

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1225 OF 2022
(Arising out of SLP (C)No. 2394 of 2021)

UNION OF INDIA & ORS.

Appellant (s)

VERSUS

EX NO 99103003 CT/WC JAGTAR SINGH

Respondent(s)

O R D E R

Leave granted.

The respondent, who was working as a Constable (Tradesman) since 01.04.1999, came to be visited with punishment of dismissal from service. This led to the respondent preferring statutory petition to the Director General, Border Security Force, which resulted in the affirming of the punishment. It is feeling aggrieved by the same that the respondent moved writ petition which came to be allowed by he learned Single Judge. Learned Single Judge directed the appellants to reinstate the respondent with continuity of service and consequential benefits with effect from the date he was dismissed. An appeal carried by the appellants before the Division Bench has been turned down by the impugned order.

We have heard Mr. K. M. Nataraj, learned Additional Solicitor General and Mr. Harish Pandey, learned counsel appearing on behalf of the respondent.

Learned Additional Solicitor General would point out that this is a case where the respondent was member of a security Force (Border Security Force) and he has been a habitual offender in the matter of overstaying leave. It is the case of the appellants that he overstayed leave 18 times. In respect of 8 overstays, it was regularised or extended. On 9 occasions, on taking a lenient view, certain punishments were given. It is the complaint of the appellants that it is despite this background, the appellant did not report on duty/ overstayed for a period of 41 days. It is this, which led the appellants to take a decision after holding proceedings to dismiss the respondent. It is the contention of the learned Additional Solicitor General that the Court has clearly exceeded its jurisdiction in the matter of interfering with the legitimately imposed punishment in the facts of this case. It is further contended that the reasoning of the Division Bench viz., that the proceedings culminating in punishment of dismissal was flawed for the reason that the respondent was not put on notice of the fact that the previous record (punishments) would be used against him, is not tenable. As far as the learned Single Judge is concerned, learned Single Judge proceeded on the basis that dismissal would amount to

deprivation of livelihood and it is itself a disproportionate punishment in the circumstances.

Learned Additional Solicitor General pointed out that under the Rules extant and applicable to the respondent, there was no requirement of putting the employee on notice. On the other hand, Section 98(3) of the Border Security Force Act, 1968 (hereinafter referred to as 'BSF Act') read with Rule 151 of BSF Rules specifically provide that no second notice is required on the past penalty.

Learned counsel for the respondent, on the other hand, would point out that the punishment which is imposed on the respondent is harsh as found by the learned Single Judge. He has two children and he is left high and dry. He had a valid reason for not reporting for duty for 41 days. His mother was ill. There were certain property disputes which had to be immediately attended to and it was in such compelling circumstances that he has to overstay for the period of 41 days.

After having heard learned counsel for the parties, we are of the view that the view taken by the Division Bench in the impugned order that non issuance of notice is fatal may not be justified also having regard to the stand which is taken by Shri Harish Pandey, learned counsel for the respondent, who does not oppose the position and, as already pointed out by the learned Additional Solicitor General, the Rule appears to provide that second notice is not necessary

in the matter of bringing home the earlier punishments with which the officer was visited. The reasoning of the Division Bench cannot stand scrutiny. At the same time, we must notice that the respondent, going by the submissions of Shri Harish Pandey, learned counsel, is aged nearly 42 years and father of two children.

We would think that, in the circumstances of this case, the interest of justice would be subserved if we direct that appellant No. 5 (original disciplinary authority) must consider the matter relating to the punishment. As noticed by us earlier, the learned Single Judge has not even directed the disciplinary authority to look into the matter. Instead the learned Single Judge had interfered with the punishment and directed reinstatement though without backwages. The Division Bench has proceeded to uphold the order on the basis of there being no second notice. In such circumstances, the proper course would be that, if the punishment of dismissal is found in the circumstances of this case to be disproportionate, the question relating to appropriate punishment is to be decided by the disciplinary authority. But even here, we are of the view that when the matter is reconsidered by the 5th appellant, the matter should in the circumstances of the case not culminate in punishments which are contemplated in Section 48(a-d) of the BSF Act.

Accordingly, the impugned judgment is set aside. We

direct the 5th appellant to consider the question relating to appropriate punishment and impose such punishment as it considers appropriate except punishment in clauses (a-d) of Section 48 of the BSF Act, 1968. The decision to be taken within a period of three months from today.

....., J.
[K.M. JOSEPH]

....., J.
[HRISHIKESH ROY]

New Delhi;
February 07, 2022.

ITEM NO.29

Court 10 (Video Conferencing)

SECTION IV-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No. 2394/2021
(Arising out of impugned final judgment and order dated 26-09-2019
in LPA No. 1619/2019 passed by the High Court of Punjab & Haryana
at Chandigarh)

UNION OF INDIA & ORS.

Petitioner(s)

VERSUS

EX NO 99103003 CT/WC JAGTAR SINGH

Respondent(s)

Date : 07-02-2022 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE K.M. JOSEPH
HON'BLE MR. JUSTICE HRISHIKESH ROY

For Petitioner(s) Mr. K. M. Nataraj, ASG.
Mr. Durga Dutt, Adv.
Mr. Adit Khorana, Adv.
Ms. Aakanksha Kaul, Adv.
Mr. Manish, Adv.
Mr. B. V. Balaram Das, AOR

For Respondent(s) Mr. C. K. Rai, AOR
Mr. Harish Pandey, Adv.
Mr. Sumit Panwar, Adv.
Mr. Anshuman Tiwari, Adv.

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

Leave granted.

The order in the appeal concludes in terms of the
signed order as follows:

"Accordingly, the impugned judgment is set
aside. We direct the 5th appellant to consider the
question relating to appropriate punishment and impose
such punishment as it considers appropriate except
punishment in clauses (a-d) of Section 48 of the BSF
Act, 1968. The decision to be taken within a period
of three months from today."

(NIDHI AHUJA)
AR-cum-PS

(RENU KAPOOR)
BRANCH OFFICER

[Signed order is placed on the file.]