

(1995) 05 AHC CK 0019
In the Allahabad High Court
Case No : C.M.W.P. No. 1817 of 1986

Satish Chandra Agnihotri

APPELLANT

Vs

Managing Director, U.P. Scheduled Castes Finance and
Development Corporation Ltd. and Others

RESPONDENT

Date of Decision : 17-05-1995

Acts Referred:

Administrative Tribunals Act, 1985 — Section 29
Constitution of India, 1950 — Article 136, 14, 226

Citation : (1995) 3 UPLBEC 1719

Hon'ble Judges : Paritosh K. Mukherjee, J

Bench : Single Bench

Advocate : M.S. Negi, for the Appellant;

Final Decision : Allowed

Judgement

Paritosh K. Mukherjee, J.—Sri M.S. Negi, learned Counsel for the Petitioner and Sri Vinod Misra, learned Counsel for the Respondent-Corporation are agreed that since the matter is of 1986 origin, the same may be finally disposed of. Accordingly, this Court proceeds to decide the case finally in accordance with Rules of the court.

2. The Petitioner is aggrieved by order of removal from service, dated September 8, 1986 passed by Managing Director, U.P. Scheduled Castes Finance and Development Corporation, Limited, Lucknow, which has been enclosed as Annexure 4 to the writ petition.

3. According to Sri Negi, learned Counsel for the Petitioner, out of six charges leveled against the Petitioner, all the charges, except charge No. 4, stood proved in accordance with the report of the Enquiry Officer. In this behalf, so far as charge No. 1 is concerned, it relates to non-submission of trial balance from April 1985 to January 1986 for Varanasi District. Since the Petitioner did not receive relevant documents, well in time, he could not submit trial balance.

4. Charge No. 2 is to the effect that despite order of District Manager, Varanasi, the Petitioner did not take charge of old vouchers and accounts from Junior Clerk. To this charge, Sri Negi contends that It is for the Junior Clerk to hand over voucher to the Petitioner and it is not for the Petitioner to chase the Junior Clerk to deliver old vouchers, and, as such, the charge is not proved. To this, learned Counsel for the Corporation submitted that the Petitioner had received the vouchers from his Junior Clerk but did not forward the same to the management. Therefore, the charge stands proved.

5. Charge No. 3 is that the Petitioner does not take interest in the work by disobeying orders of Head Office. Sri Negi vehemently urged before this Court that this charge Is "so vague" and "Indefinite" that no man of ordinary prudence can give any reply to such a Vague" charge. No particular instance has been quoted while levelling such a Vague" charge.

6. As regards charge Nos. 5 and 6, Sri Negi contends that the charges are not so serious in nature warranting major punishment of removal from service.

7. In support of his contention, Sri Negi drew my attention to a decision in Bhagat Ram Vs. State of Himachal Pradesh and Others, , wherein, it has been held by Hon''ble Supreme Court that the penalty to be imposed, must be commensurate to the gravity of misconduct, otherwise, it would be violative of Article 14 of the Constitution of India.

8. Bhagat Ram's case (supra) was later on followed by Apex Court in Ranjit Thakur Vs. Union of India (UOI) and Others, , wherein a Division Bench consisting of Hon''ble Mr. Justice A.P. Sen and Hon''ble Mr. Justice N.M. Venkatachaliah (as their Lordships then were), had made the following

Judicial review, generally speaking is not directed against a decision, . but is directed against the decision making process". The question of the choice and quantum of punishment is within the Jurisdiction and discretion of the Court-Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be as disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise within the exclusive province of the Court-Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be Immune from correction. Irrationality and perversity are recognized grounds of judicial review.

9. In Ranjit Thakur's case (supra), their Lordships of Supreme Court referred to a decision of Lord Diplock in Council of Civil Service Unions v. Minister for the Ctutf Service. (1984) 3 WLR 1174 (HL). The following observations of Lord Diplock are significant:

...Judicial review, as I think, developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can

conveniently classify under three heads the grounds upon which administrative action is subject to control by Judicial review. The first ground, I would call, "illegality," the second "irrationality," and the third "procedural Impropriety. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of "proportionality", which is recognized in the administrative law of several of our fellow members of the European Economic Community....

10. In Union of India (UOI) Vs. Parma Nanda, , a Bench consisting of Hon"ble Mr. Justice K. Jagannatha Shetty, Hon"ble Mr. Justice A M. Ahmadi and Hon"ble Mr. Justice Kuldeep Singh (as their Lordships then were) has held that enhancement or reduction in quantum of punishment to a delinquent employee rests only with the Supreme Court in exercise of power Under Article 136 of the Constitution and the said power cannot be exercised by High Court in the exercise of its writ Jurisdiction Under Article 226 of the Constitution.

11. With all respects to the Apex Court, I am afraid that I find myself unable to subscribe to the later view of Hon"ble Supreme Court in Parma Nanda's case (supra), as in my view, their Lordships of Apex Court exercised jurisdiction in the Parma Nanda's case (supra) arising out of proceeding Under Article 226 of the Constitution, and not Under Article 136 of the Constitution. In the said case, Parma Nanda, the Respondent moved the High Court of Himachal Pradesh Under Article 226 challenging the findings of Inquiry Officer as well as the order of dismissal passed by competent Authority. During the pendency of the writ petition, a Bench of the Central Administrative Tribunal at Chandigarh was constituted under the Administrative Tribunals Act, 1985. Consequently, the said writ petition stood transferred to the Tribunal by operation of Section 29 of the Act of 1985.

12. In this connection, I am further of the view that if the aforementioned analogy is taken, the Apex Court is also powerless to observe that their lordships have the power, being Apex Court of India, under the Constitution.

13. Be that as it may, after considering the facts and circumstances of the present case and also going through the charges leveled against the Petitioner. this Court is of the view that punishment of removal from service is too harsh and excessive and must be interfered with by this Court.

14. In the result, the writ petition is allowed. The impugned Order dated September 8, 1986 passed by Respondent No. 1 is set aside. The Respondents are directed to recons the case of the Petitioner, in the light of observations made above, and impose a lesser punishment, by reinstating the petitioner on "reappointment basis" and reducing two increments, with cumulative effect. The Petitioner is, however, not entitled to back wages since he did not discharge his duties for the period in question. The Respondents will pass formal order, as per aforesaid directions, within a month from the date of production of a certified

copy of judgment and order.