
(2015) 12 AHC CK 0037
In the Allahabad High Court
Case No : Service Bench No. 237 of 2007

Satya Pal Narang

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-12-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Penal Code, 1860 (IPC) — Section 308, 504

Citation : (2016) 1 ADJ 742

Hon'ble Judges : Amreshwar Pratap Sahi and Attau Rahman Masoodi, JJ.

Bench : Division Bench

Advocate : D.R. Misra, Dhruv Mathur and L.P. Misra, for the Appellant; Alok Sinha and Upendra Nath Mishra, for the Respondent

Final Decision : Dismissed

Judgement

Attau Rahman Masoodi, J.—This writ petition is directed against the order passed by the competent/disciplinary authority on 9th November, 2006 whereby the petitioner, a member of the U.P. Higher Judicial Services, has been removed from the post of Additional District and Sessions Judge. The impugned order is the outcome of two charge sheets which were issued to the petitioner on 27.4.2004 and 21.11.2005. The second charge sheet was issued during the course of disciplinary proceedings in respect of allegations of misconduct during the enquiry of the first charge sheet.

2. The brief facts of the case are that the petitioner, at the relevant point of time, was posted as Additional District Judge, Mathura from the year 2001 up to the month of May, 2003 and the alleged charges relate to his service tenure while being posted as Additional District & Sessions Judge at Mathura. The petitioner was transferred to Gonda on 22.5.2003 when he was served with the first charge sheet in pursuance whereof, vide D.O. letter No. C-99/Cf(A)/2004 dated 4.5.2004, Hon'ble Mr. Justice O.P. Srivastava was nominated as the enquiry officer. The charge sheet was served on the petitioner alongwith relevant

enclosures under the signatures of the Registrar. The charge sheet issued by the Court levelled three charges against the petitioner.

3. The first charge related to the grant of bail to one Sri Aidal in a double murder case on 22.9.2002 while posted as Additional Sessions Judge, Mathura allegedly in violation of all judicial norms and propriety. The second charge related to the acquittal of accused Pappu and others in Sessions Trial No. 422 of 1997 under Sections 308 IPC & 504 IPC allegedly without weighing the evidence on record and the third charge related to the demand of bribe of Rs. 70,000/- for passing an order in favour of one Dr. V.K. Singhal, who had instituted some civil proceedings in his court. The delinquent officer after service of first charge sheet submitted a detailed reply in the month of May, 2004 wherein he denied all the three above-mentioned charges. The enquiry judge thereafter proceeded to hold the enquiry on all the three charges with due participation of the petitioner. The petitioner participated in the enquiry proceedings and facilitated the enquiry judge to submit the enquiry report within a period of about ten months on 11.6.2005.

4. The enquiry report shows that the delinquent officer was found guilty of charge No. 1 whereas he was not held guilty on the other two charges. The enquiry report was approved by the administrative committee of the High Court and a copy thereof was decided by the Court to be served upon the charged officer for filing his representation against the conclusions drawn therein. The delinquent officer filed his reply dated 9.8.2005 which was duly placed and considered in the full court proceedings. The Court while considering the enquiry report submitted by the enquiry judge on 11.6.2005, further decided to initiate another enquiry against the petitioner for his alleged misconduct during the course of enquiry and on account of initiation of another enquiry, the petitioner was also placed under suspension.

5. The charge sheet in respect of the second enquiry also came to be issued to the petitioner on 25.11.2005 and the record reveals that the enquiry judge proceeded to conduct the enquiry on the second charge sheet which levelled two additional charges which are reproduced below:

"(1). While posted as Additional District Judge, Gonda you appeared on 7.8.2004 before the Hon"ble Enquiry Judge at the P.W.D. Inspection House, Mathura, in departmental enquiry No. 22 of 2003 pending against you for misconduct as Additional District Judge, Mathura under the influence of alcohol and as such, your behaviour was most unbecoming of a Judicial Officer and you thus committed misconduct within the meaning of Rule 3 of the U.P. Government Servants' Conduct Rules, 1956; and

(2). That, on the aforesaid date and place, when you appeared before the Hon"ble Enquiry Judge, during the course of the aforementioned departmental enquiry, behaved in extremely contemptuous manner as mentioned in the ordersheet of the said enquiry and as such your demeanour was most

unbecoming of a Judicial Officer and you thus committed misconduct within the meaning of Rule 3 of the U.P. Government Servants' Conduct Rules, 1956."

6. The petitioner participated in the second enquiry, the report whereof was submitted by the enquiry judge on 10.5.2006. The second enquiry report was also accepted by the committee and the delinquent officer was confronted with the findings recorded by the enquiry judge for submitting his reply. The delinquent officer, instead of raising any substantial grievance against the findings recorded by the enquiry judge in respect of the second charge sheet, rather, made a request for voluntary retirement so that he could lead the rest of his life with his family peacefully. There is no evidence placed on record to establish any substantive grievance against the findings recorded in the second enquiry report, except that the enquiry was concluded in a hasty manner.

7. The sequence of events clearly reveal that the conclusions drawn by the enquiry judge in respect of first charge sheet stood protested by the petitioner whereas no such grievance was raised against the second enquiry report, which, on being served upon the delinquent officer for his comments, was not assailed on any cogent basis.

8. The explanation and objection with respect to the first enquiry report was to the effect that the alleged bail order which became the subject matter of enquiry was, in fact, passed by the petitioner in normal course of judicial functioning and he had duly explained his conduct, which, according to him, did not constitute any misconduct cognizable under Rule 3 of the Conduct Rules, 1956.

9. From the perusal of the record, the petitioner does not appear to have raised any valid grievance with respect to any procedural defect, so far as the first enquiry report is concerned. However, the finding of the enquiry judge on charge No. 1 have certainly been challenged by him in his representation dated 9.8.2005.

10. So far as the second charge sheet is concerned, it is, of course, true that some material was asked for by the petitioner before filing reply but he having participated in the enquiry proceedings on the date of enquiry, the petitioner subsequently does not appear to have raised any substantial grievance against the second enquiry report, rather, he himself, as is evident from his reply dated 20.5.2006, requested for accepting his prayer for voluntary retirement.

11. Once the findings recorded by the enquiry judge in respect of the second charge sheet were not protested on the basis of any substantial material or valid explanation, it clearly shows that the other grievances raised prior to submission of enquiry report, with regard to furnishing necessary documents etc., were not pressed or pursued any further so as to construe any prejudice on that count. The behaviour of the petitioner in presenting himself in a state of influence of alcohol is certainly a misdemeanor amounting to a serious misconduct and, therefore, the conclusion drawn by the enquiry judge and the decision taken do not suffer from any infirmity as they are based on material.

12. As far as charge No. 1 levelled in the first charge sheet is concerned, the petitioner has offered a like explanation which he had put forth at the time of filing of reply to the charge sheet. Therefore, the findings recorded in the enquiry report on the strength of the explanation offered by the petitioner, being sufficiently dealt with in the report, was not found satisfactory to exonerate the petitioner from findings so recorded on the charge No. 1. The bail order and the conduct of the officer clearly seem to have been analyzed in the light of judicial propriety particularly in a situation where the offence was so serious. The bail application on a double murder ought to have been considered with due care and caution for which the material on record was bound to be weighed leaving no room for doubt. The delinquent officer having brushed aside all cardinal principles of granting bail giving rise to the complaint, clearly establishes a misconduct, therefore, there was no tangible ground worth acceptance on the basis of which the findings of the enquiry officer could be either altered, modified or reversed. The full court meeting, as per record, also deliberated on the seriousness of the misconduct indulged into by the petitioner and the misconduct having been found to have been established, has resulted into the issuance of the impugned order.

13. In the background of the case recorded above, learned counsel for the petitioner has then urged his arguments on the proportionality of the punishment, whereas learned counsel for the respondents has argued that the punishment imposed is wholly fortified and does not call for a lenient view at all.

14. Disciplinary matters against Higher Judicial Officers by virtue of Rule 34 of the Higher Judicial Service Rules, 1975 are dealt with under U.P. Government Servants Discipline and Appeal Rules, 1999. Rule 3 of the said rules contemplates punishments which are inflicted on a delinquent officer who is found to have indulged into any misconduct. There is no dispute that the alleged charges do not constitute a misconduct. Once the misconduct was found to be proved, whether the doctrine of proportionality comes to the aid of delinquent officer or not is the question that requires consideration in the context of argument raised by the petitioner's counsel.

15. The statutory rules authorise the disciplinary authority to inflict any major or minor punishment which are enumerated under Rule 3 of the Discipline and Appeal Rules, 1999. It is perhaps the variety of punishments enumerated in the rule that has led to the emergence of the doctrine of proportionality and the courts have opined that where the punishment is shockingly disproportionate to the gravity of the charges, a lenient view may be taken.

16. The case before us is of a judicial officer whose conduct is bound to match the highest standards of integrity in normal course. The duty of a judge is like holding a torch in the dark which has to glow not only to show path to others but must be utilised to find one's own path as well. The first charge levelled in the first charge sheet is seriously grave which stood proved against the charged officer. In the light of material placed on record we find that the charged officer

has taken conflicting stands in his reply to the findings on the first enquiry report and he has attempted to justify the bail order to have been passed in normal course. In our view, decision taken by the Full Court does not suffer from any perversity. Reference may be made in this regard to the judgement reported in Union of India (UOI) Vs. P. Gunasekaran, , para 20 whereof, being relevant, is extracted below:

"Equally, it was not open to the High Court, in exercise of its jurisdiction under Article 226 /227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court. In the instant case, the disciplinary authority has come to the conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to Oxford dictionary is "moral uprightness; honesty". It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence etc. In short, it depicts sterling character with firm adherence to a code of moral values."

17. It is also seen that the charged officer by disclosing the pitiable working conditions has also taken shelter of mental depression and other human factors leading to error and simultaneously it is pointed out that on withdrawal of complaint by the complainant, after cancellation of bail order, the charge ought to have been dropped. The consideration of all such defence was discussed and found deficient to exonerate him of the alleged misconduct. Since the misconduct is linked to the essential duties of the petitioner, therefore, we are not persuaded to take a lenient view, as such the argument so advanced is rejected. Added to this is the finding about the behaviour of the petitioner in relation to the second charge sheet as noted above.

18. Learned counsel appearing for the respondents, in order to defend the impugned order, has cited the case laws reported in (i) (2006) 5 SCC 680 : Union of India and others v. Duli Chand; (ii) Zunjarrao Bhikaji Nagarkar Vs. U.O.I. and Others, ; (iii) Government of Tamil Nadu Vs. K.N. Ramamurthy, and (iv) Union of India and Others Vs. K.K. Dhawan, n, to demonstrate that even a single serious charge on being proved against an officer can visit him with the most stringent punishment. Taking note of the settled position, we do not find that the competent authority has exceeded his jurisdiction in the facts and circumstances of the present case.

19. The writ petition being devoid of merit, is accordingly dismissed.