
(2012) 03 AHC CK 0140

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1057 of 2004

Maresh Kumar Singh

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 21-03-2012

Acts Referred:

Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules,
1991 — Rule 13

Uttar Pradesh Provincial Armed Constabulary Act, 1948 — Section 7

Citation : (2012) 03 AHC CK 0140

Hon'ble Judges : Rakesh Tiwari, J and Ashok Pal Singh, J

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard learned counsel for the parties and perused the record.

2. The petitioner challenges the impuged order of termination from service dated 19.10.1996, the order passed in departmental appeal on 11.2.1997 dismissing the appeal as well as the order passed by State Public Services Tribunal, Lucknow dated 30.9.1993 in Claim Petition No. 597 of 1997. The aforesaid impugned orders are appended as Annexure Nos. 1, 2 and 3 to the writ petition.

3. Brief facts of this case are that Constable No. 47408, the petitioner Maresh Kumar Singh, was posted with the 42nd Battalion of P.A.C. Naini, Allahabad. He applied for leave on 20.3.1996 on the ground that he received information through telegram in the night of 19.3.1996 that his father was seriously ill and was admitted in B.H.U. Hospital. The aforesaid leave application was refused as such he requested for an interview with respondent no. 3, Commandant, XXXXII Battalion, P.A.C., Naini, Allahabad so that he could bring out the facts of his father's illness to his knowledge and consequently get the leave sanctioned.

4. The request of the petitioner for personal interview was turned down and he was not allowed to meet the Commandant of the Battalion. After awaiting four days, he sent an application for leave by registered post, addressed to the Commandant alongwith a copy of the telegram on 23.3.1996 and left the

battalion in anticipation of grant of leave. He joined his duties on 30.3.1996. After reporting for duty the petitioner was directed to appear before the Commandant respondent no. 3 and explain the cause of unauthorised absence. The petitioner appeared before respondent no.3 on 24.5.1996 and explained the reasons which occasioned his proceeding on leave without sanction with effect from 23.3.1996 to 30.3.1996. According to the petitioner, he had no option but to proceed on leave during the aforesaid period in anticipation of sanction of leave. The petitioner was awarded 20 days cell confinement vide order dated 24.5.1996 which reads thus:

5. Respondent no. 3 was the disciplinary authority by virtue of his post. It has come on record that he had no role to play and therefore it cannot be said that he was judge in his own cause. A perusal of Annexure no.4 shows that petitioner had been absent without leave but had reported for duty after two days of his returning back from Varanasi, hence he was awarded cell confinement for 20 days for reporting duty after two days of his arriving at Allahabad. As regards the matter of unauthorised leave is concerned, the departmental enquiry was set up and initiated against the petitioner.

6. The petitioner refused to accept the cell confinement on the ground that the same had been awarded illegally and in contravention of the Leave Rules applicable to Government Servants.

7. On the above facts the respondent no.3 by his letter No. 70/96 dated 24.5.1996 directed one Shivirpal to conduct a preliminary enquiry in the matter of unauthorised leave of the petitioner. The report of the preliminary enquiry against the petitioner was submitted before respondent no. 3 by Shivirpal on 20.6.1996 finding the petitioner guilty in the matter.

8. Thereafter, the departmental proceeding against the petitioner was entrusted to the Deputy Commandant, 42nd Battalion, P.A.C., Naini, Allahabad by respondent no.3 vide letter no.6/96 dated 22.6.1996. The Enquiry Officer issued chargesheet to the petitioner on 12.7.1996 levelling the charges that he had refused to undergo the punishment of cell confinement and had been absent unauthorisedly on false pretext and accordingly was guilty of flouting of orders, irresponsible conduct, undisciplined behaviour, violation of leave rules and failure to discharge duties.

9. The chargesheet was duly replied to by the petitioner on 29.7.1996 bringing out the facts of the case. The prosecution witnesses were examined with effect from 6.8.1996 to 29.8.1996. The Enquiry Officer fixed date 2.9.1996 for examination of defence witness. However, as the defence witnesses were not available on the relevant date the petitioner moved an application on 2.9.1996 before the Enquiry Officer bringing out the facts to his knowledge but the Enquiry Officer did not afford him any opportunity and proceeded the enquiry. The enquiry report was submitted on 10.9.1996.

10. The respondent no.3 thereafter issued two show cause notices to the

petitioner vide letter no.6/96 dated 16.9.1996 asking him to show cause, firstly, why salary of the period of unauthorised absence be not paid to him and secondly, why not the punishment proposed by the Enquiry Officer be awarded to him?

11. The aforesaid show cause notices were replied by the petitioner. The respondent no.3, after considering the case of the petitioner and evidence, passed the order of termination from service on 19.10.1996. Aggrieved by the said termination order, the petitioner preferred an appeal before the Deputy Inspector General of Police, P.A.C., Kanpur Sector, Kanpur, which was dismissed by the appellate authority. Hence the petitioner filed Claim Petition No. 597 of 1997 (Mahesh Kumar Singh v. State of U.P. through Secretary Home, Civil Secretariat, Lucknow and two others) before the State Public Services Tribunal, Lucknow. Apart from placing the case in the own manner, the petitioner also prayed for setting aside the impugned order, for reinstatement from service and back wages and also raised an issue with regard to the jurisdiction of the Tribunal.

12. Counter affidavit was filed by the respondents denying the allegations of the petitioner. The Tribunal after hearing the parties and on perusal of record dismissed the claim of the petitioner vide judgement and order dated 30.9.2003, which is order impugned in the present writ petition.

13. Learned counsel for the petitioner has assailed the impugned orders on the ground that the same are arbitrary, illegal and have been passed in a mechanical manner without considering facts of the case. He submits that in the counter affidavit filed to the above claim petition the respondent denied having received any telegram regarding the illness of petitioner's father on which the petitioner filed a copy of the reply received from the postal department about service of the said telegram. The said query was replied to by the Officer incharge, Telegraph Office Allahabad Naini on 6.12.1997 in reply to letter no. C3/9697/Far, dated 15.4.1997 sent by the J.T.O. Incharge, Telegraph Office, Varanasi (B.H.U.). It was clearly mentioned therein that the said telegram dated 18.3.96 had been served on 19.3.96 at 10.20 "O1 clock and the copy of the receiving was annexed thereto. Thus, it was proved by the petitioner before the Tribunal as well that he had actually received a telegram regarding the illness of his father and had proceeded on leave in anticipation of sanction on 23.3.96 after awaiting sanction of leave for four days. It was clearly brought out before the Tribunal that the proceeding on leave in anticipation of sanction was not a deliberate act of negligence or misconduct but on the contrary was the natural way in which a son should have acted on coming to know that his father was seriously ill and that reaching him in time was an emergency. The petitioner had awaited sanction of his leave but as he was not allowed to meet the Commandant he could not get his leave sanctioned and after waiting for sufficiently long period he was left with no other alternative but to proceed on leave with due information to the Commandant, sent by registered post alongwith a copy of the telegram.

14. Assailing the judgement of the Tribunal it is stated that the Tribunal has

failed to take notice of the root cause of this dispute except the ground of petitioner's absence without permission, there was not other ground against the petitioner and that he had been asked to appear before the respondent no.3 only to clarify his position about his absence from duty. It is stated that the Tribunal as well as the disciplinary authorities had failed to consider that the petitioner was obedient sepoy and had not misbehaved. He has sought permission to meet the Commandant to apprise him of the necessity for grant of leave as his father was seriously ill and also awaited for sanction of leave for four long ordeal days but ultimately on finding that his case was not sympathetically considered that he moved application as well as telegram and proceeded on leave in anticipation of sanction of his leave.

15. The next submission of learned counsel for the petitioner is that the preliminary enquiry and the disciplinary proceeding were all conducted under the orders of respondent no.3 which initiated as he was judged in his own cause. It is also stated that the respondent no.3 was himself a party to the alleged incident and was very material witness but he still continued being arbitrary was also violative of natural justice as well as in violation of the statutory provisions inasmuch as Rule 13 of the U.P. Police Officers of Subordinate Ranks (Punishment and Appeals) Rules, 1991. According to him, this Rule clearly bars such Officers to act as disciplinary authority who are either prosecution witness or had conducted preliminary enquiry of the matter. According to him, in the instant case respondent no.3 satisfied both the conditions, one directly and other indirectly and therefore, he was barred by statutes to act as disciplinary authority and he ought to have referred the matter for transfer.

16. Lastly, he submitted that a perusal of the show cause notice itself shows that the respondent no.3 had recorded his agreement with the punishment proposed by the Enquiry Officer thereby establishing beyond doubt that he had already decided to punish the petitioner. Respondent no.3 was biased towards the petitioner for awarding punishment against him is in violation of the provisions of Police Regulation 486 and is liable to be quashed and that Section 8(3) of U.P. P.A.C. Act, 1948 is ultra vires and is liable to be declared null and void.

17. Per contra, learned standing counsel has submitted that the petitioner had not moved any application with regard to grant of leave on the ground of illness of his father. He had also not met the officer concerned rather had left the camp on his own free will from 20.3.96 to 30.3.96. It is stated that it was the duty of the petitioner to leave the camp after sanction of the leave and even if the averments made in the writ petition by the petitioner are taken on its face value his leave application had been rejected, hence for this reason also he should have moved only after leave was granted allegedly telegram and second leave application which is claimed to have been moved after four days. Learned standing counsel also stated that on perusal of Annexure no.4 to the writ petition it is apparent that the petition had returned two days earlier before reporting of duty on 30.3.96. He had also been allowed to join his duty on the date and was

awarded the punishment of 20 days cell confinement for reporting two days late after arriving at Allahabad. As regards it is the misconduct of remaining absent without sanction of leave is concerned, in the preliminary enquiry and also in the departmental enquiry which had been proceeded in accordance with law it has been stated that the petitioner had gone on unauthorised leave and had been awarded punishment "that his conduct refusing to undergo punishment of cell confinement failure of his indisciplined streak which has allowed to punish with moral and discipline of P.A.C. which is disciplined force."

18. Learned standing counsel has relied paragraph 9 of the counter affidavit in support of his contention that in the year 1994 the petitioner had been awarded two censor entries for remaining absent without sanction of leave or information, he was also awarded second minor punishment in the year 1985, he was awarded a minor punishment in the year 1989 and one punishment in the year 1996. He has also awarded adverse entry in the year 1995.

19. It is lastly submitted that the punishment awarded to the petitioner is proportionate to the charges levelled against him as his conduct should be good and moral for disciplined force. He relying paragraph 15 of the counter affidavit has argued that respondent no.3 cannot be said to be judged of his own cause as the petitioner had moved his leave application to the next higher officer and not to respondent no.3, which was rejected. The proceedings against the petitioner have been initiated under the provisions of U.P. Police Officers of Subordinate Ranks (Punishment and Appeals) Rules, 1991 is independent and without any malice. It has not been initiated according to para 486 of the Police Regulation. The enquiry has been conducted in accordance with law. The petitioner had been granted opportunity to produce defence witnesses in his defence therefore the impugned order is liable to be upheld in accordance with law.

20. No other ground has been argued by the parties.

21. Having heard learned counsel for the parties and no perusal of record it is apparent that the question in controversy as to whether the punishment imposed upon the petitioner was justified in law and equity. It is also a question as to whether the enquiry proceedings were just, fair, proper and transparent. The alleged offence committed by the petitioner falls under section 7 of the U.P. Provincial Armed Constabulary Act, 1948 is reproduced below for ready reference.

"7. Less heinous offences. An officer of Pradeshik Armed Constabulary who

(a) strikes or assaults any sentry; or

(b) being under arrest or in confinement, escapes from arrest or confinement; or

(c) is grossly insubordinate or insolvent to his superior officer in the execution of his office; or

(d) strikes or maliciously illtreats any officer of the Pradeshik Armed

Constabulary subordinate to him in rank or position; or

(e) malingers or feigns or produce disease or infirmity in himself, or intentionally delays his cure, or aggravates his disease or infirmity; or

(f) being a sentry sleeps while upon his post; or

(g) quits his post guard, picquet, party or patrol without being regularly relieved or without leave;

shall, on conviction, be punished with imprisonment for a term which may extend to seven years or with fine or with both."

22. The schedule to Criminal Procedure Code, 1973 (referred to hereinafter as Cr. P.C.) provides that if the offence was punishable with imprisonment for three years and not more than seven years such offence would be a cognizable offence, whereas the Police Regulations provide under Regulation 486 that when the offence alleged against a police officer it amounts only under Section 7 of Police Regulations, there can be no magisterial inquiry under Cr. P.C. In such cases and other cases until and unless a magisterial inquiry is ordered, enquiry will be made under the direction of Superintendent of Police in accordance with Rules given under Regulation 486. The show cause notice does not mention anything about the past conduct of the petitioner and even the chargesheet does not say anything about the past conduct of the petitioner yet the order of disciplinary authority has been passed by taking the past conduct of the petitioner into account and as such the disciplinary proceedings are vitiated and liable to be quashed. In this regard it will be relevant to peruse the G.O. Dated 18.1.1992 which clearly provides that in case past record is to be seen at the time of imposition of punishment then a second show cause notice is necessary. In the present case neither the show cause notice nor the chargesheet mention the past conduct of the petitioner and the fact that the punishment is based on past conduct of the petitioner without even issuing a second cause notice which clearly proves that the entire disciplinary proceedings are vitiated in law and liable to be quashed.

23. The contention of the petitioner that he had made best efforts to get his leave sanctioned but in view of the inordinate delay the petitioner had no option but to send an application for leave by registered post along with copy of the telegram dated 23.3.96 is not acceptable. No reasons was given for the delay in granting leave nor there was any reason or administrative exigency to refuse to sanction of leave to the petitioner. Admittedly, the petitioner has committed gross misconduct when his first leave application has been rejected. How he could have moved another application in anticipation of sanction of leave after four days on the ground that earlier leave application has been rejected. It may be that the petitioner was having sufficient leave to his credit at the time of applying for leave to the petitioner. It is settled law that the petitioner cannot proceed on leave without sanction of leave by the competent authority. Since the petitioner had illegally absent himself and he had reported for duty even after a

delay of two days of his arriving at Allahabad, hence the punishment of 20 days cell confinement awarded by the respondent no.3 was justified in law.

24. If the petitioner would be allowed to go to Varansi to see his ailing father it does not matter at all. The petitioner was absent from duty without sanction of leave. He was not able to prove or produce any evidence to the effect that the entire unit aware of his case. The departmental proceedings including the order of dismissal is fair, legal and just and was not barred in view of Regulation 486 of Police Regulations.

25. It is also apparent from the record that opportunity of hearing and to lead evidence to the petitioner was given. Even if it is assumed that the petitioner had sent an telegram and leave application by registered post to the Commandant after leaving the camp it will amount that the petitioner had proceeded on "french leave" without permission as the leave had not been sanctioned to him rather his leave application moved four days before had been rejected. Therefore the proceeding of the on leave on the assumption that subsequent leave application and telegram would be allowed, hence his act of leaving the Battalion for proceeding Varansi cannot be termed proceeding on sanctioned leave.

26. For all the reasons stated above, the writ petition is dismissed. No order as to costs.