CASE NO.:
Appeal (civil) 6087 of 2001

PETITIONER:
MITHILESH SINGH

RESPONDENT:
UNION OF INDIA AND ORS.

DATE OF JUDGMENT: 27/02/2003

BENCH:
SHIVARAJ V. PATIL & ARIJIT PASAYAT

JUDGMENT:
JUDGMENT

2003 (2) SCR 377

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Punishment from removal from service as awarded by the disciplinary authority and maintained by the Division Bench of the Guwahati High Court, is the subject matter of challenge in this appeal. The Division Bench set aside the order of a learned Single Judge who had interfered with quantum of punishment awarded.

Controversy lies within a very narrow compass, as the factual scenario is almost undisputed.

The appellant was appointed as Constable in the Railway Protection Special Force on 16.4.1978. Disciplinary proceedings were initiated against him by issuing notice under Section 9(1) of the Railway Protection Force Act 1957 (in short 'the Act') read with Rule 44 of the Railway Protection Force Rules, 1959 (in short 'the Rules'). Gravamen of charge against him was that he had left duties as well as the Tarantaran Station without permission. He was detailed with others for Quarter Guard cum Station Static Guard duty on 22.5.1987. At about 1125 hrs. he asked the Guard Commander to keep his arms and ammunition telling that he was proceeding home. The Guard Commander asked him not to go without permission. But disobeying the orders, he left his duty as well as the Station Tarantaran without any permission. This was considered to be an act of indiscipline and carelessness in duty. His defence was that he was required to attend the wedding of his brother-in-law and, therefore, he had to leave the Station in any case. It was further stated by him that he asked the Inspector in-charge that Adjutant had assured him about grant of leave, but the Inspector in-charge refused to grant leave. Faced with this situation he had to leave with a view to keep his family commitments. It was also stated by him that he had handed over his arms and ammunition for safe custody. He returned after 25 days for which he had asked for leave. The authorities on completion of the disciplinary proceedings found that the charge was proved and penalty from removal from service was awarded.

An appeal was preferred against the order of removal from service before the appropriate authority, but the same did not bring any relief. Thereafter a writ petition was filed before the Guwahati High Court. Learned Single Judge held that there was no unfairness in the conduct of the inquiry proceedings and the same was conducted in a just manner. However, he felt that the punishment was disproportionate and unjust and was, therefore, violative of Article 14 of the Constitution of India, 1950 (in short "The Constitution"). Finally, it was directed that the disciplinary authority may impose any punishment other than order of removal or dismissal or compulsory retirement from service. The said order was challenged before the Division Bench in a writ appeal. By the impugned order, the Division Bench held that Rule 156(b)(iii) permits imposition of

the penalty of removal and, therefore, imposition of such penalty cannot be held as shockingly disproportionate. The order of learned Single Judge was set aside, and the order of removal from service was restored.

In support of the appeal Mr. S.B. Sanyal, learned senior counsel submitted that the Rules provided for different types of punishments. Rule 156 deals with imposing of punishment of dismissal etc. Rule 156(b)(iii) is applicable only where there is absence from duty without proper intimation or overstay beyond sanctioned leave without sufficient cause. With reference to the factual scenario as noticed by the disciplinary authority, he submitted that request was made for grant of leave. Merely because leave was not granted, it cannot be a case of non-intimation. With reference to Rule 147 he submitted that in Clauses (iv) and (vi), offences enumerated are (a) with drawing from duty of his office without permission; and (b) absenting himself without proper intimation to his controlling authority or without sufficient cause overstaying leave granted to him or failing without reasonable cause to report himself for duty on the expiry of such leave; respectively. Withdrawing from duty without permission and absenting without proper intimation are two different offences. For imposition of penalty of removal from service; absence from duty must be without proper intimation or overstay beyond sanctioned leave without sufficient cause. The request for grant of leave is intimation, and it cannot be held to be absence from duty without proper intimation. Further, for taking note of past conduct for determination of punishment, there has to be specific charge in the proceedings and without that past conduct cannot be taken into consideration. Finally, it is submitted that the offence was not such as would warrant removal from service and, therefore, learned Single Judge was justified in his decision.

Per contra, learned counsel for the respondent submitted that the appellant belonged to the armed forces and, therefore, discipline in his conduct was imperative. He not only left the duty and the Station without permission, but also left the arms and ammunition unattended. Particular procedure is provided for grant of leave. Mere making an application for grant of leave is not sufficient and even if it is accepted that an application for grant of leave was made, same cannot be construed to be an appropriate intimation for absenting from duty. It is further submitted that having accepted that the procedure adopted was fair and proper, there was no scope for interfering with the punishment awarded which was statutorily permissible. It is pointed out that though there was reference to the past conduct, the same did not form basis for imposition of penalty.

In order to appreciate the rival submissions it is necessary to note a few provisions. Rule 104 deals with general condition governing grant of leave. Rule 147 deals with offences relatable to duties of enrolled members and Rule 156 deals with imposition of punishment of dismissal, etc. They read as follows:

"104. General Condition governing grant of leave:

104.1 The powers of superior officers and subordinate of the Force in respect of grant of leave shall be as specified in Schedule II.

104.2 Leave of every description may be sanctioned, refused or revoked subject to exigencies of public service.

104.3 No member of the Force shall leave his station even on holidays without the specific permission of authority empowered to grant his casual leave.

104.4 A member of the Force before proceeding on leave shall record his leave address in office at which orders of recall or other communication will reach him with certainty.

104.5 Leave certificate:

A leave certificate in the prescribed form shall be issued to every enrolled member of the Force proceeding on leave, other than casual leave and such certificate shall be presented by the member personally on his rejoining from leave to the officer-in-charge of the place at which he joins, who shall endorse on the certificate the hour and date of rejoining and forward the same to the office where his leave account is maintained.

104.6 Recall from leave:

The members of the Force on leave may be,-

(i) recalled at any time by the authority empowered to sanction their leave;

(ii) directed to report for duty either at their headquarters or to proceed direct to the place at which their services are required:

Provided that on being recalled, the members of the Force shall be entitled to duty passes and travelling allowance as on tour by the shortest route.

104.7 Return to duty from leave:

No member of the Force who has been granted leave on medical certificate can resume duty without first producing medical certificate of fitness. The authority competent to sanction leave may require a similar certificate in the case of any member of the Force who has been granted leave for reasons of his health even though such leave was not actually granted on medical grounds.

147. Offences relatable to duties of enrolled members:

Commission of any of the following act or acts by an enrolled member of the Force-

0) violation of any duty:

(ii) wilful breach or neglect of any provisions of this Act or any rule or of. Directives or of any other lawful orders which he is bound to observe or obey;

(iii) disobeying lawful command of superior officers;

(iv) withdrawing from duty of his office without permission;

(v) quitting his guard, picket, party or patrol without being duly relieved or without leave;

(vi) absenting himself without proper intimation to his controlling authority or without sufficient cause overstaying leave granted to him of failing without reasonable cause to report himself for duty on the expiry of such leave;

(vii) engaging himself without authority for any employment other than his duty as an enrolled member of the Force;

(viii) being guilty of cowardies;

(ix) being in a state of intoxication while on duty or after having been alerted for any duty;

(x) malingering or feigning or voluntarily causing hurt or infirmity to himself or intentionally delaying his cure or aggravating his disease or infirmity with the intention to render himself unfit of any duty or for the service;

(xi) resisting his lawful arrest or being under arrest or in confinement leaving his arrest or confinement before he is set at liberty by lawful authority;

(xii) assaulting or otherwise ill-treating any enrolled member of the Force subordinate to him in rank or position;

(xiii) being grossly insubordinate or insolvent his higher officer or using or attempting to use criminal force against his colleague or higher officer whether on or off duty, knowing or having reason to believe him to be such;

(xiv) designedly or through neglect injuries, or losing or fraudulently disposing of or unlawful lending his arms, clothes, tools, equipments, ammunition or accoutrements, or any such articles entrusted to him or belonging to any other member of the Force;

(xv) taking part in procession, gherao, demonstration, shouting slogans or resorting to pamphleteering or otherwise indulging in any intimidating or coercive act, or dharma, hunger strike for forcing under duress or threats any supervisory- authorized to concede anything or striking work;

(xvi) being guilty of using insulting or threatening language in the case of Security Court or causing any interruption or disturbance in the proceedings of such court;

(xvii) offering unwarrantable personal violence to any person in custody;

(xviii) entering or searching without lawful such authority or reasonable cause any building or place;

(xix) seizing vexatiously and unnecessarily the property of any person;

(xx) detaining, searching or arresting any person vexatiously and without reasonable suspicion or cause;

(xxi) holding out any threat inducement or promise not warranted by law; or

(xxii) aiding or abetting or attempting to commit any of the offences under this Act or these rules or doing any act towards the commission of such offence;

shall render him liable for punishment under Section 9 or Section 17 or both.

156: Imposing of punishment of dismissal, etc.;

Before coming to any lower punishment, the disciplinary authority with a view to ensuring the maintenance of integrity in the Force shall consider the award of punishment of dismissal or removal from service to any member of the Force in the following cases, namely:-

(a) Dismissal:

(i) conviction by a criminal court;

(ii) serious misconduct or indulging in committing or attempting or abetting an offence against railway property;

(iii) discreditable conduct affecting the image and reputation of the Force;

(iv) neglect of duty resulting in or likely to result in loss to the railway or danger to the lives of persons using the railways;

(v) insolvency or habitual indebtedness; and

(vi) obtaining employment by concealment of his antecedents which would ordinarily have debarred him from such employment.

(b) Removal from service:

(i) any of the misconduct for which he may be dismissed under clause (a) above;

(ii) repeated minor misconducts;

(iii) absence from duty without proper intimation or overstay beyond sanctioned leave without sufficient cause."

Rule 147(vi) deals with the case of absence without proper intimation. A mere application for grant of leave cannot be construed to be a proper intimation for absence. Rule 104 indicates various modalities governing grant of leave. There is prohibition on any member of the Force to leave Station even on holidays without specific permission of the authority empowering to grant casual leave. These modalities have been enumerated in Rule 104 clearly bring out the essence of discipline, which is required to be observed. Absence from duty without proper intimation is indicated to be grave offence warranting removal from service. Therefore, mere making an application for leave cannot be construed to be of any consequence in the background of the strict requirement of giving proper intimation. Even if it is accepted that there was intimation, that by no such imagination can be construed to be a proper intimation for diluting the requirement of obtaining permission before absenting from duty. Stress is on the expression, "proper". It means appropriate, in the required manner, fit, suitable apt. The mere making of a request of leave, which has not been accepted is not a proper intimation. It cannot be said that the said word is a surplusage. The intention of legislature is primarily to be gathered from the language used, and as a consequence a construction which results in rejection of words as meaningless has to be avoided. It is not a sound principle of construction to brush aside word (s) in a statute as being inapposite surplusage: if they can have appropriate application in circumstances conceivably within the contemplation of the statute. In the interpretation of statutes the Courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. The Legislature is deemed not to waste its words or to say anything in vain. The authorities were, therefore, justified in holding that he was guilty of the offence of absence from duty without proper intimation.

The only other plea is regarding punishment awarded. As has been observed in a series of cases, the scope of interference with punishment awarded by a disciplinary authority is very limited and unless the punishment appears to be shockingly disproportionate, the Court cannot interfere with the same. Reference may be made to a few of them. See: B.C. Chaturvedi v. Union of India and Ors., [1995] 6 SCC 749, State of U.P. and Ors. v. Ashok Kumar Singh and Anr., [1996] 1 SCC 302. Union of India and Anr. v. G. Ganayutham, [1997] 7 SCC 463; Union of India V. J.R. Dhiman, [1999] 6 SCC 403 and Om Kumar and Ors. v. Union of India, [2001] 2 SCC 386.

We find from the factual position, which is undisputed that the appellant was posted at Tarantaran in Punjab, a terrorist affected area and was, at the relevant time, working in the Railway Protection' Special Force. Any act of indiscipline of such an employee cannot be lightly taken. In Ashok Kumar Singh's case supra, the employee was a police constable and it was held that act of indiscipline by such a person needs to be dealt with sternly. As noted by the Division Bench of the High Court, penalty of removal of service is statutorily prescribed. It is for the employee concerned to show that how penalty was disproportionate to the proved charges. No mitigating circumstance has been placed by the appellant to

show, as to how the punishment could be characterized as disproportionate and/or shocking. On the contrary as established in the discipline proceedings, the appellant left the arms and ammunition unguarded and not in any proper custody. This aggravated the aberrations. Therefore, the order of removal from service cannot be faulted. There is no reason to interfere with the orders of the Division Bench of the High Court.

The appeal is dismissed, but without costs.