
(1997) 09 AHC CK 0150

In the Allahabad High Court

Case No : Civil Miscellaneous Writ PetitionR No. 29363 of 1994

Satya Prakash

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 22-09-1997

Acts Referred:

Citation : (1997) 09 AHC CK 0150

Hon'ble Judges : O.P.Garg, J

Final Decision : Dismissed

Judgement

O.P. Garg, J.—The present writ petition, under Article 226 of the Constitution of India is directed against the order of removal dated 3041993 passed by the Regional General Manager, U.R State Road Transport Corporation Azamgarh, respondent No. 2 and the order dated 2761994 passed by the Regional General Manager, U.P.S.R.T.C, Varanasi respondent No. 3 dismissing the appeal against the order of removal preferred by the petitioner.

2. Counter and rejoinder affidavits have been filed. Heard Sri Satya Prakash learned Counsel for the petitioner and Sri V.M. Sahai, learned Counsel for the respondent Nos. 2 and 3.

3. The petitioner Satya Prakash was appointed as a Bus Conductor in U.P.S.R.TC, in 1982. He was confirmed on the said post in the year 1984. A departmental enquiry was initiated against the petitioner. He was served with the chargesheet on 2941992. The allegations against him were that he had misconducted himself by not returning the unsold tickets, by not depositing the sale proceeds of the tickets soon after he returned from the journey and that he committed acts of insubordination by bringing back the bus from Lucknow which was booked from Azamgarh to Delhi. The petitioner submitted reply to the various charges against him on 891992. Sri G.K. Misra, a retired Tahsildar/Magistrate was appointed as enquiry officer. During the course of enquiry evidence was led and certain witnesses were examined. The petitioner crossexamined the witnesses. He did not lead any evidence in defence. A report of enquiry dated 1591992 was

submitted. The enquiry officer found the petitioner guilty of the charges levelled against him. The respondent No. 2, i.e., Regional Manager, U.P. State Road Transport Corporation (for short "UPSRTC") Azamgarh who was appointing/disciplinary authority, issued a show cause notice to the petitioner to which no reply was sent. Another letter reminding the petitioner to send reply to the show cause notice was also sent. On the request of the petitioner further time to file a reply was allowed but he failed to avail of the opportunity by filing the reply. Ultimately, by a detailed and reasoned order, the respondent No. 2 passed an order of removal of the petitioner from service. The petitioner preferred an appeal before the respondent No. 3 Regional General Manager, Varanasi, which too was dismissed by a reasoned order dated 27/6/1994.

4. The grounds taken in the present writ petition to challenge the orders of removal as well as dismissal of appeal are that no reasonable opportunity was afforded to the petitioner to place his point of view before the enquiry officer and that the enquiry against him was force. It is also alleged that the punishing authority has unnecessarily put the burden of proving certain facts on the petitioner and that in any case, the order of punishment in the form of removal from service is too harsh and unconscionable. In the counteraffidavit, a mention has been made about various delinquencies committed by the petitioner. The order of removal as well as order passed in appeal are said to be according to law. In the rejoinder affidavit, certain allegations made in the counteraffidavit have been refuted.

5. After having heard learned Counsel for the parties and taking into consideration the material available on record, I find that an elaborate enquiry was conducted against the petitioner by a person who was quite independent. The inquiry officer was not an officer of the department. He was a retired gazetted Government servant. He was detailed for the said purpose. The enquiry was conducted in conformity with the provisions prescribed by law. As it is, there is no scope to challenge the validity or otherwise of the enquiry proceedings. Moreover, it may be observed that this court exercising the writ jurisdiction, cannot sit as an appellate Court over the order of removal or the order passed by appellate authority. The sufficiency of evidence in proof of the finding by a domestic Tribunal is beyond the scrutiny. Likewise the reevaluation or reappraisal of evidence led at the stage of enquiry before the domestic Tribunal cannot take place before this Court. There is no justification to interfere with the finding of the inquiry officer as well as the disciplinary authority that the petitioner was guilty of the charges framed against him. The finding of the enquiry officer as well as disciplinary authority cannot be overturned by this Court.

6. Learned Counsel for the petitioner, however, urged that the punishment awarded to the petitioner is disproportionate to the proved guilt of the petitioner. In *Ranjit Thakur v. Union of India*, AIR 1987 SC 2386, Hon"ble Supreme Court has considered the doctrine of proportionality in the matter of awarding punishment under the Army Act and it was observed thus:

"The question of the choice and quantum of punishment is within the jurisdiction and discretion of the courtmartial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so 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 recognised grounds of judicial review."

Bhagat Ram v. State of Himachal Pradesh, (1983) 2 SCC 422 and ExNaik Sardar Singh v. Union of India, AIR 1992 SC 417, are other decisions of the Supreme Court on the point. There can be no quarrel about the proposition of law that the court can gauge the gravity of the established charges and the proportionality of the punishment awarded. If it is found that the punishment awarded is shockingly disproportionate to the gravity of the charges, the court, in exercise of the judicial power of review, can reduce the punishment.

7. Now the moot point for consideration in the present petition is whether the punishment awarded to the petitioner is unduly harsh calling for interference by this court. To begin with, it may be mentioned that looking to the conduct and obstinate and callous behaviour of the petitioner, the punishment cannot be said to be unduly harsh. The petitioner was a habitual defaulter in not depositing money collected by him by the sale of tickets to the passengers soon after he returned on the terminal point. He kept the money with himself for inordinate long time without any justification. Such instances are not one two or three, but were at least 30 in number as have been detailed in the chargesheet as well as in the appellate order and the counteraffidavit filed before this court. To quote an instance, he did not deposit the sale proceeds of the tickets which he collected on 27.3.1992 and 28.3.1992 amounting to Rs. 1951.20P till 12.4.1992 in spite of the fact that he was asked times out of number to deposit the money and other relevant documents. The petitioner took the plea that he had dropped the cash and after making arrangement he deposited the same. Subsequently he took a contradictory stand and gave out that he met with an accident and since the cash which was with him was spent on treatment etc., he could not deposit the same. In the normal course, the petitioner should have deposited the money and other documents on 29.3.1992 i.e., when he returned back. Various explanations submitted by the petitioner for not depositing the money were found to be concocted. Earlier also, as said above, the petitioner committed this grave irregularity on at least 30 occasions. As a matter of fact, the petitioner was guilty of temporary embezzlement of the Government money.

8. In the month of March 1992, the petitioner was to go in Bus No. 2763 with Julfiqar as driver from Azamgarh to Delhi. The bus was duly booked for this route. But what the petitioner did was that he performed the journey only upto

Lucknow and without proceeding towards Delhi, came back to Azamgarh.

9. All the above instances which form part of the established charges against the petitioner, are such would indicate that the petitioner was .deliberately flouting the orders given by his superiors in the department. He had no regard to the authority and orders of his superiors and behaved in a most callous and capricious manner. He had also not shown any signs of improvement and persisted in committing the defaults. In the light of these facts; the order of removal from service after due departmental enquiry cannot be said to be unduly harsh or unconscionable. An undesirable, insubordinate and an obstinate employee has to be weeded cut. Sometimes stern action is taken to act as a deferent to the other employees of the department as leniency is counterproductive.

10. In conclusion, I find that the order of removal from service passed against the petitioner was quite apt and does not warrant any interference by this court in exercise of writ jurisdiction. The writ petition h accordingly dismissed.