
(1993) 10 AHC CK 0058

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8837 of 1982

Suresh Chandra Tyagi

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 04-10-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 1 AWC 334

Hon'ble Judges : M.L.Bhat, J

Bench : Single Bench

Advocate : S.C. Tyagi, B.D. Pandey and K.N. Tripathi, for the Appellant;

Final Decision : Dismissed

Judgement

M.L. Bhat, J.—Petitioner was removed from service by the Respondent No. 3 on 26-6-1975. Against this order Petitioner seems to have filed a , petition before the Respondent No. 4 which was dismissed on 30-4-1982. Petitioner has now come up to this Court under Article 226 of the Constitution for quashing the order of his dismissal and for quashing the order of Respondent No. 4.

2. Facts out of which, this petition arises are briefly stated as under:

Petitioner was appointed as" Marketing Inspector in the Food and Civil Supplies Department in the year 1968. He was posted at Khurja in district Bulandshahr. Thereafter, he was promoted to the post of Senior Marketing Inspector in April 1972. Thereafter, he was reverted to the post of Marketing Inspector in November 1973 because his promotion was on adhoc basis. He was transferred to one or two places till the date of his removal from service.

3. He is alleged to have allowed a firm to sell Bajra without paying 50% levy, share of the Government. He was charge sheeted and on enquiry it was found that one of the charges against the Petitioner was proved. However, the Enquiry Officer seems to have been of the view that the Petitioner had put his signatures at the saying of Deputy Regional Marketing Officer and Marketing Inspector and

the Enquiry Officer proposed lesser punishment for the Petitioner. However, the punishing authority did not agree with the recommendation of the Enquiry Officer with regard to the punishment to be awarded to the Petitioner. The punishing authority issued a show cause notice to the Petitioner and proposed punishment of removal of service for him. The Petitioner was, thereafter," removed from the service and against the said order he seems to have filed a departmental appeal which was not decided. Thereafter, Petitioner moved a petition to Respondent No. 4 which also has been dismissed.

4. It is contended by the learned counsel for the Petitioner that report of the Enquiry Officer about the force exerted on the Petitioner to sign the release application form of the firm has not been discarded by the punishing authority and on the basis of the said report, if it is contended that the Petitioner was compelled to release the form in" favour of a particular firm without collecting 50% charges from the said firm under the pressure of his superior officers. Therefore, he could not be given major punishment of removal from service. The petitioner"s two officers who had pressurised him to commit the offence have not been punished, therefore, Petitioner could not be punished and at any rate punishment awarded to the Petitioner is excessive and disproportionate to the gravity of his offence.

5. I have heard the learned counsel for the Petitioner as also the standing counsel appearing for the other side.

6. Finding of fact arrived in this case by the Enquiry Officer against the Petitioner cannot be interfered with. Enquiry Officer has named two officers who are said to have forced the Petitioner to do something which was not permitted by law and by this act he has caused loss to the Government. The superior officers might have exercised their influence on the Petitioner and Petitioner might have done the wrongful act under their advice but that would not absolve the Petitioner from his liability.

7. He is primarily responsible for committing the offence. He has admitted that he committed the offence but his explanation was that he did it under the influence of his two superior officers. The actual wrong doer is the Petitioner himself. If he wanted -to prove his innocence he should have called his two superior offices who are said to have pressurised him to do a wrong thing in the witness box and if they had admitted that they were personally responsible for committing the offence or had pressurised the Petitioner to commit the offence that might be a mitigating circumstances in favour of the Petitioner. He had not desired to produce any defence witness during the enquiry, therefore, he cannot say that those two officers under whose pressure he is alleged to have committed the offence were not examined to ascertain the truth. On the basis of documents the correctness of the allegations were established. The Petitioner had signed the release form without collecting the Government fees. He wanted to defend himself on the plea that he had done it under the pressure of his superior offices, therefore, burden was on him to prove that he was pressurised

by the superior officers to do a wrongful thing and in fact he has done it under the pressure of his superior officers. That burden of proof has not been discharged by the Petitioner during the enquiry. Therefore, it is too late in the day for the Petitioner to raise such a plea in his writ petition and try to create an extenuating circumstances in his favour. The finding of fact is recorded by the Enquiry Officer and the Respondent No. 4 has also considered the matter . in its true perspective. Therefore, this Court cannot give the finding that Petitioner had done the wrongful act under the influence of his superior officers. That being so, this Court cannot interfere with the impugned order which is passed on enquiry report.

8. If the punishing authority has not agreed with the Enquiry Officer's report, he had reason to do so. Enquiry Officer has found the Petitioner guilty of causing loss to the State Government and had at the same time proposed a lesser punishment for it. Punishing authority has a prerogative to differ with the finding of the Enquiry Officer in respect of imposition of penalty and if the punishing authority has come to a conclusion that the Petitioner is required to be removed from the service that cannot be interfered within this- writ petition because the order passed by the punishing authority does not suffer from any illegality or infirmity.

9. There is no error apparent on the face of the recon the impugned order or in the findings of the Respondent No. 4. There is no merit in this Writ petition. Accordingly, the writ petition is dismissed. There will be no order as to costs.