
(2012) 07 UK CK 0058

In the Uttarakhand High Court

Case No : Writ Petition No. 310 of 2008 (S/S)

Savita Prasad Nautiyal

APPELLANT

Vs

Managing Director

RESPONDENT

Date of Decision : 09-07-2012

Acts Referred:

Citation : (2013) 2 UC 1116

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Judgement

Tarun Agarwala, J.—Heard Mr. C.D. Bahuguna, the learned senior counsel for the petitioner and Mr. Lalit Samant, the learned counsel for the respondent. The petitioner was a permanent employee of the Garhwal Anusuchit Janjati Vikas Nigam Ltd. In the year 1991, the petitioner was suspended on the charges that he was careless in his duties. Subsequently, a charge sheet dated 11.02.1992 was served in which there were three charges against the petitioner. The petitioner submitted his reply, which was not found satisfactory and, consequently, an enquiry officer was appointed to conduct the enquiry proceedings. The enquiry officer, after giving full opportunity to the petitioner to defend himself, submitted the enquiry report holding that all three charges stood proved against the petitioner. On the basis of this enquiry report, the petitioner was issued a show cause notice and, thereafter, the disciplinary authority passed an order dated 23.02.1993 awarding the petitioner a major punishment of removal from service.

2. The petitioner, being aggrieved by the order of removal from service, filed a writ petition No. 18773 of 1993 before the Allahabad High Court, which upon creation of the State of Uttarakhand, was transferred to this Court. The said writ petition was renumbered as Writ Petition No. 6679 of 2001 (S/S) and eventually allowed by a judgment dated 29.05.2007 holding that all three charges levelled against the petitioner related to the oral direction issued by the Managing Director at the railway station and that no written order was issued. The court

came to the conclusion that the punishment awarded to the petitioner was shocking and that the petitioner could have been awarded a lesser punishment proportionate to the gravity of charges levelled against him. The court accordingly quashed the order of removal dated 23.02.1993 while allowing the writ petition and directed the respondents to pass a fresh order after providing an opportunity of hearing to the petitioner. The court further held that in the event, the respondent finds that the punishment awarded to the petitioner was disproportionate and a lesser punishment was to be awarded, the respondent would take into consideration of the fact that the petitioner had not served the department since 1993. This direction was presumably passed with regard to the purpose of backwages. For facility, the operative portion of the order of the court dated 29.05.2007 is extracted hereunder:-

The court comes to the conclusion that the punishment awarded to the petitioner, who was a permanent employee, for removing him from the service, is shocking. He could have been awarded lesser punishment proportionate to the gravity of charges leveled against him.

For the reasons recorded above, I find it fit and proper to direct the respondent to pass fresh order after affording opportunity of hearing to the petitioner, in view of observation made above within a period of three months from the date of production of certified copy of this order.

In case, respondent comes to the conclusion, after giving opportunity of hearing and going through the charges, that punishment awarded to the petitioner is disproportionate and award him lesser punishment, while passing the order respondent shall take into consideration the fact that the petitioner has not served the department since 1993.

Writ petition is allowed. Order dated 23.02.1993 passed by the respondent is quashed.

3. Based on the aforesaid direction, the respondents initiated a fresh enquiry on the same charges after appointing a fresh enquiry officer. The same set of charges was again served and the petitioner was asked to submit a reply. The enquiry officer, after considering the reply of the petitioner, submitted a fresh enquiry report and held that the charge No. 1 & 2 could not be proved and, consequently, exonerated the petitioner, but, found him guilty on charge No. 3. The enquiry officer found that the petitioner has taken a contradictory stand and that in the earlier round of enquiry, the petitioner had taken a different stand and, on that basis, held him guilty of disobeying the order of the superior authority.

4. To illustrate the matter, the charge No. 3 related to the direction issued by the Managing Director to the petitioner at the railway station to go to a place called Aendi and, instead of going to Aendi, the petitioner proceeded to Purola for his personal work. In the earlier proceedings, the petitioner contended that on account of the noise at the railway station, he could not hear the specific

direction of the Managing Director on account of which the petitioner did not go to Aendi, but, took casual leave and went to Purola after informing the authority. But, while giving a fresh reply to the second chargesheet, the petitioner contended that he did not meet the Managing Director at the railway station and reported for work at Aendi, but, took casual leave during post lunch session and reported for work on the next day in the afternoon at the Aendi and that the presence of the petitioner is recorded on both the days in the attendance register.

5. The enquiry officer has only harped on the discrepancy made in the statement of the petitioner regarding the meeting with Managing Director and not meeting the Managing Director, but, has not considered the crucial fact that his attendance was found on both the dates. The court, while considering the matter in its judgment dated 29.05.2007, gave a finding that the enquiry officer in his first report admitted that there was a huge noise at the railway station and that it was possible that due to the noise, the petitioner could not hear the directions issued by the Managing Director.

6. In the light of the aforesaid, this court finds that when all the three charges stood proved against the petitioner, the court in its decision dated 29.05.2007 held that the punishment of removal from service was shocking and disproportionate to the gravity of the charge levelled against the petitioner. Subsequent to the decision of the court dated 29.05.2007, the enquiry officer has found that two out of three charges was not proved and only one charge was proved and, inspite of this finding, the disciplinary authority has affirmed the order of removal once again vide order dated 02.01.2008.

7. Having heard the learned counsel for the parties at some length and having perused the material brought on record, the court finds that the stand adopted by the respondent is wholly perverse and vindictive. In spite of the clear direction that the charges so proved against the petitioner does not warrant an order of major punishment, the respondent has continued to remain adamant and have passed a fresh order of removal of service. The said order is in gross violation of the clear and tacit directions of this court vide order dated 29.05.2007 passed in Writ Petition No. 6679 of 2001 (S/S). The fresh enquiry conducted by the respondent only indicates that one charge has been proved which in the opinion of the court has not been proved correctly since the explanation of the petitioner has not been considered in totality. The court further finds that when the petitioner denies the charge, it was incumbent upon the enquiry officer to produce the witness, namely, the Managing Director to prove the charge, which has not been done. Consequently, the finding of the enquiry officer on charge No. 3 is patently perverse and based on surmises and conjectures.

8. In the light of the aforesaid, the order of removal, being patently perverse, cannot be sustained and is quashed. The writ petition is allowed. The petitioner is reinstated in service with continuity of service. Admittedly, the petitioner has not worked from 23.02.1993 and considering the fact that the petitioner has been fighting for his rights since February 1993, the court after considering all aspects

of the matter is of the opinion that twenty five percent (25%) of the salary should be paid to the petitioner within three months from today, failing which the interest would become payable @ 6% per annum from the date of the termination i.e. from 23.02.1993. In the given circumstances, the petitioner is also entitled for exemplary cost, which the court computes at Rs. 50,000/- (Rupees Fifty Thousand only) and the same shall be paid to the petitioner by the respondent within the same period.