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SAMAR BAHADUR SINGH

v.

STATE OF U.P. & ORS.

(Civil Appeal No. 7643 of 2011)

B

SEPTEMBER 05, 2011

**[DR. MUKUNDAKAM SHARMA AND
ANIL R. DAVE, JJ.]**

Service Law – Dismissal – Departmental proceedings – Punishment – Proportionality of – Appellant, a Constable in the Provincial Armed Constabulary (P.A.C.), was found unauthorizedly absent from the Battalion Headquarter – On the same date he also became allegedly involved in a criminal case relating to forcible grabbing of liquor bottle from a wine shop – Appellant was acquitted in the criminal case – However, in the departmental proceedings initiated against the appellant, the Inquiry Officer found him guilty and consequently, Respondents dismissed him from service – Order of dismissal upheld by appellate authority, Service Tribunal as also High Court – Justification of – Held: On facts, justified – Acquittal of appellant in the criminal case had no bearing or relevance to the facts of the departmental proceedings as the standard of proof in both the cases are totally different – In a criminal case, the prosecution has to prove the criminal case beyond all reasonable doubt whereas in departmental proceedings, the department has to prove only preponderance of probabilities – In the present case, the department was able to prove the case against appellant on the standard of preponderance of probabilities – Allegations against the appellant were proved in the departmental proceedings by cogent materials on record – Appellant belongs to a disciplinary force and the members of such a force are required to maintain discipline and to act in a befitting manner in public – Instead of that, he was found under

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the influence of liquor and then indulged himself in an offence – The punishment of dismissal from service cannot be said to be shocking to conscience and, therefore, does not call for any interference – Penal Code, 1860 – s.392. A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7643 of 2011. B

From the Judgment & Order dated 13.2.2004 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 40500 of 1997. C

Yatish Mohan, Vinita Y. Mohan, Vishwajit Singh for the Appellant. C

Pramod Swarup, Ameet Singh, Manoj Kr. Dwivedi, Pareena Swarup, G.V. Rao for the Respondents. D

The following Order of the Court was delivered

O R D E R

1. Delay in filing rejoinder is condoned . E

2. Leave granted.

3. This appeal is directed against the judgment and order dated 13.02.2004 passed by the Division Bench of the Allahabad High Court dismissing the writ petition filed by the appellant against the judgment and order passed by the State Public Service Tribunal, U.P., which upheld the order of dismissal passed against the appellant by the respondents on 11.02.1993. F

4. The appellant herein was employed as a Constable in the Provincial Armed Constabulary (hereinafter referred to as 'P.A.C.') on 15.11.1978. He was posted in IV Bn. P.A.C., Allahabad. On 27.10.1991, he was unauthorisedly absent from the Battalion Headquarter and on that day in the evening he G

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A along with one of his friends grabbed one bottle of liquor from the wine shop forcibly and also threatened them. With regard to the aforesaid incident, a criminal case was also registered on the basis of a complaint filed by the salesman of the wine shop, Sh. Rajan Lal. The appellant was also medically
B examined during the course of which he was found to be under the influence of liquor. The Doctor has opined that he had consumed alcohol, but was not intoxicated.

5. The appellant was placed under suspension and a departmental proceeding was initiated against him. A
C memorandum of charges was issued to the appellant as against which he filed his reply. In the said departmental inquiry instituted against the appellant, an Inquiry Officer was appointed who conducted the inquiry and on completion of the said inquiry, submitted his report finding the appellant guilty of the charges
D framed against him.

6. Consequent upon filing of the aforesaid inquiry report, the Disciplinary Authority, after complying with all the formalities dismissed the appellant from service by issuing an order dated
E 11.02.1993.

7. Being aggrieved by the said order, the appellant filed an appeal which was considered by the Appellate Authority and by order dated 30.06.1993, the aforesaid appeal was
F dismissed.

8. The appellant being aggrieved filed a petition before the tribunal which was also dismissed. Consequently, the appellant filed the aforesaid writ petition, which was dismissed and therefore, he filed the present appeal, on which we have heard
G the learned counsel appearing for the parties.

9. Counsel appearing for the appellant has submitted before us that a criminal case was also instituted for the aforesaid incident in which he was acquitted and therefore, in the departmental proceeding also which was initiated he should

also have been acquitted and the same should have been allowed to be ended in his favour. He further submits that in any case it has come in evidence that the appellant was advised to take medicine which he had taken and, therefore, there was some smell of liquor from the medicine when a medical check-up was done. Relying on the same, counsel submits that the entire charge is concocted and therefore, he is required to be held not guilty of the charge. The next submission of the counsel appearing for the appellant is that the punishment given to the appellant is disproportionate to the charges levelled against him.

10. We have considered all the aforesaid submissions in the light of the records that are available with us. The medical report which is placed on record indicates that the appellant had consumed alcohol, but he was not intoxicated. The appellant was missing from the headquarters on 27.10.1991 from the morning and he was caught in the case registered under Section 392 I.P.C. in the evening. The appellant wishes to make a defence that he was advised to take medicine but the prescription which is placed in the departmental proceedings does not indicate that any medicine was prescribed in that prescription. The appellant was arrested in the criminal case in connection with stealing of a bottle of foreign liquor and even during that time he had consumed alcohol prior to the incident. These facts have been brought out in the inquiry proceedings initiated against him in which the appellant did not participate. Therefore, whatever allegations have been brought against him, have been proved by placing cogent materials on record, which go unrebutted due to his absence in the proceedings. We also find that the appellant has been charged on the ground of negligence, dereliction of duty and consuming liquor. The aforesaid facts are found proved in the departmental proceedings.

11. Acquittal in the criminal case shall have no bearing or relevance to the facts of the departmental proceedings as the

A standard of proof in both the cases are totally different. In a criminal case, the prosecution has to prove the criminal case beyond all reasonable doubt whereas in a departmental proceedings, the department has to prove only preponderance of probabilities. In the present case, we find that the department has been able to prove the case on the standard of preponderance of probabilities. Therefore, the submissions of the counsel appearing for the appellant are found to be without any merit.

12. Now, the issue is whether punishment awarded to the appellant is disproportionate to the offence alleged. The appellant belongs to a disciplinary force and the members of such a force is required to maintain discipline and to act in a befitting manner in public. Instead of that, he was found under the influence of liquor and then indulged himself in an offence. Be that as it may, we are not inclined to interfere with the satisfaction arrived at by the disciplinary authority that in the present case punishment of dismissal from service is called for. The punishment awarded, in our considered opinion, cannot be said to be shocking to our conscience and, therefore, the aforesaid punishment awarded does not call for any interference.

13. In that view of the matter, we find no merit in this appeal, which is dismissed, but leaving the parties to bear their own costs.

B.B.B.

Appeal dismissed.