
(2011) 11 AHC CK 0350
In the Allahabad High Court
Case No : Writ Petition No. 648 (SS) of 1992

Iqbal Ahmad

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 16-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 309
Penal Code, 1860 (IPC) — Section 156, 380, 457, 89
Police Act, 1861 — Section 7

Citation : (2011) 11 AHC CK 0350

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Anil Kumar, J.—Heard Sri Jytoinjay Verma, learned counsel for petitioner, learned Standing Counsel and perused the record.

2. Facts of the present case are to the effect that petitioner was initially appointed as a constable of the Provincial Armed Constabulary in IIIrd Batallion P.A.C. at Lucknow on 28.03.2007, thereafter, he was served in IInd Batallian P.A.C. at Muradabad, XIV Batallion P.A.C. at Kanpur, XV Batallion P.A.C. at Agra and lastly when the petitioner was posted as constable in Armed Police District-Faizabad on 5.7.1989, he was in custody of 53 cartridges alongwith another constable Amar Nath Saroj.

3. As per pleadings in the present case, Shri Amar Nath Saroj (constable) informed the petitioner that he alongwith the petitioner has to depart from Guard Duty on 14.9.89 to the police line in view of the petitioner proceeded to police line and he will be reached in the night at village Tikari.

4. In view of the abovesaid fact, the petitioner proceeded to record his attendance in General Diary and submit his joining at police line. Accordingly, the petitioner proceeded to police line but in the night he will be reached in village

Tikari and while he was sleeping in the night, the rifle and the cartridges were stolen accordingly the F.I.R. Was lodged u/s 156/89 read with Section 457/380 I.P.C. (Annexure No. 4). In the said incidence, a charge sheet was also issued to the petitioner on 2.8.1989 (Annexure No. 5) u/s 7 of the Police Act, after receiving the same he submitted his reply on 10.8.1989 (Annexure No. 6) thereafter one Shri M.L. Gautam D.S.P., Faizabad was appointed as enquiry officer who had conducted the enquiry in accordance with law after giving opportunity of hearing to the petitioner and on the basis of materials on record submitted the enquiry report dated 30.9.1989 (Annexure No. 7). The disciplinary authority/S.S.P. Faizabad issued a show cause notice dated 12.10.1989 to the petitioner (Annexure No. 8) by which the petitioner was asked to submit his reply that why he should not be removed from his service, after receiving the same petitioner submitted his reply on 28.10.1989 (Annexure No. 9) thereafter the disciplinary authority/punishing authority after going through the materials on record as well as reply submitted by the petitioner passed the impugned order dated 27.1.1990 hence the present petition has been filed challenging the impugned order as well as the suspension order, charge sheet and show cause notice as contained in annexure nos.2,3,5 and 8 respectively.

5. Learned counsel for petitioner submits that the impugned order of dismissal is arbitrary in nature as during the course of enquiry officer. On the basis of evidence of witness No. 3 Faizul Ansari on the information given by Shri Amarnath Saroj the petitioner has made a signature accordingly as such no information has been given to the petitioner to proceed from the guard duty to police line and as per the proceeded other constable is to be given separate information to proceed from personal guard duty to police line in view of the abovesaid fact the petitioner is not cruelty to the charge No. 1 and further no finding has been given in respect to the charge No. 2 by the enquiry officer as such entire enquiry proceedings as well as punishment order of removal dated 27.1.1990 (Annexure No. 1) passed by opposite party No. 2/S.S.P., Faizabad is arbitrary in nature and in violation of principles of natural justice is liable to be set aside.

6. On the other hand, learned Standing Counsel on the basis of the counter affidavit while the submission in the instant case due opportunity has been given to the petitioner and the enquiry proceedings has been conducted by the enquiry officer in accordance with law in principles of natural justice and during the course of enquiry officer also has got proved and taking into consideration the said fact after issuing a show cause notice and the reply submitted by the petitioner, the impugned order has been passed opposite party No. 2 which is perfectly valid and in accordance with law, hence the present writ petition is liable to be rejected.

7. I have heard learned counsel for parties and gone through the record.

8. In the instant case, the punishing authority after taking into consideration the facts and circumstances of the case in the impugned order has given a finding to

the effect that the notice issued to the petitioner cannot be considered to be one sided as the petitioner orally answered to the said notice dated 28.10.1989 which was recorded by the punishing authority and also that there was no need to verify the signature of the delinquent by the handwriting expert in context to the evidences given by the witnesses during the course of departmental enquiry and it was also established that the petitioner was given full information about his return to the police line and thus, there was no need to take into consideration other witnesses and evidences."

9. Keeping in view the said fact, the punishing authority has passed the impugned order that the charges against the petitioner are to prove as per section 7 of the Police Act and further the entire action on part of the petitioner is nothing but amount to negligent discharging his duties as police constable so it need not be appropriate and fit to keep the petitioner in the police force.

10. It is settled law that the reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can be its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the later before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made. In other words, speaking out. The inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

11. Further, if the said principles is applied in the present case and the order of removal from services are tested on the said scale, the submission made by the learned counsel for the petitioner will definitely fail in the test. As in the present case, the orders of removal passed by the punishing authority are reasoned one indicating the reasons on the basis of which the same have been passed, accordingly the submission which has been made by the learned counsel for the petitioners in this regard is wholly misconceived and rejected.

12. Further, this Court while exercising power of judicial review under Article 226 of the Constitution of India does not exercise appellate powers. It is not intended to take away from administrative authorities the powers and discretion properly vested in them by law and to substitute courts as the bodies making the decisions. Judicial review is a protection and not a weapon.

13. In the case of Council of Civil Service Unions (CCSU) V. Minister 11 for the Civil Service (1984) 3 ALL ER 935, Lord Diplock has observed the scope of judicial review in the following words:-

Judicial Review as 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."

14. Moreover, judicial review has certain inherent limitation. It is suited more for adjudication of disputes than for performing administrative functions. It is for the executive to administer the law and the function of the judiciary is to ensure that the Government carries out its duty in accordance with the provisions of the rules and statute.

15. In the case of Chief Constable of the North Wales Police V. Evans, (1982) 3 ALL ER 141, it was observed by Lord Hailsham as under:-

Purpose of judicial review is to ensure that individual receives fair treatment and not to ensure that the authority, after according fair treatment reaches on a matter which it is authorized by law to decide with its conclusion which is corrected in the eyes of the Court.

16. In the same case, Lord Brightman observed that:

Judicial review as the words imply is not an appeal from a decision but a review of the manner in which a decision was made," and held, that "it would be an error to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself.

17. The aforesaid observations made by the Lord Hailsham and Lord Brightman were quoted with approval by their Lordships of Supreme Court in State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others, and while upholding that the judicial review is directed not against the decision, but is confined to the examination of the decision making process, it was held by the Supreme Court as under:-

When the issue raised in judicial review is whether a decision is vitiated by taking into account irrelevant, or neglecting to take into account, relevant factors or is so manifestly unreasonable that no reasonable authority entrusted with the power in question could reasonable have made such a decision, the judicial review of the decision making process includes examination, as a matter of law, of the relevance of the factors.

18. In the case of Tata Cellular Vs. Union of India, the Supreme Court stated that:-

"Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made but the decision making process itself," and enumerated some broad grounds upon which an administrative action is subject to control by judicial review and classified them under the heading of "illegality", "irrationality" and "procedural impropriety." In their supervisory jurisdiction as distinguished from the appellate one, the Courts do not themselves embark upon rehearing of the matter but nevertheless courts will, if called upon, act in a supervisory capacity and see that the decision

making-body acts fairly. If the decision making body is influenced by considerations which ought not to influence or fails to take into account the matters which ought to have been taken into account the Courts will interfere. If the decision making body comes to its decision on no evidence or comes to a finding so unreasonable that a reasonable man could not have come to it then again the Courts will interfere.

Further if the decision making body goes outside its power or misconstrues the extent of its power, then too the Courts can interfere, and if the decision making body acts in a bad faith or with ulterior object which it is not authorized by law, its decision will be set aside in supervisory jurisdiction. A decision of a public authority will be liable to be quashed or otherwise dealt with by appropriate order in judicial review proceedings, where the Courts concludes that the decision is such that no authority properly directing itself on the relevant law and fact acting reasonably could have reached it.

19. Thus the decision by the appropriate authority to grant or not to grant a particular relief to a person is not open to Judicial review by the High Court under Article 226 of the Constitution of India but the power of judicial review is circumscribed to scrutiny of the decision making process only and is to be exercised in the light of the principles laid down above and applying the said principles to the facts of the present case, I do not find any irregularity, infirmity in the impugned order.

20. Last submission made by the learned counsel for the petitioners that the impugned orders under challenge are arbitrary in nature as the punishments which are awarded to the petitioners do not commensurate with the gravity of charges, as such the same is in the violation of principles of natural justice. This argument is not tenable as it is the sole prerogative and domain of the punishing authority to impose the punishment on an employee taking into consideration the material documents and evidence on record and misconduct committed by him.

21. In the case of B.C. Chaturvedi Vs. Union of India and others, Hon''ble Supreme Court has held as under :-

18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment. Keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

22. In the case of V. Rajarathinam Vs. State of Tamilnadu and another, 1997 SCC (L&S) 90, the Court has held as under :-

that if all the relevant facts and circumstances and the evidence on record are taken into consideration and it is found that the evidence established misconduct against a public servant, the disciplinary authority is perfectly empowered to take appropriate decision as to the nature of the findings on the proof of guilt. Once there is a finding as regards the proof of misconduct, what should be the nature of the punishment to be imposed is for the disciplinary authority to consider.

23. In the case of State of Karnataka and Others Vs. H. Nagaraj, Hon''ble Apex Court after relying earlier judgment in the case of Union of India Vs. Parma Nanda (1989) 2 SCC (L&S) 303 held as under:-

That it is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority.

24. In the case of Union of India (UOI) and Another Vs. S.S. Ahluwalia, the Hon''ble Apex Court had held as under :-

8.... The scope of judicial review in the matter of imposition of penalty as a result of disciplinary proceedings is very limited. The court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved."

25. In the case of State of Meghalaya and Others Vs. Mecken Singh N. Marak, the Hon''ble Supreme Court had held as under :-

The legal position is fairly well settled that while exercising the power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercise by the disciplinary authority, and/or on appeal the appellate authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the court/tribunal. The exercise of discretion in imposition of punishment by the disciplinary authority or appellate authority is dependent on host of factors such as gratuity misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquents holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the court or a tribunal would not substitute its opinion on reappraisal of facts.

Secondly, the Tribunal failed to notice that the respondent was holding an important position as Land 15 Reforms Officer during the relevant period having been conferred with various powers and duties under the Regulations. As a Land Reforms Officer, the respondent possessed the official authority for grant of

occupancy rights under the Regulations. The co-delinquents were only his subordinates and they carried out his instructions. In the facts and circumstances, therefore, the respondent and the two co-delinquents cannot be said to have been similarly placed.

26. Recently, in the case of The Administrator, Union Territory of Dadra and Nagar Haveli Vs. Gulabhia M. Lad, the Hon''ble Supreme Court has held as under :-

Para 14 : The legal position is fairly well settled that while exercising the power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercise by the disciplinary authority, and/or on appeal the appellate authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the Court/Tribunal. The exercise of discretion in imposition of punishment by the disciplinary or appellate authority is dependent of host of factor such as gravity of misconduct, past conduct the nature of duties assigned to delinquent, responsibility of position that the delinquent holds, previous penalty, if any, and the discipline required to maintain in the department or establishment he works. Ordinarily the court or Tribunal would not substitute it's opinion on reappraisal of facts.

27. For the foregoing reasons, the present writ petition lacks merit and dismissed.

28. No order as to costs.