
(2013) 11 AHC CK 0119

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 43144 of 2010

Ashok Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-11-2013

Acts Referred:

Citation : (2014) 1 ADJ 246 : (2014) 2 AWC 1397

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Ram Surat Saroj and Navin Kumar, for the Appellant;

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—The petitioner has suffered multiple punishments arising from same incident and, therefore, has come to this Court by invoking its extraordinary jurisdiction under Article 226 of the Constitution of India for seeking a writ of certiorari for quashing all the aforesaid orders of punishments as also the appellate and revisional orders which have also gone against petitioner. The facts, in brief, giving rise to present dispute are that petitioner is a Sub-Inspector in U.P. Police Force. In a case, i.e., NCR No. 111/09, under Sections 323/504 IPC (Case Crime No. 360/09, under Sections 304, 323, 504 IPC, a preliminary inquiry was conducted by Additional Superintendent of Police (Rural) and he submitted his report against petitioner alleging that petitioner did not take appropriate steps for arrest of accused, Sarvesh Singh and Shiv Prasad Singh, hence was guilty of dereliction of duty and negligence.

2. Two show-cause notices were issued by Superintendent of Police, Azamgarh pursuant to aforesaid preliminary report. One proposes punishment of censure and another proposes punishment of withholding of integrity of the year 2009.

3. Petitioner reply both the notices separately by his letters dated 25.1.2010. Thereafter two orders on the same day, i.e. 12.3.2010 were passed by Superintendent of Police, Azamgarh. By one of such order punishment of censure

was awarded and by another order punishment of withholding of integrity was imposed upon petitioner.

4. Against aforesaid orders of punishment of censure petitioner preferred appeal and against order of withholding of integrity he preferred revision before respondent No. 3. Both the appeal and revision have been rejected vide order dated 22.04.2010.

5. It is contended that the impugned orders have been passed replying on preliminary inquiry report and the evidence collected by officer concerned during preliminary inquiry but without confronting the petitioner with aforesaid material and, therefore, entire proceedings are in utter violation of principle of natural justice.

6. In para 28 of the writ petition it has been specifically pleaded that petitioner was not supplied with the copy of preliminary inquiry report, if any, and, therefore, punishment of censure founded on such report is illegal.

7. The respondents have filed a counter-affidavit and basic facts are not disputed therein. The averments contained in para 28 of the writ petition have been replied in para 23 of the counter-affidavit, which reads as under:

That a proper and detailed reply to the averment made in para 28 of the petition has been given in the proceeding paragraphs.

8. In the entire counter-affidavit, I do not find any averment to suggest or show that the copy of preliminary inquiry report and the evidence collected therein which have been relied by respondent-disciplinary authority in holding petitioner guilty and imposing punishment of censure was ever supplied or disclosed to petitioner.

9. It is true that for the purpose of imposing a minor penalty, regular departmental inquiry itself is not obligatory and the rules contemplated that after issuing a show-cause notice and receiving reply of delinquent employee, an order for minor penalty can be passed but here the disciplinary authority intends to take into consideration some material available with it. It is bounden duty of disciplinary authority to confront the delinquent employee to such material, else even a minor penalty would stand vitiated in law being in violation of principle of natural justice. No material adverse to a person can be permitted to be taken into consideration and relied on without disclosing the same to the persons concerned otherwise it would amount to passing an order ex parte founded on something in respect whereof the person concerned has no opportunity whatsoever to submit his point of view for explaining the things etc.

10. In taking the above view, I find support from a decision of Apex Court in State of U.P. Vs. Vijay Kumar Tripathi, and Another, , wherein considering Rule 55-B(a) of U.P. Civil Service (Classification, Control and Appeal) Rules, 1930, as applicable in U.P., which prescribes the procedure for minor penalties, the Court said that rule does not exclude or prohibit the observance of principles of natural

justice. It only says, that drawing of formal charges is not obligatory but the normal rule enunciated by the Court is that wherever it is necessary to ensure against the failure of justice, principles of natural justice must be read into a provision. Such a course, of course, is not permissible where the rule excludes, either expressly or by necessary intendment, the application of the principles of natural justice but in that event validity of rule may have to be seen.

11. Almost a similar situation and the issue as has been discussed above by this Court, came to be considered by a Division Bench of Madhya Pradesh High Court in Lal Audhraj Singh Vs. State of Madhya Pradesh, , wherein the Court held that before imposing punishment of minor penalty of withholding of increment, a regular departmental inquiry may not be necessary but the delinquent employee is clearly entitled to an effective opportunity of meeting the allegations on which minor penalty is proposed. The Court further said:

Merely giving a notice to the Government servant saying that he is guilty of certain lapse or misconduct and asking him to show-cause against the punishment of withholding of increments is not sufficient. The Government servant must be informed of the allegations against him and the material on which they are based. In the present case, the second notice, which was issued to the applicant on 15th April 1963, was, as stated in the return itself, on the basis of the report of enquiry which was held in July 1954. A copy of that report should have been supplied to the petitioner for enabling him to meet the charge of negligence levelled against him and to show that he did not deserve any punishment.

12. I find myself in respectful agreement with the view taken in above decisions, in absence of any other binding precedent taking otherwise view.

13. In the present case, it is evident that disciplinary authority has imposed punishment of censure by taking into account the preliminary inquiry report which at no point of time was ever disclosed to petitioner while show-cause notice was issued, to meet his representation against proposed minor penalty of censure. In fact the petitioner was denied effective opportunity of meeting allegations against him in absence of communication of material which was sought to be relied by disciplinary authority and, therefore, I have no hesitation in holding that impugned orders suffer for violating the principle of natural justice, denying adequate opportunity of hearing to petitioner before punishing him.

14. In the result, the writ petition is allowed. The impugned orders dated 31.12.2009, 12.3.2010, 22.4.2010 and 22.4.2010 (Annexures 1, 3, 5 and 7 respectively to the writ petition), are hereby set aside. However, this order shall not preclude the respondents from passing a afresh order in accordance with law. No costs.