

ISHWAR CHANDRA JAYASWAL

A

v.

UNION OF INDIA & ORS.
(Civil Appeal Nos. 48-49 of 2014)

JANUARY 3, 2014.

B

[T. S. THAKUR AND VIKRAMAJIT SEN, JJ.]

SERVICE LAW:

Departmental inquiry – Charges proved – Punishment – Doctrine of proportionality — Railway employee – Removal from service on charges of demanding and accepting meager amounts – Held: Removal of employee from service for the charges levelled against him shocks the judicial conscience of the Court — Deprivation of retiral benefits in addition to loss of service is entirely incommensurate with the charge of appellant having taken very small sums of money for issuance of Fit Certificate to other Railway employees — Appellant shall be deemed to have been compulsorily retired under Part-III Penalty 6(vii) of 1968 Rules and shall be entitled to retiral or other benefits — Railway Servants (Discipline and Appeal) Rules: 1968 — Part-III – Penalty 6(vii).

C

D

E

The appellant, an employee of Railways was removed from service as the charges of demanding and accepting Rs. 26/-, Rs. 34/- and Rs. 18/- from three employees, respectively, were found proved in the departmental inquiry. His writ petition and review petition were dismissed.

F

In the instant appeals, the only question for consideration before the Court was: “whether the punishment of removal of service of the petitioner on the alleged demand of meagre amounts of Rs.18-45 is contrary to the doctrine of proportionality”

G

H

A Allowing the appeals, the Court

B HELD: The appellant is 75 years of age. He has served the respondents for a period of twenty three years and removal from service for the two charges levelled against him shocks the judicial conscience of this Court. It has not been established that the appellant had, as a matter of habit or on a wide scale, made illegal demands from Railway servants desirous of obtaining a Fit Certificate. However, since two of the three charges have been proved, this Court is of the considered opinion that the imposition of compulsory retirement i.e. Penalty 6(vii) of Part III of The Railway Servants (Discipline and Appeal) Rules, 1968 would have better and more appropriately met the ends of justice. Deprivation of retiral benefits in addition to loss of service is entirely incommensurate with the charge of the appellant having taken very small sums of money for the issuance of Fit Certificate to other Railway employees. The impugned order dated 11.10.2010 is set aside. The appellant shall be deemed to have compulsorily retired under Part-III Penalty 6(vii) of the 1968 Rules with effect from 22.1.1991 and shall be entitled to retiral or other benefits as on the said date. [Para 6-7] [62-F, G-H; 63-A-E]

F *Union of India v. S.S. Ahluwalia* 2007 (9) SCR 377 = (2007) 7 SCC 257 – relied on.

Case Law Reference:

2007 (9) SCR 377 relied on para 5

G CIVIL APPELLATE JURISDICTION : Civi Appeal No. 48-49 of 2014.

H From the Judgment & Order dated 28.03.2012 of the High Court of Judicature at Allahabad in Civil Misc. Review Application No. 325013 of 2010 in Civil Misc. Writ Petition No.

38190 of 2004 and order 11.10.2010 in Civil Misc. Writ Petition No. 38190 of 2004. A

Shashank Shekhar, Devashish Bharuka, Jasneet for the Appellant.

S.P. Singh, Sukhbir Kaur Bajwa, Kiran Kapoor Shreekant N. Terdal for the Respondents. B

The Judgment of the Court was delivered by

VIKRAMAJIT SEN, J. 1. Leave granted. These Appeals assail the Judgment dated 11.10.2010 of the Division Bench of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No.38190 of 2004 as well as the subsequent Order dated 28.3.2012 by which a Review Application in respect of the former was dismissed. C

2. The Division Bench was confronted with the dismissal from service of the Appellant Dr. Ishwar Chandra Jayaswal against whom three Articles of Charge had been framed. Article-I was that he demanded and accepted a sum of Rs.26/- from Shri Pyare Ram, Khalasi for issuing in his favour a Fit Certificate. Article-II, in similar vein was that the Appellant demanded and accepted a sum of Rs.34/- from Shri Nandlal, Semi-skilled Revetter for issuing him a Fit Certificate. Article-III was that the Appellant had demanded and accepted Rs.18/- from Shri Balroop, Semi-skilled Revetter for issuing of Fit Certificate. The Inquiry Officer, after duly perusing the entire evidence, returned a finding that Charges 1 and 3 had been proved. The Disciplinary Authority, after considering the response of the Appellant, by its Order dated 22.1.1991 imposed the penalty of removal of the Appellant from service. D E F G

3. A Revision came to be filed which appears to have attracted the gravamen of challenge before the Division Bench. After considering the manner in which the Revision was heard and decided, the Division Bench in the impugned Order, has H

A come to the conclusion that the President had decided the
Revision in accordance with law.

B 4. In these proceedings, learned counsel for the Appellant
has confined his arguments to the ground – “whether the
punishment of removal of service of the petitioner on the alleged
demand of meagre amount of Rs.18-45 is contrary to the
doctrine of proportionality”.

C 5. It is now well settled that it is open to the Court, in all
circumstances, to consider whether the punishment imposed
on the delinquent workman or officer, as the case may be, is
commensurate with the Articles of Charge levelled against him.
There is a deluge of decisions on this question and we do not
propose to travel beyond *Union of India v. S.S. Ahluwalia*
(2007) 7 SCC 257 in which this Court had held that if the
D conscience of the Court is shocked as to the severity or
inappropriateness of the punishment imposed, it can remand
the matter back for fresh consideration to the Disciplinary
Authority concerned. In that case, the punishment that had been
imposed was the deduction of 10% from the pension for a
E period of one year. The High Court had set aside that order. In
those premises, this Court did not think it expedient to remand
the matter back to the Disciplinary Authority and instead
approved the decision of the High Court.

F 6. The Appellant before us is presently 75 years of age.
At the time when the Articles of Charge had been served upon
him, he had already given the best part of his life to the service
of the Respondent-Indian Railways. It has been contended
before us that the three charges that have been sustained
against the Appellant reflected only the tip of the iceberg;
G however, there is no material on record to substantiate this
argument of Respondents. In the present case, the Appellant
has served the Respondents for a period of twenty three years
and removal from service for the two charges levelled against
him shocks our judicial conscience. Part III of The Railway
H Servants (Discipline & Appeal) Rules, 1968 contains the

penalties that can be imposed against a Railway servant, both A
Minor Penalties as well as Major Penalties. We have already
noted that it has not been established that the Appellant had,
as a matter of habit or on a wide scale, made illegal demands B
from Railway servants desirous of obtaining a Fit Certificate.
However, since two of the three charges have been proved, we C
are of the considered opinion that the imposition of compulsory
retirement i.e. Penalty 6(vii) would have better and more
appropriately met the ends of justice. While this would have
instilled sufficient degree of fear in the mind of the employees,
it would also not have set at naught several years of service D
which the Appellant had already given to the Respondent-Indian
Railways. We think that deprivation of retiral benefits in addition
to loss of service is entirely incommensurate with the charge
of the Appellant having taken very small sums of money for the
issuance of Fit Certificate to other Railway employees.

7. It is in these premises that the Appeals are accepted
and the impugned Order dated 11.10.2010 is set aside. The
Appellant shall be deemed to have compulsorily retired under
Part-III Penalty 6(vii) of the aforementioned Railway Rules with E
effect from 22.1.1991. If he is entitled to retiral or other benefits
on the said date, the Respondents shall make necessary
payment within three months from today. This decision is
restricted to the facts of the present case.

R.P.

Appeals allowed.

F