

(1990) 01 AHC CK 0031
In the Allahabad High Court
Case No : C.M.W.P. No. 2913 of 1982

Dina Nath Pandey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-01-1990

Acts Referred:

Constitution of India, 1950 — Article 311
Govt. Servant Conduct Rules, 1956 — Rule 24

Citation : (1991) 2 LLJ 195

Hon'ble Judges : B.N. Misra, J

Bench : Single Bench

Advocate : B.P. Srivastava, for the Appellant; Standing Counsel, for the Respondent

Judgement

B.N. Misra, J.—In this petition filed under Article 226 of the Constitution, the petitioner Dina Nath Pandey has challenged the order dated 31st January, 1973 (Annexure - 9) passed by the Sub-Divisional Officer, Sadar, Mirzapur and the order dated 7th August, 1973 (Annexure-11) passed by the Collector, Mirzapur dismissing the petitioner's appeal, the order dated 11th June, 1974 (Annexure-12) passed by the Commissioner, Varanasi Division dismissing the petitioner's revision application and the order dated 4th December, 1981 (Annexure-13) passed by the Uttar Pradesh Public Services Tribunal-(1), Lucknow dismissing the claim application filed by the petitioner against the order terminating his service.

2. Facts of the case may be briefly stated. The petitioner was working as a Lekhpal at village Baraudi in tehsil Mirzapur. He was a permanent Government servant. On 19th October, 1972 a charge-sheet (Annexure-1) was served upon him asking him to show cause against five charges noted in the charge-sheet. He submitted his explanation (Annexure-3) on 18th November, 1972. At the conclusion of the departmental enquiry held against the petitioner he was found guilty of all the five charges vide Annexure-7. Thereafter a second notice

(Annexure-6) was served on the petitioner asking him to show cause as to why he shall not be removed from service. The explanation of the petitioner to the second show cause notice is Annexure 7A dated 23rd January, 1973. Finally by order dated 31st January, 1973, the Sub- Divisional Officer, Sadar, Mirzapur removed the petitioner from service vide Annexure-9. The petitioner's appeal to the Collector, Mirzapur was dismissed by order dated 7th August, 1973 (Annexure-11). The petitioner filed a revision before the Commissioner, Varanasi Division which was also dismissed by order dated 11th June, 1974 (Annexure-12). The petitioner next filed a claim petition before Uttar Pradesh Public Services Tribunal and the claim petition was dismissed by order of the Tribunal dated 4th December, 1981 (Annexure-13)

3. Mr.B.P. Srivastava, learned Counsel appearing for the petitioner, has urged two main points in support of the petitioner's case. The first point is that the petitioner had not been given adequate opportunity to produce witnesses, particularly his father-in-law, in support of his plea that the lands in question which were standing in the name of the petitioner's wife had been gifted to her by his father-in-law. This submission of learned Counsel overlooks the contents of the order dated 24th January, 1973, copy of which has been filed as Annexure-8 to the writ petition, wherein it has been clearly recorded by the Sub-Divisional Officer that on 28th November, 1972 the petitioner had given in writing that except what he had stated in his explanation, he had no further oral submissions to make nor any witnesses to examine in support of his case. In view of the clear observations of the Sub Divisional Officer as contained in his aforesaid order, it is not now open to the petitioner to complain of denial of adequate opportunity to produce and examine witnesses in support of his case.

4. Learned counsel for the petitioner next argued that the first three charges contained in the charge-sheet and which have been held to have been proved against the petitioner are so vague that the findings thereof must be set aside for the ends of justice.

5. Charge No. 1 contains the allegation that on 16th August, 1972 and again on 18th August, 1972 the petitioner had used improper words during conversation with the Kenungo. Neither the words which are alleged to have been used by the petitioner have been spelt out nor does the charge-sheet contain any description or detail as to in what manner the incident took place. There can be no doubt that the first charge is vague. Since the words alleged to have been used by the petitioner have not been specifically mentioned, the petitioner could not have met the charge or pleaded his defence to the said charge. In this context learned Counsel appearing for the petitioner relies on a decision of this Court reported in Avinash Chandra Sanjar Vs. Divisional Superintendent, Central Railway and Others, . In that case the charge-sheet did not disclose particulars as to the actual language used, and complained of by the concerned employee who was accused of misconduct of incivility to public by using disgraceful language towards a particular gentleman. It was held that the vagueness of the

charge vitiated the enquiry. It was also pointed out that addition of words like "disgraceful" did not make the charge clear and specific. With respect I agree with the observations contained in the aforesaid judgment of this Court. Hence the charges Nos. 1 and 2 must be held not proved as against the petitioner and the finding thereof recorded by concerned authority must be set aside.

6. Charge No. 3 contains the allegation that the petitioner had met the Sub-Divisional Officer on a particular date without prior permission. There is no allegation that the petitioner has misbehaved in any manner with Sub-Divisional Officer or had in any manner disturbed the Sub-Divisional Officer in the discharge of his duties. I do not think that by merely seeking a meeting with the Sub-Divisional Officer the petitioner committed any act of misconduct. Charge No. 3 must therefore must also be set aside.

7. Charge No. 4 contains the allegation that the petitioner had acquired in the name of his wife about 24 Bighas and 18 Biaswas of land at village Baraudi where he had been posted. Under Rule-24 of the Uttar Pradesh Government Servants' Conduct Rules, 1956 it was necessary for the petitioner to obtain previous sanction of the appropriate authority before acquiring this land in the name of his wife. The explanation submitted by the petitioner to this charge is that his father-in-law had gifted these lands to his wife. This plea has not at all been substantiated. In any case, the land standing in the name of the wife amounts to acquisition of land by the petitioner under the Government Servants Conduct Rules. As the petitioner did not obtain previous sanction of the appropriate authority for acquisition of these lands, charge No. 4 must be held to have been brought home against the petitioner.

8. Charge No. 5 is to the effect that the petitioner had along with others jointly acquired lands in village Baraudi where he was posted. The petitioner has admitted that for the last four to five years he knew that his name was noted in the land records, but his explanation is that he does not know or by whom his name was entered along with others in respect of the said lands. This explanation is so absurd that it has been rightly rejected at the enquiry. ChargeNo.5 must also be held to have been proved against the petitioner being in violation of the requirements of Rule 24 of the Government Servants Conduct Rules.

9. As already noted the first three charges have not been proved against the petitioner, but charges Nos.4 and 5 relating to acquisition of lands without previous sanction of the appropriate authority have been proved against him. On the question of punishment the order of removal passed against him are oppressive in the facts and circumstances of this case, particularly when the first three charges have not been proved against the petitioner. Keeping in view the peculiar facts and circumstances of this case, it would be just and proper that the order of termination should be set aside and the petitioner reinstated in service without any in-service benefits for the period of break in service.

10. For reasons aforesaid this writ petition is partly allowed. The order of removal dated 31st January, 1973 (Annexure-9), the order of the Collector, Mirzapur dated 7th August, 1973 (Annexure-12) the order of the Commissioner, Varanasi Division, dated 11th June, 1974 (Annexure-12) and the order of the Tribunal dated 4th December, 1981 (Annexure- 13) are set : aside. The petitioner shall be reinstated in service to the post he last held or to a post equivalent to the said post subject to the following directions:

(i) The petitioner shall be reinstated in service to the post last held by him or to a post equivalent to the said post within one month from the date a certified copy of this order is produced before the Sub-Divisional Officer, , Sadar, Mirzapur and as undertaken the petitioner shall furnish a certified copy of this order within two weeks from today failing which this order need not be given effect to and the order of termination shall revive and , stand as final.

(ii) The petitioner shall not be entitled to any backwages for the period from 1st February, 1973 till the date of reinstatement:

(iii) Only for the purpose of pension and other post- retirement benefits the petitioner shall be deemed to have continued in service from 1st February, 1973 till the date of re-in-statement and,

(iv) The petitioner's seniority shall be computed afresh from the date of reinstatement. His past service shall not be taken into consideration for fixation of his seniority.

11. In the facts of this case parties shall bear their own costs.

12. A certified copy of this order shall be handed over to the learned Counsel for the parties on payment of usual charges within 24 hours.