
(2012) 05 AHC CK 0022
In the Allahabad High Court
Case No : C.M.W.P. No. 24786 of 2006

Maitheli Saran Gupta

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-05-2012

Acts Referred:

Citation : (2012) 5 AWC 5147

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : A.B. Shukla, Irshad Ail, A.K. Narayan, Dhruva Narayan and Ajeet Kumar Srivastava, for the Appellant; Usha Kiran Dwivedi, S.C., R.D. Khare, Vikash Tiwari, W.H. Khan and. C.S.C., for the Respondent

Final Decision : Disposed Of

Judgement

B. Amit Sthalekar, J.—This writ petition has been filed by the petitioner challenging the order dated 20.12.2004 whereby the penalty of lowering of pay scale has been imposed together with recovery of a sum of Rs. 44,800 being the cost of transformer alleged to have been sold by the petitioner. The petitioner was working as a Junior Engineer in the Electricity Test Division of the U.P. Power Corporation Ltd. Jhansi. By the order dated 18.6.2004 he was placed under suspension on an allegation that he installed a 100 KVA Transformer at Pal Colony, which it was not entitled to install. The second charge was that while installing the pole in L.T. Line in Gole Mohar Colony to provide electricity to the non-entitled persons, he shifted the Pole according to his own desire. A charge-sheet containing these two charges, was issued to the petitioner on 29.7.2004 and an Enquiry Officer was appointed and an enquiry was held. In the enquiry the guilt of the petitioner was established whereupon a letter dated 29.11.2004 was issued to the petitioner providing him with a copy of the enquiry report dated 23.10.2004 and calling for his explanation. The petitioner submitted his explanation on 6.12.2004 and the Disciplinary Authority not being satisfied with the said explanation proceeded to impose the penalty by order dated 20.12.2004

(impugned order).

2. Aggrieved by the order of penalty, the petitioner preferred a memo of appeal dated 31.1.2005 to the appellate authority. Director, U.P. Power Corporation Ltd. (Personnel and Administration), Lucknow. The appellate authority rejected the appeal of the petitioner by his order dated 15.12.2005 (impugned order).

3. I have heard Sri Anadi Krishna Narayan, learned counsel appearing for the petitioner. None appears for the respondents. The list has been revised. The order is being dictated in the open Court.

4. The submission of the learned counsel for the petitioner is that after the Disciplinary Authority had passed the penalty order dated 20.12.2004. the petitioner had preferred a detailed memo of appeal to the appellate authority. The memo of appeal has been filed as Annexure-8 to the writ petition. There are extensive grounds taken in the memo of appeal whereby the petitioner has sought to assail the penalty order. However, he submits that in the impugned order the appellate authority has not discussed any of the grounds taken in the memo of appeal as required by the provisions of Rule 12 of the U.P. Government Servant (Discipline and Appeal) Rules, 1999. "His submission is that such an order does not show any consideration of the grounds of appeal and, therefore, is not sustainable in law.

5. Rule 12 of the U.P. Government Servant (Discipline and Appeal) Rules, 1999 reads as follows:

12. Consideration of appeals.--The appellate authority shall pass such order as mentioned in Clauses (a) to (d) of Rule 13 of these rules, in the appeal as he thinks proper after considering--

(a) Whether the facts on which the order was based have been established:

(b) Whether the facts established afford sufficient ground for taking action; and

(c) Whether the penalty is excessive, adequate or inadequate."

6. From a perusal of papers, on record, it is seen that the petitioner had preferred an extensive appeal and in his memo of appeal he had taken a large number of grounds assailing the penalty order dated 20.12.2004. However, the appellate authority by order dated 15.12.2005 has passed just a one paragraph order and not one of the grounds taken by the petitioner has been considered or discussed. A reading of the appellate order does not show by what process of reasoning the appellate authority has come to the conclusion that the memo of appeal lacks merit and deserves to be dismissed. The appellate order is wholly cryptic and cannot be said to be reasoned and speaking order.

7. The word "consider" has been interpreted by the Supreme Court in several decisions.

In R.P. Bhatt Vs. Union of India and Ors (UOI) ., , the Supreme Court interpreting

the provisions of Rule 27 (2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 has held as follows:

4. The word "consider" in Rule 27 (2) implies "due application of mind". It is clear upon the terms of Rule 27 (2) that the appellate authority is required to consider (1) whether the procedure laid down in the Rules has been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc. the penalty, or may remit back the case to the authority which imposed the same. Rule 27 (2) casts a duty on the appellate authority to consider the relevant factors set forth in Clauses (a), (b) and (c) thereof.

5. There is no indication in the impugned order that the Director General was satisfied as to whether the procedure laid down in the Rules had been complied with; and if not, whether such non-compliance had resulted in violation of any of the provisions of the Constitution or in failure of Justice. We regret to find that the Director General has also not given any finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record. It seems that he only applied his mind to the requirement of Clause (c) of Rule 27 (2), viz., whether the penalty imposed was adequate or justified in the facts and circumstances of the present case. There being non-compliance with the requirements of Rule 27 (2) of the Rules, the impugned order passed by the Director General is liable to be set aside.

8. Again in the case of Ram Chander Vs. Union of India (UOI) and Others, , interpreting the provisions of Rule 22 (2) of the Railway Servants (Discipline and Appeal) Rules (1968) the Supreme Court has relied upon its earlier decision in the case of R.P. Bhatt (supra) and held as follows: -

5.... There is also no indication that the Railway Board applied its mind as to whether the act of misconduct with which the appellant was charged together with attendant circumstances and the past record of the appellant were such that he should have been visited with the extreme penalty of removal from service for a single lapse in a span of 24 years of service. Dismissal or removal from service is a matter of grave concern to a civil servant who after such a long period of service may not deserve such a harsh punishment.

9. The Supreme Court in the case of Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others, , has held as follows:

32. The appellate authority, therefore, while disposing of the appeal is required to apply his mind with regard to the factors enumerated in sub-rule (2) of Rule 37 of the Rules. The judgment of the civil court being inter parties was relevant. The conduct of the appellant as noticed by the civil court was also relevant. The fact that the respondent has accepted the said judgment and acted upon it would be a relevant fact. The authority considering the memorial could have justifiably

came to a different conclusion having regard to the findings of the civil court. But, it did apply its mind. It could have for one reason or the other refused to take the subsequent event into consideration, but as he had a discretion in the matter, he was bound to consider the said question. He was required to show that he applied his mind to the relevant facts. He could not have without expressing his mind simply ignored the same.

In view of the above factual position and the law laid down by the Supreme Court, the appellate order cannot be sustained and deserves to be quashed. It is, accordingly, quashed and the matter is remitted back to the appellate authority, respondent No. 3 to reconsider the memo of appeal of the petitioner dated 31.1.2005 and, thereafter, proceed to pass a reasoned and speaking order. This exercise shall be carried out by the respondent No. 3 within a period of two months from the date a certified copy of this order is received by him.

With the above observations, the writ petition stands disposed of.