

(2011) 12 AHC CK 0019

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 5965 of 2011

Sudhir Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-12-2011

Acts Referred:

Constitution of India, 1950 — Article 311
Penal Code, 1860 (IPC) — Section 304, 34, 383, 384
Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules,
1991 — Rule 14(1), 23, 8(2)

Citation : (2012) 1 ADJ 417

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble B. Amit Sthalekar, J.—This writ petition has been filed by the petitioner challenging the dismissal order dated 21.6.2009 and the appellate order dated 5.10.2010.

2. Brief facts of the case are that the petitioner while posted as constable in the police out post GRP Mailani, police station G.R.P. Lakhimpur Kheri was assigned the Escort Duty of Train No. 190 Down, Gonda Mailani Passenger alongwith one other constable Ram Singh. When the said passenger train reached the railway station Tikoniya, one Dinesh Kumar alongwith his wife Smt. Kavita Devi and two year old daughter boarded the train and Dinesh Kumar tied his bicycle on the window of the passenger train. It is further alleged that the petitioner alongwith constable Ram Singh demanded ticket from Dinesh Kumar in respect of bicycle and also demanded money from Smt. Kavita. On their refusal to give money for the ticket, an altercation ensued between petitioner and constable Ram Singh with Dinesh Kumar and Smt. Kavita Devi and as a result of the altercation, it is alleged that the petitioner and constable Ram Singh pushed Smt. Kavita Devi and her two year old daughter out of the moving train, which resulted in the death of Smt. Kavita Devi and her child as she was pregnant at

that time and also resulted in serious injuries to her two year old daughter. A criminal case No. 45 of 2009, under Sections 304, 383 and 384 I.P.C. was lodged against the petitioner and constable Ram Singh and by order dated 19.6.2009, the department also placed these two persons under suspension because of their involvement in the criminal case. Subsequently without holding any departmental enquiry the petitioner was dismissed from service by the respondent No. 3 in exercise of powers under Rule 8 (2) (b) of the U.P. Police Officers of the Sub Ordinate Ranks (Punishment and Appeal) Rules 1991.

3. A counter-affidavit has been filed on behalf of respondents wherein similar facts have been reported to the effect that Dinesh Kumar alongwith his pregnant wife and two year old daughter boarded the Gonda Mailani Passenger and tied their bicycle outside the window of the train, for which ticket was demanded from Dinesh Kumar by the petitioner, which resulted in an altercation between the petitioner alongwith Ram Singh and Dinesh Kumar and his wife. In the ensuing dispute Smt. Kavita alongwith her two year old daughter were pushed out from running train, which resulted in the death of Smt. Kavita as well as her unborn child whereas her two year old daughter suffered serious injuries. It has further been stated that the act of the petitioner was inhuman and barbaric and if action had not been taken against the petitioner it would tarnish the image of the police force and, therefore, it was absolutely necessary to take action against the petitioner and constable Ram Singh and, therefore, they were dismissed from service in exercise of powers under Rule 8 (2) (b) of the U.P. Police Officers of the Sub Ordinate Ranks (Punishment and Appeal) Rules 1991.

4. Challenging the order of dismissal from service dated 21.6.2009, the petitioner filed Writ Petition No. 653 (S/S) 2010 before the Lucknow Bench of this Court, which was dismissed on 4.2.2010 on the ground that the petitioner had an alternative remedy of filing an appeal under the Rules. Accordingly the petitioner filed an appeal before the Deputy Inspector General of Police, (Railway) Lucknow, which was dismissed by order dated 5.10.2010 wherein the appellate authority concurred with the opinion of the disciplinary authority, Superintendent of Police, Railways, Lucknow.

5. In the counter-affidavit a plea has also been taken that the petitioner has remedy by way of filing revision before the Inspector General of Police (Railway) under Rule 23 of U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 and further remedy for filing petition before U.P. State Public Service Tribunal, Lucknow.

6. I have heard Sri Vijay Gautam, learned counsel for the petitioner and learned Standing Counsel appearing for respondents.

7. So far as objection of the learned standing counsel to the jurisdiction of this Court regarding maintainability of the writ petition is concerned, I am not inclined to accept the objection for the reason that the order of dismissal dated 21.6.2009 under challenge has been passed without holding any enquiry or

giving any opportunity of hearing to the petitioner. The order also does not indicate any reason for dispensing with the enquiry. Secondly in the writ petition counter-affidavit and rejoinder affidavit have already been exchanged and I have heard the parties at length. Therefore, in my opinion, no useful purpose will be served by relegating the petitioner to remedy of revision or to approach the U. P. Public Service Tribunal, Lucknow.

8. Perusal of the order of dismissal indicates that the competent authority has dismissed the petitioner from service on the ground that the petitioner alongwith constable Ram Singh had an altercation with Dinesh Kumar and his wife Smt. Kavita Devi as a result of which they pushed Smt. Kavita out of the running train which resulted in the death of Smt. Kavita Devi and her unborn child and also resulted in serious injuries to her two year old daughter. The act of these constables being barbaric would tarnish the image of the police department, therefore, it had become necessary to take action against the petitioner and constable Ram Singh by dismissing them from service in exercise of powers under Rule 8(2) (b) of the Rules.

9. Provisions of Rule 8 (2) (b) of the U.P. Police Officers of the Sub Ordinate Ranks (Punishment and Appeal) Rules 1991 is quoted below:

8. Dismissal and removal.--(1) No Police Officer shall be dismissed or removed from service by an authority subordinate to the appointing authority.

2. No Police Officer shall be dismissed, removed or reduced in rank except after proper inquiry and disciplinary proceedings as contemplated by these rules.

(b) Where the authority empowered to dismiss or remove a person or to be reduced him in ranks is satisfied that for some reasons to be recorded by that authority in writing, it is not reasonably practicable to hold such enquiry.

10. From perusal of the above provision, it will be seen that the power to dismiss or remove a person or reduce him in rank can be exercised by the competent authority only if it has become reasonably impracticable to hold an enquiry but before such power is exercised reasons have to be recorded as to why it is not reasonably practicable to hold such enquiry.

11. From perusal of the order of dismissal dated 21.6.2009, it will be seen that absolutely no reasons have been given in the said order as to why enquiry is being dispensed with and what were the reasons, for which it had become impracticable to hold departmental enquiry against the petitioner.

12. From perusal of the appellate order dated 5.10.2010, it will be seen that absolutely no reasons have been given by the appellate authority. It will be seen that the appellate order is totally silent as to why it had become reasonably impracticable to hold departmental enquiry and in fact, the appellate authority has dittoed of the order of dismissal passed by the Superintendent of Police (Railways).

13. The petitioner has also placed on record the order passed in Criminal Proceedings No. 45 of 2009, police station G.R.P. Lakhimpur Khiri arising out of F.I.R. lodged by Dinesh Kumar against the petitioner and constable Ram Singh. In the criminal proceedings the petitioner alongwith constable Ram Singh have been acquitted from all the charges lodged against them u/s 304/34, 383 and 384 I.P.C.

14. Perusal of the judgment and order of District & Sessions Judge, Lakhimpur Khiri dated 8.12.2010 filed as Annexure-12 to the writ petition indicates that during the course of recording of evidence Dinesh Kumar, husband of the deceased Smt. Kavita Devi has categorically stated that while he had boarded the train, the train picked up speed and his pregnant wife was trying to board the train and holding the window when her foot slipped and she fell and came under the wheels of the train, which resulted in her death. He has categorically stated that the two GRP constables by that time had not been able to board the train. They had not pushed Smt. Kavita or her daughter out of the running train.

15. From the narration of facts above one thing has become clear that if according to the respondents, the petitioner had been responsible for pushing Smt. Kavita out of the running train, which resulted in her death, it was not a matter, in which the departmental enquiry as contemplated under Rule 14(1) of the Rules 1991 could have been dispensed with inasmuch as Dinesh Kumar, husband of deceased Smt. Kavita was still available, who could have been called in enquiry and his statement could have been recorded if a full fledged departmental enquiry had been held by the respondents. However, the impugned order of dismissal dated 21.6.2009 does not give any reasons at all for dispensing with the departmental enquiry. Nor it is stated that as to why it had become reasonably impracticable to hold enquiry in spite of the fact that Dinesh Kumar, husband of the deceased Smt. Kavita Devi was available to give statement and full fledged enquiry could have been held and the petitioner could have been given full and reasonable opportunity for cross examination.

16. Further from the statement of Dinesh Kumar as recorded by the trial Court there was big crowd of passengers in the train; his wife was to catch the train, when her foot slipped and came under the wheels of the train. The respondents while passing the order of dismissal have not stated anywhere as to why other passengers could not have been called in the departmental enquiry to give evidence.

17. A Constitution Bench of the Supreme Court in the case in Union of India and Another Vs. Tulsiram Patel and Others, , has held in para 130 as follows :

What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry, but some instances by way of illustration may, however, be given. It would not be reasonably practicable to hold an inquiry where the

Government servant, particularly through or together with his associates, so terrorizes, threatens or intimidate witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so or where the Government servant by himself or together with or through others threatens, intimidates and terrorizes the officer who is the disciplinary authority or members of his family so that he is afraid to hold the inquiry or direct it to be held. It would also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails, and it is immaterial whether the concerned Government servant is or is not parry to bringing about such an atmosphere. In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final. A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the Government servant is weak and must fail.

18. In the light of the foregoing facts, in my opinion, the order of dismissal dated 21.6.2009 and appellate order dated 5.10.2010 having been passed in gross violation of principles of natural justice, besides being in violation of the statutory requirements of Rule 8(2) (b) of the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 are absolutely illegal and are liable to be quashed.

19. Accordingly, the present writ petition is allowed and the dismissal order dated 21.6.2009 and the appellate order dated 5.10.2010 are hereby quashed.

20. However, it will be open to the respondents to proceed afresh in accordance with law.

21. There shall be no order as to costs.