
(1999) 12 AHC CK 0112
In the Allahabad High Court
Case No : Writ Petition No. 8769 (SS) of 1987

Shobh Nath Gautam

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 08-12-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Police Regulations, 1948 — Regulation 490

Citation : (2000) 2 AWC 1388 : (2000) 1 UPLBEC 275

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : A. Mannan and Amit Bose, for the Appellant; Ajit Kumar Chaturvedi, for the Respondent

Final Decision : Allowed

Judgement

R.H. Zaidi, J.—Heard learned counsel for the petitioner, learned standing counsel and also perused the record.

2. By means of this petition filed under Article 226 of the Constitution of India, petitioner prays for issuance of a writ, order or direction in the nature of certiorari quashing the order dated 7.2.1986 dismissing the petitioner from the post of Sub-Inspector of Police.

3. Facts of the case, in brief, are that the petitioner absented from duty from 11.2.83 to 31.7.83 without taking leave in accordance with rules. Consequently, disciplinary proceedings were initiated against him. Charge-sheet dated 22.8.83 was issued. According to the statement of fact made in the inquiry report charge-sheet was served upon the uncle of the petitioner. Thereafter, inquiry Officer conducted proceedings behind the back of the petitioner and submitted his report on 27.12.85. After inquiry, inquiry officer found the charges levelled against the petitioner to have been proved. Therefore, on the basis of the said inquiry report, a show cause notice dated 14.1.86 was issued with the copy of report to the petitioner calling upon him to show cause as to why he be not

dismissed from service. On receipt of show cause notice and the report, the petitioner filed his reply on 25.1.86 contending that on receipt of telegram from his wife, he has to leave for his home after making necessary entry in G. D. at the police station. Firstly, he remained busy in the treatment of his wife, thereafter he himself fell ill, consequently, he could not attend to his duties and that he used to apply for grant of leave. It was also stated that entire disciplinary proceedings were conducted behind his back and contrary to the provisions of Regulation 490 of the Police Regulations.

4. Disciplinary authority rejecting the explanation offered by the petitioner for the absence from duty, without giving any importance to the procedure prescribed under Regulation 490, dismissed the petitioner from service by order dated 7.2.1986.

5. Challenging validity of order of dismissal, petitioner filed an appeal before next higher authority, i.e. Director General of Police. When the appeal filed by the petitioner was pending disposal before Deputy Inspector General of Police, he approached this Court and filed the present petition.

6. During pendency of the aforesaid writ petition, the appeal filed by the petitioner was dismissed by order dated 26.6.88.

7. The petitioner, challenged the validity of said appellate order by means of amendment application, which was allowed. Amendment has also been incorporated in the writ petition by learned counsel for the petitioner.

8. A counter-affidavit has been filed on behalf of the respondents contending that the petitioner deliberately absented from duty without obtaining leave and as he was not available at the address given by him in the department, consequently, charge-sheet meant for him was sent at his official residence where he was not found, consequently, charge-sheet was served upon his uncle. Thereafter, Inquiry Officer proceeded with the inquiry and ultimately submitted inquiry report. As the charges were found proved, the petitioner was dismissed from service after following the procedure prescribed under the law. In reply to the facts stated in the counter-affidavit, rejoinder-affidavit has also been filed by the petitioner in which the facts stated in the counter affidavit have been controverted and the facts stated in the writ petition have been reiterated and reasserted. A supplementary counter-affidavit has also been filed.

9. Learned counsel for the petitioner vehemently urged that the procedure prescribed for conducting disciplinary proceedings against the employees of the Police Department, Regulation 490 of the U. P. Police Regulations, has not been followed in the present case and the entire disciplinary proceedings have been conducted in violation of the said Regulation, therefore, impugned order is null and void and is liable to be quashed. It was urged that the charge-sheet alleged to have been served upon the uncle of the petitioner, cannot be held to have been served upon the petitioner. It was required to have been served personally. The petitioner in the instant case has been deprived of an opportunity of hearing

and to defend himself. According to learned counsel, the impugned orders are non est. and they are liable to be quashed.

10. On the other hand, learned standing counsel appearing for the respondents submitted that several times notices were sent to the petitioner at his official residence. Since he was not available at the said address and no other address was given by him in the department, therefore, there was no option for the Inquiry Officer but to proceed with the Inquiry and to submit his report.

11. I have considered submissions made by learned counsel for the parties and also perused the record.

12. Regulation 490 specifically provides that in the departmental trial of a police officer, after the preliminary enquiry, charge-sheet shall be framed, copy of which shall be given to the delinquent, police officer shall be asked to submit his reply. It should be oral or in writing. If the officer accepts the charge, no further evidence will be required to be recorded, the orders may be passed on the basis of the same but in case of denial, evidence will have to be produced to prove the charge/charges. It further provides that the delinquent police officer, if the evidence is produced by the prosecution, shall be allowed to cross-examine the witnesses. He shall also be allowed to inspect the record of the case. The documents mentioned in the charge-sheet shall also be supplied to him. Officer shall be at liberty to make his defence and produce such witnesses, as he desires, in his defence. After the evidence is concluded, Superintendent of Police shall record findings taking into consideration the evidence on the record. If he intends to award any major penalty, i.e. dismissal, removal or reduction in rank, the officer charged shall be supplied copy of the findings and shall be called upon to show cause as to why said penalty be not awarded to him. After receipt of the reply, papers are required to be forwarded, in cases of major penalty, to the D.I.G. Police through District Magistrate for final order. The D.I.G., on receipt of the papers, is required to supply copy of the findings recorded by the Superintendent of Police, to the officer charged simultaneously calling upon him to show cause against the imposition of punishment. On receipt of the explanation of the officer charged, he may pass order of punishment. Clause-II of the Regulation 490 provides that in any case in which Superintendent of Police considers that special circumstances Justify a departure from any of these rules, he should record reasons for his decision and in any such case. It will be for the Superintendent of Police to show in his finding that the officer charged has not been prejudiced by this departure from the usual procedure. In the present case, no reasons have been recorded by the Superintendent of Police for deviation from the normal procedure under the aforesaid Regulation and the orders have been passed against the petitioner without following the procedure prescribed under the said Regulation and in contravention thereof.

13. Provisions of Regulation 490 of the U. P. Police Regulation, are mandatory, they are not mere administrative directions. The orders passed in disregard of the said Regulation can be interfered with by this Court in exercise of powers

under Article 226 of the Constitution of India, reference in this regard may be made to the decision of this Court in Ram Swarup Vs. Ram Narain Sharma and Another, .

14. In view of the aforesaid provision, charge-sheet which was framed against the petitioner should have been served upon him personally, which was admittedly not served upon him in the present case. The petitioner was also not afforded opportunity to make his defence and to examine or cross-examine the witnesses produced against him. The charge-sheet is stated to have been served upon the uncle of the petitioner in violation of the provisions of Regulation 490.

15. Learned standing counsel could not produce before this Court any provisions in which charge-sheet could be served upon the uncle or any other relation of the petitioner. Even if the petitioner was evading service of charge-sheet and show cause notice issued by the department or the inquiry Officer, it does not give any license to the respondents to proceed ex-parte against the petitioner. A reference in this regard may be made to the decisions in Dr Ramesh Chandra Tyagi Vs. Union of India (UOI) and Others, and Union of India and Others Vs. Dinanath Shantaram Karekar and Others, , wherein it has been ruled by the Apex Court that notice/charge-sheet should be served personally, and if they are not served, they should be sent under registered cover. Even if service is not effected they may be published in the news paper.

16. In the present case notices/charge-sheet were neither served personally nor sent under registered cover nor the same were published in the newspaper. Consequently, charge-sheet issued by the Inquiry Officer cannot be deemed or held to have been served upon the petitioner. In Union of India v. Dina Nath Shantaram's case (supra) it was ruled by the Apex Court as under :

"Where the disciplinary proceedings are intended to be initiated by issuing a charge-sheet, its actual service is essential as the person to whom the charge-sheet is issued is required to submit his reply and, thereafter, to participate in the disciplinary proceedings. So also, when the show-cause notice is issued, the employee is called upon to submit his reply to the action proposed to be taken against him. Since in both the situations, the employee is given an opportunity to submit his reply, the theory of "communication" cannot be invoked and "actual service" must be proved and established."

17. It is well-settled in law that the order passed in violation of principles of natural justice is non est. Procedure for conducting enquiry, has been provided specifically under Regulation 490 which has not been followed at all. Therefore, order of punishment/dismissal from service passed against the petitioner was null and void. The appellate authority has also acted illegally in not considering this aspect of the matter and illegally dismissed the appeal filed by the petitioner. The appellate order is also, therefore, liable to be set aside. In view of the aforesaid discussion, this petition deserves to be allowed.

18. Writ petition succeeds and is allowed. Orders dated 7.2.86 and 26.6.88

passed by the authorities below, are hereby quashed. Respondents are directed to reinstate the petitioner on the post held by him at the time of dismissal. He will also be entitled to other consequential benefits. It is, however, observed that if so advised, respondents shall be at liberty to take disciplinary proceedings afresh against the petitioner.