

(1999) 03 AHC CK 0044
In the Allahabad High Court
Case No : C.M.W.P. No. 10971 of 1999

Ramesh Chandra Sharma

APPELLANT

Vs

Regional Manager, U.P.S.R.T.C., Aligarh and another

RESPONDENT

Date of Decision : 23-03-1999

Acts Referred:

Citation : (1999) 2 AWC 1460 : (1999) 82 FLR 108 : (1999) 3 UPLBEC 134

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

Bench : Single Bench

Advocate : Y.D. Sharma, for the Appellant; Samir Sharma, S.C., for the Respondent

Judgement

D.K. Seth, J.—Mr. Y. D. Sharma, learned counsel for the petitioner while challenging the order dated 12.12.1998 contained in Annexure-1 to the writ petition, by which the petitioner was suspended, contends that no enquiry having been Contemplated, the order of suspension could not have been issued. He relies on the decision in the case of Azizul Rehman v. District Magistrate. Deoria and another 1997 (77) FIR 721, in order to contend that unless contemplation of enquiry is indicated in the order of suspension, there could not have been any order of suspension. He secondly contends that the Assistant Regional Manager not being appointing authority of the petitioner, who is Assistant Traffic Inspector, the order of suspension could not have been issued by him. According to him, the Regional Manager is the appointing authority of the petitioner, who could have passed the order of suspension since he is the disciplinary authority of the petitioner. He next contends that the order of suspension has been issued mala fide. Inasmuch as two conductors were caught red handed after the petitioner had inspected the bus and that too at a different place by another inspector. But the said two conductors, who were caught red handed, have not been suspended, therefore, apparently on the face of the facts disclosed above, mala fide is apparent and the order of suspension could not have been passed even on merit. He further contends that despite lapse of three months" period, no steps

have been taken either to appoint any Inquiry Officer or to issue charge-sheet or to commence the enquiry. On these grounds, he prays that the order of suspension should be quashed.

2. Mr. Samir Sharma, learned counsel for the respondents on the other hand, contends that the order of suspension has been issued in contemplation of an enquiry and that the power to suspend in respect of the employees, of whom the Regional Manager is the appointing authority, is delegated to the Assistant Regional Manager by reason of an order dated 24.12.1986. He further submits that the question of mala fide is not so apparent on the face of it that may lead this Court to quash the order of suspension. Then again, the same being a disputed question of fact which requires investigation, this Court sitting in writ jurisdiction, cannot enter into such disputed question of facts. On these grounds, according to him, the writ petition is liable to be dismissed.

3. I have heard both Mr. Y. D. Sharma and Mr. Samir Sharma at length.

4. It appears from Annexure-1 being the order of suspension that the order of suspension was inflicted on certain charges, in respect whereof an enquiry is contemplated. The charges have also been specified in the said order. It appears that there are four charges mentioned in the said order. Though, Mr. Sharma, learned counsel for the petitioner submits that the charges are vague and indefinite, but it is not the stage to examine the same particularly when on the face of it, the charges do not appear to be vague and indefinite. On the other hand, they had semblance of some charges which can be gone into at the appropriate stage. The decision in the case of Azizul Rehman (*supra*), does not help Mr. Y. D. Sharma inasmuch as in the said case in the order of suspension itself, there was no indication that any enquiry was contemplated. Unless it is indicated in the order itself that an enquiry is contemplated, an order of suspension could not be valid. In the present case, it is indicated in the order of suspension itself that an enquiry is contemplated in respect of the charges specified therein, therefore the ratio decided in the case of Azizur Rehman (*supra*) cannot be attracted in view of distinguishing feature of the present case.

5. So far as the question of jurisdiction of the Assistant Regional Manager to issue an order of suspension is concerned, having regard to the order dated 24.12.1986 issued by the Secretary, it appears that the Board in its meeting dated 20.12.1986 had taken certain decisions with regard to administrative jurisdiction as has been specified in the schedule to the said order. The item No. 3 which specified appointing authority, shows that Assistant Traffic Inspector is an employee of whom the Regional Manager is the appointing authority. Clause (7) thereof while dealing with the question of suspension, prescribes in sub-clause (4) that Assistant Regional Manager/Depot Manager shall be authorised and shall be the authority to suspend all such employees, of whom the Regional Manager is the appointing authority. Thus, from the said order, it appears that a person of whom appointing authority is the Regional Manager, could very well be suspended by the Assistant Regional Manager. Mr. Y. D. Sharma in his writ

petition has not challenged the validity of this order dated 24.12.1986. The said order was passed on 24.12.1986 and the same has not yet been held to be ultra vires or illegal until now. Unless the same is challenged, it is also not open to the Court to enter into such question. So long it is operative, the Assistant Regional Manager remains the authority to suspend all such employees, of whom the Regional Manager is the appointing authority. Therefore. In view of the said order dated 24.12.1986, the Assistant Regional Manager has the jurisdiction to suspend the petitioner, of whom the Regional Manager is the appointing authority. As such I am unable to persuade myself to agree with the contention that the impugned order was passed by a person who was not competent or authorised to pass an order of suspension.

6. So far as the question of mala fide is concerned, these are pure questions of fact which are not admitted by Mr. Samir Sharma, as such the same remains a disputed question of fact which cannot be gone into at this stage.

7. So far as the allegation made by Mr. Y. D. Sharma that the charges are vague and indefinite, it seems that the charges indicated in the order of suspension are not so vague or indefinite that on the face of it this Court could intervene. At the moment, it seems that there are some ingredients, on which a person could have been suspended. Therefore, I am unable to interfere with the impugned - order on this score.

8. However, as contended by Mr. Y. D. Sharma that no charge-sheet has been issued as yet nor any enquiry has since been commenced, the writ petition is being disposed of in the following manner :

In case no charge-sheet has been issued to the petitioner till date, in that event, the same may be issued within a period of one month from the date of presentation of a certified copy of this order before the concerned respondent. If no charge-sheet is issued within one month as indicated above, the order of suspension shall stand automatically revoked on expiry of one month. If the charge-sheet issued, in that event, the respondents may complete the enquiry within a period of six months. In case the enquiry is not completed within the period as specified above, in that event, the suspension order shall stand revoked automatically on expiry of six months. During the period of suspension, the petitioner shall be paid subsistence allowance. The respondents may issue the charge-sheet or complete the enquiry even after expiry of the respective stipulated period and the order of suspension and the payment of subsistence allowance shall be subject to the result of the enquiry. The petitioner shall co-operate with the enquiry. Any adjournment, if sought by the petitioner, shall be excluded for the purpose of calculating the period as stipulated above.

9. The writ petition stands finally disposed of. There will be no order as to costs.