

PETITIONER:  
STATE OF U.P. & OTHERS

Vs.

RESPONDENT:  
ASHOK KUMAR SINGH & ANR.

DATE OF JUDGMENT 10/11/1995

BENCH:  
VENKATASWAMI K. (J)  
BENCH:  
VENKATASWAMI K. (J)  
BHARUCHA S.P. (J)

CITATION:  
1996 AIR 736                      1996 SCC (1) 302  
1995 SCALE (6) 465

ACT:

HEADNOTE:

JUDGMENT:

### J U D G M E N T

K. Venkataswami. J.  
Delay condoned.  
Leave granted.  
Heard counsel on both sides.

This appeal by special leave is directed against the Order of the Allahabad High Court in W.P. No. 9547/90 dated 12.8.1991.

The first respondent was a police constable and he was removed from service pursuant to a duly conducted departmental enquiry by Order dated 6.5.1985. The first respondent challenged the order of removal before the U.P. Public Services Tribunal No.5, Lucknow Bench. The Tribunal by its detailed and considered order dated 29.6.1990 declined to interfere with the order of removal for reasons set out therein. Still aggrieved, the first respondent moved the Allahabad High Court under Article 226 of the Constitution of India by filing W.P. No. 9547 of 1990 challenging the order of removal as confirmed by the U.P. Public Services Tribunal.

Before the learned Judge, the order of removal was challenged mainly on the ground that the first respondent was not given a reasonable opportunity in the departmental enquiry. The learned Judge rejected the above contention by observing that 'the plea of reasonable opportunity is not open to the petitioner' as the High Court was satisfied that full opportunity was given to the petitioner. Further the High Court concurred with all the findings of the Tribunal rendered on the charges levelled against the first respondent.

Strangely, the High Court interfered with the punishment of removal, while concurring with the findings rendered against the first respondent on the charges levelled against him, by observing as follows :-

"The Presiding Officer of the Tribunal

has passed a very detailed order in which he enumerated the circumstances under which the inquiry was conducted. The enquiry officer found the petitioner to have absented from duty on several occasions, totalling 251 days during the year 1981-82 while posted at police station Ram Sanehi Ghat, 93 days in 1982 while posted at police station Safdarjang and from 28.2.84 onwards on being subsequently posted at police station Ram Sanehi Ghat. The petitioner has submitted before the Tribunal as well as here that during all this long period he had fallen ill and he sent regular applications for grant to leave along with the medical certifications for grant to such proof was ever filed by the petitioner before the Tribunal.

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In the present case the only charge against the petitioner was that he absented himself from duty for long periods although it was his case that he applied for grant of leave. Even if it is assumed that the petitioner, against whom there appears to be no charge of misconduct of grave nature, is proved his absence from duty would not amount to such a grave charge for which the extreme penalty of dismissal may be imposed. In view of the fact that the petitioner has offered not to claim arrears of salary as well as he assurance (sic) this Court that he would discharge his duties faithfully and sincerely this Court is of the view that extreme penalty imposed against the petitioner does not commensurate with the gravity of the charge, hence this writ petition deserves to succeed on this point. However, it will be open for the opposite parties to impose any minor punishment against the petitioner.

In view of what has been indicated hereinabove the writ petition succeeds. The order of dismissal passed against the petitioner contained in Annexure-3 is quashed. The opposite parties will re-instate the petitioner on duty. However, it will be open for the opposite parties to impose any minor punishment upon the petitioner considering the charges. It is made clear that the petitioner will be entitled only to extent one fourth of amount as back wages."

We are clearly of the opinion that the High Court has exceeded its jurisdiction in modifying the punishment while concurring with the findings of the Tribunal on facts. The High Court failed to bear in mind that the first respondent was a police constable and was serving in a disciplined force demanding strict adherence to the rules and procedures more than any other department. Having noticed the fact that the first respondent has absented himself from duty without

level on several occasions, we are unable to appreciate the High Court's observation that 'his absence from duty would not amount to such a grave charge'. Even otherwise on the facts of this case, there was no justification for the High Court to interfere with the punishment holding that 'the punishment does not commensurate with the gravity of the charge' especially when the High Court concurred with the findings of the Tribunal on facts. No case for interference with the punishment is made out.

For all these reasons, we set aside the impugned order of the High Court in W.P.No.9547/90 and restore the order of the u.p. Public Services Tribunal, The appeal is allowed. No order as to costs.

JUDIS