
(2010) 01 AHC CK 0280
In the Allahabad High Court

Mohd Kaleem

APPELLANT

Vs

State of U.P. thr. Prin. Sec. Home and Others

RESPONDENT

Date of Decision : 28-01-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 01 AHC CK 0280

Hon'ble Judges : Devi Prasad Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Devi Prasad Singh, J.—Heard Mr. Manik Sinha, learned Counsel for the petitioner and Mr. V.S. Tripathi, learned Standing Counsel.

2. Present writ petition under Article 226 of the Constitution of India has been filed against the impugned order dated 15.7.1999 whereby the petitioner, who was working as Assistant Sub Inspector (Ministerial), Faizabad, has been dismissed from service after departmental enquiry.

3. While assailing the order of dismissal, it has been stated by the learned Counsel for the petitioner that no date, time and place was fixed by the disciplinary authority, hence the punishment awarded in pursuance to the enquiry report is not sustainable under law.

4. The petitioner was initially appointed as Constable (Ministerial) in Civil Police by order dated 15.5.1978. His services were confirmed on 1.1.1990. He was transferred from Civil Police, Faizabad to 30th Btn. P.A.C., Gonda by order dated 5.5.1993. However, the order of transfer was stayed by this Court in writ petition No. 5336(S/S) of 1993 by order dated 19.7.1993. Again on 12.7.1996, the petitioner was transferred from Civil Police, Faizabad to 30th Battalion, P.A.C., Gonda but the transfer order was kept in abeyance for six months by the Police Headquarters from 31.7.1997 to 31.12.1997. On 19.2.1998, the petitioner was relieved by the Senior Superintendent of Police, Faizabad to join in P.A.C. At 30th

Battalion, Gonda. However, the petitioner failed to join at 30th Battalion, PAC, Gonda and remained absent without sanctioned leave for a period of 10 months, i.e. upto 27th May, 1998. It has been stated by the petitioner's counsel that the petitioner was under medical treatment of medical practitioner Dr. Afroz Khan for three months. He further submits that the petitioner had submitted an application for grant of medical leave but it was not sanctioned. In the meantime, he was placed under suspension.

5. A charge-sheet dated 17.11.1998 was served upon the petitioner. In consequence thereof, the petitioner submitted a reply on 20.11.1998. On 30.6.1998, the petitioner had sent by Registered Post a non-employment certificate to the Commandant, P.A.C., Gonda but he was not paid subsistence allowance. However, it has been submitted by the petitioner's counsel that the enquiry officer without informing the petitioner with regard to pending enquiry has sent an enquiry report to the disciplinary authority and in consequence thereof, a show cause notice dated 21.5.1999 was sent to the petitioner to which he submitted a reply and thereafter, his services were dismissed by the order under challenge in the present writ petition.

6. It has been submitted by the learned Counsel for the petitioner that the enquiry officer has conducted the enquiry in violation of principle of natural justice and at no stage of the enquiry proceeding, the petitioner was ever informed with regard to the pending enquiry.

7. Mr. V.S. Tripathi, learned Standing Counsel has drawn the attention of this Court to the counter affidavit as well as the report of the enquiry officer and submits that in spite of service of notice, the petitioner did not participate in the enquiry, hence ex parte enquiry was held and statement of witnesses were recorded. Thereafter, the enquiry officer has submitted his report.

8. From the original record, produced before the Court, it appears that the enquiry officer had sent notice from time to time on several dates but the petitioner did not appear before the enquiry officer. Notices were affixed over the petitioner's house as well as served on the petitioner's son, namely Jafar Salim. Since in spite of service of notice, the petitioner did not appear, the enquiry officer has proceeded with the ex parte enquiry. The statement of Tara Shanker Srivastava, Head Clerk, Rana Pratap Yadav, ASIM, Om Prakash Soni, Accountant, Sagir Ahmad, Dal Naik of 30th Battalion, P.A.C. and Kamta Prasad Maurya, Ardali were recorded by the enquiry officer and thereafter report was submitted to the disciplinary authority. Thus, from the enquiry report, it appears that all efforts were made to serve notice on the petitioner and keeping in view the fact that the notices were not only affixed adjacent to the petitioner's house but it was also given to the petitioner's son which shall be deemed to be sufficient service on the petitioner. The enquiry report shows that notices were sent on 21.12.1998, 6.1.1999, 24.1.1999, 25.1.1999, 10.2.1999 and 21.2.1999 but the petitioner had not taken care to participate in the enquiry proceedings. Accordingly, argument advanced by the learned Counsel for the petitioner does not seem to

be sustainable. Once, a delinquent employees does not appear in spite of service of notice, then the enquiry officer as well as the disciplinary authority have got right to proceed ahead with the enquiry to its logical end. In the present case, the procedure prescribed with regard to regular enquiry has been duly followed so far as the disciplinary authority or the enquiry officer is concerned. Hence, the submission of the petitioner's counsel that the enquiry suffers from substantial illegality seems to be not sustainable.

9. Next submission of the petitioner's counsel is that the punishment awarded to the petitioner is disproportionate to the charges. Ordinarily, power conferred to this Court under Article 226 of the Constitution of India for judicial review is of decision making process and not the decision itself vide (1995) 6 SCC 750 Union of India and Anr. v. B.C. Chaturvedi.

10. However, the Court shall evolve that in case the order of punishment shakes the conscious of the Court, then while exercising power of judicial review under Article 226 of the Constitution of India, the Court may interfere on the ground of quantum of punishment. In the present case, the petitioner was absent from duty for a period of three months. He belongs to the category of disciplined force, i.e. the police department, Ministerial. No leniency may be accorded in the matter where the controversy relates to the disciplined force. It appears that the petitioner had earlier not resumed duty on account of interim order passed by this Court but when later on, fresh order was passed, he defied the order passed by the authorities and failed to resume duty. He remained absent on the ground of alleged sickness. Absence from duty without sanctioned leave makes out a case for major penalty, more so when the absence is for a longer period.

11. It has been stated by the learned Standing Counsel that the petitioner has got checkered history and right from 1998 from time to time, he remained absent. However, even if earlier antecedent is not taken into account, the absence of three months without sanctioned leave does not call for any leniency. In view of above, keeping in view the fact that the petitioner was absent from duty for a period of three months without sanctioned leave, it is not a fit case where the Court should interfere on the quantum of punishment.

12. Learned Counsel for the petitioner submits that in spite of the application filed with regard to non-employment, subsistence allowance was not paid. In case it is so, then the respondent/disciplinary authority is directed to look into the matter and take a decision with regard to payment of subsistence allowance in accordance with fundamental rule and communicate the decision within three months from the date of receipt of a certified copy of this order.

13. Subject to above direction, the writ petition, being devoid of merit, is dismissed.