
(2015) 02 AHC CK 0194

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 42556 of 2013

Hansram Mishra

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 10-02-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 161, 224, 225, 323, 333
Prevention of Corruption Act, 1988 — Section 5(2)

Citation : (2015) 4 ALJ 723

Hon'ble Judges : M.C. Tripathi, J

Bench : Single Bench

Advocate : Anil Kumar and Ram Krishna, for the Appellant

Final Decision : Allowed

Judgement

M.C. Tripathi, J—Heard Sri. Ram Krishna and Sri. Anil Kumar, learned counsels for the petitioner and Sri. Pankaj Rai, learned Additional Chief Standing Counsel for the respondents. By means of the present writ petition, the petitioner has prayed for quashing the impugned order dated 15.07.2013 passed by respondent No. 3 and order dated 01.08.1994 passed by the respondent No. 1.

2. After exchange of affidavits, the writ petition is disposed of finally.

3. Brief facts giving rise to the present writ petition are that the petitioner was appointed as regular Sahkari Kurk Amin on commission basis in the year 1978 in Kishan Sewa Sahkari Samiti Pakariya Hakim Puwayan, Sahjahanpur in the pay scale of Rs. 354-350. The appointment letter has been brought on record as Annexure No. 1 to the writ petition.

4. It has been averred in the writ petition that the petitioner had lodged an F.I.R., against one Sri. Satnam Singh, against whom an allegation had been levelled that he had kidnapped the petitioner and the petitioner was rescued by the people of the locality and on the same day one F.I.R. had also been lodged by Sri. Bhupendra Tripathi, Planning Director of Zila Gram Vikas Adhikaran,

Shahjahanpur against the petitioner regarding the alleged demand of Rs. 500/- as bribe from Sri. Satnam Singh and in this regard an F.I.R., had been lodged under Sections 395, 224, 225, 333, 427, 161 and 323, IPC and Section 5(2) of Prevention of Corruption Act. The same was registered as Case Crime No. 10 of 1993. The petitioner against the said F.I.R. had filed criminal case and this Court vide order dated 17.02.1993 had passed interim order in favour of the petitioner with following observations:--

"Standing Counsel desires and is granted one month's time to file counter affidavit. The rejoinder affidavit may be filed within two weeks next. List thereafter for hearing on admission.

In the meanwhile and until further orders, both investigation and the arrest of the petitioner shall remain stayed."

5. The District Magistrate, Shahjahanpur vide order dated 20.01.1993 had suspended the petitioner on the basis of the allegations which were levelled against the petitioner as per the First Information Report. Aggrieved with the order dated 20.01.1993, the petitioner had filed writ petition and the same had been disposed of vide order dated 02.04.1993 with direction to the respondents to complete the disciplinary proceeding against petitioner within three months. Thereafter, the petitioner had been charge-sheeted on 15.03.1994 and in response he has submitted reply on 02.04.1994. Thereafter, the petitioner had received show cause notice dated 23.04.1994 sent by the respondent No. 1 stating therein that all the charges against the petitioner were found to be correct as per inquiry report and if the petitioner is to say anything, he may submit his response.

6. It has been averred in the writ petition that no copy of the inquiry report had ever been given to the petitioner and the same had been conducted behind his back and no opportunity had been afforded to the petitioner and further the petitioner had been denied the right to cross-examine the witnesses. It appears from the record that in spite of the categorical direction issued by this Court for concluding the inquiry in the matter but the same had not taken place within stipulated time. The petitioner was compelled again to approach this Court by means of Contempt Petition No. 1120 of 1994 and the Hon"ble Contempt Court vide order dated 22.07.1994 had issued notices to the respondent No. 1. After receiving notices, the petitioner had received communication dated 02.09.1994 by which it had been indicates that the petitioner's service had already been terminated vide order dated 01.08.1994. It has also been averred that the petitioner had assailed the termination order dated 01.08.1994 through Writ Petition No. 33183 of 1994 and meanwhile, the petitioner had also moved an application to the State Government through Commissioner with prayer for initiation of fresh inquiry. Thereafter, vide letter dated 01.05.2003, the District Assistant Registrar Co-operative Society directed the Additional Development Officer (Cooperative) to conduct the fresh enquiry in the matter and as per the direction the Additional Development Officer (Co-operative) conducted the

inquiry and submitted report on 06.05.2003. Meanwhile, the police has also inquired into the matter in pursuance to the direction issued by this Court dated 14.10.2003 and after conducting the inquiry the investigating officer had submitted final report on 22.12.2007. It is categorically averred in the Paragraph No. 30 of the writ petition that learned Sessions Judge, Shahjahanpur vide order dated 16.07.2008 had accepted the final report.

7. It is relevant to mention at this stage that the petitioner who had filed earlier writ petition which was pending consideration before this Court was finally disposed of vide order dated 08.1.2012 with observation that the petitioner may filed appeal before the Divisional Commissioner under Rule 11 of the Uttar Pradesh Government Servant (Discipline & Appeal) 1999 and the same may be considered and decided within two months. The Commissioner, Bareilly Division, Bareilly vide order dated 15.07.2013 had dismissed the appeal. The same is assailed by means of the present writ petition.

8. Learned counsel for the petitioner submits that the impugned order dated 15.07.2013 passed by respondent No. 3 and order dated 01.08.1994 passed by the respondent No. 1 cannot be sustained on the ground that the disciplinary proceedings were vitiated in law and as such no opportunity of personal hearing had ever been afforded to the petitioner nor even the inquiry report had been supplied to him and further submits that even he had not been permitted to cross-examine the witnesses, therefore, the complete inquiry was against the principles of natural justice.

9. Learned counsel for the petitioner further submits that the allegation had been levelled against the petitioner for asking bribe of Rs. 500/- from Sri. Satnam Singh against whom he had firstly lodged the F.I.R., the complete story was concocted and had deliberately implicated him just only to malign and tarnish the image of the petitioner. He further submits that in the present matter, the police had inquired into the matter and investigated thoroughly regarding the alleged incidence and once it had been investigated by the police department and submitted the final report and further the same had been accepted by the learned Sessions Judge on 16.07.2008, then in view of the aforesaid circumstances, the impugned order cannot be sustained and petitioner cannot be held for guilty of such petty offence and whereas the departmental inquiry had been taken place in violation of principles of natural justice. Therefore, the order impugned cannot be sustained.

10. Sri. Pankaj Rai, learned Additional Chief Standing Counsel submits that in the departmental proceeding, the petitioner had been given ample opportunity to defend himself and in the departmental inquiry, he was found to be guilty even his departmental appeal has also been rejected, therefore, at this stage, he cannot be permitted to submit that the inquiry was in violation of the principles of natural justice. He further submits that the criminal proceedings are entirely different even if the final report had been submitted in the criminal matter, even though the departmental proceeding would not be vitiated and the petitioner is

not entitled for any relief in this regard.

11. Heard rival submissions of learned counsel for the parties and perused the record.

12. Bare perusal of the impugned orders, the allegation which had been levelled by one Sri. Satnam Singh S/o Sri. Gurdeep Singh who was admittedly the defaulter and had moved a representation to the District Magistrate that the petitioner had asked Rs. 500/- from him and, therefore, he may be apprehended, therefore, the direction was issued on 18.01.1993 to Superior Officers to apprehend the petitioner on the spot and it has been alleged that the petitioner was apprehended while receiving Rs. 500/- and once he was caught, he misbehaved to the Superior Officers. It is relevant to notice at this stage, that the said plot had been designed on the dictate of a defaulter and as per departmental inquiry, nothing concrete had been established regarding the alleged incidence. Once after thorough inquiry, the police department had submitted final report regarding the alleged incidence and not found the petitioner guilty for taking any bribe then the order impugned cannot be sustained in the light of the aforesaid facts and circumstances whereas in the departmental inquiry, the procedure was flagrantly violated. Even the inquiry report had not been supplied to the petitioner and he had been denied for the cross-examination in the said proceedings.

13. The aforementioned facts would eventually prove that there were various flaws in the inquiry process, the allegation was levelled against petitioner by a person who was admittedly defaulter, his version has been taken as sacrosanct by the department and no efforts had been made to find out the correct facts by the department and even his past service record had not been taken into consideration, very leisurely allegations were made and complainant version was taken as gospel truth and every efforts were made just to nab the petitioner. As already noticed above, since the charge on which punishment has been imposed on behest of the defaulter, even though same was thoroughly investigated by the police and once the final report had been submitted in favour of the petitioner and further whole departmental inquiry was made in violation to natural justice, then what is left to be considered and examined by this Court as to whether punishment imposed was commensurate with the said charges.

14. Learned counsel for the petitioner has relied upon the judgment passed in State of U.P. Vs. Shatrughan Lal and Another, AIR 1998 SC 3038 : (1998) 6 JT 55 : (1998) 5 SCALE 1 : (1998) 6 SCC 651 : (1998) SCC(L&S) 1635 : (1998) 3 SCR 939 : (1998) AIRSCW 651 : (1998) 6 Supreme 587 . For ready reference, paragraph Nos. 4, 5, 6, 7, 9 & 10 are reproduced herein below:--

"4. Now, one of the principles of natural justice is that a person against whom an action is proposed to be taken has to be given an opportunity of hearing. This opportunity has to be an effective opportunity and not a mere pretence. In departmental proceedings where charge-sheet is issued and the documents

which are proposed to be utilised against that person are indicated in the charge sheet but copies thereof are not supplied to him in spite of his request, and he is, at the same time, called upon to submit his reply, it cannot be said that an effective opportunity to defend was provided to him. (see: Chandrama Tewari Vs. Union of India (UOI) (through General Manager, Eastern Railways), AIR 1988 SC 117 : (1987) 4 JT 398 : (1988) LabIC 339 : (1987) 2 SCALE 1058 : (1987) 1 SCC 518 Supp : (1987) SCC 518 Supp : (1988) 1 SCR 1102 : (1988) 1 SLJ 180 ; Kashinath Dikshita Vs. Union of India (UOI) and Others, AIR 1986 SC 2118 : (1986) 2 LLJ 468 : (1986) 1 SCALE 909 : (1986) 3 SCC 229 : (1986) 2 SLJ 278 ; State of Uttar Pradesh Vs. Mohd. Sharif (Dead) through Lrs., AIR 1982 SC 937 : (1982) 45 FLR 289 : (1982) LabIC 1234 : (1982) 2 LLJ 180 : (1982) 2 SCC 376 : (1982) 2 SLJ 259 .

5. In High Court of Punjab and Haryana Vs. Amrik Singh, (1995) 2 LLJ 656 : (1994) 5 SCALE 39 : (1995) 1 SCC 321 Supp : (1995) 1 SCC 321 : (1994) 6 SCR 6 Supp : (1995) 2 SLJ 61 , it was indicated that the delinquent officer must be supplied copies of documents relied upon in support of the charges. It was further indicated that if the documents are voluminous and copies cannot be supplied, then such officer must be given an opportunity to inspect the same, or else, the principles of natural justice would be violated.

6. Preliminary inquiry which is conducted invariably on the back of the delinquent employee may, often, constitute the whole basis of the charge-sheet. Before a person is, therefore, called upon to submit his reply to the charge sheet, he must, on a request made by him in that behalf, be supplied the copies of the statements of witnesses recorded during the preliminary enquiry particularly if those witnesses are proposed to be examined at the departmental trial. This principle was reiterated in Kashinath Dikshita Vs. Union of India (UOI) and Others, AIR 1986 SC 2118 : (1986) 2 LLJ 468 : (1986) 1 SCALE 909 : (1986) 3 SCC 229 : (1986) 2 SLJ 278 , wherein it was also laid down that this lapse would vitiate the departmental proceedings unless it was shown and established as a fact that non-supply of copies of those document in his defence.

7. Applying the above principles to the instant case, it will be seen that the copies of the documents which were indicated in the charge sheet to be relied upon as proof in support of articles of charges were not supplied to the respondent nor was any offer made to him to inspect those documents.

9. This paragraph of the written statement contains an admission of the appellant that copies of the documents specified in the charge sheet were not supplied to the respondent as the respondent had every right to inspect them at any time. This assertion clearly indicates that although it is admitted that the copies of the documents were not supplied to the respondent and although he had the right to inspect those documents, neither were the copies given to him nor were the records made available to him for inspection. If the appellant did not intend to give copies of the documents to the respondent, it should have been indicated to the respondent in writing that he may inspect those

documents. Merely saying that the respondent could have inspected the documents at any time is not enough. He has to be informed that the documents, of which the copies were asked for by him may be inspected. The access to record must be assured to him.

10. It has also been found that during the course of the preliminary enquiry, a number of witnesses were examined against the respondent in his absence, and rightly so, as the delinquents are not associated in the preliminary enquiry, and thereafter the charge-sheet was drawn up. The copies of those statements, though asked for by the respondent, were not supplied to him. Since there was a failure on the part of the appellant in this regard too, the principles of natural justice were violated and the respondent was not afforded an effective opportunity of hearing, particularly as the appellant failed to establish that non-supply of the copies of statements recorded during preliminary enquiry had not caused any prejudice to the respondent in defending himself."

15. Learned counsel for the petitioner has also relied upon the judgment passed in *Hardwari Lal Vs. State of U.P. and Others*, AIR 2000 SC 277 : (2000) 84 FLR 3 : (1999) 8 JT 418 : (2000) 1 LLJ 495 : (1999) 6 SCALE 642 : (1999) 8 SCC 582 : (2000) SCC(L&S) 85 : (1999) AIRSCW 4387 : (1999) 9 Supreme 34 . For ready reference, paragraph Nos. 3 & 5 are reproduced herein below:--

3. Before us the sole ground urged is as to the non-observance of the principles of natural justice in not examining the complainant, Shri. Virender Singh, and witness, Jagdish Ram. The Tribunal as well as the High Court have brushed aside the grievance made by the appellant that the non-examination of those two persons has prejudiced his case. Examination of these two witnesses would have revealed as to whether the complaint made by Virender Singh was the best person to speak to its veracity. So also, Jagdish Ram, who had accompanied the appellant to the hospital for medical examination, would have been an important witness to prove the state or the condition of the appellant. We do not think the Tribunal and the High Court were justified in thinking that non-examination of these two persons could not be material. In these circumstances, we are of the view that the High Court and the Tribunal erred in not attaching importance to this contention of the appellant.

5. In the circumstances, we are satisfied that there was no proper enquiry held by the authorities and on this short ground we quash the order of dismissal passed against the appellant by setting aside the order made by the High Court affirming the order of the Tribunal and direct that the appellant be reinstated in service. Considering the fact of long lapse of time before the date of dismissal and reinstatement, and no blame can be put only on the door of the respondents, we think it appropriate to award 50 per cent of the back salary being payable to the appellant. We thus allow the appeal, filed by the appellant. However, there shall be no order as to costs.

16. In the case of *State of U.P. and Others Vs. Rama Kant Yadav*, (2002) 95 FLR

915 : (2002) 8 JT 237 , the Supreme Court reversed the order of the High Court whereby the punishment had been reduced to reinstatement in service on payment of 50% of back wages with a warning to the delinquent, and held that the High Court ought not to have Interfered with the quantum of punishment in the facts of that case. The Supreme Court in the case of State of U.P. and others Vs. Ashok Kumar Singh and anothers, AIR 1996 SC 736 : AIR 1995 SC 736 : (1995) 6 SCALE 465 : (1996) 1 SCC 302 : (1996) 1 UJ 6 , held that where the employee had absented himself from duty without leave on several occasions, the High Court was not correct in holding that his absence from duty would not amount to such a great charge so as to impose the penalty of dismissal from service.

17. On the contrary the Apex Court in the case of Ranjit Thakur Vs. Union of India (UOI) and Others, AIR 1987 SC 2386 : (1988) CriLJ 158 : (1987) 4 JT 93 : (1988) 1 LLJ 256 : (1987) 2 SCALE 773 : (1987) 4 SCC 611 : (1988) 1 SCR 512 : (1989) 1 SLJ 109 , has held that "the question of the choice and quantum of punishment is within the Jurisdiction and discretion of the Court-Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review."

18. In the case of Union of India and others Vs. Giriraj Sharma, AIR 1994 SC 215 : (1994) 1 LLJ 604 : (1994) 3 SCC 755 Supp , the Apex Court held that overstaying of leave subsequent to the order of rejection of application for extension of leave could not be considered to be a severe enough charge to warrant punishment of dismissal from service and the same was held to be harsh and disproportionate. A Division Bench of this Court in the case of Harpal Singh Vs. State Public Services Tribunal, Bench No. 5, Lucknow and others, (2000) 2 AWC 1075 : (2000) 86 FLR 334 : (2000) 1 UPLBEC 704 , held that where it was on account of negligence of the constable of the G.R.P. that one passenger was misbehaved with and was murdered, the same could not be a case of serious misconduct and held that the punishment of dismissal from service was totally disproportionate to the offence and thus directed reinstatement of the employee in service, with half back wages and also ordered that he be given a severe warning. Further, in the case of Alexandar Pal Singh v. Divisional Operating Superintendent, 1987 (2) ATC 922 (SC), the Supreme Court held that ordinarily the Court or Tribunal cannot interfere with the discretion of the punishing authority in imposing particular penalty but this rule has an exception. If the penalty imposed is grossly disproportionate with the misconduct committed, then the Court can interfere. The railway employee on being charged with negligence in not reporting to the railway hospital for treatment was removed from service.

The Supreme Court found it fit to interfere with the punishment of removal from service and modified it to withholding of two Increments.

19. A Division Bench of this Court in the case of Suresh Kumar Tiwari Vs. D.I.G., P.A.C., Kanpur and Another, (2001) 4 AWC 2630 : (2002) 92 FLR 584 : (2001) 3 UPLBEC 2522 , has, while reiterating the view of the Supreme Court, held that the High Court normally does not interfere with the quantum of punishment unless the punishment shocks the conscience of the Court.

20. In the light of the law laid down by the Apex Court as well as this Court, in my view the broad principle which emerges is that normally, it is the disciplinary authority which should be best left with the duty of imposing the punishment after considering the facts and circumstances of the case. However, it is well settled that in case, if on the admitted facts, the punishment imposed is grossly disproportionate to the offence, which shocks the conscience of the Court, the Court has the power and jurisdiction to interfere with the punishment imposed.

21. Considering the facts and circumstances of the case, the punishment awarded to the petitioner of dismissal from service is too harsh and totally disproportionate to the charges, for which he had been found guilty. The punishment of dismissal from service are resorted only if there is very grave misconduct. The punishment from dismissal from service imposed on the petitioner is too harsh and is liable to be set aside.

22. Accordingly, the impugned order dated 15.07.2013 passed by respondent No. 3 and order dated 01.08.1994 passed by the respondent No. 1 cannot be sustained and are quashed. In view of above, the writ petition is allowed with the direction to the respondents concerned to pay to the petitioner half of the salary since removal from the department on basis of no work no pay and further respondents to pay entire arrears within two months time from the date of production of a certified copy of this order.