
(1997) 05 AHC CK 0152
In the Allahabad High Court
Case No : C.M.W.P. No. 1336 of 1989

Rama Nand Rai

APPELLANT

Vs

Director, Panchayat Raj and Others

RESPONDENT

Date of Decision : 30-05-1997

Acts Referred:

Citation : (1997) AWC 186 Supp

Hon'ble Judges : P.K. Jain, J;B.M. Lal, J

Bench : Division Bench

Advocate : G.K. Singh and R.N. Singh, for the Appellant;

Final Decision : Allowed

Judgement

P.K. Jain, J.—Heard Sri R. N. Singh, learned Counsel for the Petitioner and the learned standing counsel for the Respondents.

2. By the present petition, the Petitioner prays for quashing the order dated 3.10.1988 (Annexure 16 to the writ petition) awarding punishment of reduction of pension by 5% and directing that for the suspension period, he was not entitled to salary and allowance except subsistence allowance already paid to him.

3. Petitioner was posted as District Panchayat Raj Officer in Deoria and vide order dated 3.2.1984, he was transferred from Deoria to Ballia. His claim is that the transfer was stayed by the State Government vide Order dated 9.2.1984 (Annexure 2 to the writ petition). He was, however, suspended by Deputy Director Administration, Panchayat Raj, Deoria vide order dated 2.5.1984. The Petitioner filed Writ Petition No. 14410 of 1984 in this Court and this Court vide order dated 28.11.1984 stayed the order of suspension dated 2.5.1984 and Order appointing the Enquiry Officer dated 4.5.1984. The Petitioner retired on 30.11.1984 from the said post. However, a charge-sheet was framed against him on 9.11.1984 which was served upon him on 19.7.1985 and the enquiry was concluded by the impugned order dated 3rd October, 1988. It is further stated

that the Petitioner was confirmed on the post of District Panchayat Raj Officer by an order dated 31.3.1987 passed by the Director, Panchayat Raj, U.P. with effect from 1.4.1984 as he was approved for confirmation by the Public Service Commission on 2.6.1986.

4. The impugned order is challenged mainly on the ground that all the charges against the Petitioner related to the date prior to his confirmation, although the enquiry was completed subsequent to the date of the confirmation yet in view of the doctrine of condonation and doctrine of washing off the acts of misconduct, if any, prior to the date of confirmation could not have been made a ground for substantiating the charges and holding the Petitioner guilty of such charges.

5. The facts as stated above, are not very much disputed except that the charge-sheet dated 9.11.1984 was served upon the Petitioner earlier than 19.7.1985.

6. The short question raised in this petition is whether in the circumstances stated above, the doctrine of condonation or the doctrine of washing off would apply or not. It is well-settled principle of service jurisprudence that no person can be indicated for acts of omission or commission amounting to misconduct if after the date of omission or commission of such acts, he had been promoted or confirmed. It would be deemed that such lapses on the part of the Government servant were considered at the time of his promotion, confirmation or crossing of the efficiency bar, as the case may be, and in case a decision is taken in his favour, the lapses prior to the date of that decision were condoned and consequently, all the adverse entries/acts of omission or commission should have stood washed off. This doctrine of condonation or washing off has been reiterated in a number of judicial pronouncements of the Apex Court as well as of this Court.

7. In *Mathura Rai v. State of U.P. and Anr.* (1989) 1 UPLBEC 22, the facts were that the Petitioner was confirmed in June, 1985 w.e.f. April, 1983. Prior to that, during September 11, 1981 to 31st July, 1983, the Petitioner held the charge of General Manager, Obra Hydel and Thermal Project. On certain complaints received against him, the Government initiated Vigilance Enquiry and the report of such enquiry was submitted after his retirement. The enquiry report recommended suitable reduction in pension of the Petitioner. This recommendation alongwith the enquiry report was submitted by the Government in September, 1984 to the Board with advice to make suitable reduction in the pension of the Petitioner. The Secretary of the Board, however, advised for imposing punishment of censure or warning only. The Government did not agree with the enquiry report and ultimately directed calling for explanation of the Petitioner. The Government passed an order on 14th August, 1987 directing the reduction of pension by 5%, The Hon''ble Supreme Court observed that if a Vigilance Enquiry initiated against employee is concluded after his retirement and yet he is confirmed after submission of the report adverse to him from back date for a period for which the enquiry was held, his services should be deemed to be approved. Otherwise, the two limbs shall not be working in cohesion. If confirmation results in diluting earlier entries and entitles a person to move

further on promotional ladder, then it certainly negatives the vigilance report which loses all its weight and substance. And that is what exactly happened in case of the Petitioner. The Vigilance report was submitted in August, 1984 whereas the Petitioner was confirmed in 1985. The effect of confirmation in law was that services of Petitioner stood approved. His pension, therefore, could not be reduced. The Hon'ble Supreme Court in para 5 further observed that in any case these aspects could have been taken into account while confirming him in 1985. The Vigilance Enquiry completed after retirement of Petitioner may have furnished material for taking disciplinary proceeding against him since he had retired but it was certainly material on which the confirmation of Petitioner could have been withheld. But once he was confirmed, it should be deemed that he was exonerated of all these flaws which were mere irregularity than illegality, and, therefore, it could not have furnished material on which such a serious action under Regulation 470 (b) could have been taken.

8. In another case *Dr. Girish Bihari v. State of U.P.* (1984) UPLF3EC 953, the Supreme Court held that once adverse entries are wiped off by reason of promotion of the Officer to higher post, those entries lose all value and even if they form part of the service record of the officer, they cannot be given effect.

9. In yet another case *The State of Punjab Vs. Dewan Chuni Lal*, , the facts were that the Respondent Dewan Chuni Lal was a Sub Inspector of Police and during departmental enquiry he was called upon to answer a charge framed on October 12, 1949 setting forth extracts from his confidential character roll showing his inefficiency and lack of probity while in service from 1941 to 1948. It was argued before the Supreme Court that the crossing of the efficiency bar must be regarded as giving him a clean bill up to that date and in view of this the reports of 1941 and 1942 should not have been taken into consideration against him.

In para 14, the Supreme Court held that "in our view, reports earlier than 1944 should not have been considered at all inasmuch as he was allowed to cross the efficiency bar in that year. It is unthinkable that if the authorities took any serious view of the charge of dishonesty and inefficiency contained in the confidential reports of 1941 and 1942, they could have overlooked the same and recommended the case of the officer as one fit for crossing the efficiency bar in 1944".

10. A Division Bench of this Court in *Uma Kant Tripathi v. State of U.P. and Ors.* 1996 (1) AWC 422 : 1996 (1) UPLBEC 417, reiterated the same principle of law. That was a case in which the services of the Petitioner were not regularised and were terminated on ground that there were three adverse entries in his character roll. The Petitioner had made a representation against the three adverse entries which was pending and the Petitioner was allowed to cross the efficiency bar and subsequent to the crossing of the efficiency bar, the order refusing to regularise his services and termination was passed. The High Court held that the doctrine of washing off the adverse entries on promotion of the officer is applicable and the principle is not confined to the cases of promotion only. It applies to the cases of

promotion on ad hoc or officiating basis as well as to the cases of crossing of the efficiency bar or confirmation. The High Court observed that if it were not so, an officer would be subject to repeated review of his adverse entries of remote past at various stages even though they were rendered ineffective as he was given promotion to higher post at an earlier stage despite those adverse entries.

11. In view of the above settled legal position, we are of the view that on facts of the present case also, the doctrine of condonation and doctrine of washing off applies and once the Petitioner was confirmed on a date subsequent to the date for which the lapses on his part were being investigated, he would be deemed to have been condoned with respect to such lapses. Therefore, the impugned order cannot be sustained.

12. The petition is allowed. The impugned order is quashed and it is directed that the Petitioner shall be entitled to full salary for the period of suspension and also the full pension on his retirement on attaining the age of superannuation. No order as to costs.