
(2003) 04 AHC CK 0179
In the Allahabad High Court
Case No : C.M.W.P. No. 26233 of 2001

Baboo Lal Dubey

APPELLANT

Vs

Regional Manager, U.P.S.R.T.C. and Another

RESPONDENT

Date of Decision : 04-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 3 AWC 2453

Hon'ble Judges : S.K. Singh, J

Bench : Single Bench

Advocate : Pradeep Saxena, for the Appellant; Samir Sharma, for the Respondent

Final Decision : Allowed

Judgement

S.K. Singh, J.—By means of the present writ petition, the petitioner has prayed for quashing of the order dated 19.4.2001 (Annexure-6 to the writ petition) as has been passed by respondent No. 2 by which, the petitioner has been removed from service.

2. For the purpose of convenient understanding, the facts in brief, can be summarised as thus. The petitioner who has been working as Conductor in U.P.S.R.T.C., Zero Board, Depot, Allahabad (hereinafter referred to as the Corporation) was served with the charge-sheet on 23.9.1997. It is mentioned in the charge-sheet that on 4.9.1997, he misbehaved Sri Jawahar Lal, the Assistant Traffic Inspector in the Corporation at about 8.15 a.m. near Zero Road Bus Station Canteen. It is mentioned that the aforesaid misconduct was a result of annoyance of the petitioner as on 29.8.1997, he was caught by Sri Jawahar Lal aforesaid while taking ten passengers without tickets. The charge-sheet was replied by the petitioner on 20.12.1997. Thereafter, on 1.9.1998, report was submitted by the Enquiry Officer pursuant to which on 8.9.1998 notice was issued to the petitioner proposing punishment of removal from service. On receipt of the show cause notice the petitioner moved application on 15.9.1998

(Annexure-4 to the writ petition) through which it was prayed that incomplete enquiry report has been supplied to him as with the report, no statement of any witness/cross-examination has been given and, therefore, whatever evidence has been collected in the enquiry may also be supplied with the enquiry officers' report. It is said that although nothing was received by the petitioner but on 9.1.1999 (Annexure-5 to the writ petition) he submitted his detailed reply. It appears that in respect to another incident/charge, the petitioner was removed from service on 30.1.1999 but thereafter, the higher authority on being satisfied with the petitioner's appeal/ representation by order dated 21/26.6.2000 re-instated the petitioner by giving minor punishment of stoppage of five annual increments. Thereafter, on 11.12.2000, the petitioner was asked to submit fresh detailed reply to the show cause notice referred above. The petitioner appears to have again submitted his reply on 7.2.2001 in which again he reiterated the facts and stand as were stated in the earlier reply dated 9.1.1999 (Annexure-5 to the writ petition). On completion of the aforesaid, respondent No. 2 appears to have taken a final decision by the impugned order dated 19.4.2001 (Annexure-6 to the writ petition) by which the petitioner has been removed from service. It is against the order of respondent No. 2 referred above, the petitioner has come up to this Court by means of this writ petition.

3. Parties' learned counsel have been heard at length and pleadings as are on record, have been examined. As jointly requested, the matter has been heard on merits and is being finally decided.

4. Learned counsel for the petitioner submits that the impugned order of removal of the petitioner from service besides being illegal, arbitrary, is based on consideration of non-existent facts and in fact, there is absolutely no corroborative evidence in respect to charges levelled against the petitioner. It is further submitted that the respondents have also taken into account earlier misconduct of the petitioner upon which, he was ordered to be removed from service on 30.1.1999 and also alleged incident dated 8.3.2001 of taking nine passengers without tickets and thus the respondent No. 2 on the finding that the petitioner appears to be involved in series of misconduct and he is habitual one his continuance in service is not in the interest of Corporation which is factually incorrect has passed the impugned order. It is argued that as the impugned order amounts to major punishment, the charges being not supported by any corroborative evidence, the order cannot be sustained. It is further argued that petitioner has not been given a reasonable opportunity to defend himself as alongwith show cause notice, no evidence was supplied and further the respondents having taken into consideration, the non-existent facts and the charges of misconduct dated 8.3.2001 to which the petitioner has no opportunity to defend and punishment being disproportionate, same is liable to be quashed.

5. In response to the aforesaid submission, learned counsel for the respondents submits that the charge against the petitioner of assault by him on a superior officer, being serious in nature, the arguments of learned counsel that the

punishment is disproportionate, is not available to him. It is further argued that the respondent No. 2 having found the petitioner to be in habit of indulging himself in various kinds of misconduct, has rightly held that his continuance in service is not in the interest of Corporation. It is pointed out that after detailed enquiry, after collecting full fledged evidence and after affording full opportunity to the petitioner, impugned decision has been taken to which no exception can be taken. Lastly, it has been submitted that the petitioner has effective remedy to file appeal against the impugned order and therefore, no interference is called for.

6. Upon hearing aforesaid arguments, the Court proceeds to examine the matter. In view of the pleadings and the arguments, three questions arise to be dealt with by this Court which can be formulated as below :

(1) When and in what circumstances, the order of punishment is to be interfered by the Court.

(2) Whether and when the Court can interfere in the quantum of punishment.

(3) Whether after exchange of pleadings, whether the petitioner is to be relegated to the alternative remedy.

7. So far as the first question about the scope of interference by this Court in the order of punishment is concerned, first the Court has to be satisfied that the exercise by respondents is after affording adequate opportunity to the petitioner and after collecting reasonable evidence to support the charges and further that the action on the part of the respondents is bona fide. So far the case in hand is concerned, for the reasons which are indicated herein, it is clear that it is a case of absolutely no evidence to support the charges, rather the impugned order is based on a consideration of non-existent facts and also of some subsequent events/misconduct to which admittedly the petitioner has no opportunity. It is said that the petitioner was intercepted on 29.8.1997 while he was taking ten passengers without tickets by Jawahar Lal, Assistant Traffic Inspector, on account of which, being annoyed, on 4.9.1997, petitioner assaulted Sri Jawahar Lal referred above, near canteen of Zero Road Bus Station. Although, the Bus stand and so far situation of the canteen is concerned, there cannot be any manner of doubt that large number of witnesses from the public as well as of the department must have been available but in the complaint by Sri Jawahar Lal name of one Mohan Lal Tiwari was given in whose presence, the alleged assault took place. The aforesaid Mohan Lal Tiwari as has come in the order has unfortunately died. Thus, except the statement of complainant Jawahar Lal, there appears to be absolutely no corroborative evidence in respect to the charge in question. The respondent No. 2 appears to have based his decision having been greatly influenced by the circumstances that earlier the petitioner was also ordered to be removed from service on 30.1.1999 and thereafter, on being re-Instated, again he was found taking nine passengers without tickets. So far the order dated 30.1.1999 is concerned, suffice it to say that the same was interfered by higher authority by order dated 21.6.2000 and, the order of

petitioner's removal from service was modified with the diversion of reinstatement with stoppage of five annual increments. So far the misconduct dated 8.3.2001 is concerned, admittedly, neither that is the subject-matter of charge on which the matter has proceeded nor any enquiry in that respect has ever taken place and, therefore, both the aforesaid considerations, i.e., earlier order of removal from service and the incident dated 8.3.2001 appear to be not valid considerations for the charge in issue. It also appears that the respondent No. 2 has wrongly shifted burden on the petitioner to prove his innocence, whereas it was for the department to have proved the charge against the petitioner on the basis of independent evidence in support of the charges. The complaint against the petitioner is that on account of assault by him, Jawahar Lal referred above fell down resulting in slight abrasion on his left hand. It is clear from the finding so recorded by respondent No. 2 in the impugned order that neither there is any medical report in respect to abrasion which the complainant is said to have received, nor he has lodged any report with the police and, therefore, the incident of assault and felling down of the complainant, getting abrasion, all these things were required to be supported by atleast some independent evidence in this respect, which has admittedly not been done. Even the name of any other witness has not been given in the complaint which was made by the complainant before the departmental authority ordering enquiry. The very approach of the respondent No. 2 that as the petitioner has not been able to substantiate his version that he has not assaulted the complainant and there appears to be no reason that why informant has given incorrect information and, therefore, charge against the petitioner is proved, appears to be wrong. The petitioner has clearly denied the incident of assault and thus he was not supposed to prove the negative thing. It appears that the respondent No. 2 has wrongly shifted heavy burden on the petitioner to prove his innocence without taking case of minimum proof in respect to charges. Some of the extract/ observation in this respect as are contained in the impugned order will be useful to be quoted here :

^^vkjksih us vius cpko esa dksbZ lk{; ,oa lcwr ugha is" k fd;k gS A og ;g Li"V dj ldus esa foQy jgk gS fd ;fn fnukad 4-9-1997 dks fjiksVZdrkZ dks mlus thjks jksM cl LVs"ku ij ugha ekjk ihVk Fkk] mUgksaus mlds fo:) xyr fjiksVZ D;ksa fd;k A ,slh fLFkr esa fjiksVZdrkZ dh fjiksVZ ij vfo"okl djus dk dksbZ dkj.k ugha gS A

vkjksih us dsoy yxk;s x;s vkjksiksa ls bzdj fd;k gS A blds vfrfjDr mlus vius cpko gsrq dksbZ rdZ ,oa lcwr is" k ugha fd;k gS A

vkjksih dk ;g dFku dh ?kVuk dk LFkku thjks jksM cl LVs"ku fLFkr dSuVhu ds ikl dk gS tdk? ij izR;sd le; ;k=h ,oa foHkkxh; deZpkjh mifLFkr jgrs gSaa rc Hkh fjiksVZdrkZ us xokg dk uke ugha fn;k gS vkSj u gh ?kVuk dh lwpu fudVre Fkkus esa ntZ dh x;h gS A vkjksih dk mDr dFku ;qfDr laxr blfy, ugha gS fd mlus vius cpko esa dksbZ xokg ugha izLrqr fd;k gS A**

8. In respect to arguments/ averments of the petitioner that no witness has been examined, although reply has been given in para 15 of the counter-affidavit

which states that "full opportunity has been afforded to the petitioner to cross-examine departmental witnesses and to produce his own defence" but neither detail of any witness nor any document in support thereof has been filed along with the counter-affidavit which clearly reveals that it is only for the purposes of denial, a vague assertion that the opportunity has been given to cross-examine departmental witnesses, has been made.

9. In view of the aforesaid, it appears that in respect to incident in question, neither any report was lodged nor any witness was named or examined nor there is any medical examination to corroborate the version and therefore, on the facts, the view that charges are proved on the basis of mere statement of informant, cannot be accepted to be valid exercise for taking impugned decision. It also appears that alongwith show cause notice when the copy of report was given to the petitioner, he in his letter dated 15.9.1998 addressed to the disciplinary authority asked for providing the copy of statement and other documents/evidence on the basis of which, the enquiry officer has submitted report so that he may give effective reply, but that was never given and also the detailed reply as has been given by the petitioner on 9.1.1999 (Annexure-5 to the writ petition) has not at all been taken into account and in a most sweeping manner, mainly on the premises that the petitioner has not adduced any evidence in support of his version, the impugned decision has been taken. It also appears that the circumstances that the petitioner was earlier removed from service and after his reinstatement, by order dated 21.6.2000, he again indulged in the misconduct on 8.3.2001, was heavily weighed in the mind of respondent No. 2, although, it has been held earlier, that in respect to the incident dated 8.3.2001, no enquiry whatsoever has proceeded and, therefore, it cannot be asserted that to what extent, the mind of respondent No. 2 was influenced by the aforesaid consideration and therefore, on an examination of entire facts, this Court is of the view that the decision as has been taken by respondent No. 2 suffers from apparent illegality which needs interference by this Court. To sum up, the charge against petitioner was neither corroborated by any independent evidence nor the petitioner has been given reasonable opportunity to defend himself and further the respondent No. 2 has taken into account non-existent and irrelevant factors and, therefore, the order of punishment is to be interfered by this Court.

10. So far as question of quantum of punishment is concerned, it has been repeatedly said that if the punishment is shockingly disproportionate to the charges, then also interference may be made by this Court but at the same time, it has also been said that if the charges are serious and if the High Court has not found any fault in the enquiry proceeding in which the charges have been found to be proved then for interfering in the quantum of punishment so awarded by the disciplinary authority, the Court should restrain himself. However, so far as case in hand is concerned, as it has already been held that on the facts, the conclusion arrived at by the disciplinary authority is vitiated, very punishment so given by the impugned order has to go.

11. So far the question of dismissal of writ petition for availability of alternative remedy is concerned, suffice it to say that at the time when the writ petition was entertained, learned counsel for the respondent was allowed time to file counter-affidavit and at that time, this objection was not raised and, therefore, now after exchange of pleading, after hearing the argument on merits, having come to the conclusion that the impugned exercise is vitiated, there appears to be no justification for relegating the petitioner to approach higher forum as provided under the relevant regulations, as has been repeatedly said by this Court and also by Apex Court. After exchange of pleadings, at the stage of hearing the writ petition need not be dismissed on the ground of alternative remedy unless very serious disputed question of facts are involved and detailed finding on facts are to be recorded/adjudicated, writ petition need not be dismissed on the ground of availability of alternative remedy.

12. In view of the foregoing discussion, I am of the considered view that the petitioner is entitled to get relief from this Court.

13. Accordingly, writ petition succeeds and is allowed. The impugned order of respondent No. 2 dated 19.4.2001 (Annexure-6 to the writ petition) is hereby quashed. Needless to say that the petitioner will be re-instated in service with all consequential benefits.