

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10762 OF 2013

UNION OF INDIA & ORS.

...APPELLANT(S)

VERSUS

SUNIL KUMAR SHARMA

...RESPONDENT(S)

O R D E R

The appellants are before this Court assailing the order dated 14th August, 2012 passed by the High Court of Delhi in W.P.(C) 4935 of 2012. Through the said order, the High Court has set aside the order impugned therein and declared that there is no evidence to sustain the charge against the respondent herein. Accordingly, the respondent has been exonerated from the charges and the appellants have been directed to reinstate the respondent with all consequential benefits.

Heard Shri Rajan Kr. Chourasia, learned counsel appearing on behalf of the appellants, Shri Deepak Goel, learned counsel for the respondent and perused the records.

At the outset it is noticed that the respondent was charged of the misconduct that on 5th April, 2010 at Janak Puri (West) Metro Station respondent abused and manhandled his superior officer Shri Rajeshwar Sahu, Sub-Inspector. On the said charge, the appellants

had proceeded against the respondent and held a Disciplinary Proceedings. In the said proceedings Shri Rajeshwar Sahu, Sub-Inspector was examined as PW-I and Shri Krishna Kumar Bharti, Constable, who is said to have been present at the time when the incident had taken place was examined as PW-II. Having noted the evidence tendered in the Disciplinary Proceedings and the findings of Enquiry Officer, the Disciplinary Authority had passed the order dated 28.10.2010 imposing the punishment of reducing the pay by two stages, for a period of two years. The respondent herein in assailing the said order had filed a Revision Petition. The Revisional Authority while taking into consideration the contentions put forth herein had also secured material with regard to the past conduct of the respondent and in that circumstance was of the opinion that the punishment is required to be enhanced. Accordingly, a show cause notice dated 09.02.2011 was issued to the respondent and the punishment initially imposed was enhanced by ordering compulsory retirement of the respondent from the services of the appellants through order dated 13.05.2011. It is in that light, the respondent being aggrieved, assailed the punishment order in the Writ Petition filed before the High Court.

The High Court while considering the correctness or otherwise of the orders had referred to the evidence which had been taken note by the Enquiry officer before rendering his findings which had thereafter been noted by the Disciplinary Authority. While appreciating this aspect of the matter, the High Court was conscious of the position that in a writ proceedings of the present nature the re-appreciation of the evidence does not arise.

However while referring to the evidence it had taken note that the Enquiry officer had failed to take note that the PW-I Shri Rajeshwar Sahu though had alleged that the respondent had intimidated and manhandled him had indicated in the General Diary for the day as 'everything OK'. In that light, the High Court had arrived at the conclusion that non-consideration of the material which was available on record will amount to perversity. Therefore it held that the findings recorded by the Enquiry Officer which resulted in punishment was not justified. In addition, the High Court had also noted the evidence of PW-II Shri Krishna Kumar Bharti who is stated to have been at the spot, but he has not made any allegation in support of the charge that was made against the respondent. The High Court thus having appreciated the matter in its entirety had arrived at its conclusion.

In that circumstance, though the learned counsel for the appellant seeks to contend that the High Court was not justified, we are of the opinion that the High Court was conscious of the legal position and facts involved. Even though the learned counsel at this stage has made reference to the past conduct, in the instant case the charge was entirely based on the incident which had occurred on 05.04.2010 regarding which a consideration was made and ultimately a conclusion was reached by the High Court. In that circumstance, insofar as the High Court arriving at the conclusion that the charge against the respondent was not established, we see no reason to interfere.

Learned counsel for the appellant at this stage has made specific reference to certain observations contained in paragraph 9

of the impugned order relating to the manner in which Shri Rajeshwar Sahu is stated to have conducted himself. To that extent we make it clear that the said observations shall not be held against Shri Rajeshwar Sahu and shall stand deleted in terms thereof.

Having arrived at the above conclusion, the nature of relief as granted by the High Court to the respondent herein also needs consideration since the learned counsel for the appellant would vehemently contend that in a matter of the present nature where the respondent is a part of a disciplined force cannot be permitted to assume service at this stage. Where we have arrived at the conclusion that the charge has not been proved in normal circumstance, the natural course would be to reinstate. However, in the present facts it is noticed that the respondent was aged about 48 years when the incident had occurred in the year 2010. If that aspect of the matter is kept in view ; the respondent would be nearing the age of superannuation and in that circumstance it would not be appropriate to physically reinstate the respondent to a disciplined force. However, having arrived at the conclusion that the charge had not been established the respondent cannot also be prejudiced.

Therefore insofar as the relief granted by the High Court to reinstate the respondent, we modify the said direction and indicate that the respondent shall not be entitled to be physically reinstated to the post. However, the length of service shall be notionally taken into consideration for continuity till the actual date of superannuation as per the date indicated in his service records.

The length of service shall accordingly be taken into consideration for the purpose of working out the terminal benefits and pensionary benefits, if any. Insofar as the back wages, taking into consideration that the respondent has not actually rendered his service and there is no material on record to indicate that he was unemployed during the entire period, to balance the equities we direct that he may be paid 50% of the backwages which he would have otherwise been entitled to, within a period of ten weeks.

In terms of the above modification, the appeal stands disposed of.

.....J .
[A.S.BOPANNA]

.....J .
[VIKRAM NATH]

NEW DELHI
JUNE 15, 2022

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

Civil Appeal No.10762/2013

UNION OF INDIA & ORS.

Appellant(s)

VERSUS

SUNIL KUMAR SHARMA

Respondent(s)

(IA No. 106232/2021 - EARLY HEARING APPLICATION)

Date : 15-06-2022 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.S. BOPANNA
HON'BLE MR. JUSTICE VIKRAM NATH
(VACATION BENCH)

For Appellant(s) Mr. Rajan Kumar Chourasia, Adv.
 Mr. Shiv Mangal Sharma, Adv.
 Ms. Rita Gupta, Adv.
 Mr. Shyam Gopal, Adv.
 Mr. Kartik J., Adv.
 Mr. Randeep Sachdeva, Adv.
 Mr. Siddhant Puri, Adv.
 Mr. Arvind Kumar Sharma, Adv.
 Mr. B. Krishna Prasad, AOR

For Respondent(s) Mr. Deepak Goel, AOR

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

The appeal stands disposed of in terms of signed order.

Pending applications shall also stand disposed of.

(RAJNI MUKHI)
COURT MASTER (SH)

(R.S. NARAYANAN)
COURT MASTER (NSH)

(Signed order is placed on the file)