
(2001) 07 AHC CK 0174
In the Allahabad High Court
Case No : C.M.W.P. No. 34927 of 1995

Sheo Prakash Rai

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 04-07-2001

Acts Referred:

Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 — Rule 13, 27

Citation : (2001) 3 AWC 2233 : (2001) 168 CTR 177 : (2001) 90 FLR 837 : (2001) 248 ITR 619 : (2001) 3 UPLBEC 2222

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Advocate : S.K. Mishra, Ravindra Singh and Manish Goyal, for the Appellant; S.C. and Rajni Kant Tiwari, for the Respondent

Final Decision : Disposed Of

Judgement

Ashok Bhushan, J.—This writ petition has been filed by the petitioner challenging the order dated 22.4.1995 passed by the Superintendent of Police, Maharajganj dismissing the petitioner, a constable (armed force), Vigular. Counter-affidavit and rejoinder-affidavit have been exchanged in the writ petition and with the consent of the parties, the writ petition is being finally decided.

2. The facts of the case as emerge from the pleadings of the parties are, that the petitioner was appointed and posted as constable (armed force) in 36th P.A.C. Battalion at Ram Nagar, Varanasi, on 1.11.1986. After completing three years" of service, option was asked from the armed police constables by U. P. Police Head Quarter for appointment on the post of Vigular which is special wing of U. P. Police Organisation. The petitioner has given his option for appointment as Vigular and after being examined medically, he was appointed as Vigular. The post of Vigular is a post of special allowance and other perks and is under the supervision and control of the Uttar Pradesh Police Head Quarter. It is stated in paragraph 5 of the writ petition that Vigular cannot be asked to perform any

other duty unless he is declared medically unfit and to this effect, an approval is accorded by the Uttar Pradesh Police Head Quarter. On 13.7.1991 the petitioner was transferred to district Maharajganj as the Vigular where he performed his duties in the capacity of Vigular. He further stated that in the month of July, 1994, he developed severe chest pain and on 3.8.1994, he submitted a medical certificate showing his inability to perform his duty as Vigular. The authorities realising the grievance of the petitioner referred the matter to the police head quarter to relieve the petitioner from the duty of Vigular. On 6.8.1994 the Circle Officer. Police Lines asked the petitioner to do the santari duty. Petitioner requested that he has no hesitation in performing the santari duty but unless the approval of relieving from Vigular duty comes from the police head quarter, his duty could not be changed. On 12.8.1994, the petitioner was called in "adesh kaksha" for pronouncement of drill punishment which was proposed by the Circle Officer for not doing the santari duty. Petitioner attended the "adesh kaksha" before the Superintendent of Police and when drill punishment was pronounced by the Superintendent of Police, he requested him to hear the petitioner. Petitioner has alleged that after hearing the request of the petitioner, the Superintendent of Police became infuriated and the petitioner was suspended on 12.8.1994. Disciplinary proceeding was initiated against the petitioner. The petitioner in the disciplinary proceedings requested for change of the inquiry officer saying that the Circle Officer himself was the complainant. He further stated that his demand for supply of record was turned down. He has referred Annexure-3 to the writ petition, i.e., letter dated 28.1.1995 by which the Circle Officer has informed him that he cannot be given copies of departmental proceedings. The petitioner was issued a show cause notice as to why he should not be dismissed. The petitioner was dismissed from service by the order dated 22.4.1995. Petitioner states that he was not served the copy of the inquiry report for which he made an application on 5.5.1996. The petitioner has also filed a supplementary-affidavit alleging that he was not given a copy of the inquiry report. He was also not given the copy of charge-sheet or copy of complaint. Statements of witnesses were recorded behind the back of the petitioner. Respondents have filed a counter-affidavit to the writ petition and the supplementary counter-affidavit. Petitioner has also filed a supplementary rejoinder-affidavit. The respondents in their counter-affidavit have stated that against the petitioner, disciplinary inquiry was held and he was given full opportunity. The statements of witnesses were supplied to the petitioner and show cause notice dated 25.10.1995 along with the findings of the inquiry officer were given to the petitioner. The petitioner disobeyed the orders of his superiors. The request of the petitioner to change the inquiry officer was rejected since there was no substance in it. The inquiry report has been supplied to the petitioner which was received by him.

3. I have heard Sri Manish Goyal, counsel for the petitioner and Sri Rajni Kant Tiwari, learned standing counsel for the respondents. Counsel for the petitioner made following submissions :

(a) The disciplinary inquiry was conducted against the petitioner in violation of the principle of natural justice. The witnesses were examined behind the back of the petitioner. The regular inquiry was set up on 13.9.1994 whereas the statements of witnesses which have been filed as Annexure-C.A. 2 shows that they were recorded on 17.8.1994 and copy of which was made available to the petitioner on 2.10.1994.

(b) The complainant himself took part in the disciplinary proceedings against the petitioner. Petitioner stated that the Circle Officer Police Lines in whose presence the Superintendent of Police passed orders was made a preliminary inquiry officer. The preliminary inquiry officer indicted the petitioner. The regular inquiry was under the influence of one of the eye-witnesses, namely, Circle Officer Police Lines who was preliminary inquiry officer. Petitioner's counsel has also referred to Rule 13 of Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991. Petitioner submitted that the officer of police who is connected with the incident should have been kept away from the inquiry and in the present case, there is violation of Rule 13 in so far as the Circle Officer, Police Lines, conducted the preliminary inquiry and the Superintendent of Police who himself was the eye-witnesses of the incident decided the case, the Deputy Inspector General of Police should have been approached to transfer the case to some other unit.

(c) That the request of the petitioner to supply the entire documents along with the papers of disciplinary proceedings vide application dated 21.1.1995 was rejected by the order dated 21.1.1995 filed as Annexure-3 to the writ petition and due to non-supply of the documents principles of natural justice have been violated.

(d) That the punishment of dismissal is highly disproportionate to the charge levelled against the petitioner.

4. In support of the aforesaid submission, counsel for the petitioner also cited several decisions of the Apex Court and High Courts which will be referred while considering the submissions. Learned standing counsel refuted the submissions of the petitioner and submitted that the inquiry was conducted in accordance with Rules and in conformity with the principles of natural justice. The standing counsel further submitted that awarding of punishment is discretion of the appointing authority and the High Court will not interfere in the punishment awarded. Learned standing counsel relied on *The Government of Andhra Pradesh Vs. B. Ashok Kumar*, ; *The Government of Andhra Pradesh Vs. B. Ashok Kumar*, ; *Narayan Dattatraya Ramteerthakhar Vs. State of Maharashtra and others*, : *Rae Bareli Kshetriya Gramin Bank Vs. Bhola Nath Singh and other*,

5. With regard to first submission made by the counsel for the petitioner that the statements of witnesses were recorded behind the back of the petitioner and the copy of the statements recorded on 17.8.1994 were given to him on 3.10.1994 : it has come on the record that the statements recorded on 17.8.1994 were

statements recorded in the preliminary inquiry, copies of which were given to the petitioner on 3.10.1994. The statements recorded on 17.8.1994 were not the statements in the regular disciplinary inquiry. The inquiry report which has been filed as Annexure-C.A. 2 shows that the statements were recorded in the presence of the petitioner and petitioner also cross-examined them. There is no specific averments in the writ petition or in the supplementary affidavit regarding the date of recording of statements of the witnesses and the fact that the petitioner was not called on the aforesaid date and he had no opportunity to cross-examine. To the contrary, the inquiry report specifically states that in the petitioner's presence, statements were recorded : and he also cross-examined. Nagendra Singh, the then Circle Officer. Iqbal Singh, Sub-Inspector, Bhagwat Sharan Misra. Sub-Inspector, Harsh Nath Head Constable, Prem Chandra Yadav, Head Constable. Lalbali Singh Constable and Surendra Narain Shukla, Constable. Copy of inquiry report is annexed as Annexure-C.A. 2 to the supplementary counter-affidavit to which a supplementary rejoinder-affidavit has been filed by the petitioner in which aforesaid cross-examination by the petitioner has not been denied, rather the petitioner has been harping on the statements recorded on 17.8.1994 copy of which was given to him on 3.10.1994. As observed above, the statements recorded on 17.8.1994 were the statements recorded in the preliminary inquiry. There is no force in the first submission of the petitioner.

6. The second submission of the petitioner also has no merit. Petitioner has alleged violation of Rule 13 of Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991. Rule 13 of 1991 Rules is quoted below :

"13. Officer not competent to conduct disciplinary proceedings.--A Gazetted Officer of the Police Force who is either a prosecution witness in the case or has earlier conducted a preliminary inquiry in that case shall not conduct inquiry in that case under these Rules. In case the said Gazetted Officer is the Superintendent of Police himself, the Deputy Inspector General concerned shall be moved to transfer the case to some other district or unit as the case may be."

Rule 13 contains prohibition ; that the Gazetted Officer of Police who is either a prosecution witness or has earlier conducted the preliminary inquiry in the case, shall not conduct the inquiry under these Rules. The earlier preliminary inquiry was conducted by Nagendra Singh. Circle Officer, Police Lines, who also appeared as a witness in the proceedings. The inquiry was not conducted by said Nagendra Singh but was conducted by Hari Bansh Singh Yadav. Circle Officer, Sadar Maharajganj. There was no violation of Rule 13. Petitioner's counsel further contended that before the Superintendent of Police, incident took place on account of which he has been dismissed, hence the Superintendent of Police ought to have recused himself from the disciplinary proceedings. There is no such provision in the Rules which may disentitle the Superintendent of Police to pass the punishment order merely on the ground that the alleged misconduct or in-discipline took place in the presence of the Superintendent of Police. The

argument of the counsel for the petitioner has no substance as there was no violation of Rule 13.

7. With regard to third submission that the petitioner was denied copies of document, there is force in the contention of the petitioner. Petitioner vide an application dated 21.1.1995, asked for copy of papers of departmental proceedings on, payment of fee. The said application was rejected vide order dated 28.1.1995. Annexure-3 to the writ petition. The inquiry officer has stated that there is no provision for giving the copies of documents in the departmental inquiry. The aforesaid view of the inquiry officer is not in conformity with Rule 27 of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules. 1991. Rule 27 of the said Rules is being extracted below :

"27. Supply of copies of documents on payments.--A police officer is entitled, on payment at the rates to be fixed from time to time by the Government, copies of all papers material to an appeal, application for revision or petition which lies under these Rules except confidential papers, the publication of which would be prejudicial to the administration."

8. The petitioner has right to represent against the finding of the inquiry officer and in representation which is to be made against the finding of the inquiry officer, the papers under the departmental proceedings cannot be said to be irrelevant, hence the petitioner was entitled to be given the copies of the proceedings of departmental inquiry. The application of the petitioner was rejected without reference to the Rule 27 of the said Rules. There is no such reason given in the order dated 28.1.1995, that giving papers to the petitioner would be prejudicial to the administration. In view of the above, it is clear that the prejudice was caused to the petitioner by non-supply of the documents and order dated 28.1.1995 rejecting the prayer of petitioner was contrary to Rule 27.

9. The last submission of the counsel for the petitioner that the punishment is highly disproportionate to the charge levelled against the petitioner, needs to be considered in detail. Only charge against the petitioner is that he did not perform santari duty given to him on 6.8.1994 and when on 12.8.1994, he was asked to explain, he could not give satisfactory reply. On 12.8.1994. Superintendent of Police awarded 14 days drill punishment which was not accepted by the petitioner and petitioner disobeyed the order and uttered derogatory words against the higher officer which is an act of indiscipline. The petitioner in paragraph 5 of the writ petition has stated that he is working as Vigular. Petitioner further alleged that Vigular cannot be asked to perform any other duty unless he is declared medically unfit and to this effect an approval is accorded by the Uttar Pradesh Police Head Quarter. Paragraph 5 of the writ petition is being extracted below :

"5. That craving the leave of this Hon"ble Court, it is pertinent to submit that the post of Vigular fetches with it the special allowances and other perks and appointment to the said post is under the pervasive supervision and control of

the Uttar Pradesh Police Head Quarter. It is further submitted that the Vigular cannot be asked to perform any other duty unless he is declared medically unfit and to this effect, an approval is accorded by the Uttar Pradesh Police Head Quarter. In other words, it is the P.H.Q. which is supreme authority with respect of Vigular Wing of Armed Police."

A counter-affidavit has been filed in which in paragraph 5, the reply of paragraph 5 of the writ petition has been given in following words :

"5. That the contents of paras 3. 4 and 5 of the writ petition require no comments."

10. Thus, the aforesaid allegation of the petitioner has not been denied. The case of the petitioner is that he has been working as Vigular and the respondents-authorities have sent the recommendation to Police Head Quarter for relieving him from the duty of Vigular. The inquiry officer has noted in his inquiry report that no orders were received from the Police Head Quarter. In the aforesaid circumstances, the petitioner protested against being allotted santari duty. Petitioner has further stated in the writ petition that he requested the authorities concerned that he has no hesitation in performing the santari duty provided approval as to relieving of the petitioner from the Vigular duty comes from the Police Head Quarter. Respondents have not brought any material on record to show that there was an information or order received from the Police Head Quarter relieving the petitioner from Vigular duties. Specific allegation of paragraph 5 of the writ petition has not been denied. In view of the aforesaid, petitioner has some justification in protesting against the santari duty given to him. Petitioner's protest was not considered and he was awarded drill punishment by which the petitioner lost his calm. It cannot be denied every person of disciplined force has to show respect to his superiors and the petitioner's show of displeasure to the drill punishment awarded by the Superintendent of Police cannot be approved but the question is as to whether on aforesaid act, the petitioner can be awarded the punishment of dismissal from service.

11. The petitioner's counsel submitted that this Court can interfere in the award of punishment if the punishment is shockingly disproportionate to the charge. Petitioner's counsel has placed reliance on the following decisions :

- (i) Dr Ramesh Chandra Tyagi Vs. Union of India (UOI) and Others,
- (ii) B.C. Chaturvedi Vs. Union of India and others,
- (iii) Ram Kishan Vs. Union of India and others,
- (iv) Association of Chemical Workers and others v. B.D. Borude and another (1993) 1 LIC 711.
- (v) Gulzar Singh v. State of Punjab
- (vi) Gopal Das Rawat Vs. U.P. State Road Transport Corporations and Others,

(vii) U.P. State Road Transport Corporation and Others Vs. Mahesh Kumar Mishra and Others,

Counsel for the respondents have cited three cases of the Apex Court which have been referred to above for the proposition that the High Court should not interfere in the quantum of punishment awarded by the disciplinary authority which falls in the discretion of the appointing authority.

12. In all the judgments aforesaid the principle laid down by the Apex Court is that normally the High Court cannot substitute its own conclusion of penalty and impose some other penalty but if the punishment imposed by the disciplinary authority shocks the conscience of the High Court, it would appropriately mould the relief either directing the disciplinary authority to reconsider the penalty imposed or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment. The three-Judge Bench in B.C. Chaturvedi case (supra) laid down the above principle in paragraph 18. The paragraph 18 of the aforesaid judgment is extracted below :

"A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/ Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/ Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

13. Hon"ble Hansaria. J., agreeing with the aforesaid view expressed by the two Hon"ble Judges observed in paragraph 22 which is quoted below :

"The aforesaid has, therefore, to be avoided and I have no doubt that a High Court would be within its jurisdiction to modify the punishment/penalty by moulding the relief, which power it undoubtedly has, in view of a long line of decisions of this Court, to which reference is not deemed necessary, as the position is well-settled in law. It may, however, be stated that this power of moulding relief in cases of the present nature can be invoked by a High Court only when the punishment/penalty awarded shocks the judicial conscience."

The Hon"ble Hansaria, J., further observed in paragraph 25 as under :

"I would, therefore, think that but for the self imposed limitation while exercising power under Article 226 of the Constitution, there is no inherent reason to disallow application of judicial mind to the question of proportionality, of punishment/penalty. But then, while seized with this question as a writ court

interference is permissible only when the punishment/penalty is shockingly disproportionate."

14. Three-Judge Bench in B.C. Chaturvedi's case (supra) considered the earlier judgments of the Apex Court. Recent judgment by two-Judge Bench of the Apex Court in U. P. State Road Transport Corporation case again considered the same aspect. Paragraphs 8 and 9 of the judgment in U.P. State Road Transport Corporation and Others Vs. Mahesh Kumar Mishra and Others, are extracted below :

"8. This will show that not only this Court but also the High Court can interfere with the punishment inflicted upon the delinquent employee if, that penalty, shocks the conscience of the Court. The law, therefore, is not, as contended by the learned counsel for the appellants, that the High Court can, in no circumstance, interfere with the quantum of punishment imposed upon a delinquent employee after disciplinary proceedings.

9. Another three-Judge Bench of this Court in Colour-Chem Limited Vs. A.L. Alaspurkar and Others, , has also laid down the same proposition and held that if the punishment imposed is shockingly disproportionate to the charges held proved against the employee, it will be open to the Court to interfere."

15. The petitioner's counsel has placed much reliance on the judgment of Ram Kishan v. Union of India and others (supra) which was a case of police personnel who had used abusive language against his superiors. In the aforesaid judgment, it was held in paragraphs 11 and 12 :

"11. It is next to be seen whether imposition of the punishment of dismissal from service is proportionate to the gravity of the imputation. When abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of abusive language. No strait-Jacket formula could be evolved in adjudging whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts. What was the nature of the abusive language used by the appellant was not stated.

12. On the facts and circumstances of the case, we are of the considered view that the imposition of punishment of dismissal from service is harsh and disproportionate to the gravity of charge imputed to the delinquent constable. Accordingly, we set aside the dismissal order. We hold that imposition of stoppage of two increments with cumulative effect would be an appropriate punishment. So, we direct the disciplinary authority to impose that punishment. However, since the appellant himself is responsible for the initiation of the proceedings, we find that he is not entitled to back wages ; but, all other, consequential benefits would be available to him."

16. In the present case as observed earlier, there was some justification with the

petitioner to protest against the allotting of santari duty since he was working as Vigular under the control of the U. P. Police Head Quarter and recommendation to relieve him from the duties of Vigular were not yet accepted. Discontentment and protest was natural for the petitioner in the background of the above facts and his protest before the Superintendent of Police cannot be said to be an act of serious indiscipline. Expressing objection to the orders of the superiors cannot be condoned in the disciplined force but while awarding punishment, the nature of indiscipline has to be kept in mind. In the present case, all the witnesses who appeared, have stated that while coming out from the "adesh kaksha", petitioner was loudly speaking to himself saying some thing against the higher officers. The aforesaid act only shows that the petitioner expressed loudly his discontentment over the drill punishment awarded to him. The Apex Court in Ram Kishan's case (supra) has observed that the language used by the police official against the superior must be understood in the environment in which that person is situated and the circumstances surrounding the event, in the present case, petitioner's contention that he was not yet relieved by the U. P. Police Head Quarter from the duties of Vigular and he was allotted santari duty without there being relieving order gives him justification to protest against the duties. Protest made by the petitioner in the aforesaid background has to be considered and his not performing the santari duty has to be looked into with that background. The aforesaid conduct of the petitioner was not of such a nature which may merit his dismissal. The punishment awarded against the petitioner is shockingly disproportionate.

17. Learned standing counsel has relied on Abdul Majeed Sahib and another Vs. The District Collector and others, . The aforesaid case was a case of misconduct relating to misappropriation of public money. In view of the charge against the petitioner, the Apex Court observed that in case of misappropriation of public money, removal of service is an appropriate order. The aforesaid case is thus clearly distinguishable. Another case relied on by the learned standing counsel The Government of Andhra Pradesh Vs. B. Ashok Kumar, The aforesaid case was of dismissal in a bribe case. The respondent in that case has demanded illegal gratification for refraining from registering a complaint. The Apex Court found that the Tribunal in disciplinary proceedings having found the fact that the respondent demanded and accepted illegal gratification, therefore, that finding was not such which may shock conscience. The aforesaid case is also distinguishable. The next case relied upon by the learned standing counsel is Rae Bareli Kshetriya Gramin Bank Vs. Bhola Nath Singh and other, In the aforesaid case, the High Court examined the evidence and reversed the finding of fact recorded by the inquiry officer. The Apex Court held that above course was not permissible. This case is clearly distinguishable since in the present case findings of the inquiry officer are not being examined or reassessed.

18. From the above, it is clear that the punishment of dismissal was shockingly disproportionate to the charge levelled against the employee. In view of the above, the dismissal order is set aside and the matter is remanded back to the

disciplinary authority to award appropriate punishment apart from dismissal. Since the petitioner was denied the copies of the documents of the departmental proceedings, it will be open to the petitioner to ask for the copies which may be given to the petitioner in accordance with the Rule 27 of Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991, on the basis of the document so given to the petitioner, the petitioner will have a right to submit a representation to the disciplinary authority which may be considered before passing the order.

19. With the aforesaid direction, the writ petition is disposed of and the order dated 22.4.1995, is quashed, the respondent No. 3 is directed to pass fresh order awarding appropriate punishment apart from dismissal within a period of four months from the date of receipt of a certified copy of this judgment.