

(1998) 08 AHC CK 0024
In the Allahabad High Court
Case No : Writ Petition No. 2453 (S/S) of 1995

Sobaran Singh

APPELLANT

Vs

State of Uttar Pradesh and another

RESPONDENT

Date of Decision : 19-08-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 384
Police Act, 1861 — Section 7
Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 — Rule 17(1)
Uttar Pradesh Police Regulations, 1948 — Regulation 493

Citation : (1998) 4 AWC 300 : (1998) AWC 300 : (1999) 2 UPLBEC 50

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

Bench : Single Bench

Advocate : Amit Bose, for the Appellant; C.S.C., for the Respondent

Judgement

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

2. By means of this petition under Article 226 of the Constitution of India, the petitioner prays for issuance of a writ, order or direction in the nature of certiorari quashing the show cause notice dated 4.7.1995. Prayer for a writ of mandamus commanding the respondents not to proceed further with the departmental proceedings has also been made.

3. It appears that a First Information Report (Case Crime No. 825/91 u/s 384, I.P.C.) was lodged at police station Charbagh, Lucknow, in which the petitioner was suspected to be involved. Consequently, the petitioner who was holding the post of police constable was placed under suspension vide order dated 17.7.91 in exercised of powers under Rule 17 (1) (a), U. P. Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991. Thereafter in the aforesaid criminal case, charge-sheet was submitted. In the said criminal case, the petitioner was ultimately acquitted by the judgment and order dated 18.1.1995 by the

Additional Chief judicial Magistrate, Lucknow. On the basis of the order of acquittal, referred to above, the petitioner was reinstated on the aforesaid post on 28.2.1995. In the said order, it was also directed that the inquiry against the petitioner shall go on. It was on 4.7.95 that the impugned show cause notice was issued to the petitioner calling upon him as to why the "censure" entry be not awarded to him. The petitioner feeling aggrieved by the said notice, filed the present petition.

4. On behalf of the respondents, a counter-affidavit has been filed, in which the facts stated in the writ petition were controverted. It was asserted that the petitioner was given benefit of doubt in the aforesaid criminal case. The acquittal of the petitioner was not honourable and clear acquittal, therefore, it has been asserted that the disciplinary proceedings could go on against the petitioner and the adverse entry could be awarded to the petitioner in the said proceedings.

5. Learned counsel for the petitioner vehemently urged that in view of the provisions of Regulation 493 (c) of U. P. Police Regulations, after acquittal whether clear or on the basis of doubt, it was not open to the respondents to proceed against the petitioner departmentally. It was also urged that the order of the Additional Chief Judicial Magistrate dated 18.1.95 having become final the respondents could not take any disciplinary action and could not award the petitioner punishment in any form on the basis of aforesaid criminal case.

6. Learned standing counsel, on the other hand, submitted that the petitioner having been given benefit of doubt in the aforesaid criminal case, therefore, it was open to the competent authority to proceed against the petitioner and to award the proposed punishment.

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

8. It is not disputed that the petitioner was one of the accused person in the Case Crime No. 625 of 1991 and that he was acquitted by the Additional Chief Judicial Magistrate by judgment and order dated 18.1.95 which has become final. The operative portion of the said judgment is quoted below :

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vfHk;q?x.k flikgh ua- 2384 jkt/kkjh izlkn ,oa flikgh ua- 2097 lkscju flag dks vkjksi /kkjk 394] Hkk-n-la- ls nks"keq? fd;k tkrk gS A os tekur ij gSa A mudh tekursa jnn dh tkrh gS A izfrHkwfrx.k mUeksfpr] vU; fujLr fd,s tkrs gSa A

fnukad % 18-1-1995

g- viBuh; 18-1-1995 ?bZ"oj n;ky? vij eq[; U;kf;d eftLV?sV m?kj jsyos] y[ku?*

9. Regulation 493 (c) of the U. P. Police Regulations is relevant for the purposes of present case, which is quoted below :

"493. It will not be permissible for the Superintendent of Police in the course of a

departmental proceeding against a police officer who has been tried judicially to re-examine the truth of any facts in issue at his judicial trial, and the finding of the Court on these facts must be taken as final.

(c) If the accused has been judicially acquitted or discharged, and the period for filing an appeal has elapsed and/or no appeal has been filed the Superintendent of Police must at once reinstate him if he has been suspended ; but should the findings of the Court not be inconsistent with the view that the accused has been guilty of negligence in, or in fitness for, the discharge, of his duty within the meaning of Section 7 of the Police Act, the Superintendent of Police may refer the matter to the Deputy Inspector General and ask for permission to try the accused departmentally for such negligence or unfitness."

10. The aforesaid regulation under the similar facts and circumstances as are of the present case, was considered by a Division Bench of this Court in the case of Dhani Ram v. Superintendent of Police, Hardoi, 1989 (1) UPLBEC 624, this Court, after considering the matter at length was, pleased to rule as under :

"It shows that in departmental proceedings against a police officer, the Superintendent of Police cannot re-examine the truth of any fact in issue at the judicial trial and the finding of the criminal court on that point must be taken as final. It further shows that in case an accused is judicially acquitted or discharged and the judgment of the criminal court has become final, the Superintendent of Police must reinstate the delinquent police officer if he had been suspended. If the finding of the criminal court is not inconsistent with the view that the accused has been guilty of negligence in or unfitness in the discharge of his duty departmental proceedings can be initiated against that police officer with the permission of the Deputy Inspector General of Police."

"10. From the above discussion it is clear that the petitioner was judicially acquitted in the criminal trial. The truth of the charge was thoroughly examined by the criminal court. The departmental proceedings were initiated in connection with the same charge. These proceedings were initiated because the police authorities were under the impression that the petitioner had been given the benefit of doubt. Such a distinct on has not been made in the aforesaid Police Regulation. It is general principle applicable to Government servants but the case of a police officer stands on a different footing in face of para 493 of the U. P. Police Regulations. It is not less significant to mention that in the impugned order (Annexure-1) itself it is mentioned that the evidence which was led in the criminal trial was the only evidence in the departmental proceedings. When that evidence was not believed and did not prove the charge how it can be held that it was sufficient for the departmental proceedings to hold the petitioner guilty for the offence for the departmental proceedings to hold the petitioner guilty for the offence for the misconduct of taking illegal gratification. The finding of the criminal court is undoubtedly inconsistent with the finding arrived at in the departmental proceedings. It can, therefore, be easily inferred that the impugned order violates para 493 of the U. P. Police Regulations and deserves interference

in the exercise of jurisdiction under Article 226 of the Constitution."

11. In view of the law laid down by this Court in the above noted cases, it was not open to the respondents to proceed against the petitioner and take any disciplinary action on the basis of the criminal case referred to above. The action of issuing show cause notice and the show cause notice itself in view of law laid down by this Court seem to be wholly illegal and without jurisdiction.

12. Learned counsel for the respondents, however, referred to and relied upon the decision of Apex Court in State of Rajasthan Vs. B.K. Meena and others, . In the said case, the Apex Court dealt with the desirability or advisability of staying the disciplinary proceedings against the respondent pending the criminal proceeding/case against him. It was, after considering the arguments of the learned counsel for the parties and all relevant decisions on the point, ordered as under :

"19. For the above reasons, it must be held that the Tribunal was in error in staying the disciplinary proceedings pending the criminal proceedings against the respondent. The appeal is accordingly allowed with costs. The order of the Tribunal is set aside. The disciplinary proceedings against the respondent shall go on expeditiously without waiting for the result of the criminal proceedings. The costs of the appellant are estimated at Rs. 5,000."

13. The aforesaid decision is distinguishable on facts and is not relevant for the purposes of present case. On the basis of the aforesaid decision, it cannot be contended that the disciplinary action could be taken against the petitioner in spite of the fact that he has been acquitted of the criminal charges levelled against him.

14. In view of the aforesaid discussions the writ petition succeeds and is allowed. The show cause notice dated 4.7.95 is hereby quashed. No orders as to costs.