

(2006) 01 AHC CK 0176

In the Allahabad High Court

Case No : Civil Miscellaneous-Writ Petition No. 2883 of 2000

Pramod Kumar

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 30-01-2006

Acts Referred:

Citation : (2006) 01 AHC CK 0176

Hon'ble Judges : V.C.Misra, J

Final Decision : Partly Allowed

Judgement

V.C. Misra, J.—Heard Shri M.M. Khan learned Counsel for the petitioner and Shri Sushil Kumar Srivastava learned Counsel appearing on behalf of the Union of India.

2. This writ petition has been filed challenging the orders dated 16.2.1989, 7.3.1990 and 18.3.1999 passed by the respondents 4, 3 and 2 respectively to reinstate the petitioner with full back wages and other consequential benefits admissible to the post of constable of Railway Protection Force on the grounds that the disciplinary authority had not arrived at a right conclusions on the basis of evidence on record. Following charges were framed against the petitioner :

"He is charged for remissness/negligence in the discharge of his duty in that on 25.3.1988, he consumed liquor while returning from duty by 2 SM Passenger train even after Gd. Commander asked him not to do so. He neglected security of arms and ammunition issued to him, which were taken by Gd. Commander Jagdamba Singh Gd. Cons, in his duty."

His act tantamount to serious misconduct and render him unfit for the job.

3. The Inquiry Officer found that charges No. 1 and 3 were not proved. Charge No. 2 regarding putting the security of the weapons in jeopardy by the petitioner while taking medicine from outside without being prescribed by a registered medical practitioner. The said" weapon and the cartridges of the petitioner were

deposited by one constable Kartar Singh.

4. The Disciplinary Authority, vide order dated 16.2.1989 on the basis of the charges framed against the petitioner and the findings arrived at by the Inquiry Officer, came to the conclusion that the petitioner being new in service and it being his first default, a lenient view be taken and awarded a punishment of withholding of increment of pay (WIP) for three years. However, vide order dated 7.3.1990 by Additional Chief Security Commissioner respondent No, 3 thereafter issued again a fresh show cause notice dated 26.9.1989 suo moto and reviewed the proposal for enhancement of the punishment already awarded vide order dated 16.2.1989. It found that the points mentioned in petitioners" reply were only repetition of his earlier reply and he had not convincingly, discharged his duty and neglected the arms and ammunition as a member of the disciplinary forces and awarded the punishment by his removal from service with immediate effect.

5. The petitioner being aggrieved, filed a writ petition before this Court,, however, he was directed vide order dated 2.4.1990 to file an appeal before the Second Appellate Authority. In pursuance of the same, an appeal was filed by the petitioner. The respondent No. 2 referred to it as being barred by time but decided the same on merits. The Second Appellate Authority respondent No. 2 vide its order dated 18.3.1999 held that it was wrong on the part of the appellant to say that the charges were not established as it was not necessary to have any eyewitness to prove that a person was under the influence of liquor which could very well be verified from the gait, speech and smell of the mouth of the person concerned and further that one dak bag of RMS was recovered from his belongings. This proves that he had taken away one dak bag RMS covering it in his blanket and nothing else was required to prove this charge. On the basis of said averments, the respondent No. 2 came to the conclusion that the charges levelled against the petitioner have been proved beyond any doubt and the award of the punishment of removal of service by the Additional Chief Security Commissioner/RPF was quite justified and as there was no ground for interference the appeal was accordingly rejected.

6. Learned Counsel for the Union of India has submitted that the findings of the Disciplinary Authority, being finding of fact, cannot be interfered by this Court under Article 226 of the Constitution of India. He has relied upon the Judgment of the Hon"ble Apex Court in the case of B.C. Chaturvedi v. Union of India and others, (1995) 6 Supreme Court Cases 749.

7. I have looked into the record of the case and perused the record and find that the appellate order dated 18.3.1999 communicated vide order dated 25.5.1999 has been passed by the respondents without considering the relevant evidence on record discussed by the Inquiry Officer. It is a nonspeaking order and has been passed on the basis of surmises and conjectures. The order dated 18.3.1999 passed by respondent No. 2 is hereby quashed.

8. This writ petition is partly allowed and the case is remanded back with the direction that the Appellate Authority respondent No. 2 shall rehear the matter afresh and decide the appeal after considering the relevant material and evidence on record by a speaking order preferably within a period of three months from the date the certified copy of this order is placed before it. No order as to costs.