Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1334 OF 2013
[Arising out of SLP (Civil) No. 2070 of 2012]

Rajendra Yadav .. Appellant

Versus

State of M.P. & Others .. Respondents

J U D G M E N T

K. S. RADHAKRISHNAN, J.

1. Leave granted.

2. Appellant, a Police Constable, while he was working in the police station Rahatgarh, District Sagar along with A.S.I. Lakhan Tiwari and Head Constable Jagdish Prasad Tiwari stated to have received an amount of Rs.3,000 for not implicating certain persons involved in Crime No. 4 of 2002 charged under Sections 341, 294, 323, 506(B), 34 IPC. A complaint to that effect was filed by one Kundan Rajak, a resident of Village

Sothia, PS Rahatgarh. Acting on that complaint, the appellant was charge-sheeted, along with two others, vide proceedings dated 6.5.2002 by the Superintendant of Police, Sagar. The following are the charges levelled against the appellant:

(1) He demonstrated gross negligence and lack of interest in discharge of his duty by not implicating all the persons involved in the crime.

(2) He demonstrated misconduct by accepting Rs.3,000 from the complainant Kundan Rajak for lodging a report in the police station.

3. Appellant filed a detailed reply to the charge-sheet by his letter dated NIL and denied all the allegations.

4. A detailed inquiry was conducted through the Additional Superintendant of Police, Sagar against the appellant and other two persons – A.S.I. Lakhan Tiwari and H.C. Jagdish Prasad Yadav. During the course of the inquiry, the charge against Lakhan Tiwari was found not proved, but his role was found to be doubtful. So far as appellant Rajendra Prasad Yadav is concerned, it was held that one of the charges could not be proved for want of evidence. The inquiry report dated

8.9.2004, so far as the appellant is concerned, states as follows:

> "Against the delinquent No. 2, H.C. 1104 Rajendra Prasad, one of the charges imputed could not be proved for want of evidence. During the course of departmental inquiry, the inquiry has noted that the charge No. 2 was also not proved from the statement of prosecution witness and documents of the prosecution but one cannot deny the participation of the delinquent and his tacit approval."

5. The Superintendant of Police, Sagar, however, vide his proceedings dated 26.3.2004, disagreed with the remarks of the Inquiry Officer and held that the charge No. 2 as against the appellant was found to be proved. Consequently, a supplementary charge-sheet was also given to the appellant. Later, a final order was passed by the Deputy Inspector General of Police, Sagar stating as follows:

> "With respect to the delinquent HC No. 1104 Rajendra Yadav, the Inquiry Officer has stated vide his said letter that the delinquent HC was present in the police station during the report of the Crime No. 4/02. As per the evidence, the money was demanded by Ct. Arjun Pathak. The report has been recorded by HC 1104 Rajendra Yadav whereas Rs.3,000/- was paid to Const.

> Arjun Pathak. Therefore, with regard to receiving money, the participation of HC Rajendra Yadav and his tacit approval are proved with respect to the charge No. 2. At the same time, he could not exercise his control over his subordinate. The money was demanded by Arjun Pathak and upon receipt of the money by Arjun Pathak, HC 1104 Rajendra Yadav lodged the report. Therefore, I am in disagreement with the view of the Inquiry Officer given in the inquiry report of the department inquiry that the charge is not proved against the delinquent HC Rajendra Prasad Yadav. As per the remark of the Inquiry Officer, the above mentioned charge No. 2 imputed against HC No. 1104 Rajendra Prasad is found to be proved."

6. On the basis of the above finding, Lakhan Tiwari was demoted for three years from the post of A.S.I. to Head Constable. But the appellant and Jagdish Prasad Tiwari were dismissed from service.

7. Aggrieved by the same, appellant preferred an appeal before the Inspector General of Police (appellate authority), who dismissed the appeal vide his order dated 9.12.2004.

8. Appellant then filed a Writ Petition No. 10696 of 2007 before the High Court of Madhya Pradesh, Jabalpur Bench,

which was dismissed by the learned single Judge by his order dated 3.5.2007, against which a Writ Appeal No. 11 of 2007 was also preferred, which was also dismissed by the Division Bench vide its impugned judgment dated 6.9.2011.

9. Mr. Rakesh Khanna, learned counsel appearing for the appellant, submitted that since both the charges levelled against the appellant were not proved fully, the respondent Department was not justified in dismissing him from the service, which is grossly disproportionate to the gravity of the offence. Further, it was pointed out that there is nothing on the record to show that the appellant had demanded or accepted the alleged sum of Rs.3,000 and it was proved in the inquiry that it was Constable Arjun Pathak who had demanded the above mentioned amount and he was, even though, inflicted with the punishment of compulsory retirement was, later, reinstated by imposing punishment of reduction of increment with cumulative effect for one year. The inquiry has clearly established that it was Arjun Pathak who had demanded and accepted the illegal gratification from the complainant, but he has been given a lighter punishment while the appellant was imposed a harsher punishment, which is clearly arbitrary and

discriminatory. Learned counsel placed considerable reliance on the judgment of this Court in ***Anand Regional Coop. Oil Seedsgrowers' Union Ltd. V. Shaileshkumr Harshadbhai Shah*** (2006) 6 SCC 548 and claimed parity, if not fully exonerated.

10. Shri Arjun Garg, learned counsel appearing for the respondent State, submitted that there is no illegality in the views expressed by the learned single Judge and the Division Bench calling for any interference. Further, it was pointed out that since the appellant, being a member of a disciplined force, should not have involved in such an incident and his tacit approval could not be brushed aside because it had taken place in his presence.

11. We have gone through the inquiry report placed before us in respect of the appellant as well as Constable Arjun Pathak. The inquiry clearly reveals the role of Arjun Pathak. It was Arjun Pathak who had demanded and received the money, though the tacit approval of the appellant was proved in the inquiry. The charge levelled against Arjun Pathak was more serious than the one charged against the appellant. Both appellants and other

two persons as well as Arjun Pathak were involved in the same incident. After having found that Arjun Pathak had a more serious role and, in fact, it was he who had demanded and received the money, he was inflicted comparatively a lighter punishment. At the same time, appellant who had played a passive role was inflicted with a more serious punishment of dismissal from service which, in our view, cannot be sustained.

12. The Doctrine of Equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate, i.e., lesser punishment for serious offences and stringent punishment for lesser offences.

13. The principle stated above is seen applied in few judgments of this Court. The earliest one is ***Director General of Police and Others v. G. Dasayan*** (1998) 2 SCC 407, wherein one Dasayan, a Police Constable, along with two other constables and one Head Constable were charged for the same acts of misconduct. The Disciplinary Authority exonerated two other constables, but imposed the punishment of dismissal from service on Dasayan and that of compulsory retirement on Head Constable. This Court, in order to meet the ends of justice, substituted the order of compulsory retirement in place of the order of dismissal from service on Dasayan, applying the principle of parity in punishment among co-delinquents. This Court held that it may, otherwise, violate Article 14 of the Constitution of India. In ***Shaileshkumar Harshadbhai Shah*** case (supra), the workman was dismissed from service for proved misconduct. However, few other workmen, against whom there were identical allegations, were allowed to avail of the benefit of voluntary retirement scheme. In such circumstances, this Court directed that the workman also be treated on the same footing and be given the benefit of

voluntary retirement from service from the month on which the others were given the benefit.

14. We are of the view the principle laid down in the above mentioned judgments also would apply to the facts of the present case. We have already indicated that the action of the Disciplinary Authority imposing a comparatively lighter punishment to the co-delinquent Arjun Pathak and at the same time, harsher punishment to the appellant cannot be permitted in law, since they were all involved in the same incident. Consequently, we are inclined to allow the appeal by setting aside the punishment of dismissal from service imposed on the appellant and order that he be reinstated in service forthwith. Appellant is, therefore, to be re-instated from the date on which Arjun Pathak was re-instated and be given all consequent benefits as was given to Arjun Pathak. Ordered accordingly. However, there will be no order as to costs.

.....J.
(K. S. RADHAKRISHNAN)

.....J.
(DIPAK MISRA)

New Delhi,
February 13, 2013