
(2003) 05 AHC CK 0101

In the Allahabad High Court

Case No : C.M.W.P. No. 7864 of 1996 & Civil Miscellaneous Writ Petition No. 7864 of 1996

Rana Pratap

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-05-2003

Acts Referred:

Citation : (2003) 3 UPLBEC 2319

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : R.P. Tiwari, S.K. Mishra, J.N. Singh and S.N. Verma, for the Appellant; M.C. Chaturvedi, Addl. C.S.C., S.S. Sharma, S.C. and V.S. Misra, for the Respondent

Final Decision : Dismissed

Judgement

R.B. Misra, J.—In this writ petition order dated 26.12.1995 (Annexure 9) has been challenged, whereby the petitioner has been removed from Service.

2. Heard Sri S. K. Mishra, learned Counsel for the petitioner as well as Sri M.C. Chaturvedi, Additional Chief Standing Counsel and Sri S.S. Sharma, learned Standing Counsel for the State and respondents.

3. It appears that the petitioner was appointed as Peon in 56 Bn., N.C.C., Jhansi on 23.2.1967 and was regularised on 28.10.1983. However, for unauthorised absence from duty and for disobeying lawful orders of Commanding Officer and absenting himself frequently without leave for over two years and eleven months and for creating activities as security risk and for undesirable activities the petitioner was charge-sheeted and after obtaining reply and Enquiry Report the petitioner was removed from services on 26.12.1995. Against this order the petitioner has preferred Writ Petition No. 7864 of 1996.

4. It appears that for non-payment of salary and arrears for unauthorised absence the petitioner filed a Case No. 70/1992 before the Labour Court, which

was decided in favour of the petitioner on 31.8.1994, against which the Commanding Officer, N.C.C. preferred an appeal before the District Judge, Jhansi, which was decided on 13.8.1996 against the petitioner. Above order of the District Judge was challenged by way of Writ Petition No. 37045 of 1996. Under the bona fide impression that the termination order dated 26.12.1995 was challenged by the petitioner before the Labour Court in Case No. 70/1992, this Court on 1.3.2000 dismissed the present Writ Petition No. 7864/1996 with an observation that for the same cause of action the present writ petition was not maintainable. A recall application was filed,, which was allowed by this Court on 30.8.2001, by which it was clarified that the Writ Petition No. 37045/1996 was in respect of the payment of salary and arrears for authorised absence and not in respect of the order dated 26.12.1995. However, again on 16.8.2000 the present Writ Petition No. 7864 of 1996 was dismissed in default, which again on the restoration application of the petitioner was restored by this Court on 11.11.2002.

5. Seven charges in respect of unauthorised absence, disobedience, for undesirable activities, refusing to perform the duty, creating activities to the security risk were served to the petitioner and reply were obtained from the petitioner and after proper enquiry in accordance with law as contended by the respondents the petitioner was removed from the services. The counter-affidavit was filed. According to Para 2(1) of the counter-affidavit the petitioner is habitual trouble a creator and an in-disciplined person. He was found to be a security risk by the then Commanding Officer Lt. Col. S.S. Sujlana, as he was found to have removed some accountable papers from the office. He was penalised for this due to his undesirable activities he had earlier been removed from the duty of a peon by Lt. Col. S.S. Sujlana and was assigned a light duty i.e., watering of plants in the office area. This he refused as he considered it to be a labour's job. A letter was written to N.C.C. GP. HQS. Kanpur regarding change of his designation. It was initiated by them that Sri Rana Pratap will carry-out any duties assigned to him. He, however, refused to carry out the duties assigned to him by the Commanding Officer. According to Para 2(11) of the counter-affidavit the petitioner was given an alternative duty of a unit Chowkidar at night as per charter of duties of Class IV Employees, which he refused to perform. He was detailed to make administrative arrangement at the unit short range for firing by cadets and staff on 8th May, 1992 and 9th May, 1992, where he refused to perform this duty. He absented himself without leave w.e.f, 8th May, 1992 to 28th June, 1993 and rejoined on 29th June, 1993 on his own. He was, therefore, not made any payment from 9th May, 1992 to 28th June, 1993. According to Para 2(111) of the counter-affidavit in order to create harassment and problems for Commanding Officer, petitioner has been writing to higher authorities directly contrary to orders from his home, that he is not being permitted to join duty, where as he is not rejoining on his own accord. An inquiry was ordered by NCC GP HQS, Kanpur to go into the allegations made by petitioner and his wife an application sent to higher authorities. The Investigation Officer came to the unit twice but the petitioner did not turn up intentionally. This was intimated to NCC

GP HQS, Kanpur by the Inquiry Officer vide 58 U.P. Bn. NCC, Orai Letter No. 007/Conf/A.II, dated 15th July, 1992. His case was put up to Dy. D.G.U.P. Directorate, Lucknow. He found the case baseless and advised the individual to rejoin the duty forthwith. The individual was accordingly asked by the unit to perform the duties of night Chaukidar forthwith but he refused to carry out this duty and conveyed it in his Letter No. Nil of dated 22nd Sept., 1992. According to Para 2(IV) of the counter-affidavit Col. E. Macarius, Group Commander, NCC GO HQS Kanpur visited this unit during Sept., Oct., Nov. and Dec., 1992 but he did not find petitioner present in the unit. This was conveyed to NCC Directorate U.P. Lucknow vide GP HQS Letter No. 0708/76/A-Civ, dated 24th Dec, 1992 NOC Directorate conveyed the same to the petitioner vide Letter No. 653/Kanpur/pers (c), dated 25th Jan., 1993. A notice dated 17th June, 1993 was also published in a Hindi Newspaper stating that the petitioner is absent from duty since 8th May, 1992 and despite having given three notices no application had been received from him till 17th June, 1992. According to Para 9 the petitioner was given full opportunity to defend himself and cross-examine the witnesses, copies of the statement of witnesses were also provided to the petitioner. Based on enquiry report, written statement in reply to the charge-sheet submitted by the petitioner the Appointing Authority passed final order on 26.12.1995 removing the petitioner from services. Accordingly as narrated in the counter-affidavit the petitioner has been given full opportunity of hearing and enquiry has been completed in consonance to the principle of natural justice. However, there is alternative remedy of filing appeal by the petitioner against the order dated 26.12.1995, which the petitioner has not availed of.

6. Learned Counsel for the petitioner has submitted that the enquiry has not been made properly and the punishment and removal from service of the petitioner is not commensurate to the allegations and charges against him.

7. I have heard the learned Counsel for the parties and perused the documents. I find that the seven charges against the petitioner including that he is habitual trouble creator, indisciplined person, has been disobeying the lawful orders of Commanding Officer, was absenting himself without leave for about three years and was security risk to the Organisation and has shown defective duty in maintaining the documents in his office and for undesirable activities, the respondents have obtained reply of the petitioner to the charge-sheet and had conducted the enquiry after furnishing all the documents required and allowed the petitioner to adduce all possible evidences and cross-examine the witnesses and by observing norms of principles of justice and after providing full opportunity of hearing to the petitioner has passed the order dated 26.12.1995 removing the services of the petitioner in accordance with law keeping in view the conduct, performance and deficiency in the petitioner the removal of the petitioner is not disproportionate what to say of shockingly disproportionate to the charges and allegations proved against him. This Court is not to sit over the findings of the Disciplinary Authority and the Court is not to assess the power of Disciplinary Authority and determined the act of the Disciplinary Authority is

erroneous or correct and also not to assess whether the particular act was gravest act and misconduct warranting dismissal in view of the decision of the Supreme Court in State of Punjab and others Vs. Bakhshish Singh, and (1999) 7 SCC 463 Union of India v. Ganythan and also in reference to the view taken by Supreme Court in U.P. S.R.T.C. and Others Vs. Har Narain Singh and Others, .

8. The quantum of punishment awarded to the petitioner keeping in view the present facts and circumstances and the charges against the petitioner the punishment is not shockingly disproportionate, therefore, this Court cannot interfere in the quantum of punishment in view of Regional Manager, U.P.S.R.T.C., Etawah and Others Vs. Hoti Lal and Another, and this Court is also not to interfere in the said order of removal dated 6.12.1995 in the light of judgment in Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, .

9. In view of the above observations writ petition is dismissed.