
(1976) 02 AHC CK 0033
In the Allahabad High Court
Case No : Writ Petition No. 8471 of 1974

Rajeshwar Swarup Gupta

APPELLANT

Vs

State of Uttar Pradesh and others

RESPONDENT

Date of Decision : 10-02-1976

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : (1976) 02 AHC CK 0033

Hon'ble Judges : K.N.Singh, J

Final Decision : Allowed

Judgement

K.N. Singh, J.

The petitioner was recruited in Government service as Naib Tahsildar. He earned promotions. In 1961 he was appointed as Tahsildar in officiating capacity. In 1966 he was selected for confirmation against a clear vacancy on the post of Tahsildar. In 1968 he was promoted to officiate on the post of Deputy Collector. While he was posted at Saharanpur as a Deputy Collector, the Government issued an order on August 19, 1970 reverting him to the post of Tahsildar. The Board of Revenue was directed to issue orders for the petitioner's posting as Tahsildar. The Board of Revenue thereafter posted the petitioner as Tahsildar at Agra. On October 28, 1970 the Board of Revenue issued orders placing the petitioner under suspension with immediate effect with a direction that the petitioner would be given pay 1/3rd of his salary as subsistence allowance. The petitioner made several representations to the Board of Revenue as well as to the State Government for rescinding the suspension or in the alternative to proceed with the enquiry, if any, against him, but he received no reply from them. After waiting for a period of about 4 years, the petitioner approached this Court under Article 226 of the Constitution by means of the present writ petition challenging the validity of the order of the State Government dated August 19, 1970 reverting the petitioner to the post of the Tahsildar and the order of the Board of Revenue dated October 28, 1970 placing the petitioner under

suspension.

There is no dispute that the petitioner was officiating on the post of Deputy Collector. He had no legal right to hold that post as it was always open to the State Government to revert him to the post of Tahsildar, if in its opinion the petitioner's work and conduct was not satisfactory or if the petitioner was found unsuitable to hold the post of Deputy Collector. The State Government could further revert the petitioner to a lower post on other grounds arising out of administrative exigency. But in the instant case the averments contained in paragraphs 19 and 24 of the affidavit of Virendra Nath Sharma, an Upper Division Assistant of the Board of Revenue make it amply clear that the impugned order of reversion was passed by way of punishment. In paragraph 19, there is a clear Statement that "the petitioner was working as an officiating Deputy Collector on ad hoc basis purely in temporary capacity and on account of his fraudulent acts he was reverted to his original post of Tahsildar. Again in paragraph 24 of that affidavit it has been stated that "while working as officiating Tahsildar at Kanpur, some serious complaints were received against the petitioner which were investigated by the Vigilance Department on the basis of those complaints the State Government reverted the petitioner from the officiating post of Deputy Collector to the officiating post of Tahsildar". These averments leave no manner of doubt that complaints were received against the petitioner and enquiry into those complaints were held and it was on the basis of those complaints and reports that the petitioner was reverted from the officiating post of Deputy Collector to that of Tahsildar. Allegation contained in the complaints as well as the reports submitted by the vigilance were the foundation for the issue of the order of reversion. It is true that if the work and conduct of an officiating Tahsildar is not found satisfactory it is always open to revert the Government servant to the lower post and in doing that it may take into account any allegation of misconduct against him. In judging his suitability, it is open to take into account any fault or complaint made against the Government servant hit if the order of reversion is founded upon the complaint of fraud or misconduct or upon the findings of misconduct, the order of reversion would in substance to be an order of punishment. See: *State of Bihar v. S. B. Misra* A.I.R. 1971 S.C. 1011.

In the instant case the averments contained in paragraphs 19 and 24 of the counteraffidavit make it amply clear that the petitioner was reverted from the officiating post of Deputy Collector because there were serious complaints against him and because Vigilance had submitted report on the basis of which the petitioner was found to have committed misconduct. There is no dispute between the parties that the petitioner was not afforded any opportunity of defence prior to the issue of the impugned order of reversion. In the circumstances the order of reversion is rendered illegal and void.

Learned counsel for the petitioner urged that the impugned order of suspension was passed on October 28, 1970 but till today no departmental proceedings have been taken, no charges have been framed or served upon the petitioner. No

enquiry has been held and the petitioner has been kept waiting during all these years. It is further urged that the impugned order of suspension has been passed mala fide in violation Rule 49A of the Civil Services (Classification, Control and Appeal) Rules.

There is no dispute that no charges have been framed nor any enquiry has been held against the petitioner. There is no further dispute that the departmental proceedings have not commenced as yet. It is, however, asserted on behalf of the Government that while the petitioner was posted as Tahsildar at Kanpur, he entered into conspiracy with one Smt. Usha Kansal and certain other officers and allotted Gaon Sabha land to one of the officers. The Gaon Sabha land was later on acquired by the Nagar Mahapalika, Kanpur. Those Officers who were allotted land received compensation on inflated rates. The petitioner aided in fraudulent acts and abated frauds committed by those officers. It is further asserted in the counteraffidavit that on coming to know of the aforesaid facts and after holding the preliminary enquiry the petitioner was placed under suspension immediately at a time when regular disciplinary proceedings were contemplated to be taken against him. There can be no dispute that if after preliminary enquiry departmental proceedings are contemplated against a Government servant. It is always open to the appointing authority to suspend the Government servant in contemplation of the departmental enquiry. The petitioner was suspended on October 28, 1970 but till today no departmental enquiry had commenced. In *State of V. P. v. Jai Singh* 1974 A.L.J. 862, a Full Bench of this Court held that if the appointing authority intends to take a formal departmental enquiry in due course in that event it is open to the authority concerned to suspend a Government servant in contemplation of formal departmental enquiry. The power of suspension under rule 49A is discretionary. Once the appointing authority of an objective consideration of the material before it comes to the conclusion that a formal departmental enquiry should be held against the Government servant, it has got full jurisdiction to suspend the Government servant. But in a case where the departmental enquiry is not held for a period of 6 years keeping the Government servant under suspension during all these time would be unreasonable and arbitrary. In the instant case the petitioner has been kept under suspension for a period of about 6 years and till today departmental proceedings have not commenced. In the circumstances the order of suspension is rendered invalid.

Learned Standing Council urged that when the Board of Revenue issued the impugned order of suspension it had decided to take formal departmental enquiry against the petitioner, but later on it was decided to prosecute the petitioner and for that purpose sanction was obtained from the Government. Thereafter a complaint has been sent to the Special Judge, Anti Corruption, Lucknow. The matter is at present pending in the Government for taking criminal proceedings against him and as such departmental proceedings could not be taken. In the rejoinder affidavit filed by the petitioner this allegation has been denied and it has been asserted that the Board of Revenue by its order dated

October 7, 1974 has withdrawn the complaint forwarded to the Judge, Anti Corruption. There is thus serious controversy as to whether any criminal prosecution has been launched against the petitioner. Be that as it may, it is not necessary to decide this controversy, it is not necessary to decide this controversy as in my opinion even assuming that the Board of Revenue decided to prosecute the petitioner, it has no jurisdiction to keep the petitioner under suspension. As already notes the petitioner could be kept under suspension if departmental enquiry was contemplated and not because a criminal prosecution was contemplated against petitioner. During investigation of a criminal case, a Government servant cannot be placed under suspension under Rule 49A. Rule 199 of the Subsidiary Rules permits suspension of a Government servant only after chargesheet has been submitted to the criminal court. Admittedly the instant case no chargesheet has been submitted and the criminal prosecution has not commenced, therefore the petitioner could not be kept under suspension pending investigation of criminal case.

In view of the above discussion I am of the opinion that the impugned orders of reversion dated August 19, 1970 reverting the petitioner from the post of Deputy Collector to the post of Tehsildar, as well as the order dated October 28, 1970 suspending the petitioner are illegal.

Before I conclude, I would like to observe that the instant case illustrates the tyrannical manner in which a Government servant is sometimes harrassed by the higher authorities. The petitioner has been kept under suspension for a period of about 6 years without framing any charges against him and without paying him his full salary. During all this time he received his subsistence allowance which is hardly sufficient to maintain his family. The petitioner was a suspect in the eye of the administration and as such he was placed under suspension without complying with the requirements of law, protests and request went unheeded by the administration. If he had not invoked the jurisdiction of this Court under Article 226 of the Constitution, one does not know how long he would have suffered under the unjust and illegal order of the Board of Revenue without any forum to remove his grievances. I hope the Government will look into this matter and take immediate action to compensate the petitioner for the injury caused to him by payment of his arrears of salary to him.

With these observation I allow the petition and quash the order reverting the petitioner as well as the order placing him under suspension. The petitioner is entitled to his costs.