
(2001) 03 AHC CK 0082
In the Allahabad High Court
Case No : Writ Petition No. 730 (S/S) of 2001

Lalchand Yadav

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 18-03-2001

Acts Referred:

Constitution of India, 1950 — Article 311(2)
Uttar Pradesh Subordinate Police Officers (Punishment and Appeal) Rules, 1991 —
Rule 8(2)(a)

Citation : (2001) 03 AHC CK 0082

Hon'ble Judges : Pradeep Kant, J

Final Decision : Dismissed

Judgement

Pradeep Kant, J.—The petitioner, who is a Police Constable has challenged the order of dismissal from service dated 2312001 passed by the Superintendent of Police, Balrampur contained in Annexure 3 to the writ petition.

2. An FIR was lodged against the petitioner under Section 8.20 of the Narcotic Drugs & Psychotropic Substances Act while he was posted as Police Constable in Thana Kotwali, Balrampur. Subsequently a chargesheet was filed and the petitioner was tried in Special Criminal Case No. 11 of 2000 in the Court of Sessions Judge, Balrampur. The petitioner was convicted vide judgment and order dated 12122000 and was sentenced to 10 years RI and a fine of Rs. one lac was imposed upon him. Against the said judgment the petitioner has preferred a criminal appeal in the High Court which has been admitted. The High Court while admitting the appeal has allowed bail to the petitioner vide order dated 812001 and realization of fine was also stayed.

3. The impugned order of dismissal from service has been passed by the Superintendent of Police, Balrampur on the ground of conduct which has led to his conviction in the criminal charge.

4. Learned Counsel for the petitioner Sri Jaideep Mathur strenuously urged that in view of Rule 8 (2) of the U.P. Police Officers of the Subordinate Ranks

(Punishment and Appeal) Rules the petitioner could not have been dismissed from service without lodging an enquiry or in any case without affording any prior opportunity in the matter. His submission is that Rule 8 (1) specifically provides that no police officer shall be dismissed or removed from service by an authority subordinate to the appointing authority whereas subrule (2) of Rule 8 says that no police officer shall be dismissed, removed or reduced in rank except after proper enquiry and disciplinary proceedings, as contemplated by the Rules. The proviso attached to subrule (2) of Rule 8 provides that, that in case the punishment order is to be passed under clauses (a), (b) and (c) of the proviso, no such enquiry as required under Rule 8 (2) is essential. The submission of the learned Counsel for the petitioner is that subrule (2) of the Rule 8 specifically lays down that a "proper" enquiry and disciplinary proceedings, as contemplated by these Rules, is to be conducted before a police officer can be dismissed, removed or reduced in rank and the proviso only dispenses with the holding of "proper" enquiry and disciplinary proceedings and does not absolve the authority from holding any enquiry or any disciplinary proceedings which in turn would mean that atleast an opportunity is to be given before passing an order of punishment may be that a full fledged enquiry may not be held. In support of this submission, learned Counsel for the petitioner drew attention of the Court to Article 31 of the Constitution wherein in subclauses (1) and (2) of the word "proper" has not been placed before the word "enquiry" and the words "disciplinary proceedings" do not find mention at all in the said provision. However, the proviso annexed to Article 311 contains exactly the same words which are found in proviso attached to subrule (2) of Rule 8 of the Service Rules of the petitioner. The submission, therefore, is that in Article "11 holding of enquiry has been dispensed with whereas in subrule (2) of Rule 8 only proper enquiry is not required to be conducted. The distinction which is sought to be laid down by the learned Counsel for the petitioner in interpreting the two provisions, namely, the constitutional provision of Article 311 and its proviso and statutory provision of Rule 8 (2) and its proviso could not be substantiated by him by any case law or by any authority of the Court. The placement of the word "proper" before the word "enquiry" in subrule (2) of Rule 8 would only mean that while holding an enquiry the authority concerned must follow the rules and a proper enquiry should be held as a improper enquiry would, firstly, not mean anything and secondly on the basis of improper enquiry, no punishment order can be passed. In Article 311 the word "enquiry" would also mean that a proper enquiry should be held, as improper or illegal enquiry may itself be a cause for vitiating the order of punishment which might be passed in such an enquiry. Thus, if the word "proper" has been introduced in subrule (2) of the Rule 8, which word is missing in Article 311, it would not give any right to the authority to hold an improper enquiry. Both the words "enquiry" or "proper enquiry" would mean an enquiry which is held in accordance with law after following the rules of natural justice. Adding of the word "proper" in subrule (2) of Rule 8 is not in conflict and cannot be treated to be in conflict with the provisions of Article 311 of the Constitution nor it can be given a different meaning. The holding of enquiry in

the matters which are not covered by the proviso to subrule (2) of Rule 8 or proviso to Article 311 is a must and mandatory in character whereas no enquiry is supposed to be held if the case is covered under any of the clauses of the proviso annexed to subrule (2) of Rule 8 or Article 311. If no enquiry is to be conducted, then to assume that any proper enquiry or any other enquiry is to be held would be reading something which is not provided under the Rules or in the Constitution. Therefore, the purpose of excluding certain class of case which are covered by the proviso in which holding of enquiry has been dispensed with would be defeated and the proviso would become redundant. Such an interpretation of the rules cannot be given. A rule is to be interpreted in a manner so that it gets full import of the object and purpose of the rule and it does not defeat or runs repugnant to any other provision of the rules. A harmonious construction of subrule (2) of Rule 8 and its proviso would necessarily lead to the conclusion that in the cases which are covered by the proviso the order of punishment can be passed on the grounds enumerated in clauses (a), (b) and (c) of the proviso annexed to subrule (2) of Rule 8. If the order has been passed under any of the clauses of the Proviso, holding of the enquiry has been dispensed with and it is not necessary for the authority to hold an enquiry. However, while passing an order under clauses (a), (b) and (c), of the proviso to subrule (2) of Rule 8, it is obligatory and incumbent upon the authority to pass the order of punishment in terms of the requirement of these clauses of the proviso.

5. In a case where a person is dismissed, removed or reduced in rank on the ground of conduct which was led to his conviction on a criminal charge, the authority is obliged to apply its mind and pass the order of punishment after considering the conduct of such person which was led to his conviction on a criminal charge. Merely on the basis that the person has been convicted, an order of punishment cannot be passed.

6. In the case of *Union of India and others v. Ramesh Kumar*, (1997) 7 SCC 514, the Apex Court had an occasion to consider the second proviso to Article 311 (2) of the Constitution which provides that Article 311 (1) and (2) would not apply where a person dismissed, removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge. In this case the Central Administrative Tribunal, New Delhi had not set aside the order of dismissal and directed the appellants to treat the period beginning from the date of dismissal of the respondent till the disposal of criminal appeal as period of suspension for which the respondent would be entitled to get normal subsistence allowance in accordance with the relevant rules. The respondent in that case was convicted under Section 5 (2) of the Prevention of Corruption Act and sentenced to imprisonment for three years and to pay a fine of Rs. 5, 000 and in default further undergo six months imprisonment. A criminal appeal was filed in which the sentence was suspended and the respondent was released on bail. The dismissal order was passed pending the criminal appeal. The Central Administrative Tribunal allowed the claim of the respondent and set aside the

dismissal order as indicated above. The Supreme Court considered Rule 19 of the CCS (CCA) Rules, 1965 and Rules 15.2 and 15.3 of Chapter VII of the Vigilance Manual, Article 311 (2) of the Constitution and Fundamental Rule 54 (1) and allowed the appeal and set aside the order passed by the Central Administrative Tribunal. It has been observed in this case that if the Appellate Court suspends the execution of sentence and grants bail to an accused, the effect of the order is that the sentence based on conviction is for the time being postponed, or kept in abeyance during the pendency of the appeal. In other words, by suspension of execution of sentence under Section 389 of CrPC an accused avoids undergoing sentence pending criminal appeal. However, the conviction continues and is not obliterated and if the conviction is not obliterated, any action taken against a Government servant on a misconduct which led to his conviction by the Court of law does not lose its efficacy merely because the Appellate Court has suspended the execution of sentence.

7. In the instant case, the order of dismissal from service passed against the petitioner clearly indicates that the authority concerned has passed the order after applying his mind and considering the ground of conduct which has led to his conviction on the criminal charge. Since the order has been completely in consonance with the proviso (a) attached to subrule (2) of Rule 8 and it did not require any enquiry to be held, I do not find any merit in the submission made by the learned Counsel for the petitioner. The writ petition being devoid of merits is liable to be dismissed summarily.

The writ petition is dismissed.