

(1999) 05 AHC CK 0062
In the Allahabad High Court
Case No : C.M.W.P. No. 21067 of 1999

Rakesh Kumar

APPELLANT

Vs

Chairman/President, Nagar Palika Parishad, Thakurdwara and
others

RESPONDENT

Date of Decision : 20-05-1999

Acts Referred:

Uttar Pradesh Municipal Servants (Appeal) Rules, 1967 — Rule 3, 5

Citation : (1999) 3 AWC 2333 : (1999) 2 UPLBEC 1216

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

Bench : Single Bench

Advocate : Saalim Shah, for the Appellant;

Judgement

D.K. Seth, J.—The petitioner has challenged the order of the appellate authority dated 22.4.1999 by which the petitioner's appeal preferred under Rule 3 of U. P. Municipal Servants Appeals Rules, 1967 has been dismissed.

2. Shri S. Alim Shah, learned counsel for the petitioner points out from Rule 5 of the said Rules that while considering the appeal, the appellate authority has to consider three factors as provided in Rule 5. The impugned order does not show that the appellate authority has considered any of those factors. On this ground, he prays that the order passed by the appellate authority should be quashed and the appellate authority should be directed to reconsider the appeal in accordance with law.

3. I have heard learned counsel for the petitioner at length.

4. A perusal of the order dated 22.4.1999 contained in Annexure-14 to the writ petition shows that no reason for dismissal of the appeal has been given. On the other hand, it is only mentioned that the appeal which was received in the office on 26.2.1999 was read with attention and thereafter the appellate authority has reached to the conclusion that the appeal is liable to be dismissed and accordingly the same was dismissed. Thus, it shows that the said order does not

indicate the mind of the appellate authority and he has not indicated- about the factor in deciding the appeal in term of Rule 5. Rule 5 of the said Rules provides as follows :

"Consideration of art appeal by appellate authority.--The appellate authority shall in addition to any other relevant factors consider-

(i) whether the facts on which the order of punishment was based, have been established ;

(ii) whether the facts established afford sufficient ground for taking action ; and

(iii) whether the penalty imposed is excessive or adequate or inadequate."

5. Thus, it provides that the appellate authority has to consider all the relevant factors including the three factors mentioned in the Rule 5. It has not been mentioned in the order of the appellate authority that the facts on which the order of punishment was based have been established or that such facts" as established afforded sufficient ground for inflicting the punishment nor it has been considered that the punishment imposed was justified and reasonable and were not excessive or inadequate.

6. Thus, the appellate authority has not attended to the factors which is supposed to be attended by reason of Rule 5. The order does not indicate that the appellate authority attended to any such factor. It is not expected that the appellate authority would right a judgment. But at the same time, there should be sufficient indication that they had taken into account the relevant considerations and had arrived at the opinion/ conclusion on that basis.

7. Since Rule 5 has specifically provided that certain factors are to be taken into consideration. It is incumbent on the appellate authority to indicate atleast the gist of the reasons on the basis whereof he had arrived at the conclusion for rejecting or allowing the appeal as the case may be.

8. Thus, it appears that the order impugned suffers from material infirmity and perversity and accordingly, the same is liable to be quashed.

9. In the result, the order dated 22.4.1999 contained in Annexure-14 to the writ petition is hereby quashed. Let a writ of certiorari do issue accordingly. The appellate authority being respondent No. 1 shall reconsider the appeal afresh in the light of Rule 5 of the said Rules and the observation made hereinabove as early as possible preferably within a period of three months from the date a certified copy of this order is produced before the respondent No. 1. Let it be recorded that I have not entered into the merits of the case. The appellate authority is free to decide the appeal in accordance with law according to his own wisdom and discretion. The decision is expected to contain some reasons for arriving at a particular conclusion on which the decision is given. Let a writ of mandamus do issue accordingly.

10. The writ petition is thus disposed of.

However, there will be no order as to costs.