WWW.LIVELAW.IN

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No(s).6183 of 2010

Union of India and Ors **Appellant(s)**

Versus

Sitaram Mishra and Anr **Respondent(s)**

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

1. The first respondent was enlisted as a constable in the CRPF on 20 September 1971. He was posted in the 41st Batallion in September 1989. In February 1998, he was functioning as Head Constable and was deployed at Ractiacherra, Police Station Jirania, West Tripura. A carbine was issued to him. It is alleged that, on 18 February 1998 at about 0945 hours, while he was cleaning the barrel of his loaded 9 MM carbine in the barracks, he did not remove the magazine and proceeded to clean the carbine carelessly. As a result, eight rounds were fired. One of the bullets hit a co-constable who was present in the barracks. He died as a result of the injuries which were sustained. A First Information Report was lodged. The Commandant initiated a disciplinary proceeding against the first respondent. The charge was in the following terms:

Signature Not Verified
Digitally signed by SANJAY KUMAR
Date: 2018.07.18 16:55:46 IST
Reason:

> "That, No.710170325 HC Sita Ram Mishra, while serving as a Head Constable (GD) in "B" Coy, duct and remissness in his capacity as a member of the Force under Section 11(1) of CRPF Act, 1949, punishable under Rule 27(a) of CRPF Rules, 1955, in that he on 18.02.1998 at about 0945 hours, started cleaning barrel of his loaded 9

WWW.LIVELAW.IN

> MM Carbine (No.15356032, Butt no.13) in men barrack of B/41 Bn. CRPF, carelessly without removing its magazine on his bed. In this process of clearning, 08 Rounds got fired automatically and one of these bullet hit No.901310271 Ct. Sailesh Kumar Tiwari who was present there in the barrack. No.901310271 Ct. Sailesh Kumar Tiwari subsequently succumbed to his injuries at about 1020 hours same day in Civil Hospital, Jirania, Agartala."

2. After conducting a disciplinary enquiry, the Enquiry Officer submitted a report on 12 March 1999. The first respondent was held to be guilty of misconduct by the disciplinary authority, as a result of which the penalty of dismissal from service was imposed under Section 11(1) of the CRPF Act 1949 read with Rule 27(a) of the CRPF Rules 1955. The appeal as well as the revision petition filed by the first respondent were dismissed.

3. The first respondent was also tried of an offence under Section 304 of the Indian Penal Code 1860[1]. He was acquitted by the Judicial Magistrate, First Class, Agartala, Tripura West on 5 January 2002.

4. The writ petition filed by the first respondent under Article 226 of the Constitution to challenge his dismissal from service was dismissed by a learned Single Judge. However, in a writ appeal, the Division Bench interfered with the judgment of the learned Single Judge on the ground that the charge of misconduct was not established. Since the first respondent had, in the meantime, retired from service, the Division Bench directed that he be treated in service until he attained the age of superannuation and be paid full back wages after adjusting the subsistence allowance paid during the period of suspension.

5. The High Court, by its impugned judgment in the writ appeal, held that:

1 "IPC"

WWW.LIVELAW.IN

(i) The charge of misconduct was belied by the depositions of PW 5 and PW 6 during the course of the disciplinary enquiry to the effect that the carbine was disassembled when it was being cleaned;

(ii) There was no evidence in support of the finding of misconduct;

(iii) The departmental proceedings as well as the criminal case were "same and identical"; and

(iv) The departmental proceedings were not sustainable after the acquittal of the first respondent from the criminal case.

6. Learned counsel appearing on behalf of the appellants submitted that the Division Bench of the High Court has fallen into a serious error in interfering with the dismissal of the writ petition by the learned Single Judge, particularly in a case such as present, where the charge of misconduct was duly proved on the basis of the evidence adduced in the disciplinary enquiry. It was further submitted that the facts are not in dispute, viz., that the first respondent was in possession of a carbine which was assigned to him for his official duties; he was in the men's barracks; and the carbine was while being handled by the first respondent discharged as a result of which one of the bullets struck his colleague who died as a result of the injuries. On these facts, it was submitted that a case of negligence was clearly established which warranted dismissal from service. The charge of criminal wrongdoing has to be proved beyond reasonable doubt whereas the disciplinary proceeding is governed by a preponderance of probability. On these grounds, it was submitted that the High Court was in error in interfering with the exercise of disciplinary jurisdiction by the competent authority.

WWW.LIVELAW.IN

7. On the other hand, learned counsel appearing on behalf of the first respondent, has placed reliance on the decision of the Judicial Magistrate acquitting the first respondent of the charge under Section 304 of the IPC. It was urged that on the basis of the judgment of acquittal, it is evident that there is no substance in the case that the first respondent was guilty of a rash and negligent act. Moreover, it was urged that the first respondent has since retired from service and his pensionary dues should be directed to be released.

8. From the material on the record, certain facts are not in dispute. They are:

(i) The first respondent was in possession of a weapon which had been issued to him as a Head Constable in the CRPF posted at the 41st Batallion at the relevant point of time;

(ii) The death of the co-employee occurred in the course of the handling of the weapon by the first respondent; and

(iii) Both the first respondent and the victim were in the men's barracks of the 41st Batallion.

9. The disciplinary authority found that the charge of misconduct was sustainable on the basis of the evidence on the record. The Division Bench of the High Court reversed the judgment of the learned Single Judge primarily on the basis of the depositions of PW 5 and PW 6 to the effect that the 9MM carbine was disassembled. The High Court was manifestly in error in reappreciating the evidence which was adduced during the disciplinary enquiry. The issue, in the exercise of judicial review against a finding of misconduct in a disciplinary enquiry, is whether the finding is

WWW.LIVELAW.IN

sustainable with reference to some evidence on the record. The High Court can, it is well-settled, interfere only in a situation where the finding is based on no evidence. In such a situation, the finding is rendered perverse. In the present case, the impugned judgment of the Division Bench adverts to the statement of the first respondent of the circumstances in which the death of his colleague occurred. The relevant extract is thus:

> "...When I was about to go outside to see my luggage, I fitted the magazine of my Carbine and JAB MAINE MAGAZINE PAR HATH MARA TO CARBINE SE FIRE HONE LAGA."

10. This part of the admission of the first respondent clearly indicates that it was as a result of the handling of the weapon by the first respondent that the bullets were fired and the death of his colleague occurred in consequence. None of the material facts are in dispute.

11. In this view of the matter, the High Court was manifestly in error in interfering with the findings of the disciplinary enquiry, particularly when a learned Single Judge had, in the course of his judgment, found no irregularity in the enquiry. The punishment of dismissal is not disproportionate to the misconduct proved.

12. The second ground, which has weighed with the High Court, is equally specious. A disciplinary enquiry is governed by a different standard of proof than that which applies to a criminal case. In a criminal trial, the burden lies on the prosecution to establish the charge beyond reasonable doubt. The purpose of a disciplinary enquiry is to enable the employer to determine as to whether an employee has committed a breach of the service rules. In the present case, the learned Single Judge has adverted to Circular Order No.16/85, which *inter alia* imposed the following obligation

WWW.LIVELAW.IN

upon the members of the CRPF:

> "(c) strict fire discipline should be enforced by supervisory staff at all levels. In other words, loaded, and cocked weapons should not be kept by the troops while in barracks/non operational places.
>
> Severe disciplinary action must be taken against the defaulters."

The fact that the first respondent was acquitted in the course of the criminal trial cannot operate *ipso facto* as a ground for vitiating the finding of misconduct which has been arrived at during the course of the disciplinary proceedings. The High Court, in our view, has drawn an erroneous inference from the decision of this Court in ***Capt M Paul Anthony v Bharat Gold Mines Ltd***[2]***.*** The High Court adverted to the following principle of law laid down in the above judgment:

> "...While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubts. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance."

13. It is undoubtedly correct that the charge in the criminal trial arose from the death of a co-employee in the course of the incident resulting from the firing of a bullet which took place from the weapon which was assigned to the first respondent as a member of the Force. But the charge of misconduct is on the ground of the negligence of the first respondent in handling his weapon and his failure to comply with the departmental instructions in regard to the manner in which the weapon should be handled. Consequently, the acquittal in the criminal case was not a ground for setting aside the penalty which was imposed in the course of the disciplinary enquiry. Hence, having regard to the parameters that govern

2 (1999) 3 SCC 679

WWW.LIVELAW.IN

the exercise of judicial review in disciplinary matters, we are of the view that the judgment of the Division Bench of the High Court is unsustainable.

14. For the above reasons, we allow the appeal and set aside the impugned judgment and order of the Division Bench of the High Court dated 14 December 2007. In consequence, we maintain the judgment of the learned Single Judge dismissing the writ petition filed by the first respondent under Article 226 of the Constitution. There shall be no order as to costs.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Indira Banerjee]

New Delhi;
July 11, 2019

WWW.LIVELAW.IN

ITEM NO.110 COURT NO.11 SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s).6183/2010

UNION OF INDIA AND ORS Appellant(s)

VERSUS

SITARAM MISHRA AND ANR Respondent(s)

Date : 11-07-2019 This appeal was called on for hearing today.

CORAM :
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MS. JUSTICE INDIRA BANERJEE

For Appellant(s) Mr. S.S. Ray, Adv.
Ms. Snidha Mehra, Adv.
Mr. Chakitan Vikram Shekher Papta, Adv.
Ms. Tanisha Samanta, Adv.
Mr. B.V. Balramdas, Adv.

For Respondent(s) Mr. P. K. Jain, AOR
Mr. Saurabh Jain, Adv.
Mr. P.K. Goswami, Adv.

Mr. Rameshwar Prasad Goyal, AOR

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

The appeal is allowed in terms of the signed reportable judgment. There shall be no order as to costs.

Pending application, if any, stands disposed of.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER

(Signed reportable judgment is placed on the file)