

CASE NO.:
Appeal (civil) 4247 of 2006

PETITIONER:
Union of India & another

RESPONDENT:
S.S. Ahluwalia

DATE OF JUDGMENT: 24/08/2007

BENCH:
G.P. Mathur & P.K. Balasubramanyan

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 4247 OF 2006

G.P. Mathur, J.

This appeal, by special leave, has been preferred against the judgment and order dated 11.1.2006 of a Division Bench of Delhi High Court by which the Letters Patent Appeal filed by the appellants was dismissed and the judgment and order dated 20.12.2001 of the learned Single Judge was affirmed.

2. The respondent S.S. Ahluwalia joined the Indian Army on 28.6.1965 as Commissioned Officer. In the year 1973 he was relieved from the army and he joined Central Reserve Police Force (CRPF). The respondent moved an application under Rule 43(d)(i) of the Central Reserve Police Force Rules, 1955 (hereinafter referred to as 'the Rules') seeking voluntary retirement with effect from 1.7.1993. The application moved by the respondent was rejected on 12.7.1993. He gave representations on 30.7.1993 and 10.8.1993 for re-examination of his case and to accord sanction for his voluntary retirement. On reconsideration of the matter the appellants accepted the prayer made by the respondent on 23.2.1994 subject to the condition that the proceedings for imposing major penalty initiated against him vide memo dated 4.2.1994 shall continue. The respondent submitted his representation on 12.9.1994 raising various pleas and prayed for withdrawal of the charge-sheet and proceedings for imposition of major penalty. In the inquiry proceedings the respondent filed written statement of defence on 21.2.1994. The Inquiry Officer, after conducting a full inquiry and recording evidence, held that charge No. I was partly proved and charges Nos. II, III and IV were fully proved. The case of the respondent was referred to Union Public Service Commission (UPSC), who, after examination of the material on record, advised that the ends of justice would be met in case a penalty of 10% deduction from his basic pension for one year was imposed. The case was then referred to Ministry of Home Affairs (MHA) for approval of the Competent Authority for acceptance of the advice of the UPSC and award of punishment. The Competent Authority then imposed punishment of 10% deduction from his pension for a period of one year.

3. After the application of the respondent for his voluntary retirement had been accepted by order dated 23.2.1994 he was actually relieved on 2.3.1994. He made request for release of his retiral benefits but he was informed by communication dated 12.5.1995 that till the proceedings of departmental inquiry were concluded his retiral benefits could not be released.

4. The respondent then filed three writ petitions in the Delhi High Court. Writ Petition No. 637 of 1996 was filed praying for quashing

of the order dated 12.5.1995 and consequential release of the retiral benefits like pension, commuted pension, gratuity along with interest @ 14% per annum with effect from 1.7.1993 till the date of actual payment and also for a direction to the appellants to treat the respondent as deemed to have voluntarily retired with effect from 1.7.1993 in accordance with Rule 43(d)(i) of the Rules. On 5.9.1998 the respondent moved an amendment application for amending the Writ Petition No. 637 of 1996 and in this a prayer was made that the order dated 23.2.1994 retiring the respondent be quashed and the appellants be directed to reinstate the respondent in service with all consequential benefits. Writ Petition No. 2169 of 1997 was filed for quashing of the order dated 17.3.1997 by which a penalty was imposed for deduction of 10% pension for one year. The writ petitions were contested by the appellants herein by filing counter affidavits. The learned single Judge, by judgment and order dated 20.12.2001, allowed the writ petitions filed by the respondent herein, set aside the order imposing penalty of 10% deduction in pension for one year and also directed for his reinstatement in service with all consequential benefits including salary and promotion. The appellants preferred a Letters Patent Appeal which was dismissed by the Division Bench on 11.1.2006. It is these orders which are subject-matter of challenge in the present appeal.

5. We have heard learned counsel for the appellants and Mr. S.S. Ahluwalia, respondent-in-person.

6. There is no dispute that the respondent had moved an application on 15.3.1993 under Rule 43(d)(i) of the Rules seeking voluntary retirement from service with effect from 1.7.1993. This application was rejected on 12.7.1993. He made representations against rejection of his application on 30.7.1993 and 10.8.1993 and finally by order dated 23.2.1994 his request for voluntary retirement was accepted subject to the condition that the proceedings initiated against him for imposing major penalty vide memo dated 4.2.1994 shall go on. It is also not in dispute that the respondent was actually relieved on 2.3.1994. Writ Petition No.637 of 1996 had been filed by the respondent on 6.2.1996 wherein the relief sought was that a direction be issued to the appellants to treat the respondent as deemed to have voluntarily retired with effect from 1.7.1993 in accordance with Rule 43(d)(i) of the Rules and further for quashing of the order dated 12.5.1995 and consequential release of his retiral benefits. An amendment application was moved for amending the writ petition on 5.9.1998 and here for the first time a relief was sought for quashing the order dated 23.2.1994 retiring the respondent and for a direction to reinstate him in service with all consequential benefits. The learned single Judge did not at all notice the fact that the request of the respondent for voluntary retirement had actually been accepted on 23.2.1994 and he was actually relieved on 2.3.1994. Thereafter he was no longer in service and had not done any work. The learned Single Judge has merely observed that this was a case of extreme harassment and thereafter passed the operative portion of the order directing reinstatement of respondent in service with all consequential benefits including salary and promotion. The order for reinstatement can be passed where as a result of disciplinary proceedings initiated by an employer an employee is dismissed or removed from service and the said dismissal or removal is found to be illegal by a court of law. This was not a case here. There was absolutely no ground on which an order for reinstatement with all consequential benefits could be passed in favour of the respondent when he had himself sought voluntary retirement and had actually been relieved on 2.3.1994. The Division Bench of the High Court also did not advert to this aspect of the matter. The Division Bench merely observed that had the appellants disposed of the matter of voluntary retirement of the respondent in 1993 and had he been permitted to retire in that year itself he stood fair chance of getting a re-employment. The view taken by the Division Bench is wholly unsustainable in law. In the application moved by the respondent on 15.3.1993 he had sought

voluntary retirement from 1.7.1993. This request was finally accepted on 23.2.1994 and he was relieved on 2.3.1994. As such there was not much delay in accepting the prayer of the respondent for voluntary retirement. The disciplinary proceedings had finally concluded against the respondent with imposition of small punishment. In these circumstances there was absolutely no ground for directing reinstatement of the respondent in service with continuity in service and all consequential benefits.

7. The learned single Judge has also set aside the order by which a penalty of 10% deduction in pension for one year had been imposed. This part of the order has also been affirmed by the Division Bench. It may be mentioned here that charge No. I was found to be partly proved and charges Nos. II, III and IV were found to be fully proved. The scope of judicial review in the matter of imposition of penalty as a result of disciplinary proceedings is very limited. The court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved. In such a case the court is to remit the matter to the disciplinary authority for reconsideration of the punishment. In an appropriate case in order to avoid delay the court can itself impose lesser penalty. In the present case the penalty imposed upon the respondent was very small, namely, 10% deduction from pension for one year. Thus there was hardly any occasion for the High Court to interfere with the order of penalty passed by the Competent Authority. However, having regard to the facts and circumstances of the case and specially to the fact that the penalty was a small one being 10% deduction from the pension for one year only, we do not want to interfere with that part of the order of the learned single Judge and also of the Division Bench.

8. In the result the appeal is partly allowed. The directions issued for reinstatement of the respondent with all consequential benefits including salary and promotion are set aside.

9. No costs.