3. By that order, the learned Tribunal has allowed the Original Application. It has set aside the punishment order, order passed in appeal and the order passed in revision. Further, it has remitted the matter to the disciplinary authority to pass a fresh order as may be proportionate to the misconduct found proven.
4. Shri Gopal Verma has vehemently contended that the Tribunal has completely erred in setting aside the punishment, appeal and revision orders and in remitting the

matter to the disciplinary authority. Referring to the record of the enquiry, the enquiry report as also the past conduct of the respondent, it has been urged, the respondent was habituated to remaining absent without leave. In the past as well, the respondent had absented himself without leave. In the present transaction, he remained absent without leave for about 10 months and when asked to report at the Railway Hospital, the respondent failed to comply with that direction and continued to remain on unexplained leave. He has also referred the statement of a Management witness, Shri M.K. Singh stating that respondent had earlier offered similar conduct.

5. Thus, it has been submitted, a clear case of dereliction of duty was made out. It was necessary to award major punishment of dismissal from service for continued and repeated acts of remaining absent without leave.

6. On the other hand, Shri P.K. Pandey would submit, the Tribunal has not erred in setting aside the punishment order as confirmed in appeal and revision. Referring to the enquiry report, it has been submitted, no accentuating fact or circumstance was found proven as may have warranted the wholly disproportionate punishment of dismissal from service. The fact of the respondent having remained ill as had prevented him from performing his duties, was not found to be false. Insofar as the respondent had produced medical certificate in support of his claim of illness, there was prima facie evidence in support of the explanation furnished by the respondent. Then, it has been submitted, having joined service on 29.06.2006, the respondent remained on duty

without any further complaint. It is his further submission that these mitigating circumstances have remained from being factored in by the disciplinary authority. Thus, wholly excessive punishment of dismissal from service was awarded to the respondent after he had joined back in service and had continued to work without break.

7. Having heard learned counsel for the parties and perused the record, without drawing any conclusion as to fact occurrence of misconduct alleged, we find, the Tribunal has not committed any error in setting aside the orders of punishment, appeal and revision and remitting the matter to the disciplinary authority to consider the matter afresh. Since, we do not wish to make any observation as to the conduct alleged, we are not referring to the material relied upon by the learned counsel for the parties. For the purposes of decision of the present petition, we are confining our discussion to the order of the Tribunal.

8. The Tribunal has correctly extracted the principle to be applied in the award of major punishments. Thus, gravity of misconduct, past conduct, nature of duties, position in organisation, previous penalty, if any and requirement of discipline to be enforced were relevant to be considered by the disciplinary authority before the punishment may have been awarded to the respondent.

9. It is undisputed that the respondent was appointed as a Khalsi on 22.10.1999. In the context of the present proceedings, he was found absent from work for nine months from 9.5.2005 to 18.2.2006. Thereafter, there was a brief break up to 28.06.2006 but there is no dispute to the

fact that the respondent had worked continuously from 29.06.2006 onwards.

10. In the context of absence from duty without leave, all factors should have been examined by the disciplinary authority before award of major punishment of dismissal could be made. To that extent, the Tribunal has further protected the interest of the present petitioner by observing that the disciplinary authority may observe the past record of the respondent and all other factors taken note of by the Tribunal. At present the disciplinary authority had not offered any consideration to the material aspects of the matter.

11. In view of the above, we find no error in the order of the Tribunal dated 29.05.2023. Accordingly, the writ petition is **dismissed**. No order as to costs.

Order Date :- 20.9.2023
SA

(Arun Kumar Singh Deshwal, J.) (S.D. Singh, J.)