
(2010) 03 AHC CK 0036
In the Allahabad High Court
Case No : C.M.W.P. No. 5676 of 2002

Naseem Ahmed

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 25-03-2010

Acts Referred:

Citation : (2010) 125 FLR 713

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Advocate : R.P. Tripathi and Ashutosh Tripathi, for the Appellant; S.N. Srivastava, Senior S.C., Upendra Nath Sharma and Devi Shanker Shukla, C.S.Cs., for the Respondent

Final Decision : Allowed

Judgement

Amreshwar Pratap Singh, J.—Heard Shri Ashutosh Tripathi, learned Counsel for the petitioner and Shri Upendra Nath Sharma, learned Counsel for the respondents.

2. The petitioner-Naseem Ahmad underwent disciplinary proceedings on account of overstay after having taken leave. The petitioner was subjected to an inquiry but the disciplinary authority disagreeing with the Enquiry Officer's report proceeded to impose the punishment of dismissal on the petitioner vide order dated 7th July, 1999. The petitioner preferred an appeal against the same and the same was allowed on 24th November, 1999 by the following order:

...Therefore, I find that the departmental enquiry conducted against the appellant is not just and fair. In view of the above procedural irregularities, which are against instructions on the subject as well as principle of the natural justice, the departmental enquiry conducted against No. 851190409 Ex CT Nasim Ahmed of 130 Bn by the Commandant 130 Bn CRPF vide his office order No. P. VIII-11-98-130-EC-II dated 31.10.1998 is hereby quashed and a de novo enquiry is ordered for his OSL for 76 days from 19.7.1998 to 2.10.1998. Said No.

851190409 Ex. CT Nasim Ahmed of 130 Bn is hereby re-instated into service with the direction to report in the unit within thirty (30) days from the date of issue of this order. Intervening period from the date of dismissal from service till the date of reporting in the unit be treated as DIES-NON.

3. It is, therefore, clear that the appeal was allowed and the petitioner was to be tried again in the inquiry proceedings de-novo. The petitioner was served with a notice on 6th January, 2000 that he may report or else he was not to be given any further opportunity. The respondents have come out with a case that the petitioner failed to report for duty and, therefore, the impugned order was passed on 14th February, 2000 cancelling the earlier order of the appellate authority dated 24.11.1999.

4. This writ petition has been filed questioning the correctness of the order dated 14.2.2000 and the jurisdiction of the Deputy Inspector General of Police to cancel his earlier order passed in a statutory appeal.

5. Learned Counsel for the petitioner submits that even if the petitioner did not report for duty in spite of passing of the order by the Appellate Authority, the Authority had to proceed to hold the inquiry de novo and, thereafter, any order could have been passed against the petitioner. There was no occasion for the D.I.G. to cancel the earlier appellate order dated 24.11.1999.

6. Shri Sharma, learned Counsel for the respondents contends that this order was under a compulsory situation, inasmuch as, if the petitioner failed to comply with the direction of the order of the Appellate Authority, there was no option but to cancel the appellate order which has been done by the D.I.G.

7. I have heard learned Counsel for the parties and perused the affidavits available on records. The appeal, which was allowed in favour of the petitioner, was a statutory appeal. The consequences of the order in appeal was that the order of dismissal had been set aside and the petitioner will therefore be deemed to be a member of the force. In such a situation, even if it is presumed that he did not join for duty, the option to the authority was to proceed ex-parte against the petitioner in an inquiry under the rules and then to pass an order.

8. The Rules do not provide for cancellation of the appellate order and the order passed in appeal could not be reviewed by the appellate authority. It could have been set aside by a competent authority or a Court of law. The D.I.G. was not possessed with any jurisdiction to cancel an order merely on the ground that the petitioner had not reported for duty after passing of the order in appeal.

9. The appellate authority had become functus-officio and it had no jurisdiction to set aside an order passed in a statutory appeal by an administrative order, if an order has been passed in exercising of a statutory power, the same cannot be reviewed in exercise of administrative powers. In the instant case, the same D.I.G., who had allowed the appeal of the petitioner, had no authority to cancel the same. The entire exercise is, therefore, without jurisdiction.

10. In my opinion, the order dated 14.2.2000 is not in conformity with law find is patently illegal. The same is hereby set aside.

11. It shall be open to the respondents to proceed de novo against the petitioner as directed by the Appellate Authority in the order dated 24.11.1999.

12. With the aforesaid observations, the writ petition stands allowed.