

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9102 of 2014

UNION OF INDIA & ANR.

APPELLANT(s)

VERSUS

VISHWAS DODHU NERPAGAR

RESPONDENT(s)

O R D E R

1. This appeal is directed against the final order dated 20.12.2011 passed by the High Court of Judicature at Bombay, Bench at Aurangabad in Civil Application(St.) No.34088/2011 in Review Application No.1/2012 in W.P. No.2563/1999 and the judgment and order dated 11.08.2010 passed in W.P. No.2568/1999.

2. The respondent herein was a member of the Railway Protection Special Force. On the ground of overstaying on leave for a period of 107 days, after initiating disciplinary proceedings, he was imposed with a penalty of removal from service. Feeling aggrieved by the same, respondent herein filed Writ Petition No.2563 of 1999 which was allowed in his favour and he was ordered to be reinstated. Evidently, such interference and consequential order were made on the ground that the penalty imposed on him was wholly disproportionate. Thereupon, the appellant herein filed a Civil Application (St.) No. 34088/2011 in Review Application No.1/2012 in W.P. No.2563/1999. However, the said application was dismissed. It is in the aforesaid circumstances that the captioned appeal has been filed.

3. Heard learned counsel for the appellant and also the learned counsel for respondent. The short submission of the learned counsel for the appellant is that when the penalty imposed on the respondent is interfered with on the ground of being wholly disproportionate to the gravity of the misconduct liberty should have been granted to the appellants herein to impose adequate

penalty, in accordance with law. The learned counsel further submits that taking note of the fact the order of punishment was set aside, the respondent was reinstated in service as far back on 03.02.2012. Now, he is to retire from service in July, 2024. The learned counsel submitted further that taking into account all the aforesaid circumstances, it is now proposed to impose a minor penalty of barring of next increment without a cumulative effect.

4. The learned counsel appearing for respondent would submit that subsequent to the order of removal from service, the respondent was out of service from 1995-2010 and during the said period the respondent was not given back wages despite reinstatement in service. That being so, it is contended that it would not be proper to impose any further penalty for the aforesaid misconduct.

5. We have already noted that respondent is constable in the Railway Protection Special Force. The fact that he had overstayed on leave for a period of more than three months, to be precise, for a period of 107 days is not in dispute. It is also not in dispute that the order of removal from service imposed on the respondent was interfered with on the ground of it being wholly disproportionate to the gravity of the misconduct and consequent to such finding the High Court ordered for his reinstatement, but specifically made it clear that he would not be entitled to back wages from the date of his removal till his reinstatement. We may hasten to add here that despite such order disentitling him from back wages the respondent had not chosen to challenge the same and hence, legally he cannot have any grievance in that regard. But the fact is that he now highlights the said fact to canvass the position that the proposal to impose the aforesaid penalty of barring of next increment without cumulative effect is totally unwarranted and harsh in the given circumstances.

6. In the contextual situation it is relevant to note that after staying the operation of the judgment on 23.11.2012 this court on

19.01.2022 passed the following order: -

“Issue fresh notice to the private respondent, returnable within six weeks.

Dasti, in addition, is permitted.

Interim order to continue till then.

In the meantime, the appellants would be free to consider modulating the punishment, if permissible and warranted in the fact situation of the present case and make appropriate statement in that regard on the next date of hearing.”

7. In the light of the afore-extracted order dated 19.01.2022 coupled with the fact that overstaying on leave by a member of the Railway Protection Special Force for a long period could not be taken lightly and further that the penalty for the said misconduct was interfered with only on the ground of it being wholly disproportionate, we are of the considered view that the appellants are justified in seeking liberty to impose a penalty which is proportionate to the misconduct. The proposed penalty, according to us, is commensurate with the gravity of the misconduct.

8. In the peculiar circumstances of the case, we are inclined to dispose of this appeal granting liberty to the appellants to impose the aforesaid proposed penalty if they think it appropriate to impose it on respondent. Subject to the above modification of the impugned judgment by granting liberty the appeal stands disposed of.

9. Pending application(s), if any, shall stand disposed of.

....., J.
(C.T. RAVIKUMAR)

....., J.
(SUDHANSHU DHULIA)

NEW DELHI;
JULY 11, 2023.

ITEM NO.2

COURT NO.16

SECTION III

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). 9102/2014

UNION OF INDIA & ANR.

Appellant(s)

VERSUS

VISHWAS DODHU NERPAGAR

Respondent(s)

(IA No. 134498/2022 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES
IA No. 134492/2022 - RECALLING THE COURTS ORDER)

Date : 11-07-2023 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE C.T. RAVIKUMAR
HON'BLE MR. JUSTICE SUDHANSHU DHULIA

For Appellant(s) Mr. Amrish Kumar, AOR
Mr. R. Bala, Sr. Adv.
Mr. Sachin Sharma, Adv.
Mrs. Nidhi Khanna, Adv.

For Respondent(s) Mr. Kunal Cheema, AOR
Mrs. Aditi Deshpande Parkhi, Adv.
Mr. Shivam Dube, Adv.
Mr. Raghav Deshpande, Adv.

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

The Civil Appeal is disposed of in terms of the signed order.
Pending application(s), if any, shall stand disposed of.

(VIJAY KUMAR)
COURT MASTER (SH)

(MATHEW ABRAHAM)
COURT MASTER (NSH)

(Signed Order is placed on the file)