
(2007) 10 AHC CK 0172
In the Allahabad High Court

Ram Chandra Shukal

APPELLANT

Vs

U.P. State Public Services Tribunal, State of U.P.

RESPONDENT

Date of Decision : 30-10-2007

Acts Referred:

Police Act, 1949 — Section 7

Uttar Pradesh Public Services (Tribunal) Act, 1976 — Section 4

Citation : (2008) 117 FLR 446

Hon'ble Judges : S.P. Mehrotra, J; R.K. Agarwal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.K. Agarwal and S.P. Mehrotra, JJ.—The present Writ Petition has been filed by the petitioner, inter alia, praying for quashing the orders dated 30.12.1985, 17.6.1991 and 30.6.1997 (Annexures-12, 14 and 15 respectively to the Writ Petition), and further directing the reinstatement of the petitioner in service with all consequential benefits.

It appears that the petitioner was employed as a Constable in U.P. Police Force.

2. Disciplinary proceedings were initiated against the petitioner u/s 7 of the Police Act on the ground that the petitioner was careless and negligent in discharge of his duties and was unfit to be retained in service. He was given chargesheet on 29.4.1985, copy whereof has been filed as Annexure-1 to the Writ Petition. The petitioner gave reply to the chargesheet. The Inquiry Officer after holding the enquiry submitted his report dated 19.9.1985 to the respondent No. 4 and recommended for dismissal of the petitioner from service. The said Enquiry Report dated 19.9.1985 has been filed as Annexure-SA-1 to the Supplementary Affidavit, sworn on 30.7.2007.

3. Thereupon, the respondent No. 4 issued a show-cause notice to the petitioner alongwith copy of the said Report dated 19.9.1985 submitted by the Inquiry Officer.

Copy of the said show-cause notice has been filed as Annexure-8 to the Writ Petition.

4. It further appears that the petitioner did not submit any reply to the said show-cause notice. In the circumstances, the respondent No. 4 by his order dated 30.12.1985 awarded punishment of dismissal from service to the petitioner.

Copy of the said order dated 30.12.1985 has been filed as Annexure-12 to the Writ Petition.

5. It further appears that the petitioner thereafter filed an Appeal on 21.2.1986 before the respondent No. 3 against the said order dated 31.12.1985.

6. In paragraph 16 of the Writ Petition, it has been asserted that as the said Appeal was not being decided by the respondent No. 3, the petitioner gave several reminders in the years 1987, 1988 and 1990, and ultimately, when the Appeal was not decided, the petitioner in the year 1990 filed a Claim Petition before the U.P. State Public Services Tribunal, Lucknow (respondent No. 1) (hereinafter also referred to as "the Tribunal").

The said Claim Petition was numbered as Claim Petition No. 640/V/HMI/1990.

7. It further appears that during the pendency of the said Claim Petition before the Tribunal, the aforesaid Appeal, filed by the petitioner before the respondent No. 3, was dismissed on 17.6.1991.

8. The said fact of dismissal of the Appeal by the order dated 17.6.1991 was brought to the notice of the Tribunal. The Tribunal by the order dated 30.6.1997 dismissed the Claim Petition filed by the petitioner as having become infructuous. The Tribunal pointed out that despite the dismissal of the Appeal by the respondent No. 3 on 17.6.1991, the said order was not impugned before the Tribunal by making amendment in the Claim Petition, and as such, the Claim Petition of the petitioner had become infructuous.

The petitioner thereafter filed a Review Petition before the Tribunal, which was dismissed by the Tribunal by its order dated 29.11.1997. Thereafter, the petitioner filed the present Writ Petition.

9. We have heard Shri Kripa Shanker Singh, learned Counsel for the petitioner and the learned Standing Counsel appearing for the respondents, and perused the record.

10. It is submitted by the learned Counsel for the petitioner that the assertions made in paragraph 16 of the Writ Petition regarding reminders having been given by the petitioner for deciding the Appeal, have not been specifically denied in paragraph 10 of the counter affidavit. It is further submitted that in view of the fact that the Appeal was filed by the petitioner on 21.2.1986 and the said Appeal was not decided within one year from the date of filing of the Appeal, and further, in view of the fact that reminders were given by the petitioner in the years 1987, 1988 and 1990 for deciding the said Appeal, it would be deemed that

the petitioner had exhausted his departmental remedy in view of the third proviso to Section 4 of the U.P. Public Services (Tribunal) Act, 1976 (here-in-after also referred to as the "Act").

11. It is further submitted that in view of the third proviso to Section 4 of the Act, it was not necessary for the petitioner to make any amendment in the Claim Petition or to seek setting-aside of the appellate order passed on 17.6.1991 during the pendency of the Claim Petition before the Tribunal.

12. In reply, the learned Standing Counsel appearing for the respondents submitted that in view of the order dated 17.6.1991 passed by the appellate authority during the pendency of the Claim Petition before the Tribunal, it was incumbent upon the petitioner to challenge the said order by making suitable amendment in the Claim Petition.

We have considered the submissions made by the learned Counsel for the parties.

13. Section 4 of the U.P. Public Services (Tribunal) Act, 1976 lays down as under:

4. Reference of claims to Tribunal-If any person who is or has been a public servant claims that in any matter relating to employment as such public servant his employer or any officer or authority subordinate to the employer has dealt with him in a manner which is not in conformity with any contract, or-

(a) in the case of a Government servant, with the provisions of Article 16 or Article 311 of the Constitution or with any rules or law having force under Article 309 or Article 313 of the Constitution;

(b) in the case of a servant of a local authority or a statutory corporation, with Article 16 of the Constitution or with any rules or regulations having force under any Act of Legislature constituting such authority or corporation; he shall refer such claim to the Tribunal, and the decision of the Tribunal thereon shall, subject to the provisions of Articles 226 and 227 of the Constitution, be final:

Provided that no reference shall, subject to the terms of any contract, be made in respect of a claim arising out of the transfer of a public servant.

Provided [further] that no reference shall ordinarily be entertained by the Tribunal until the claimant has exhausted his departmental remedies under the rules applicable to him.

Provided also that where no final order is made by the competent authority, that is to say the State Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by the Claimant within one year from the date on which such appeal was preferred or representation was made, the Claimant may by a written notice require such competent authority to pass the order and if the order is not passed within one month of the service of notice the Claimant shall be deemed to have exhausted his departmental remedy.

Explanation.- For the purposes of this proviso, it shall not be necessary to require the claimant (in the case of a Government servant) to avail also of the remedy of memorial of the Governor before referring his claim to the Tribunal.

The second proviso to Section 4 of the Act lays down that no reference shall ordinarily be entertained by the Tribunal until the claimant has exhausted his departmental remedies under the rules applicable to him.

The third proviso to Section 4 of the Act, inter alia, provides that where no final order is made by the competent authority with regard to the appeal preferred or representation made by the Claimant within one year from the date on which such appeal was preferred or representation was made, the Claimant may by a written notice require such competent authority to pass the order and if the order is not passed within one month of the service of notice the Claimant shall be deemed to have exhausted his departmental remedy.

14. As noted above, the Appeal was filed by the petitioner, on 21.2.1986. As the Appeal was not decided within one year, the petitioner gave reminders in the years 1987, 1988 and 1990, as asserted in paragraph 16 of the Writ Petition. A perusal of paragraph 10 of the counter affidavit, wherein the averments made in paragraph 16 of the Writ Petition have been dealt with, shows that the assertions made in paragraph 16 of the Writ Petition regarding the reminders having been given to the appellate authority (respondent No. 3) for deciding the Appeal, have not been specifically denied. In the circumstances, the assertions made in paragraph 16 of the Writ Petition regarding the reminders having been given to the appellate authority (respondent No. 3) for deciding the Appeal, will be presumed to be correct.

15. It is, thus, evident that the Appeal was not decided by the respondent No. 3 within one year of its filing, and the reminders were given by the petitioner in this regard in the years 1987, 1988 and 1990. Therefore, the requirements of the third proviso to Section 4 of the Act were fulfilled in the present case, and it would be deemed that the petitioner had exhausted his departmental remedy. The Claim Petition before the Tribunal was, therefore, not covered in the second proviso to Section 4 of the Act, and the Tribunal could entertain the said Claim Petition, and decide the same on merits.

16. In our opinion, the Tribunal was not correct in declining to decide the Claim Petition on merits on the ground that the petitioner did not seek setting aside of the appellate order dated 17.6.1991 passed during the pendency of the Claim Petition by making suitable amendments in the Claim Petition.

The Claim Petition, in our view, had not become infructuous on account of passing of the said order dated 17.6.1991 by the appellate authority.

17. We are, therefore, of the view that the order dated 30.6.1997 passed by the Tribunal is liable to be quashed, and the matter is liable to be remanded back to the Tribunal for deciding the Claim Petition afresh on merits. In order to avoid

any technical objection, the Tribunal will give opportunity to the petitioner to amend the Claim Petition for challenging the order dated 17.6.1991 passed by the appellate authority.

18. In view of the above, it is not necessary for us to go into the question of correctness of the order dated 29.11.1997 passed by the Tribunal on the Review Petition filed by the petitioner.

19. The Writ Petition is, therefore, allowed. The order dated 30.6.1997 (Annexure-15 to the Writ Petition) passed by the Tribunal is quashed. The matter is remanded back to the Tribunal for deciding the Claim Petition of the petitioner afresh on merits in accordance with law keeping in view the observations made above.

20. However, in the facts and circumstances of the case, no order is passed as to costs.

It is made clear that this Court has not considered the claim of the petitioner on merits as it is for the Tribunal to consider and adjudicate upon the same.