
(1996) 04 AHC CK 0128

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 20140 of 1986

Mohd. Aquil Siddiqui

APPELLANT

Vs

U.P. State Public Service Tribunal and Others

RESPONDENT

Date of Decision : 08-04-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1996) 3 AWC 1547 : (1997) 1 UPLBEC 501

Hon'ble Judges : R.K. Mahajan, J;B.M. Lal, J

Bench : Division Bench

Advocate : A.S. Diwakar, for the Appellant; S. C., for the Respondent

Final Decision : Disposed Of

Judgement

R.K. Mahajan, J.—This is a writ petition filed by the petitioner praying that a writ in the nature of certiorari be issued quashing the charge sheet, enquiry report, penalty order of the disciplinary authority, and judgment of the Tribunal dated 14-11-1993 and judgment on review application dated 14-8-1986. The petitioner has further prayed for a writ of mandamus commanding the respondent No. 2 to treat the petitioner on continuous service with all consequential benefits as his services were not terminated.

2. The petitioner was at relevant time Senior Assistant in the office of Commissioner, Allahabad Division. Selection was to be made for training for the post of Lekhpal for the year 1979-80. The petitioner was Incharge for preparing the list of the candidates for being sent to the training. To understand the case it would be relevant to refer the brief charge levelled against the petitioner.

3. The petitioner was charge-sheeted for not preparing correct list between November, 1978 and December, 1979 while selecting candidates for Lekhpat Trainiag School of the "Commissioner". He did not follow properly the Government Orders and Board Orders. He did not make a note of comment on the file of the Government Orders and Board Orders while selecting candidates

for Lekhpal Training School for the session 1979-80 and while also relating to 450 candidates (General Category 250, Scheduled Caste 113, Backward Class 68, Dependants of Freedom Fighters 14 and Dependants of deceased employees 5) left out 43 such candidates who were not selected and who had better marks than the selected candidates and the basis for selection as kept was fulfilled by such candidates as that of selected candidates. In other words, the candidates who had better claims were left out while candidates who had less merit were selected. He also did not prepare the correct list of Backward candidates to be selected on merit and of Handicapped candidates and prepared the list of the candidates who were having less marks and left out who were having more marks. He also did not attend to the complaints which were received after the last selection was made and had he put those complaints before the competent authority the grievance of some candidates would have been met. He also absconded from duty. Sixty forms were not available which were received in the office and were given to him after proper indexing and he could not make them available. The department drew the inference that there was a motive for gratification and corruption and after due enquiry he was dismissed from service.

4. The petitioner then filed an appeal before the U. P. State Services Tribunal, Lucknow which was dismissed and a review of that was also dismissed. The Tribunal came to the conclusion that there is no fault in the enquiry conducted and the petitioner was responsible for dereliction of duty and a charge has been duly substantiated. The Tribunal also approved sentence of dismissal.

5. Being aggrieved by the aforesaid order of the Tribunal the petitioner filed the present writ petition. The learned counsel for the petitioner submits that the finding recorded by the Tribunal are erroneous. He has further submitted that the petitioner was not responsible for preparing the incorrect list as other Clerks were also involved in it and it was also the duty of the Supervisory Officer to see that the list has been prepared correctly. He has further submitted that it is a case of negligence and the dismissal was not warranted, as the petitioner has put in long years of service and there is no previous example of misconduct against him and the Tribunal has not appreciated this aspect.

6. We heard the learned counsel for the parties. It is a basic principle of law that while exercising writ jurisdiction this Court would not interfere in the findings of a Tribunal and specially when the Tribunal has held that the enquiry is based on evidence. In writ jurisdiction the Court can only interfere in the finding of the Tribunal is based on no evidence, or irrelevant material or non-existing facts or the wrong approach of the appreciation of the law is made. We are of the considered opinion that the Tribunal has rightly appreciated the findings of the fact based on enquiry. We cannot reappraise in such situation.

7. Learned counsel contended that the punishment is extremely harsh and unreasonable.

8. Considering over all circumstances of the case we are of the opinion that the

ordinarily we are not to interfere in the matter of punishment but in certain circumstances the administrative action of the disciplinary authority regarding punishment can be adjudged if it is disproportionate to misconduct of the delinquent. It is always open to adjudge the fairness and unreasonableness of administrative act. In this behalf the following rulings have been brought to our notice *Bhagat Ram v. State of Himachal Pradesh* AIR 1993 SC 494 in this case it was observed that in a petition under Article 226 of the Constitution of India the High Court does not function as court of appeal. But where the finding is utterly perverse the court can always interfere with the same. There is another authority *Ranjit Thakur Vs. Union of India (UOI) and Others, and Sardar Singh v. Union of India* AIR 1992 SC 417. The ratio in these rulings is that if the penalty imposed is not commensurate with the gravity of misconduct would be violative of Article 14 of the Constitution of India. In other words, if there is unreasonableness in the punishment after taking the entire circumstances the court can interfere.

9. The grounds on which the administrative action is subject to control by judicial review were classified under three heads by Lord Diplock in the decision of the House of Lords in *Council of Civil Service Unions v. Minister for the Civil Service* 1984 ELR ALL 935. They are : (i) illegality, (ii) irrationality, and (iii) procedural impropriety. Illegality as a ground for review means that the decision maker must understand correctly the law that regulates his decision making power and must give effect to it. Irrationality applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to it. The third head described as procedural impropriety refers to failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. In a later decision of the House of Lords in *Nottinghamshire County Council v. Secretary of State for the Environment* 1986 ELR ALL199 at 203 it is observed :

"The law has developed beyond the limits understood to apply to judicial review as practised by the courts in 1947, the ground on which the Courts will review the exercise of an administrative discretion by a public officer is abuse of power. Power can be abused in a number of ways ; by a mistake of law in misconstruing the limits imposed by statute (or by common law in the case of a common law power) on the scope of the power ; by procedural irregularity lay unreasonableness in the *Wednesbury* sense ; or by bad faith or an improper motive in its exercise- A Valuable, and already "classical" but certainly not exhaustive analysis of the grounds on which courts will embark on the judicial review of an administrative power exercised by a public officer is now to be found in Lord Diplock's speech in *Council of Civil Service Union v. Minister for the Civil Service*, (1984) 3 All ER 935 : (1985) AC 374".

These principles enunciated in Lord Diplock's *CCSU's* case (supra) are embedded in Article 14 of the Constitution of India. If the punishment is unreasonable the Courts have power to review the fairness of administrative act of the disciplinary authority. Since the matter of selection involved different

stages of procedure and there can be degree of contributory negligence at different stages of supervision.

10. The powers of High Court has been also recently examined by the Hon''ble Supreme Court in B.C. Chaturvedi Vs. Union of India and others, and it was held that where the punishment is shocking to the conscience, relief can be given. In our view shocking to conscience is to be used with unreasonableness and in such situation principle of Wednesbury applies.

11. We are of the view that since the Tribunal and the punishing authority have not considered at all the previous record of the petitioner while imposing punishment. The process of selection entails minute sorting out of the application and it was also duty of the other officer to check up properly. Taking into consideration that nothing has been pointed out against him from previous record that he has suffered penalty it would be a case of extreme penalty if he is dismissed from service. In case he is dead wood or undesirable the punishing authority could have retired him. So we in the circumstances feel that penalty award is not proportionate to the negligence/misconduct of the petitioner and find it a fit case to retire him compulsory with pensionary benefits. The petitioner was at the time of filing of the writ petition was 53 years of age i.e. in the year 1986. By this time has crossed the age of retirement as the petition is pending since 1986. The entire period till the age of superannuation would be counted as period spent by him on duty for the purpose of pensionary benefits and not for any other purpose.

12. With these observations, the writ petition is disposed of.