A UNION OF INDIA AND ORS.

v.

NARAIN SINGH

MAY 9, 2002

B [SYED SHAH MOHAMMED QUADRI AND S.N. VARIAVA, JJ.]

Service Law—Misconduct—Court Martial—Dismissal from service on admitted facts—Order of dismissal confirmed by appellate authority and Single Judge of High Court—Division Bench setting aside the order—Whether justified—Held, charges being serious in nature the penalty was commensurate with the charges—When charges proved courts should not interfere with the quantum of punishment—Constitution of India, 1950, Article 226.

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Respondent committed misconduct for the third time. He was charge-sheeted. During Court Martial, respondent pleaded guilty and also stated that he was a poor man and may be pardoned. Disciplinary Authority, on admitted facts, held him guilty of the charges and dismissed him from service. Aggrieved, respondent filed appeal which was dismissed. Single Judge of the High Court also dismissed the petition. Division Bench concluded that the charges against the respondent are proved and are of serious nature and also that he was punished for the third time. However, holding that when a poor person pleads guilty to the misconduct committed by him then the extreme penalty of dismissal from service was un-called for, it set aside the dismissal order. Hence the present appeal.

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F **Allowing the appeal, the Court**

HELD : A Court must not lightly interfere with sentences passed after a properly conducted enquiry where the guilt is proved. Reduction of sentence, particularly in military, para-military or police services can have a demoralising effect and would be a retrograde step so far as discipline of these services is concerned. It is not for the Court to determine the quantum of punishment once charges are proved. Also it is not for the Court to interfere on misplaced grounds of sympathy and/or mercy. In the instant case the charges being of a serious nature the penalty of dismissal from service was commensurate with the charges. Thus Division Bench erred in setting aside the dismissal order and also holding that if a

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poor person pleads guilty to the misconduct, then extreme penalty of dismissal is uncalled for. [927-F-G; 928-A, B] A

Union of India **v.** *Sardar Bahadur,* **[1972] 4 SCC 618 and** *Apparel Export Promotion Council* **v.** *A.K. Chopra,* **[1999] 1 SCC 759, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3414 of 2002. B

From the Judgment and Order dated 26.2.2001 of the Rajasthan High Court in D.B.C.S.A. No. 1051 of 1998.

Ranjit Kumar, Ms. Binu Tamta and Ms. Sushma Suri for the Appellants. C

Dhruv Mehta, Ms. Shobha and Anu Mehta for K.L. Mehta & Co. for the Respondents.

The Judgment of the Court was delivered by

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S.N. VARIAVA, J. (1) Leave granted.

(2) Heard parties.

(3) This Appeal is against an Order dated 26th February, 2001. Briefly stated the facts are as follows: E

The Respondent was appointed as a Driver in the Border Security Force in 1990. In 1992 he met with an accident which was found to be due to his negligence. He was punished with 28 days quarter guard and a sum of Rs. 2,405 was recovered from him. He was then changed from the cadre of Driver to that of a Constable. Thereafter he was punished a second time for misconduct. F

(4) On 3rd February, 1997 the Head Constable, who was in-charge of assigning duties to the Constables working under him, directed the Respondent to go for Sentry Duty at Sector Headquarters, BSF, Silliguri. The Respondent did not report for Sentry duty. When the Head Constable learnt about this he went to the barrack and found the Respondent sleeping. The Head Constable woke up the Respondent. Some altercation took place and the Respondent gave a fist blow on the mouth of the Head Constable as a result of which the front tooth of the Head Constable was broken. G

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(5) On 4th February, 1997 the Respondent was charge-sheeted for two charges, viz. (i) disobeying the lawful command given by the superior officer and (ii) assaulting the superior officer. On 2nd March, 1997, during Court Martial, the Respondent admitted that he had disobeyed the lawful command and that he had assaulted his superior officer. He stated that, "I am a poor man, I have committed a mistake. I may be pardoned." The Disciplinary Authority, on admitted facts, found the Respondent guilty of the charges and dismissed him from service. The Appellate Authority dismissed the Appeal filed by the Respondent.

(6) The Respondent filed Writ Petition No. 669 of 1998. This was dismissed by a learned single Judge of the High Court of Rajasthan on 3rd September, 1998. The Respondent then filed an Appeal. The Division Bench in the impugned Order, *inter alia*, held as follows:

> "It is true that the charges levelled against the appellant and found to be proved on his pleading guilty are really of serious nature and such a person cannot be allowed to go scot free without any punishment. More particularly, when he was punished in all thrice in his entire service of about seven years. However, we are of the considered opinion that while passing the extreme penalty of dismissal from service the authorities were also required to keep in mind other factors, namely; (i) the person is coming from which place, (ii) his family back ground, and (iii) his service record of seven years, etc.
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> When a poor person pleads guilty to the misconduct committed by him then in our considered opinion the extreme penalty from service was un-called for."

On this reasoning, the Division Bench set aside the Order of dismissal and directed reinstatement of the Respondent. The Division Bench imposed an order of stoppage of three grade increments without cumulative effect. The Division Bench directed the Appellants to reinstate the Respondent latest by 1st May, 2001 without back wages.

(7) This Court has, in the case of *Union of India* v. *Sardar Bahadur* reported in [1972] 4 SCC 618, held that there are limits to the powers which can be exercised by a Single Judge under Article 226 of the Constitution and,

similarly, there are limits to the powers of a Division Bench while sitting in appeal over the judgment of a Single Judge. This Court has held that where there are relevant materials which support the conclusion that the officer is guilty, it is not the function of the High Court to arrive at an independent finding. It has been held that if an enquiry has been properly held the question of adequacy or reliability of evidence cannot be canvassed before the High Court.

(8) In the case of *Apparel Export Promotion Council* v. *A.K. Chopra* reported in [1999] 1 SCC 759, it has been held by this Court that it is within the jurisdiction of the competent authority to decide what punishment is to be imposed and the question of punishment is outside the purview of High Court's interference unless it is so disproportionate to the proved misconduct as to shock the conscious of the Court. It has been held that reduction of sentence by the High Court would have a demoralising effect and would be a retrograde step. It has been held that repentance/unqualified apology at the last appellate stage does not call for any sympathy or mercy.

(9) As seen above, the Division Bench notes that the charges against the Respondent are proved and that the charges are of serious nature. Once the Court came to the conclusion that the charges were proved and that the charges were of the serious nature, it was not the function of the Court to interfere with the quantum of punishment. The Division Bench was wrong in holding that factors viz. a) the person is coming from which place, b) his family background and (c) his service record etc. were to be kept in mind. In our view the Division Bench was also wrong in holding that if a poor person pleads guilty to the misconduct, then extreme penalty of dismissal is uncalled for. In our view a Court must not lightly interfere with sentences passed after a properly conducted enquiry where the guilt is proved. Reduction of sentence, particularly in military, para-military or police services can have a demoralising effect and would be a retrograde step so far as discipline of these services is concerned. In this case the charges being of a serious nature the penalty was commensurate with the charges. Further the Division Bench has itself noted that this was the third time the Respondent was punished.

(10) Mr. Mehta tried to support the impugned Order on the ground that the Division Bench had taken a just and kind view considering the fact that the Respondent had served for a long time and came from a poor family. He submitted that the impugned Order was a just order and should not be interfered with. We are unable to accept this submission. As stated above, the law is

A clear. It is not for the Court to determine the quantum of punishment once charges are proved. In this case it cannot be said that the punishment of dismissal is not commensurate with the charges. It is not for the Court to interfere on misplaced grounds of sympathy and/or mercy.

(11) In the result, the Appeal is allowed. The impugned Order dated
B 26th February, 2001 is set aside. There will be no order as to costs.

N.J. Appeal allowed.