

(1999) 07 AHC CK 0166

In the Allahabad High Court

Case No : C.M.W.P. No's. 2862 of 1997 and 5767 of 1996

Phool Singh

APPELLANT

Vs

Managing Director, U.P.S.R.T.C. Lucknow and others

RESPONDENT

Date of Decision : 30-07-1999

Acts Referred:

Citation : (1999) 3 AWC 2629 : (1999) 3 UPLBEC 1912

Hon'ble Judges : D.K. Sethi, J

Bench : Single Bench

Advocate : Anil Kumar Srivastava, for the Appellant; Sameer Sharma and Sunil Sharma, for the Respondent

Final Decision : Allowed

Judgement

D.K. Seth, J.—Heard Mr. Anil Kumar Srivastava, learned counsel for the petitioner and Mr. Sameer Sharma. learned counsel for the respondents.

2. The petitioner was subjected to disciplinary proceedings, in which he was found guilty. In the order dated 26th July. 1995, the only punishment that was awarded was that during the period of suspension, the petitioner would not be entitled to anything in excess of the suspension allowance paid to him since in the meantime, the petitioner had retired.

3. It appears from Annexure-1 to the writ petition that the petitioner had retired with effect from 30th April, 1995 whereas the order of punishment was inflicted on 26th July, 1995. The petitioner had challenged the said order of punishment by means of Writ Petition No; 2862 of 1997. By the order dated 12th April, 1999, Writ Petition No. 2862 of 1997 was connected with Writ Petition No. 5767 of 1996. Though the record of Writ Petition No. 2862 of 1997 has been placed before this Court along with the record of Writ Petition No. 5767 of 1996, but the same has not been shown on the list. Learned counsel for the petitioner points out that the record of Writ Petition No. 2862 of 1997 has been sent to this Court. In such circumstances, the Writ Petition No. 2862 of 1997 is treated as on days

list along with Writ Petition No. 5767 of 1996, since shown in the list, on account of its being connected with each other.

4. After hearing Mr. Anil Kumar Srivastava, learned counsel for the petitioner In respect of the case made out in Writ Petition No. 2862 of 1997, it appears that the order contained in Annexure-3 to the writ petition being dated 26th July, 1995, is reasoned one. I have gone through the said order.

5. In the enquiry, the petitioner was given sufficient opportunity and after going through the enquiry report, the Enquiry Officer had come to a finding that the petitioner was guilty of the charges levelled against him. After following due process, the disciplinary authority had concurred with the finding of the Enquiry Officer and had agreed with the report. Accordingly, he had passed an order of punishment to the extent that the petitioner will not be entitled to anything in excess of the suspension allowance during the period he remained under suspension. It was also noted that in the meantime the petitioner had retired.

6. Thus, after going through the materials, I do not find any reason to interfere with the order dated 26th July, 1995, as well as the order passed on the appeal dated 18th June, 1996. contained in Annexures-3 and 4 to the writ petition respectively, both of which seems to be reasoned one and has been passed after applying its mind.

7. Therefore, Writ Petition No. 2862 of 1997 is dismissed. There will, however, be no order as to costs.

8. In Writ Petition No. 5767 of 1996, the petitioner has prayed that he may be paid the retrial benefits. The petitioner has been allowed to retire during the continuation of the enquiry and that no order has been passed with regard to the forfeiture of the retrial benefits to the petitioner in the order inflicting punishment. The only punishment that has been inflicted is the forfeiture of difference of pay during the period of suspension. Unless it is indicated in the order of punishment that the retrial benefits are also forfeited by reason of the order that has been passed in the present case, it cannot be said that either the petitioner was removed or his service was terminated by way of punishment. He having been allowed to retire with the punishment inflicted, which also shows to be proportionate to the finding, which did not warrant either punishment of removal or termination of services, the petitioner cannot be deprived of the advantage of retrial benefits.

9. As such. Writ Petition No. 5767 of 1996 is allowed. The respondents are directed to pay the retrial benefits to the petitioner as early as possible, preferably within a period of six months from the date a copy of this order is produced before the respondents. No cost.