
(2012) 02 AHC CK 0020

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 55946 of 2008

Azad Yadav

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Penal Code, 1860 (IPC) — Section 409
Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 — Rule 14(1)

Citation : (2012) 2 ADJ 774

Hon'ble Judges : P.K.S. Baghel, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble P.K.S. Baghel, J.—The petitioner has filed the present writ petition aggrieved by his dismissal order dated 13.9.2007 passed by Superintendent of Police, Ghazipur. His appeal and revision both have been dismissed by orders dated 30.10.2007 and 31.7.2008 by the Deputy Inspector General of Police, Varanasi Region, Varanasi and Inspector General of Police, Varanasi Zone, Varanasi, respectively. All the three orders are impugned in the present writ petition. The facts of judgment appear from the pleadings exchanged between the parties.

2. Briefly stated, the petitioner was appointed as a constable in civil police on 25.4.1982. On 21.6.2006 a First Information Report was lodged against the petitioner u/s 409 IPC by the Sub Inspector-Tej Bahadur Singh, the In -charge of Outpost Bara, Police Station Gahmar, District Ghazipur. In the FIR, it was alleged that the petitioner, Azad Yadav and another constable Ram Singh were on picket duty on 20.6.2006 from 7.00 p.m. to 1.00 a.m. (Mid-night). On 21.6.2006 in the early morning at 4.30 a.m. when Sub Inspector Tej Bahadur Singh was on patrolling duty along with constable Nathuni Singh, constable Kameshwar Singh,

constable Ram Pravesh Singh and constable Ram Bali, he met the petitioner and another constable Ram Singh. He found that Ram Singh was having his rifle but the petitioner did not have his rifle with him. On the query made by him with regard to his rifle, the petitioner did not give any satisfactory answer and tried to give evasive reply. The Sub Inspector Tej Bahadur Singh made inquiry at the police station and he was informed that both constables, the petitioner and Ram Singh were issued rifles and cartridges. The petitioner had misappropriated his rifle no. 10239 along with cartridges. The petitioner did not give any satisfactory reply as such the FIR was lodged against him and he was arrested on 22.6.2006. By that time, petitioner had not filed any FIR in respect of his loss of rifle.

3. The superintendent of Police and another officers were informed about the loss of the rifle and cartridges. The Superintendent of Police placed the petitioner under suspension and he directed the Circle Officer, Jamania to conduct a preliminary inquiry of the incident. In compliance of the order of Superintendent of Police, the preliminary inquiry was conducted by the C.O.

4. On the basis of preliminary inquiry, the disciplinary authority took decision to initiate disciplinary proceedings in terms of U.P. Police Officers of Subordinate Rank (Punishment and Appeal) Rules 1991. The petitioner was served a charge sheet on 16.1.2007, wherein sole charge was framed that with ulterior motive he has misappropriated the rifle. An Inquiring Officer was appointed who had conducted the inquiry.

5. The perusal of the inquiry report indicates that the petitioner was afforded full opportunity. The Department has examined Sub Inspector Tej Bahadur Singh, Police Station Bhurkura, district Ghazipur, Vinay Kumar Singh, posted at Chawki Sevrai, police station Gamhar, district Ghazipur, who had issued rifle and cartridges to the petitioner as well as constable C.P. No. 762-Ram Singh, Constable H.C. No. 39 Shiv Pratap Singh posted at Election Cell, Ghazipur and Ramakant Singh-Circle Officer, Jamania, district Ghazipur.

6. The main witness examined by the department was Sub Inspector Tej Bahadur Singh. The petitioner was given opportunity to cross examine him. The petitioner had cross examined him at length. He had also cross examined some other witnesses. At the end of evidence of the department, the petitioner was asked to lead his evidences. He neither produced any witness nor filed any evidence in his defence, except, his own statement. The Inquiring Officer had submitted his report and he found that the charge with regard to the loss of rifle was fully proved. A copy of the inquiry report has been filed as annexure-7 to the writ petition.

7. The disciplinary authority issued a show cause notice along with inquiry report to the petitioner and the petitioner had submitted his reply to the show cause notice. A copy whereof is annexure-8 to the writ petition.

8. The Disciplinary Authority, after considering the inquiry report, the reply submitted by the petitioner and other material placed on record, was satisfied

that the major penalty may be inflicted upon the petitioner by his dismissal and he was not a fit person to retain in service.

9. As stated earlier, aggrieved by the order of disciplinary authority, the petitioner had filed an appeal before the respondent no. 3, the Deputy Inspector General of Police, Varanasi Region Varanasi, which was dismissed by him on 30.10.2007. Dissatisfied with the aforesaid order, he filed a revision before the respondent no.2, which was also dismissed on 31.7.2008. All the three orders are impugned of the writ petition.

10. I have heard Sri Sidharth Khare, learned counsel appearing for the petitioner at length and learned Standing Counsel for the respondents.

11. Sri Sidharth Khare contended that the imposition of penalty upon the petitioner suffers from discrimination as Sri Ram Singh had not been inflicted with any penalty under the order of Inspector General of Police. His order of dismissal had been set aside and he had been reinstated in service.

12. The next submission of Mr. Khare is that a perusal of the order of dismissal demonstrates that in passing of the said order consideration has been taken of the past service record of the petitioner also. However, at no point of time, the petitioner had been put to notice that such past service record would be considered in awarding the penalty. Thus the order is in violation of principle of natural justice.

13. In support of his contention, Sri Khare placed reliance in the case of Kailash Prasad Gupta Vs. Vice Chancellor and others, 2010 (1) ESC 775 and Indu Bhushan Dwivedi Vs. State of Jharkhand and Another, .

14. Sri Khare has further urged, albeit feebly, that the penalty inflicted upon the petitioner is disproportionate to the allegation levelled against the petitioner.

15. Learned Standing Counsel submitted that loss of rifle is a gross misconduct as the petitioner is a member of disciplined force and his conduct shows that he was fully involved in misappropriation of the rifle as he has not reported the matter immediately to his superior officer or he lodged any FIR. On the other hand, when Sub Inspector Tej Bahadur Singh met him at 4.30 a.m. in the morning, he did not report the incident to him rather he failed to give any satisfactory answer for the loss of his rifle.

16. Learned Standing Counsel has drawn the attention of the Court to the inquiry report as well as preliminary inquiry and submitted that this Court cannot sit as an appeal over the findings of disciplinary proceedings. Petitioner has been given full opportunity and there is no illegality in the departmental proceedings.

17. I have considered the rival submissions made by the learned counsel for the parties.

18. From the submission advanced by the learned counsel for the petitioner, it is clear that there was no procedural irregularity in holding the departmental

proceedings. Learned Standing Counsel has also invited the attention of the Court to the pleadings of the writ petition and the ground to indicate that there is no allegation of unfairness in disciplinary proceedings.

19. Undisputedly, there was loss of rifle of the petitioner and he had not filed any FIR nor he had reported his superior officer immediately after the incident. From the evidence of the Sub Inspector before the I.O. a cross examination was made by the petitioner. It is proved beyond doubt that the conduct of the petitioner was not fair. Such finding recorded by the I.O. does not warrant any interference under Article 226 of the Constitution. It is based on the evidence on record. It is noteworthy that the incident took place in the night of 20.6.2006. However, for the first time, the petitioner had sent the report to the Superintendent of Police under the registered cover on 28.6.2006.

20. His stand was that he also sent an application u/s 156 (3) Cr.P.C. on 23.6.2006 to the Chief Judicial Magistrate concerned. The disciplinary authority and Inquiring Officer rightly disbelieved his statement that his information was not lodged at the police station Gamhar and the Sub Inspector Tej Bahadur Singh did not register his report. From perusal of the statement of the various witnesses before the I.O. his statement has rightly been disbelieved by the authorities. The loss of a weapon in the police force is seriously viewed and it amounts misconduct, if it is not properly explained.

21. As regard to the argument of Mr. Khare that there was discrimination as Ram Singh was reinstated, I find that disciplinary proceedings against Ram Singh was also initiated and also dismissed on 13.9.2007 in terms of Rule 14(1) of the Rule 1991. However, the Inspector General of Police allowed his revision on the ground that the rifle of Ram Singh was not lost and from his own statement of Azad yadav/petitioner it was found that Ram Singh was not with him but he was about 15 metres ahead of the petitioner. When the alleged incident took place that the two persons on a motorcycle have snatched away his rifle, there was no evidence on record regarding the complicity of Ram Singh in the incident and as such the facts of both the cases were entirely different.

22. Sri Khare in support of his submission with regard to the discrimination, he placed reliance on Kailash Prasad Gupta (Supra). However, paragraph -5 of the said judgment is material in the present case. It is reproduced herein below;

We repeatedly gave opportunity to the learned counsel for the University to point out any distinction between the appellant and other six employees in whose cases despite having found similar charges proved, minor penalty was imposed though in the case of the appellant, maximum penalty of dismissal has been chosen. He failed to point out any such difference.

23. In the present case, there is clear distinction of the charge against the petitioner and Ram Singh as mentioned above. The petitioner has lost his weapon and not Ram Singh. Thus the same punishment cannot be imposed on the petitioner and Ram Singh.

24. The Writ Court has very limited jurisdiction to re-appreciated the evidence on record in disciplinary proceedings. The Court has also limited jurisdiction with regard to the proportionality of the quantum of punishment. The Supreme Court in recent judgment has again reiterated the well settled law that High Court does not sit as appellate authority over the finding of the disciplinary authority, subject to certain limitations;

25. In the case of SBI v. Ram Lal Bhaskar, (2011) 10 SCC 249, the Supreme Court laid down the law in following terms;

Thus, in a proceeding under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the findings of the disciplinary authority and so long as the findings of the disciplinary authority are supported by some evidence the High Court does not re-appreciate the evidence and come to a different and independent finding on the evidence. This position of law has been reiterated in several decisions by this Court which we need not refer to, and yet by the impugned judgment the High Court has re-appreciated the evidence and arrived at the conclusion that the findings recorded by the inquiry officer are not substantiated by any material on record and the allegations leveled against the respondent no.1 do not constitute any misconduct and that the respondent no.1 was not guilty of any misconduct.

26. Again in Chairman cum Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and Others, the position was highlighted as follows;

27. In the case of State of Andhra Pradesh and Others v. Chitra Venkata Rao¹, this Court considered the scope of judicial review in dealing with departmental enquiries and held:

28. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of Andhra Pradesh Vs. Sree Rama Rao, . First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence.

The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

29. The Supreme Court in *Chairman cum Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and Others*, , opined;

30. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal

31. The Supreme Court long back in *State of Andhra Pradesh Vs. Sree Rama Rao*, issued a note of caution to High Court:

There is no warrant for the view expressed by the High Court in considering whether a public officer is guilty of the misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court, must be applied, and if that rule be not applied, the High Court in a petition I... under Article 226 of the Constitution is competent to declare the order of the authorities holding a departmental inquiry invalid. The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental inquiry against a public servant: it is concerned to determine whether the inquiry is held by an

authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the inquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of inquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the inquiry is otherwise properly held, the sole judge of the facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution.

32. As regard to the quantum of punishment, the Supreme Court in the case of *B.C. Chaturvedi Vs. Union of India* has held in respect of quantum of punishment, the disciplinary authority is sole judge of the facts. The Supreme Court held that;

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappraise the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India Vs. H.C. Goel*-this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued".

14. In *Union of India v. S.L. Abbas* when the order of transfer was interfered with by the Tribunal, this Court held that the Tribunal was not an appellate authority which could substitute its own judgment to that bona fide order of transfer. The Tribunal could not, in such circumstances, interfere with orders of transfer of a government servant.

33. In *Administrator of Dadra & Nagar Haveli v. H.P. Vora*-it was held that the Administrative Tribunal was not an appellate authority and it could not substitute the role of authorities to clear the efficiency bar of a public servant. Recently, in *State of Bank of India vs. Samarendra Kishore Endow-a Bench* of this Court of which two of us (B.P. Jeevan Reddy and B.L. Hansaria, JJ.) were members, considered the order of the Tribunal, which quashed the charges as based on no

evidence, went in detail into the question as to whether the Tribunal had power to appreciate the evidence while exercising power of judicial review and held that a tribunal could not appreciate the evidence and substitute its own conclusion to that of the disciplinary authority. It would, therefore, be clear that the Tribunal cannot embark upon appreciation of evidence to substitute its own findings of fact to that of a disciplinary/appellate authority".

34. The High Court under Article 226 of the Constitution will not interfere with the quantum of punishment unless the punishment was in outrageous defiance of logic and was shocking.

35. The relevant portion of judgment in the case of the Chairman cum Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and Others, is reproduced herein below;

19. "de Smith states that "proportionality" involves "balancing test" and "necessity test". Whereas the former (balancing test) permits scrutiny of excessive onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations, the latter (necessity test) requires infringement of human rights to the least restrictive alternative. [Judicial Review of Administrative Action (1995), pp. 601-05, para 13.085; see also Wade & Forsyth: Administrative Law (2005), p. 366.]

20. In Halsbury's Laws of England (4th Edn.), Reissue, Vol. 1(1), pp. 144-45, para 78, it is stated:

36. The court will quash exercise of discretionary powers in which there is no reasonable relationship between the objective which is sought to be achieved and the means used to that end, or where punishments imposed by administrative bodies or inferior courts are wholly out of proportion to the relevant misconduct. The principle of proportionality is well established in European law, and will be applied by English courts where European law is enforceable in the domestic courts. The principle of proportionality is still at a stage of development in English law; lack of proportionality is not usually treated as a separate ground for review in English law, but is regarded as one indication of manifest unreasonableness.

21. The doctrine has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without abuse of discretion. There can be no pick and choose selective applicability of the government norms or unfairness, arbitrariness or unreasonableness. It is not permissible to use a sledgehammer to crack a nut. As has been said many a time; where paring knife suffices, battle axe is precluded.

22. In the celebrated decision of Council of Civil Service Union v. Minister for Civil Service (1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL) Lord

Diplock proclaimed: (All ER p. 950h-j)

Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case-by-case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality'.

One of the tests to be applied while dealing with the question of quantum of punishment would be : would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment.

37. The upshot of the above discussion is that no ground is made out by the petitioner to interfere in the matter. Therefore, the petition, which lacks merit deserves dismissal. The writ petition is dismissed. However, no order is passed as to costs.