

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 6348 OF 2011
(Arising out of SLP(C) No. 8705/2010)

LALJI PANDEY

...Appellant

Versus

UNION OF INDIA & ORS.

...Respondents

O R D E R

1. Leave granted.

2. This appeal is directed against the judgment and order dated 19.11.2009 passed by the Division Bench of the Gujarat High Court dismissing the writ petition filed by the appellant herein. By the aforesaid judgment and order, the High Court upheld the order passed by the Disciplinary Authority removing the appellant from service pursuant to institution of a departmental proceeding against him. The charge-sheet was issued to the appellant in the said departmental proceeding.

3. We have gone through the said charge-sheet containing the charges. On perusal thereof, we find that in fact there are two charges alleged against the appellant. First charge is recovery of Rs.199/- from a packet of Balaji namkeen, which was hidden under a sand bag near the place where the appellant was on duty at the relevant point of time. The second charge, although is connected with the first charge, but is based on different foundation to the effect that the aforesaid money of Rs.199/- was generated by the appellant illegally for his personal gain and thereafter hidden the same under the sand bag placed near the gate with the intention to take out the same at his own convenience.

4. After issuance of the charge-sheet dated 21.07.2008 with the aforesaid charges, the appellant submitted his reply

whereupon witnesses were examined in the departmental proceedings by the Enquiry Officer appointed for the purpose. The Enquiry Officer returned a report of guilty against the appellant.

5. We have been taken through the findings recorded by the Enquiry Officer. After narrating the way the incident had happened and as stated by Karam Singh, the Inquiry Officer came to the conclusion that during the duty hours when Inspector Karam Singh asked Constable Lalji Pandey about the aforesaid money of Rs.199/-, he kept quiet and therefore the Enquiry Officer concluded that the said money was illegally obtained money, collected by the appellant for personal gain and then hidden the same under the sand bag with the intention to take out the same at his own convenience. This is practically repetition of the charge alleged without any appreciation. These conclusions are basically the contents of the charge, which was framed against the appellant.

6. Be that as it may, the Disciplinary Authority considered the aforesaid finding of the Enquiry Officer and by order dated 26.9.2008, after giving an opportunity to the appellant to show cause, imposed a punishment on him of removal from service.

7. Being aggrieved by the said order, the appellant filed an appeal before the Appellate Authority which was dismissed. Thereafter a revision was filed which was also dismissed, consequent upon which the writ petition was filed in the High Court which was also dismissed by the impugned judgment and order and hence the present appeal.

8. We have heard the counsel appearing for the parties who have taken us through all the relevant records. Upon going through the materials placed on record, we find that although an amount of Rs.199/- was recovered from under the

sand bag near the gate; the same was not recovered from the hands of the appellant but from under the sand bag near the place where the appellant was on duty. At the relevant point of time, the appellant was found to have bended and when he was asked as to what he was doing by bending, he said, he was doing nothing. Money was thereafter recovered from under the sand bag.

9. However, even after going through the entire evidence on record, we do not find any iota of evidence which could be said to have proved the charge of receiving any illegal gratification by the appellant. The aforesaid charge, therefore, of receiving illegal gratification by the appellant is not proved. That an amount of Rs.199/- was recovered from near the place where the appellant was on duty at the relevant point of time could be an element which is against the appellant, as the appellant in the morning had only Rs.10/- in his custody when he reported for duty. However, the possibility that the same amount could have been kept there by someone else or planted there also cannot be ruled out. In any event, the appellant cannot be held to be guilty of charge of receiving illegal gratification. There is also no evidence on record to prove that the said amount of Rs.199/- was the amount which was a part of illegal gratification. The source of the amount could not be proved in the departmental enquiry by any evidence, not to speak of cogent and strong evidence.

10. Be that as it may, we are satisfied on the facts and circumstances of the case that the Department has failed to prove the entire charge that is levelled against the appellant and, therefore, we are of the considered opinion that the punishment awarded to the appellant of removal of his service is not warranted in the facts and circumstances of this case.

11. Therefore, we set aside the said order of removal from service passed against the appellant and impose upon him a

punishment of withholding three increments with cumulative effect. We also observe that the appellant shall not be entitled to any back wages and he would be drawing his salary only from the date he joins service after his reinstatement. An order of reinstatement shall be passed by the Competent Authority as expeditiously as possible, preferably within a period of three months from today and in any case not later than four months.

12. The appeal is allowed to the aforesaid extent leaving the parties to bear their own costs.

13. We also appreciate the assistance given by the counsel appearing for both the parties, particularly, the counsel appearing for the respondent who has painstakingly taken us through the evidence on record and assisted us very fairly and competently.

.....J
(Dr. MUKUNDAKAM SHARMA)

.....J
(ANIL R. DAVE)

NEW DELHI,
AUGUST 4, 2011.
ITEM NO.2

COURT NO.13

SECTION IX

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

Petition(s) for Special Leave to Appeal (Civil) No(s).8705/2010

(From the judgment and order dated 19/11/2009 in
11347/2009 of The HIGH COURT OF GUJARAT AT AHMEDABAD)

SCA No.

LALJI PANDEY

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With office report)

Date: 04/08/2011 This Petition was called on for hearing today.

CORAM : HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA

HON'BLE MR. JUSTICE ANIL R. DAVE

For Petitioner(s) Mr. N.N. Krishnamani, Sr. Adv.
 Mr. G.C. Tyagi, Adv.
 Mr. Kailash Pandey, Adv.
 Mr. Brijesh Tyagi, Adv.
 Mr. Mukesh Tyagi, Adv.
 Mr. Varinder Kumar Sharma, Adv.

For Respondent(s) Mr. Gaurav Sharma, Adv.
 Ms. Sukhbeer Kaur Bajwa, Adv.
 Mr. Shreekant N. Terdal, Adv.

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

Leave granted.

The appeal is allowed in terms of the signed order.

(NAVEEN KUMAR)
COURT MASTER

(RENU DIWAN)
COURT MASTER

(Signed order is placed on the file)