
(2014) 09 AHC CK 0259
In the Allahabad High Court
Case No : Writ-A No. 31637 of 2008

Ajit Kumar Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 09-09-2014

Acts Referred:

Citation : (2014) 107 ALR 48

Hon'ble Judges : M.C. Tripathi, J

Bench : Single Bench

Advocate : S.K. Chaubey, A.N. Singh and Amar Nath Sharma, Advocate for the Appellant

Judgement

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M.C. Tripathi, J.—Heard learned Counsel for the petitioner and Sri Pankaj Rai, learned Additional Chief Standing Counsel for the State-respondents. By means of the present writ petition, the petitioner has prayed for a writ, order or direction in the nature of certiorari quashing the impugned orders dated 14.12.2006, 31.7.2007 and 31.12.2007 passed by the respondent Nos. 4, 3 and 2 (Annexure Nos. 7, 9 and 10 to the writ petition).

2. The brief facts give rise to the present writ petition are as follows: The petitioner was posted at Police Station Ubhawan District Ballia as Station House Officer. On 17.8.2005 during the course of gram panchayat elections at Booth No. 154 two rival female candidates had started quarreling with each other and created chaos at the Booth. As per record, some person had informed to the District Control Room, Ballia and immediately police had apprehended two persons from each warring factions and a case was registered for misplacement of some ballot papers.

3. Due to occurrence of the said incidence, the Superintendent of Police had warned the petitioner vide order dated 30.11.2005 and observed that the same may also be placed in his service record.

4. It transpires from the record that one person, namely, Ram Kumar Yadav R/o. Gram Paranpur, P.S. Khejuri, District Ballia had also made certain complaint against the petitioner and it appears from the record that some direction has been issued from D.I.G., by which it had been communicated to the concerned S.S.P. that mere warning was not sufficient in the matter and the same does not fall under the category of punishment and as such, the inquiry was liable to be held. Thereafter, the Superintendent of Police, Ballia had asked the Additional S.P., Ballia to submit a report and finally the Additional S.P. Azamgarh vide his recommendation dated 9.11.2005 had held that the petitioner was not guilty in the incidence. In this regard a detailed inquiry has also been conducted by the A.S.P. Azamgarh, and submitted his report on 9.11.2005 and made recommendation that in the matter only warning should be issued to the petitioner. Again a show cause notice was given to the petitioner on 22.9.2006 and immediately the petitioner had replied and denied the allegation contained in the show cause notice. Finally the respondent No. 4 had passed the impugned order dated 14.12.2006 by which the financial penalty of 15 days salary has been imposed.

5. Aggrieved with the order dated 14.12.2006 the petitioner had preferred an appeal before the respondent No. 3, the same was rejected, vide his order dated 31.7.2006. Thereafter, the petitioner had preferred a revision, which was also rejected by the respondent No. 2 vide his order dated 31.12.2007.

6. Learned Counsel for the petitioner submits that impugned order dated 14.12.2006 is unsustainable on the ground that initially the Superintendent of Police after considering the entire material had passed the order dated 30.11.2005, by which only warning was issued to the petitioner but subsequently, on account of some frivolous complaint made by some rival factions finally the Superintendent of Police had succumbed the pressure and changed his earlier order dated 30.11.2005 and passed the impugned order dated 14.12.2006, the same is unsustainable on the face of record and liable to be set aside, and further on the ground that the inquiry officer had made very detailed inquiry and, thereafter, recommended only for warning. He further submits that actually the petitioner had no role in the alleged incidence, a first information report had been lodged by the Presiding Officer, namely, Sri Juleswar Pandey on 17.8.2005 and only on the basis of said information, a report of missing of ballot papers was lodged and as such the petitioner has not made any dereliction of duty and unnecessarily, he had been dragged in the matter.

7. Lastly, learned Counsel for the petitioner submits that the impugned order is also unsustainable in absence of full fledged departmental inquiry. In the matter, admittedly, no chargesheet had been served upon the petitioner. Therefore, the same is impermissible as per provisions of Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 (herein below referred as Rules 1991).

8. However, learned Additional Chief Standing Counsel has tried to defend the order impugned on the ground that as per the provision of Rule 4(1) of Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991, only two penalties can be imposed, namely,

(a) Major Penalties (b) Minor Penalties.

9. He submits that by means of an order dated 30.11.2005 only warning was given to the petitioner but actually there is no as such punishment available in the Rules 1991.

10. For ready reference, Rule 4 of the Rules 1991 is reproduced herein:

"4. Punishment.--(1) The following punishments may, for good and sufficient reasons and as hereinafter provided, be imposed upon a police Officer, namely--

(a) Major Penalties-

(i) Dismissal from service.

(ii) Removal from service.

(iii) Reduction in rank including reduction to a lower-scale or to a lower stage in a time scale.

(b) Minor Penalties-

(i) Withholding of promotion.

(ii) Fine not exceeding one months" pay.

(iii) Withholding of increment, including stoppage at an efficiency bar.

(iv) Censure."

11. Sri Pankaj Rai, learned Additional Chief Standing Counsel submits that for imposing minor penalties as such, there is no requirement of any departmental inquiry and states that Rule 5 of the Rules 1991 clearly provides that full fledged inquiry is required only, where the charges are grave in nature, where a major punishment can be imposed and for minor punishment, there is no requirement of any departmental enquiry. As such for resolving the present controversy the procedure for award of punishment is also relevant, for ready reference, Rule 5 of the Rules 1991 is reproduced herein:

"5. Procedure for award of punishment.--(1) The cases in which major punishments enumerated in Clause (a) of sub-rule (1) of Rule 4 may be awarded shall be dealt with in accordance with the procedure laid down in sub-rule (1) of Rule 14.

(2) The cases in which minor punishments enumerated in Clause (b) of sub-rule (1) of Rule 4 may be awarded, shall be dealt with in accordance with procedure laid down in sub-rule (2) of Rule 14.

(3) The cases in which minor penalties mentioned in sub-rules (2) and (3) of Rule 4 may be awarded shall be dealt with in accordance with the procedure laid down in Rule 15.

A bare perusal of the Rule 5 it is apparent that for petty cases where the minor penalties can be imposed then the Rule 15 would be applicable. For ready reference, Rule 15 of the Rules 1991 is reproduced herein:

15. Orderly room punishments.--Reports of petty breaches of discipline and trifling cases of misconduct by a Police Officer, not above the rank of head Constable, shall be enquired into and disposed of in orderly room by the Superintendent of Police or other Gazetted Officer of the Police Force. In such cases punishment may be awarded in a summary manner after informing the Police Officer verbally of the act or omission on which it is proposed to punish him and giving him an opportunity to make verbal representation. A register in Form 2 appended to these rules shall be maintained for such cases. In this Register, text of the summary proceeding shall be recorded."

12. A bare perusal of the Rule 15 it is apparent that in such cases punishment may be awarded in a summary manner after informing the Police Officer verbally of the act or omission on which it is proposed to punish him and giving him an opportunity to make verbal representation.

13. As per submission of learned Additional Chief Standing Counsel the claim of the petitioner for full fledged inquiry does not sustain.

14. Therefore, in view of above, the submission of learned Counsel for the petitioner for proper inquiry into the matter is misplaced as per provision of Rule 15 of the Rules 1991.

15. In the present matter, the Superintendent of Police, Ballia vide order dated 30.11.2005 only warned the petitioner about the alleged incidence, which took place on 17.8.2005. Subsequently, when some alleged complaint had been made, only thereafter, the inquiry was conducted by the A.S.P. Azamgarh who had made thorough inquiry into the matter and thereafter, only recommended for warning, so that in future he may discharge official duty with due diligence. But the Superintendent of Police, Ballia was not agreed with the said proposed recommendation and imposed 15 days of financial penalty in terms of salary.

16. The role of the petitioner at the time of alleged incidence had very limited and whatever the information had been sent by the Presiding Officer, the same had been taken care of by the petitioner and had acted promptly in the matter. Even in most of the cases, it is seen that police official are not placed inside the Booth. Whatever the information had been conveyed by the Presiding Officer, the same had to be followed. In the present matter, a report was lodged by the Presiding Officer, the same was acted upon by the petitioner promptly and more so inquiry officer, even though which was not even required to go into such detail as per Rule 1991, but after thorough inquiry had found that the petitioner was

not liable for such punishment.

17. After carefully going into the record, it is established that the petitioner had no role in the matter as such, the punishment was unwarranted specially in the background that the petitioner had performed the duty in pursuance to the order and he could not be held liable as per report of Additional Superintendent of Police, the order of punishment was also without appraising the correct facts as indicated above. Therefore, the same is unsustainable in the eyes of law and as such the punishment of financial penalty of 15 days is too harsh and excessive. In view of above, impugned orders dated 14.12.2006, 31.7.2007 and 31.12.2007 passed by the respondent Nos. 4, 3 and 2 are unsustainable and accordingly, the same are hereby set aside and quashed.

In the result, the writ petition is allowed.