

(2014) 04 AHC CK 0128

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 7676 of 2013

Shareef Ahmad

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 03-04-2014

Acts Referred:

Citation : (2014) 5 ADJ 69 : (2014) 6 ALJ 123 : (2014) 6 AWC 5528 : (2014) 3 UPLBEC 1986

Hon'ble Judges : Manoj Misra, J

Bench : Single Bench

Advocate : Gautam, Advocate for the Appellant; N.N. Mishra and S.K. Tripathi, Advocate for the Respondent

Final Decision : Allowed

Judgement

Manoj Kumar Gupta, J.—Petitioner is clerk in Municipal Corporation, Gorakhpur. He is posted in the Holmes Colonel Library. It appears that on request of U.P. Zila Adhikari, Sadar, Gorakhpur/Assistant Election Registration Officer, certain clerical staff of Nagar Nigam, Gorakhpur was attached to the Election office to assist in the preparation of voter list, the petitioner Shareef Ahmad being one amongst them. By order dated 17.6.2011, passed by Nagar Ayukt, Nagar Nigam, Gorakhpur, the petitioner was placed under suspension on the charge that on 15.4.2011, Principal Secretary, Forest, UP Government made a spot inspection of Manniya Kanshiram Shahri Awas Yojna and sought information regarding inclusion of 1500 houses built therein, in the voter list. Sri Shareef Ahmad, petitioner who was looking after the said work, was required to furnish information. He informed that the said place is outside the limits of Nagar Nigam, Gorakhpur. The information was found to be misleading, as the aforesaid area comes under Mohalla Tal Ramgarh, which is within Nagar Nigam limits. It is further stated that because of wrong information given by the petitioner, the Chief Development Officer, Gorakhpur, could not be supplied correct information in time. This is evidence of gross negligence on part of petitioner in important

work of preparation of voter list, and an effort to mislead the high officials. Such conduct is against the Government Servants Conduct Rules. It amounts to insubordination and indiscipline.

2. On 10.10.2011, the Enquiry Officer issued a charge-sheet to the petitioner in which the same charges were reiterated and the petitioner was called upon to show-cause why he should not be given adverse entry and his behavior be censured, so that such conduct is not repeated in future. The petitioner replied to the charge-sheet. It is admitted that the petitioner was attached to the Election Office and was attending the duties at the district head quarters. A specific plea was taken by the petitioner that the work assigned to him was to assist the employees of the Election Office in preparation of electoral list on the basis of inputs given by the supervisors/investigators, as is evident from the order of Up Zila Adhikari, Sadar, Gorakhpur dated 4.4.2011, (Annexure 2 to the writ petition). It was further stated that the petitioner had no information regarding any particular area being within or beyond the limits of Nagar Nigam, Gorakhpur. Such factual information is only in the knowledge of the supervisors or the Tehsil authorities, namely, Tehsildar, Kanoongo and Lekhpal. It was further stated that when at the time of inspection, such information was called for, the petitioner immediately got in touch with Shri Lal Chand the concerned Lekhpal of ward No. 44, Goplapur, on his mobile No. 8009902466. The Up Nagar Ayukt himself talked to him. He informed that the area in question is beyond the Nagar Nigam limits. The petitioner as well as other officials bona fide believed the said information to be correct. It was further stated that the Vice Chairman, Gorakhpur Development Authority, Gorakhpur vide letter dated 14.6.2011 addressed to Nagar Ayukt, Nagar Nigam, Gorakhpur stated that efforts be made to include the said area within the limits of Nagar Nigam so that the residents of said colony are not deprived of their right to vote. In response to it, relevant information was furnished through Up Nagar Ayukt, Nagar Nigam, Gorakhpur in which it is stated that the information regarding the colony in question being in any particular ward or not, would become clear only on spot inspection by rent/election department and whereafter, direction can be given to the Kanoongo and Lekhpal to include the said area in the electoral list. It was reiterated that the only duty assigned to the petitioner was to check the forms submitted by the supervisors and assist in the preparation of the final electoral list, as such, the charges leveled against the petitioner regarding dereliction of duties and furnishing of wrong information, are palpably incorrect.

3. The Assistant Nagar Adhikari, who was holding the enquiry, submitted his report after considering the explanation given by the petitioner. He accepted the version of the petitioner that the work relating to inclusion of any particular ward in the electoral list, was to be done by the other departments after making spot inspection and blame in this regard, has been wrongly shifted on the petitioner. He reached to a positive conclusion that the petitioner had knowingly not furnished any incorrect information and suggested that he may be reinstated with a warning.

4. On receipt of the report of the enquiry officer, Nagar Ayukt, Nagar Nigam, Gorakhpur vide its order dated 3.12.2011 directed for censuring the conduct of the petitioner and for making adverse entry in his service book. He further directed that one increment shall be withheld on temporary basis for one year. Aggrieved by the said order, petitioner filed a representation before the Commissioner of the Division, which was rejected by order dated 29.3.2012. The petitioner, thereafter claims to have filed another representation/review application on 17.4.2012 before Nagar Ayukt, Nagar Nigam, Gorakhpur followed by reminder dated 25.6.2012 and thereafter filed the instant writ petition assailing the validity of the orders dated 17.6.2011 and 3.12.2011 passed by respondent No. 2 and order dated 29.3.2012 passed respondent No. 3.

5. Counter and rejoinder-affidavits have been exchanged between the parties and with their consent, this writ petition was heard finally at the admission stage, in accordance with the Rules of the Court.

6. Learned counsel for the petitioner submitted that the impugned order of punishment dated 3.12.2011 is manifestly illegal as it goes beyond punishment proposed by the charge-sheet dated 10.10.2011. It is contended that there was no proposal nor any show-cause to the petitioner for withholding one increment for one year and consequently, the punishment order dated 3.12.2011, in so far as it inflicts such punishment on the petitioner, is illegal and a result of arbitrary exercise of power. It is further contended that the charge levelled against the petitioner was palpably incorrect in as much as the petitioner was never assigned duty of carrying out inspection of any area or to verify whether the same is within the limits of Nagar Nigam or beyond it. He was only given the work of checking forms submitted by the supervisors and to assist in preparation of final electoral list. It is contended that the petitioner has also adduced evidence in this regard by way of order of Vice Chairman, Gorakhpur Development Authority, dated 14.6.2011 and the notings in the office file of the clerk of Up Nagar Ayukt, that the responsibility for determining whether a particular area is within a ward or not, is to be carried out by Kanoongo and Lekhpal. It is contended that in the impugned order, the explanation given by the petitioner has not at all been dealt with. It is further submitted that the enquiry officer has accepted the explanation given by the petitioner and in view of it, it was all the more required to give cogent reasons for not accepting the explanation of the petitioner. It is submitted that no finding at all has been recorded in the impugned order as to why petitioner is guilty of the charge levelled against him. It is further contended that since the enquiry report was in favour of the petitioner, and therefore, in case the disciplinary authority was in disagreement with the findings of the enquiry officer, it ought to have given a show-cause notice to the petitioner in this regard, which having not been done, the impugned order cannot be sustained.

7. On the other hand, learned counsel for respondent Nos. 2 and 3 submitted that the petitioner was rightly punished by the impugned order as he was guilty of furnishing incorrect information. It is further stated that the enquiry officer

had gone beyond his authority in proposing punishment against the petitioner; it was not incumbent upon the disciplinary authority to accept the same. It is further stated that the petitioner being an employee of Nagar Nigam, was supposed to furnish correct information regarding the area being within the municipal limits or beyond it and the petitioner having failed to do so, disciplinary proceedings were rightly initiated against him and there is no illegality in the impugned orders.

8. I have considered the rival submissions of learned counsel for the parties and perused the record.

9. The petitioner who is a class III employee of Nagar Nigam, Gorakhpur is governed by the Uttar Pradesh Nagar Mahapalika Sewa Niyamawali, 1962 (hereinafter referred to as "the service rules"). Rule 27 of the service rules stipulates imposition of various penalties for "good and sufficient reasons". Similar phraseology is used in Rule 34 which contemplates imposition of penalty of censure entry or stoppage of increment at an efficiency bar. Sub-rule (2) of Rule 34 provides for "recording of reasons for punishment" inflicted on an employee. The proviso to Rule 34 is an exception to the above rule in cases where servant's increment in the time-scale of his pay, at any stage other than an efficiency bar, is stopped due to his integrity remaining uncertified. Admittedly, the present case does not come under the proviso to Rule 34. It was thus mandatory on the punishing authority to record good and sufficient reasons while imposing penalties. A perusal of the impugned order of punishment passed by Nagar Ayukt, dated 3.12.2011 reflects that it does not give any reason much less than any good and sufficient reason. It only states that punishment is being inflicted on the petitioner in view of the report of the enquiry officer. However, perusal of the report of the enquiry officer reveals that he had not found the petitioner guilty of knowingly giving any incorrect or misleading information. In such circumstances, it was all the more necessary for the punishing authority to have considered the explanation submitted by the petitioner wherein, he had categorically denied the charge levelled against him and to arrive at the cogent finding regarding misconduct on part of the petitioner. But the punishing authority has proceeded in a jiffy in passing the impugned order, without applying its mind to the explanation given by the petitioner. In view the same, the order of punishment cannot be sustained in law.

10. It is pertinent to note that under Rule 31 which provides for the procedure for holding disciplinary proceedings, the enquiry officer apart from giving findings on basis of evidence and statement of the witnesses, is also competent to make his own recommendation regarding the punishment to be imposed on the charged servant. Rule 32 which does not specifically apply to the facts of the instant case, as it provides for the procedure to be followed in cases a major punishment is to be imposed but the proviso thereof, does give an indication that in case the punishing authority disagrees with any part or whole of the proceedings prepared under Rule 31, it is required to state the points of such

disagreement, together with a brief statement of the grounds thereof, and which shall be communicated to the officer or servant charged. In the present case, the findings of enquiry officer are in favour of petitioner and in such circumstances, even without any statutory requirement, the principles of natural justice required the punishing authority to give a show-cause notice to the petitioner regarding its disagreement on the findings recorded by the enquiry officer, before inflicting punishment on the petitioner. However, in the present case, no such exercise has been undertaken, which also vitiates the impugned orders.

11. It is evident from the explanation submitted by the petitioner that he had specifically denied of being responsible for furnishing any information of the kind for which he was charged. It was stated by the petitioner, in reply to the charge-sheet, that he was merely attached to the Election office for verifying correctness of various forms submitted by the supervisors and to assist in preparation of final electoral list. Admittedly, at the relevant time, petitioner was posted as clerk in Holmes Colonel Library, Nagar Nigam, Gorakhpur. Thus, according to the petitioner, neither it was his duty as a clerk in Nagar Nigam, Gorakhpur to be in possession of information regarding particular area, being within or beyond the municipal limits nor such responsibility was assigned to him on being attached with the Election office. In this regard, he had also filed certain documentary evidence, namely, letter of Vice Chairman, Gorakhpur Development Authority, Gorakhpur dated 14.6.2011 and notings in the office file dated 21.6.2011. Although detailed oral enquiry was not held in the case because only proposed minor punishment was proposed against the petitioner but even then, the punishing authority was ordained to apply its mind to the defence of the petitioner and to record a specific finding of guilt, before inflicting any punishment on him. The same having not been done, the order under challenge cannot be sustained.

12. The appellate authority which considered the statutory representation of the petitioner, had also committed the same mistake. It had not at all considered the explanation submitted by the petitioner and had proceeded to reject the representation filed by the petitioner on the assumption that the charge against the employee is correct and which amounts to a gross misconduct and as such, there is no need for interfering with the punishment awarded to the petitioner.

13. Rule 35(2) of the service rules, contemplates making representation to the appropriate appellate authority in case of award of minor penalty and where appeal does not lie. Rule 37 prescribes the procedure for filing appeal and representations, which is identical. On appeal or representation having been filed, Rule 38 envisages that the appellate authority shall consider whether the facts on which the order was based, have been established and whether the facts established afford sufficient grounds for taking action. This, presupposes application of mind by the appellate authority. It has to arrive at a definite conclusion that the facts on which punishment order was based, have been established. In the present case, as discussed above, the impugned order of

punishment does not record any finding that the charges levelled against the petitioner were found established. The appellate order also does not record any such finding. Thus, the appellate authority had dealt with the matter in a most casual and perfunctory manner.

14. Since the punishing authority had failed to record any finding regarding the explanation submitted by the petitioner, and therefore, no purpose would be served in remitting the matter back to the appellate authority to consider the representation of the petitioner. Thus, the only course warranted in the facts of the instant case, is to quash the impugned orders, leaving it open to the disciplinary authority to pass fresh orders in accordance with law. For the reasons stated above, the writ petition succeeds and is allowed. The impugned order dated 3.12.2011 passed by respondent No. 2 and order dated 29.3.2012 passed by respondent No. 3 are quashed. It shall be open to the Punishing.

Authority to pass fresh orders, in accordance with law.