
(2013) 10 AHC CK 0034

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1605 (S/S) of 2010

Surendra Singh Thakur

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 30-10-2013

Acts Referred:

Citation : (2013) 10 ADJ 668 : (2014) 1 ESC 57 : (2013) 4 UPLBEC 3313

Hon'ble Judges : Devendra Kumar Upadhyaya, J

Bench : Single Bench

Advocate : Ravi Singh and N.C. Upadhyay, for the Appellant;

Judgement

Devendra Kumar Upadhyaya, J.—Heard Sri N.C. Upadhyay, learned counsel for the petitioner and learned Standing Counsel appearing for the State. The facts of the case which are not in dispute are that the petitioner while posted as Constable in the year 1998 at 30th Bn. P.A.C., Gonda proceeded on sanctioned earned leave for a period of 30 days w.e.f. 28.4.1998. During the period of leave, arising out of an incident which occurred on 20.5.1998 involving the petitioner, an F.I.R. was lodged at Case Crime No. 141 of 1998, under Sections 323, 504 and 506 I.P.C. and Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the petitioner at Police Station Kulhui, District Mahrajganj. The said case crime No. 141 of 1998 resulted in petitioner being charge-sheeted for the aforesaid offences and ultimately the learned Special Judge/Additional District Judge (FTC), Court No. 1, District Mahrajganj, vide judgment and order dated 20.3.2009 convicted the petitioner of six months" rigorous imprisonment with fine of Rs. 2,000/-, default whereof was to result in an additional three months" rigorous imprisonment.

2. The said conviction order dated 20.3.2009 is under challenge before this Court in Criminal Appeal No. 1675 of 2009 wherein an order has been passed on 27.3.2009 whereby petitioner was ordered to be released on bail during pendency of appeal. In the said appeal, this Court further passed an order on 8.4.2009 providing therein that execution of sentence awarded to the petitioner

by the trial Court shall remain suspended till the disposal of appeal.

3. It is based on the aforesaid conviction order that the petitioner has been dismissed from service by the impugned order dated 27.1.2010, passed by the Commandant, 30th Bn. P.A.C., Gonda.

4. The impugned order mentions that departmental proceedings under Rule 14(1) of the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 (hereinafter referred to "Rules, 1991") were initiated against the petitioner and concluded by the Assistant Commandant/Presiding Officer, 30th Bn. P.A.C., Gonda who submitted his findings on 20.8.2009 whereby recommendation was made to dismiss the petitioner as provided under Para 481 of the Police Regulations.

5. The impugned order further states that after receiving the findings from the Assistant Commandant/Presiding Officer, a show-cause notice dated 17.11.2009 was issued proposing dismissal of the petitioner from service and again petitioner was served with show-cause notice proposing the punishment alongwith findings of the Assistant Commandant/Presiding Officer dated 20.8.2009 on 18.11.2009. Petitioner in response to the aforesaid show-cause notice and findings dated 20.8.2009, after seeking time on several occasions, submitted his written explanation dated 22.1.2010 in which he stated that his past service records of 23 years have all along been spot-less and unblemished and further that the incident involving him in criminal case was a result of an old enmity in the village and he is victim of the circumstances on account of conspiracy hatched against him by his Pattidar.

6. The impugned order further states that during the period of earned leave on 20.5.1998 at around 8.00 a.m. some altercation took place between the complainant-Ram Charan Prasad, S/o Adharey Harijan concerning repair of bicycle and further that petitioner, though, had been getting his bicycle repaired yet he did not pay the repair charges to the complainant and owed Rs. 100/- to him. When, on account of unpaid Rs. 100/-, the complainant refused to repair the bicycle of the petitioner again, same was objected to by the petitioner by calling names. The impugned order also records that on objection by the complainant, he was beaten by cane by the petitioner and based on this incident an F.I.R. was registered against the petitioner under Sections 323, 504, 506 I.P.C. and 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 on 21.5.1998.

7. The plea of pendency of the criminal appeal and the interim order by which sentence awarded to petitioner by the learned trial Court was suspended was also taken by the petitioner in his written submission, which too appears to have been considered in the impugned order. However, placing reliance on the Government Order dated 12.10.1979, the Commandant, 30th Bn. P.A.C., Gonda rejected the aforesaid claim based on pendency of appeal and suspension of the sentence by stating that it is very well permissible in law to conduct

departmental proceedings without waiting for final result of the appeal filed against the order of conviction.

8. It is noticeable that impugned order categorically mentions that after the petitioner was convicted in the criminal case with six months" rigorous imprisonment coupled with a fine of Rs. 2,000/- departmental proceedings u/s 14(1) of aforementioned Rules, 1991 were conducted and statement of the petitioner was also recorded and thereafter he was furnished with the copy of the findings alongwith show-cause notice requiring him to give reply. The Commandant while passing the impugned order has stated that for conducting departmental proceedings, it is not necessary that conduct of the employee concerned complained against should relate to his duty; rather any misconduct by Government employee outside his duty can also be subject-matter of departmental proceedings. The impugned order further states that even during departmental proceedings, statement of the petitioner was recorded by the Presiding Officer and at that time petitioner did not make any request to get any witness examined. The impugned order, thus, states that the petitioner is dismissed under Rule 4(1)(a)(i) of Rules, 1991 as per the provisions contained in Para 481 of the Police Regulations.

9. From the aforementioned facts as culled from perusal of the impugned order and pleadings on record, solitary issue which emanates for consideration by the Court is as to whether the instant case can be said to be a case of punishment of dismissal under Rule 8(2)(a) of Rules, 1991 or is it punishment of dismissal referable to Rule 14(1) of the Rules, 1991.

10. Though, the departmental proceedings are said to have been instituted and conducted purportedly following the provisions of Rule 14(1) of the Rules, 1991 but perusal of the record produced by the respondents to the Court reveals that no such departmental proceedings were conducted along the lines of the provisions contained under Rule 14(1) of the Rules, 1991. At this juncture, it is relevant to observe that the procedure for conducting departmental proceedings in cases referred to in Rule 5(1) of the Rules, 1991 against any subordinate police officer is required to be conducted in accordance with the procedure laid down in Appendix-I of the Rules, 1991. Rule 5(1) of the Rules, 1991 provides that the cases in which major punishments of dismissal or removal from service or reduction in rank including reduction to a lower scale or to a lower stage in a time scale is to be passed shall be dealt with in accordance with the procedure laid down in sub-rule (1) of Rule 14 of the Rules, 1991.

11. In the instant case, punishment of dismissal from service is referable to Rule 4(a)(i) and as such, if it is a case of departmental proceedings, not covered by Rule 8(2)(a) of the Rules, 1991, then procedure as prescribed in Appendix-I appended to Rule 14(1) of the Rules 1991 was required to be followed. Appendix-I appended to Rule 14(1) of the Rules, 1991 is being quoted below:

Appendix I PROCEDURE RELATING TO THE CONDUCT OF DEPARTMENTAL

PROCEEDINGS AGAINST POLICE OFFICER [See Rule 14(1)]

Upon institution of a formal enquiry such police officer against whom the enquiry has been instituted shall be informed in writing of the grounds on which it is proposed to take action and shall be afforded an adequate opportunity of depending himself. The grounds on which it is proposed to take action shall be used in the form of a definite charge or charges as in form 1 appended to these Rules which shall be communicated to the charged police officer and which shall be so clear and precise as to give sufficient indication to the charged police officer of the facts and circumstances against him. He shall be required, within a reasonable time, to put in, in a written statement of his defence and to state whether he desires to be heard in person. If he so desires, or if the Inquiry Officer so directs an oral enquiry shall be held in respect of such of the allegation as are not admitted. At that enquiry such oral evidence will be recorded as the Inquiry Officer considers necessary. The charged police officer shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called as he may wish: provided that the Inquiry Officer may, for sufficient reasons to be recorded in writing, refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and statement of the findings and the ground thereof. The Inquiry Officer may also separately from these proceedings make his own recommendation regarding the punishment to be imposed on the charged police officer.

12. A perusal of the aforesaid provision contained in Appendix-I appended to the Rules, 1991 reveals that on institution of a formal enquiry, the delinquent subordinate police officer is required to be informed in writing the grounds on which action is proposed to be taken. It further provides that the grounds on which action is proposed to be taken shall be in the form of a definite charge or charges, meaning thereby, in case of departmental proceedings instituted or initiated under Rule 14(1) of the Rules, 1991, the delinquent subordinate police officer will be served with a charge-sheet. The said provision further provides that charge so deduced in writing against the charged officer shall be so clear and precise as to give sufficient indication to the charged police officer of the facts and circumstances against him. The provision further provides that written statement of defence will be required to be submitted on behalf of the charged officer and further, evidence etc. is required to be recorded by the Inquiry Officer. The charged subordinate police officer is also entitled to cross-examine the witnesses and to give his own evidence. The proceedings so conducted are required to contain sufficient record of the evidence and statement of the findings and the grounds etc.

13. It does appear from perusal of the impugned order that the matter at hand was treated a case of departmental proceedings by the respondents against the petitioner referable to Rule 14(1) of the Rules, 1991, as such what was legally incumbent upon the respondents was that the petitioner ought to have been served with charge-sheet as mandated in Appendix-I appended to the Rules,

1991. Admittedly, no charge-sheet to the petitioner was ever served as per requirement of Appendix-I appended to Rule 14(1) inasmuch as petitioner was not served with any charge-sheet wherein the charges against him, based on which action was proposed to be taken, were definite, clear or precise. What appears to have been done in the instant case is that after conviction order against the petitioner was passed by the learned trial Court on 20.3.2009, departmental proceedings were said to have been instituted under Rule 14(1) of the Rules, 1991 and certain findings of the Presiding Officer alongwith show-cause notice are also said to have been served upon the petitioner. The petitioner, however, was never served with any charge-sheet, neither any opportunity to him was given to submit his written statement of defence as mandated by the provision contained in Appendix-I appended to Rule 14(1) of the Rules, 1991.

14. Thus, I have no hesitation to hold that before passing impugned order of dismissal from service, the procedure prescribed for imposition of major penalty of dismissal from service under Rule 5(1) read with Rule 14(1)) and the Appendix-I appended to Rules, 1991 has not been followed by the respondents in this case. In such a situation, if it is assumed that it is a case referable to Rule 14(1) of the Rules, 1991 as is reflected from perusal of the impugned order, the impugned order is not liable to be sustained for want of adherence to the procedure prescribed for major penalties under the Appendix-I appended to the Rules, 1991, which makes the impugned order completely vitiated.

15. Coming to the issue as to whether the impugned order of dismissal can be saved looking to the provisions contained in Rule 8(2)(a) of the Rules, 1991 which provides that where the subordinate police officer is inflicted with either of the major penalty or dismissal or removal or reduction in rank on the ground of his conduct which has led to his conviction on a criminal charge, the Court may observe that in such cases what needs to be examined while judicially scrutinising such dismissal order is as to whether the penalty imposed is arbitrary or grossly excessive being out of proportion to the offence committed or whether the penalty is not called for under the facts and circumstances of the case.

16. In a case where punishment order is passed under Rule 8(2)(a) of the Rules, 1991, departmental proceedings as contemplated by the Rules, 1991 are not required to be instituted or conducted. In other words, if a person is dismissed on the ground of his misconduct leading to his conviction on a criminal charge, no departmental enquiry needs to be conducted.

17. It is to be noticed, however, that in the instant case the departmental, proceedings were conducted though, as observed above, these proceedings were not in consonance with the requirement of Appendix-I appended to the Rules, 1991.

18. Rule 8(2)(a) of the Rules, 1991 appears to be in pari materia with the

provision contained in Article 311(2)(a) of the Constitution of India which provides that in case a Government employee is dismissed or removed or reduced in rank on the ground of his conduct which has led to his conviction on a criminal charge, departmental proceedings were not required to be conducted.

19. In the instant case, if it is assumed that it is a case of punishment under Rule 8(2)(a) of the Rules, 1991, what needs to be considered by the Court is as to whether conduct of the petitioner leading to his conviction in the criminal case was such which warrants imposition of penalty of dismissal from service.

20. In the leading case pertaining to the aforesaid issue, Hon"ble Apex Court in the case of Union of India and Another Vs. Tulsiram Patel and Others, , has observed that where it comes to notice of the disciplinary authority that Government servant has been convicted on a criminal charge, the disciplinary authority must consider whether his conduct which has led to his conviction was such as it warrants imposition of the penalty and, if so, what penalty should be imposed. The relevant observation made by the Hon"ble Apex Court in the case of Union of India and another v. Tulsiram Patel (Supra) in para 127 is quoted below:

127. Not much remains to be said about clause (a) of the second proviso to Article 311(2). To recapitulate briefly, where a disciplinary authority comes to know that a Government servant has been convicted on a criminal charge, it must consider whether his conduct which has led to his conviction was such as warrants the imposition of a penalty and, if so, what that penalty should be. For that purpose it will have to peruse the judgment of the criminal Court and consider all the facts and circumstances of the case and the various factors set out in The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others, . This, however, has to be done by it ex parte and by itself. Once the disciplinary authority reaches the conclusion that the Government servant's conduct was such as to require his dismissal or removal from service or reduction in rank he must decide which of these three penalties should be imposed on him. This too it has to do by itself and without hearing the concerned Government servant by reason of the exclusionary effect of the second proviso. The disciplinary authority must, however, bear in mind that a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the concerned Government servant. Having decided which of these three penalties is required to be imposed, he has to pass the requisite order. A Government servant who is aggrieved by the penalty imposed can agitate in appeal, revision or review, as the case may be, that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case. If it is his case that he is not the Government servant who has been in fact convicted, he can also agitate this question in appeal, revision or review. If he fails in all the departmental remedies and still wants to pursue the matter, he can invoke the Court's power of judicial review subject to the Court permitting it. If the Court finds that he was not in fact the person convicted, it will strike down the

impugned order and order him to be reinstated in service. Where the Court finds that the penalty imposed by the impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed or not warranted by the facts and circumstances of the case or the requirements of that particular Government service the Court will also strike down the impugned order. Thus, in *Shankar Dass Vs. Union of India (UOI) and Another*, this Court set aside the impugned order of penalty on the ground that the penalty of dismissal from service imposed upon the appellant was whimsical and ordered his reinstatement in service with full back wages. It is, however, not necessary that the Court should always order reinstatement. The Court can instead substitute a penalty which in its opinion would be just and proper in the circumstances of the case.

21. It is well-settled that conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the Government employee concerned. What needs to be considered by the disciplinary authority, if he proceeds to impose penalty under Article 311(2)(a) of the Constitution of India or under Rule 8(2)(a) of the Rules, 1991 is as to whether the conduct leading to conviction of the Government servant in a criminal case is such which will justify the penalty, major or minor, to be imposed on the Government employee concerned. Further, in order to arrive at such a decision, the disciplinary authority/appointing authority is required to consider the decision of the criminal Court as well as other facts and circumstances of the case which led to his conviction. It may also be observed that while arriving at the decision of imposition of either of the major penalties, in such case, the disciplinary authority/appointing authority should keep in mind the settled legal proposition that conviction in every offence does not justify imposition of penalty. Disciplinary Authority should also bear in mind that the punishment imposed should not be excessive, that is to say, it must be commensurate with the gravity of the conduct which led to the conviction of the Government servant on criminal charge.

22. It is settled that it is not the conviction itself which should be the basis of any of the major penalty under Rule 8(2)(a) of the Rules, 1991, rather it is the nature of conduct leading to conviction in a criminal case on which decision of the appointing/disciplinary authority should be based. To put it differently, every conviction will not result in imposition of a major penalty under Rule 8(2)(a) of the Rules, 1991; rather it is the nature of conduct leading to conviction in the criminal case which will be the determining factor for taking a decision either to impose any of the major penalties or any lesser penalty.

23. In the instant case, if the impugned order is tested on the aforesaid legal principal, the Court comes to the definite conclusion that imposition of major penalty of dismissal imposed upon the petitioner was not warranted. The incident which led to petitioner's conviction in the criminal case appears to have arisen on account of a trivial dispute of alleged non-payment of Rs. 100/- which, according to the prosecution, the petitioner owed to the complainant as repair

charges for getting his bicycle repaired.

24. Hon"ble Apex Court in the Case of Shankar Dass Vs. Union of India (UOI) and Another, , has observed that appointing authority cannot be permitted to dismiss the Government employee under Clause (a) of the second proviso appended to Article 311(2) of the Constitution of India in a huff. It specifically lays down that dismissal order can be passed only on the ground of conduct which has led to conviction of the employee concerned on a criminal charge. However, putting a word of caution, Hon"ble Apex Court in the afore-mentioned case of Shankar Dass v. Union of India (Supra) further observed that power of dismissal in such cases, like every other power, has to be exercised fairly, justly and reasonably. The relevant portion of the judgment of Hon"ble Apex Court in the case of Shankar Dass v. Union of India (Supra), which is embodied in para-7 of the report, is extracted hereinbelow:

7. It is to be lamented that despite these observations of the learned Magistrate, the Government chose to dismiss the appellant in a huff, without applying its mind to the penalty which could appropriately be imposed upon him in so far as his service career was concerned. Clause (a) of the second proviso to Article 311(2) of the Constitution confers on the Government the power to dismiss a person from service "on the ground of conduct which has led to his conviction on a criminal charge". But, that power, like every other power, has to be exercised fairly, justly and reasonably. Surely the Constitution does not contemplate that a Government servant who is convicted for parking his scooter in a non-parking area should be dismissed from service. He may, perhaps, not be entitled to be heard on the question of penalty since clause (a) of the second proviso to Article 311(2) makes the provisions of that article inapplicable when a penalty is to be imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly. Considering the facts of this case, there can be no two opinions that the penalty of dismissal from service imposed upon the appellant is whimsical.

25. The incident involving the petitioner which resulted in his conviction by the learned trial Court, on the face of it, appears to have occurred on account of sudden anger which the petitioner might have been filled with on account of demand of Rs. 100/- which he owed to the complainant for getting his bicycle repaired. The offence, though entails criminal liability and if proved, is punishable, is the result of some petty altercation which took place between the petitioner and the complainant. The conduct of the petitioner in criminal law, if established, may be unpardonable, however, imposing major penalty of dismissal from service, in my considered opinion, in the facts and circumstances of the case, is wholly unwarranted.

26. For the reasons given above, the impugned order dated 27.1.2010, passed by the Commandant, 30th Bn. P.A.C., Gonda deserves to be quashed.

27. Accordingly, writ petition is allowed and the impugned order of dismissal dated 27.1.2010, passed by the Commandant, 30th Bn. P.A.C., Gonda as contained in Annexure No. 1 to the writ petition is hereby quashed with a further direction to the respondents to reinstate the petitioner in service forthwith, say within a period of six weeks from the date certified copy of this judgment is served up on the competent authority. Regarding the back wages to be paid to the petitioner from the date of order of dismissal i.e. w.e.f. 27.1.2010 till his reinstatement, the Court feels that interest of justice would be served if the petitioner is paid half of the total amount which would have accrued to him had he continued in service during this period. The said wages to the petitioner shall be paid within a period of three months from the date of production of a certified copy of this judgment.

There will be no order as to cost.