

(2008) 04 AHC CK 0304
In the Allahabad High Court

State of U.P. and Others

APPELLANT

Vs

Brajendra Singh and Another

RESPONDENT

Date of Decision : 23-04-2008

Acts Referred:

Citation : (2008) 117 FLR 925

Hon'ble Judges : Yatindra Singh, J;Ran Vijay Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Yatindra Singh and Ran Vijay Singh, JJ.—Sri Brijendra Singh respondent No. 1 (the contesting respondent) was a constable in PAC. He was found in state of intoxication on 9.11.1997. He was suspended on 21.11.1997 and; thereafter a charge-sheet dated 14.1.1998 was served upon him. An inquiry was conducted and inquiry report was submitted. The contesting respondent was given a show cause notice. Considering his reply he was dismissed from service on 21.3.1998. He filed an appeal which was dismissed on 23.12.1998. The contesting respondent filed claim-petition No. 767 of 1999. It was allowed on 28.5.2004, hence the present writ petition.

2. We have heard the Standing Counsel for the petitioner and Sri S.N. Yadav for the contesting respondent.

3. The Tribunal has allowed the claim petition of the contesting respondent on the ground that:

- (i) The contesting respondent was not given the statement of the witnesses;
- (ii) The principles of natural justice has been violated;
- (iii) The doctor's report has not been proved;
- (iv) Rules have not been followed.

4. After the inquiry was conducted, the contesting respondent was given a show

cause notice. He filed a reply against the same. Thereafter he filed an appeal and also claim petition. The contesting respondent never took a plea that statement of witnesses was not been given. Photostat copy of signed document of the contesting respondent has been filed before this Court. It shows that all the statements were served upon the contesting respondent. If the statement had not been served upon the contesting respondent then he should have taken this plea either in reply to show cause notice or at least before the Tribunal. This has not been done. It could not be taken at the time of hearing before the Tribunal. The Tribunal has committed illegality in allowing the claim petition.

5. Apart from the finding that the statements of witnesses were not given, no other reason has been indicated for holding that principle of natural justice have been violated. We have already negated the same. This submission also has no merits.

6. Same is the case so far as doctor's report is concerned. In case it was not proved then the objection ought to have been taken in the proceeding or at least in response to show cause notice. It was never done. This plea could not be taken at the time of hearing of the claim petition.

7. The case of the contesting respondent throughout and even before the Tribunal was that he had not taken any alcohol but had taken Antipar medicine on the advise of the doctor and it is because of this that smell of alcohol was coming out.

8. If this was the case then the burden was upon the contesting respondent to produce the doctor or for that matter to produce the subscription, to show that he has taken such medicine.

9. The Tribunal has said that while conducting the inquiry rules had not been followed but apart from the finding that the statement of witnesses have not been given or doctor's report was not proved. This finding is incorrect as it has been held in preceding paragraphs. No other specific rules has been indicated. There is no merit in this submission.

10. The termination order and the appellate order indicate that this is not the first time that the contesting respondent was punished. The other punishments, apart, from others, include abusing under influence of alcohol, running away during the duty, stealing TV from Javan Club. Considering entire circumstances, the punishment awarded to him is not excessive. In view of this order of Tribunal dated 28.5.2004 is quashed and termination order dated 21.3.1998 and appellate order dated 23.12.1998 is upheld. The writ petition is allowed.