

(2010) 09 AHC CK 0126
In the Allahabad High Court
Case No : C.M.W.P. No. 8753 of 2007

Constable Ex-174 T.P. Anand Kishore	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 21-09-2010

Acts Referred:

Citation : (2011) 2 AWC 1400

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.P. Sahi, J.—Heard Sri Jitendra Kumar, learned Counsel for the Petitioner and learned standing counsel for all the Respondents.

2. The Petitioner is a dismissed Constable of the U.P. Police Service. He has come up against the order of dismissal dated 31st July. 2006 as affirmed by the appellate and revisional orders dated 4.9.2006 and 31.10.2006 respectively.

3. A counter-affidavit has been filed by the Respondents to which a reply has been filed by the Petitioner and an additional supplementary-affidavit has been filed on 17.5.2010 after service on the learned Chief Standing Counsel.

4. Sri Jitendra Kumar, learned Counsel for the Petitioner submits that the order of punishment is perverse, inasmuch as, it does not take notice of the documents, which were on record in relation to the defence set up by the Petitioner and which had been clearly pointed out by the Petitioner during the enquiry proceedings through a written document.

5. The focus and the challenge, therefore, is on the finding recorded in the impugned order to the effect that the submission raised on behalf of the Petitioner in relation to the handcuffing of the accused who were in the custody of the Petitioner, has not at all been considered in correct perspective. As a matter of fact, the orders have been passed ignoring the relevant material.

6. The dispute in short is that the Petitioner, who was entrusted with the custody and production of two accused namely Mukesh and Bhola, took them to the Court where Bhola escaped from the custody of the Petitioner and Mukesh returned back to the lock-up. Learned Counsel for the Petitioner submits that there was no deliberate fault on the part of the Petitioner nor was he negligent in his duty but it was on account of no availability of handcuffing material for the said accused that he escaped in view of heavy rush of litigants in Court and taking undue advantage of the said situation.

7. The Petitioner took a clear defence before the Enquiry Officer that the accused Bhola had not been handcuffed and for that a clear averment was made in the written submission filed before the Enquiry Officer along with a copy of G.D. No. 24 dated 23.11.2005, which indicated that the material to handcuff the accused was not even supplied and the Petitioner was handed over two accused for being taken to the Court for their production in their respective cases.

8. Learned -counsel for the Petitioner submits that this is evident from the aforesaid G.D. report, which is also brought on record as Annexure 11 to the writ petition and he further relies on relevant extracts of the Guards and Escorts Rules, 1928 to contend that it was the duty of the concerned officials to have provided adequate material for handcuffing the accused, which was admittedly not done. Learned Counsel for the Petitioner submits that the Rules provided that if the accused is being sent in the custody of a Constable without handcuffs. then two Constables have to be posted with one accused. In the instant case two accused were allowed to be taken by the Petitioner without being handcuffed for being produced in Court. He, therefore, submits that the procedure adopted by the Respondents themselves was contrary to the 1928 Rules aforesaid and hence the Petitioner cannot be held to be negligent in his duty.

9. The Respondents have filed a counter-affidavit to which a reply has been submitted by the Petitioner.

10. Having considered the aforesaid submissions and having perused the records, the aforesaid stand taken by the Petitioner is categorical, which has been noticed while dealing with by the disciplinary authority at Item No. 2 in the impugned order dated 31st July, 2006. The disciplinary authority nowhere mentions the defence of the G.D. report referred to hereinabove and as pointed out by the Petitioner namely G.D. No. 24 dated 23.11.2005. The Petitioner is, therefore, right in contending that the aforesaid relevant material has been ignored by the authority. Apart from this, the aforesaid issue relating to the applicability of the 1928 Rules ought to have been looked by the disciplinary authority himself when such a plea had been raised in the written submission made by the Petitioner before the Enquiry Officer. This was further corroborated by his own statement. Unfortunately, the District Police Officer, who proceeded to pass the impugned order has recorded findings as if with a predisposed mind. The evidence was, therefore, overlooked and, therefore, in my opinion, the order suffers from the vice of perversity. Non-consideration of this relevant defence

material set up by the Petitioner vitiates the orders.

11. Accordingly, the order dated 31st July, 2006 and the consequential orders passed in appeal and revision are set aside.

12. The writ petition is allowed.

It shall be open to the Respondents to proceed to consider the aforesaid defence material as set up by the Petitioner and pass appropriate orders in accordance with law.