

CASE NO.:
Appeal (civil) 5606 of 2007

PETITIONER:
Vishwanath

RESPONDENT:
Union of India & Ors

DATE OF JUDGMENT: 03/12/2007

BENCH:
Tarun Chatterjee & Dalveer Bhandari

JUDGMENT:
JUDGMENT

O R D E R

CIVIL APPEAL NO. 5606 OF 2007
[Arising out of SLP (C) No. 17331 of 2006]

Leave granted.

The appellant was appointed in the year 1984 with the South Central Railway and was posted at Lalgude Loco-Shed, Secunderabad, Andhra Pradesh. On 15.10.1991, one C. M. Reddy, colleague of the appellant, abused him and uttered objectionable words regarding the character of his wife. On this sudden provocation and insinuation, the appellant lost his cool and equanimity and slapped C. M. Reddy. Thereafter, a scuffle ensued, in which Constable Murali of the Railway Police Force had beaten Yard Khalashi Meekwin James, in order to save Constable C.M. Reddy. Meckwin James tried to push them away and consequently they fell down and sustained injuries. The entire incident happened because of irresponsible behaviour of the appellant and Constable C.M. Reddy. It is alleged by the respondents that the entire incident had lowered the reputation of the disciplined Railway Police Force.

The departmental enquiry was conducted against them and both of them were found guilty. The punishment of withholding of increment for a period of two years with cumulative effect on Constable C.M. Reddy was imposed and the appellant involved in the same incident, was punished with removal from the service. The punishment of the appellant of removal from service was maintained even by the Division Bench of the Bombay High Court, Bench at Aurangabad in Writ Petition No.1673 of 1993.

The appellant, aggrieved by the imposition of extreme penalty of removal from the service, has approached this court.

Undoubtedly, the appellant (being a member of a disciplined Force) had acted in a very irresponsible manner. It was submitted on behalf of the appellant that the conduct of the appellant must be seen in the background of the entire episode. In the departmental enquiry, the appellant and Constable C.M. Reddy were found guilty. The penalty of removal of the appellant from the service was maintained even before the Division Bench of the High Court.

The appellant aggrieved by the impugned judgment has approached this court.

This Court issued show cause notice to the respondents and in pursuance to that a counter affidavit has been filed on behalf of the Divisional Security Commissioner, Railway Police

Force, Hyderabad Division. In para 4 of the said affidavit, it is incorporated that the entire incident was due to the irresponsible behaviour of the appellant and Constable C.M. Reddy. But, in the departmental enquiry, Constable C.M. Reddy was imposed the punishment of withholding of increment for a period of two years with cumulative effect, whereas, the appellant was punished with removal from the service.

We have heard the learned counsel for the appellant and the learned Additional Solicitor General appearing for the respondent, Union of India. On consideration of the peculiar facts and circumstance of this case, the extreme punishment of removal imposed on the appellant seems to be shockingly disproportionate to the level of misconduct on the part of the appellant, particularly when Constable C.M. Reddy, who was involved in the same incident, has been awarded much lesser punishment. The entire incident happened predominantly because of sudden and grave provocation by Constable C.M. Reddy on uttering abusive language and doubting the character of the appellant's wife.

In our considered opinion, the ends of justice would be met if the extreme penalty imposed on the appellant of removal from the service is set aside and, instead, the penalty of withholding of increment for a period of three years with cumulative effect is imposed on the appellant. The appellant shall also not be entitled to any back wages.

This appeal is accordingly disposed of. In the facts and circumstances of the case, the parties are directed to bear their own costs.