

(2010) 12 AHC CK 0056

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 52570 of 2000

Jageshwar Prasad

APPELLANT

Vs

Chairman/Administrator, Nagar Palika Parishad and Others

RESPONDENT

Date of Decision : 02-12-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 2 ADJ 720 : (2011) 128 FLR 728

Hon'ble Judges : S.P. Mehrotra, J;Pankaj Mithal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.P. Mehrotra and Pankaj Mithal, JJ.—The present Writ Petition has been filed under Article 226 of the Constitution of India, inter-alia, praying for quashing the orders dated 2.8.2000 and 8.9.2000 (Annexures-8 and 7 respectively to the Writ Petition) passed by the State Public Services Tribunal and for quashing the order of punishment dated 16.1.1984 passed by the Disciplinary Authority (Annexure-5 to the Writ Petition) and the order dated 18.10.1989 passed by the Appellate Authority (Annexure-6 to the Writ Petition).

2. It appears that at the relevant time, the Petitioner was working on the post of Record Keeper in Nagar Palika. Hamirpur, District-Hamirpur. By the order dated 22.8.1983 (Annexure-1 to the Writ Petition), the Petitioner was suspended and disciplinary enquiry was ordered. The Enquiry Officer was appointed, and he issued a charge-sheet dated 17.10.1983 (Annexure-2 to the Writ Petition) to the Petitioner levelling 4 charges.

3. First charge was that the Petitioner left the Headquarter on 7.8.1983 availing casual leave on 8.8.1983 and 9.8.1983 without any permission to leave the Headquarter and without handing over the Keys of his Almirah wherein the Octroi receipts were kept, to any person.

4. Second charge was that on account of the Petitioner's unauthorized absence

and not leaving the keys of his Almirah, when demand for Octori receipts was made by Octori Moharir, the lock of the Almirah of the Petitioner had to be broken so that there would not be financial loss to the Nagar Palika.

Third charge was in regard to the Petitioner's misbehaviour and use of unparliamentary language with the Executive Officer on 11.8.1983 and threatening the Executive Officer.

Fourth charge pertained to disobedience of the oral and written orders of the Executive Officer by the Petitioner.

5. The Petitioner submitted his reply dated 28.10.1983 (Annexure-3 to the Writ Petition) in respect of the charges levelled against the Petitioner. The Enquiry proceedings were held by the Enquiry Officer and thereafter the Enquiry Officer submitted his report dated 16.11.1983. Copy of the Enquiry Report has been filed as Annexure-SA-1 to the Supplementary Affidavit.

6. The Disciplinary Authority thereafter issued a show cause notice dated 20/23.12.1983 (Annexure SA-2 to the Supplementary Affidavit) to the Petitioner to show cause as to why punishment mentioned in the said notice be not awarded to him. The Petitioner submitted his reply dated 4.1.1984 (Annexure-4 to the Writ Petition) in respect of the said show cause notice.

7. The Disciplinary Authority (District Magistrate/Administrator, Nagar Palika, Hamirpur-Respondent No. 3) thereafter, passed order dated 16.1.1984 (Annexure 5 to the Writ Petition) awarding the following punishments to the Petitioner:

1. The Petitioner would get only subsistence allowance for the suspension period and no other salary would be paid to him for the said period.
2. Stoppage of one increment with cumulative effect.
3. Adverse entry to the Petitioner.

8. The Petitioner thereafter filed an appeal before the Appellate Authority (Commissioner, Jhansi Division, Jhansi-Respondent No. 2.). The Appellate Authority by its order dated 18.10.1989 (Annexure-6 to the Writ Petition) dismissed the appeal filed by the Petitioner. The Appellate Authority on the basis of the material on record held that as the charges against the Petitioner had been proved, no modification of the punishment order dated 16.1.1984 was required. The Appellate Authority also noted that the appeal filed by the Petitioner was beyond the period prescribed for the same.

9. The Petitioner thereafter approached the State Public Services Tribunal. The State Public Services Tribunal by its order dated 2.8.2000 (Annexure-7 to the Writ Petition) dismissed the claim petition filed by the Petitioner. The Petitioner thereafter filed a review petition before the State Public Services Tribunal which too was rejected by the Tribunal by its order dated 8.9.2000 (Annexure-8 to the Writ Petition).

Thereafter, the Petitioner has filed the present Writ Petition seeking the relief as mentioned above.

Counter Affidavit and Rejoinder Affidavit have been exchanged between the parties.

10. We have heard Sri Manoj Kumar (Sharma), learned Counsel for the Petitioner. Sri J.P. Tripathi, learned Counsel appearing for the Respondent No. 1 and the learned Standing Counsel appearing for Respondents No. 2 and 3, and perused the record.

11. It is submitted by Sri Manoj Kumar (Sharma) that the Enquiry Officer in his Enquiry Report dated 16.11.1983 (Annexure-SA-1 to the Supplementary Affidavit) absolved the Petitioner of various charges levelled against him. The Disciplinary Authority however assumed that the Enquiry Officer had found the charges as proved and awarded punishment to the Petitioner on the basis of such assumption by his order dated 16.1.1984. It is submitted that the Appellate Authority as well as the State Public Services Tribunal failed to appreciate this aspect of the matter.

12. We have considered the submissions made by Sri Manoj Kumar (Sharma), learned Counsel for the Petitioner and perused the Enquiry Report dated 16.11.1983.

13. A perusal of the Enquiry Report shows that in respect of charge No. 1, the Enquiry Officer inter alia recorded his finding that normally the employee should leave the station only after the leave had been sanctioned, which was not done by the Petitioner. The Enquiry Officer further found that the Petitioner did not handover the Keys of his Almirah to any person before leaving the station and proceeding on leave. The Enquiry Officer observed that in such circumstances, the Petitioner ought to have made arrangement so that the work would not suffer in his absence. As regards charge No. 2, the Enquiry Officer found that on 9.8.1993 the shortage of receipts was felt and the lock of the Almirah of the Petitioner had to be broken, though no financial loss was caused to the Nagar Palika, Hamirpur. As regards charge No. 3, the Enquiry Officer found that the Petitioner talked to the Executive Officer in an undesirable manner and loudly. The Enquiry Officer found that the charge against the Petitioner was proved to the extent that he should not indulge in unnecessary conversation with the superior Officer and should act in accordance with the instructions given by the superior Officer. As regards charge No. 4, the Enquiry Officer found that the Petitioner did not comply with the directions of the Executive Officer and the Petitioner ought to have handed over the Keys of his Almirah while going on leave.

14. It will thus be seen that the Enquiry Officer in his report found the charges against the Petitioner as proved though not to the extent as mentioned in the original charges. Therefore, we are unable to agree with the submissions made by Sri Manoj Kumar (Sharma), learned Counsel for the Petitioner that the

Enquiry Officer absolved the Petitioner of the charges levelled against him.

15. It will also be noticed that the disciplinary proceedings against the Petitioner have been held in accordance with the relevant rules and full opportunity was given to the Petitioner to put his defence. It has not been shown on behalf of the Petitioner that there has been any non-compliance of any relevant rule in holding the disciplinary proceedings against the Petitioner. The disciplinary proceedings having been held against the Petitioner in accordance with the relevant rules and the principles of natural justice, we are of the opinion that no interference is called for with the order of punishment which has also been upheld by the Appellate Authority after perusing the record. The State Public Services Tribunal has also considered the material on record and dismissed the claim petition filed by the Petitioner.

16. As regards the punishments awarded to the Petitioner, we are of the opinion that no exception can be taken to the punishments which have been imposed on the Petitioner. Having regard to the nature of the charges levelled against the Petitioner, the punishments which have been awarded to the Petitioner can not be said to be disproportionate. The punishments are not such as to shock the conscience of the Court.

17. In view of the above discussion, we are of the opinion that the Writ Petition is liable to be dismissed.

The Writ Petition is accordingly dismissed. However, on the facts and in the circumstances of the case, there will be no order as to costs.