

(2005) 10 AHC CK 0181

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 47559 of 2005

Umesh Chandra

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 24-10-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 1
Constitution of India, 1950 — Article 124(6), 21, 235
Criminal Procedure Code, 1973 (CrPC) — Section 239
Penal Code, 1860 (IPC) — Section 420, 467, 468
Uttar Pradesh Government Servants (Conduct) Rules, 1956 — Rule 3

Citation : (2006) 5 AWC 4519

Hon'ble Judges : Bharati Sapru, J; B.S. Chauhan, J

Bench : Division Bench

Advocate : N.C. Rajavanshi and M.K. Rajavanshi, for the Appellant; K.R. Sirohi, Amit Sthalekar and S.C., for the Respondent

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—The petitioner, an officer of the Judicial Services of this State, has challenged the order of the High Court on the administrative side dated 11.02.2005 (Annex. 11) whereby the petitioner has been deprived of three increments by withholding the same with cumulative effect. The matter has been contested by the High Court and a counter affidavit has been filed sworn by Shri P.K. Goel, Joint Registrar (Inspection) denying the allegations contained in the writ petition.

2. We have heard Shri N.C. Rajvanshi, learned Senior Counsel for the petitioner and Shri Amit Sthalekar, Advocate for the respondent High Court and the learned Standing Counsel for the respondent No. 1.

3. The petitioner, while working as Additional Chief Metropolitan Magistrate, Kanpur, granted bail on 29.06.1993 to an accused named Atul Mehrotra in Crime Case No. 3240 of 1992 u/s 420, 467, 468, I.P.C. arising out of Crime No, 216 of

1986, Police Station Collectorganj, Kanpur Nagar. Not only this, an application was moved by the said accused u/s 239, Cr.P.C. for discharge which was also allowed within 10 days vide order dated 06.08.1993. The said order of discharge was however reversed in a revision filed by the State later on and directions were issued to proceed against the accused.

4. The facts, in short, of the case? in which the petitioner had passed the aforesaid orders, were that Atul Mehrotra had been charged of having cheated the Punjab National Bank, Birharia Road Branch, Kanpur Nagar by defrauding it, an amount of Rs. 9,78,969/- (Rupees Nine Lacs Seventy Eight Thousand Nine Hundred Sixty Nine Only). The accused had been charged of having resorted to forgery and manipulation of bank accounts and documents. According to the prosecution case, the accused was liable to be punished for imprisonment with life on such charges being proved, and as such, the officer concerned committed a gross error of jurisdiction by extending the benefit of bail to the accused on the same day when he surrendered before the Court. Further, this was not a case where the accused ought to have been discharged and the order passed by the officer was, therefore, an act of undue haste.

5. The then Chief Manager, Punjab National Bank, Birhana Road Branch, Karipur Nagar made a complaint on the administrative side on 11.11.1995 to the then Hon'ble Chief Justice of this Court. The matter was entrusted to the Vigilance Department to enquire and report. After almost four and half years, the vigilance inquiry report was submitted on 14.03.2002 and on the basis of the same the petitioner was suspended on 30th April, 2002 and it was resolved to initiate disciplinary proceedings against the petitioner. A charge sheet was issued to the petitioner on 6th September, 2002 to which he submitted a reply on 22.10.2002. The enquiry was entrusted to Hon'ble Justice Pradeep Kant, who conducted the enquiry and submitted a detailed report dated 06.02.2002 (Annex-8). A show cause notice was issued to the petitioner "along with a copy of the enquiry report to which the petitioner submitted his reply on 19.05.2004 (Annex.10). The enquiry report was accepted by the Administrative Committee and the Full Court ultimately resolved to reinstate the petitioner but imposed the punishment of withholding of three annual grade increments with cumulative effect which order is under challenge in the present writ petition.

6. The grounds for challenge taken by the petitioner are, that the resolution of the Full Court does not disclose any reason for not accepting the explanation submitted by the petitioner. The next ground taken is that even assuming that the petitioner passed an erroneous order in law, the same did not necessarily warrant initiation of disciplinary proceedings and such an action would result in discouraging honest officers to undertake and discharge their duties independently. It has been further urged that there was absolutely no haste in the demeanour of the petitioner while conducting himself in passing orders in the case in question, and on the contrary, every accused is entitled to speedy justice or else delay in disposal of the same would be contrary to the spirit of Article 21

of the Constitution of India. The other grounds taken are that the petitioner was never put to notice on any such charge, about the manner in which the case of Atul Mehrotra was segregated from the cases of other co-accused and therefore, this fact could not have been made the basis for recording findings against the petitioner by the learned Inquiry Judge. It has been also submitted that the petitioner has acted in conformity with the guidelines and circulars issued by this Court while proceeding to pass orders and as such he cannot be held to have committed any misconduct as defined under the U.P. Government Servants Conduct Rules, 1956 (hereinafter called the "Rules 1956"). "

7. On behalf of the respondents, Shri Amit Sthalekar urged that the nature of the crime in which the petitioner had passed the orders, was a serious offence against the society and is an incident of cheating in a bank which resulted in defrauding the bank of a substantial amount of public money, as such the officer conducted himself in a manner which was- against the judicial norms and the granting of bail and discharging the accused within 10 days of the moving of the application was an act of absolute undue haste which clearly established the doubtful integrity of the petitioner. The enquiry report indicates that the learned Inquiry Judge found the charges proved against the petitioner for which detailed reasons have been specified, thus, there is no want of reasons or material for arriving at the conclusion for punishing the petitioner and as such the submissions advanced on behalf of the petitioner do not warrant any interference by this Court. Paragraphs 5-D and 5-F of the counter affidavit have been pointed out to indicate the conduct of the petitioner on past occasions just to show that the service record of the petitioner was not good and he had been given adverse entries for several years.

8. In the inquiry, the following two charges had been framed against the petitioner:

Charge No. 1.

That the petitioner on 29.06.1993, while posted as 2nd Additional Chief Metropolitan Magistrate, Kanpur Nagar, granted bail to main accused Atul Kumar Mehrotra in Criminal Case No. 3240 of 1992, State v. Atul Kumar Mehrotra and Ors., under : 420, 467, 468 Indian Penal Code Crime No. 216 of 1996 Police Station Collectorganj, Kanpur Nagar, illegal, against all judicial norms and propriety, knowing that in this matter accused persons committed forgery in the Bank records and thereafter the accused Atul Kumar Mehrotra fraudulently withdrawn an excess amount of Rs. 9,78,969.00 from his bank account and offence u/s 467 Indian Penal Code, is punishable with life imprisonment. Therefore, he had no jurisdiction to grant bail u/s 467 IPC, thus the aforesaid bail order dated 29.6.1993 was passed by him for extraneous consideration, and he thereby failed to maintain absolute integrity and complete devotion to duty, And thus, he committed mis-conducted with the meaning of Rule 3 of the Rules 1956.

Charge No. 2

That the petitioner on 06.08.1993 while posted as 2nd Additional Chief Metropolitan Magistrate, Kanpur Nagar, discharged the main accused Atul Kumar Mehrotra in Criminal Case No. 3240 of 1992, State v. Atul Kumar Mehrotra and Ors., under Sections 420, 467, 468 Indian Penal Code, Crime No. 216 of 1996 Police Station Collectorganj, Kanpur Nagar, illegally, against law, all judicial norms and propriety, knowing it that in this matter accused persons committed forgery in the Bank records and thereafter accused Atul Kumar Mehrotra fraudulently withdrawn an excess amount of Rs. 9,78,969.00 from his bank account, thus the aforesaid order dated 8.6.1993 was passed by him for extraneous consideration, and he thereby failed to maintain absolute integrity and complete devotion to duty. And thus, he committed mis-conducted with the meaning of Rule 3 of the Rules 1956.

9. Both the charges stood proved against the petitioner, as referred to above.

10. Shri Rajvanshi has submitted that once the order passed by him u/s 239, Cr.P.C. had been rectified in a revision and bail order could: be said to suffer from judicial error, the enquiry was not required. The Administrative Committee as well as the Full Court approved the said enquiry report Without any reservation. In these circumstances, the contention of the petitioner that there was no necessity of holding disciplinary proceedings cannot be accepted. The officer has been found to have acted totally in bad faith which reflects his reputation and integrity. It also demonstrates his lack of devotion to duty; and to say the least, it clearly amounts to acting in a defiant manner in an undeterred and unhesitating attitude. The Apex Court has repeatedly held that even if an order can be corrected on the judicial side, the same can also be subject matter of scrutiny by initiating disciplinary proceedings in the event- it is found that the officer has not acted in good faith. (Vide Govinda Menon Vs. Union of India (UOI), ; Union of India and others Vs. A.N. Saxena, ; Union of India and Others Vs. K.K. Dhawan, ; Union of India (UOI) and Others Vs. Upendra Singh, ; and The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another,).

11. In Government of Tamil Nadu Vs. K.N. Ramamurthy, , the Hon^{ble} Supreme Court held that exercise of judicial or quasi judicial power negligently having adverse affect on the party or the State certainly amounts to misconduct.

12. In M.H. Devendrappa Vs. The Karnataka State Small Industries Development Corporation, , the Hon^{ble} Supreme Court ruled that any action of an employee which is detrimental to the prestige of the institution or employment, would amount to misconduct.

13. In High Court of Judicature at Bombay through its Registrar Vs. Udaysingh Nimbalkar and Others, the Hon^{ble} Apex Court while dealing with a case of judicial officer held as under:-

"Since the respondent is a judicial officer and; the maintenance of discipline in the judicial service is a paramount matter and since the acceptability of the

judgment depends upon the credibility of the conduct, honesty, integrity and character of the officer and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the judicial officer, we think that imposition of penalty of dismissal from service is well justified."

14. This Court in *Ram Chandra Shukla v. State of U.P. and Ors.* (2002) 1 ALR 138 held that the case of judicial officers has to be examined in the light of] a different standard that of other administrative officers. There is much requirement of credibility of the conduct and integrity of judicial officers.

15. In *High Court of Judicature at Bombay through its Registrar Vs. Shirish Kumar Rangrao Patil and another*, , the Supreme Court observed as under:-

"The lymph nodes (cancerous cells) of, corruption constantly keep creeping into the vital veins of the judiciary and the need to stem it out by judicial surgery lies on the judiciary itself by its self-imposed or corrective measures or disciplinary action under the doctrine or control enshrined in Articles 235, 124(6) of the Constitution. It would, therefore, be necessary that there should be constant vigil by the High Court concerned on its subordinate judiciary and self-introspection.

When such a constitutional function was exercised by the administrative side of the High Court any judicial review thereon should have been made not only with great care and circumspection, but confining strictly to the parameters set by this Court in the aforesaid decisions.-----"

16. In *Government of A.P. Vs. P. Posetty*, , the Hon"ble Supreme Court held that sense of propriety and acting in derogation to the prestige of the institution and placing his official position under any kind of embarrassment may amount to misconduct as the same may ultimately lead that the delinquent had behaved in a manner which is unbecoming of an employee/Government servant.

17. In *All India Judges' Association Vs. Union of India and others*, , the Hon"ble Supreme Court observed that Judges perform a "function that is utterly divine" and officers of the subordinate judiciary have the responsibility of building up of the case appropriately to answer the cause of justice. "The personality, knowledge, judicial restraint, capacity to maintain dignity" are the additional aspects which go into making the Courts functioning successfully.

18. In *Tarak Singh and Another Vs. Jyoti Basu and Others*, , the Hon"ble Supreme Court observed as under:-

"Today, the judiciary is the repository of public faith. It is the trustee of the people. It is the last hope of the people. After every knock of all the doors fail, people approach the judiciary as a last resort. It is the only temple worshipped by every citizen of this nation, regardless of religion, caste, sex or place of birth because of the power he wields. A Judge is being judged with more strictness than others. Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary must take utmost care to see that the temple of justice does not crack from inside which will lead to a catastrophe in the justice delivery

system resulting in the failure of public confidence in the system. We must remember woodpeckers inside pose larger threat than the storm outside."

19. Thus, in view of the above, it is evident that in spite of the fact that an order can be corrected in appellate/revisorial jurisdiction but if the order smacks of any corrupt motive or reflects on the integrity of the judicial officer, domestic enquiry can be held.

20. The second submission raised, by Shri Rajvanshi that the petitioner had competence to pass the bail order does not require serious deliberation for the reason that it has been so held by the Hon'ble Inquiry Judge, though the legal position has seriously been disputed by Shri Sthalekar placing reliance upon the judgments in *Surendra and Ors. v. State of U.P.* 1976 AWC 227 (All); *Krishan Kumar v. State of U.P.* 1985 All LJ 1238; *Gurucharan Singh v. Delhi Administration* AIR 1978 SC 179; *Vijay Kumar v. State of U.P.* 1989 AWC 568; and *Prahlad Singh Bhati v. N.C.T. Delhi and Anr.* AIR 2001 SCW 1263, as the Inquiry Judge has held that even if the petitioner was competent to grant bail in cases where the offence was punishable with life imprisonment, he passed the order giving undue advantage to the main accused and did not keep in mind the gravity of the charge. This finding requires to be considered in view of the settled proposition of law that grave negligence is also a misconduct and warrant initiation of disciplinary proceedings.

21. Be that as it may, as the learned Inquiry Judge has accepted this position, it does not require any further probe. However, it has persistently been held by the Apex Court that while considering the bail applications, the gravity of charge is of paramount consideration. The Hon'ble Inquiry Judge has recorded the finding as under:-

"There is no specific bar in granting bail in a case punishable with imprisonment for life, by a Magistrate but while granting the bail the Court has to keep in mind the nature of the accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour and standing of the accused, circumstances which are procurable to the accused, reasonable possibility of securing the presence of the accused at the trial, the larger interest of the public or state and other similar considerations. Discretion to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in arbitrary manner....

Charged Officer has granted the bail to accused Atul Mehrotra mainly on two grounds, firstly the hand writing expert had opined that it cannot be ascertained that the disputed signatures and admitted signature are made by one person; secondly that parity was given to accused Atul Mehrotra with the co-accused Bishen Swarup. Prima facie it is evident from the record that accused Bishen Swarup is alleged to be the carrier of accused Atul Mehrotra. Atul Mehrotra was allegedly the main person who had opened the account and withdrawn the amount from the Bank, so the case of accused Bishen Swarup stands on different

footing. It was a case of fraud of an amount of more than Rs. 9.5 lacs played upon a Bank. Facts and circumstances of the case reveal that the bail appears to have been granted in haste.... Although the case u/s 420, 467 and 468 IPC was triable by the Court of Magistrate, First Class but normally in a matter of fraud of such huge amount i.e. 9,8,969/- which was of a considerable value in the year 1986, care should have been taken by the Charged Officer before granting bail but the circumstances and manner in which the bail was granted establish that the same was done in haste."

22. In view of the above, it cannot be held that the petitioner had acted in a reasonable manner. He had proceeded in haste and that may also be taken note of that anything done in undue haste can also be termed as arbitrary and cannot be condoned in law. (Vide Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. Vs. Devendra Kumar Jain and Others, ; and Bahadursinh Lakhubhai Gohil Vs. Jagdishbhai M. Kamalia and Others,).

23. The Hon"ble Inquiry Judge has also found the second charge proved as under:-

"Though there is no direct evidence of passing the order of bail on extraneous consideration and even if it is accepted that the charged officer was having jurisdiction to grant bail to the accused Atul Mehrotra, for the offences punishable u/s 420, 467, 468 IPC a combined effect of charge No. 1 and 2 would make out that the officer first granted bail on the same day, to the main accused Atul Mehrotra i.e. 29.6.93, the day of his surrender and thereafter when the accused moved an application for discharge on 26.7.93 he was discharged within 10 days from the date of moving the application for discharge that too, by giving him a different treatment as against the two other co-accused and by little considering that Atul Mehrotra was the main accused who allegedly had opened the Bank account and was charged of committing forgery in the Bank Accounts resulting in misappropriation of an amount of more than Rs. 9.5 lacs. Both the aforesaid orders thus extended undue advantage to the accused Atul Mehrotra.

The order of discharge was later on set-aside In revision and the trial thus has proceeded against Atul Mehrotra, also."

(Emphasis added).

24. It is thus evident that the main accused had been given undue and unwarranted advantage, though the co-accused who happened" to be merely carrier of the main accused, was deprived of the same treatment.

25. In this facts situation, the submissions made by Shri Rajvanshi are not worth acceptance.

26. It has further been submitted by Shri Rajvanshi that the Administrative Committee as well as the full Court had not recorded any reason while passing the impugned order and rejecting the representation of the petitioner, therefore," the order impugned stands vitiated. This contention lacks merit for the reason

that this is a matter of common knowledge that inquiry report is accepted first by the Administrative Committee after full deliberations and only then it is being made available to the delinquent officer for making comments. It is reconsidered after receiving the comments, of the delinquent officer and having deliberations. The matter is then placed before the Full Court wherein the further deliberations take place. Thus a very cumbersome procedure is prescribed to have the check and balance and to rule out the possibility of arbitrariness, as deliberations take place in Full Court, An order does not become bad merely because reasons have not been recorded unless the delinquent succeeds in establishing that such a decision was not permissible on the report submitted by the Inquiry Judge or the inquiry report itself was perverse being based on no evidence or contrary to the evidence on record. (Vide Ram Kumar Vs. State of Haryana, ; Somdutta v. Union of India and Ors., AIR 1989 SC 414; S.N. Mukherjee Vs. Union of India, ; Union of India and others Vs. E.G. Nambudiri, ; State Bank of Bikaner and Jaipur and others Vs. Prabhu Dayal Grover, ; State of U.P. Vs. Yamuna Shanker Misra and another, ; Badrinath Vs. Government of Tamil Nadu and Others, ; and State of U.P. v. Narendra Nath Sinha AIR 2001 SCW 3380) .

27. In National Fertilizers Ltd. v. P.K. Khanna AIR 2005 SCW 4333, the Apex Court reiterated the same view observing as under:- i

"The concurrence of the Disciplinary Authority with the reasoning and conclusion of the Inquiry; j Officer means that the Disciplinary Authority has: j adopted the conclusion and the basis of the conclusion i as its own. It is not for the Disciplinary Authority to restate the reasoning."

28. Recording of reasons is warranted necessarily in case the Disciplinary Authority" does not agree with the findings recorded by the Inquiry Officer. Therefore, we find no substance in the aforesaid submission at all.

29. It has also been urged on behalf of the petitioner that in the charge sheet the issue of separation of the case of Atul Mehrotra from other accused had not been mentioned, though taken into consideration by the Hon"ble Inquiry; Judge as well as by the Administrative Committee and Full Court, thus the inquiry report itself stood vitiated. We have given serious thought to the issue. Firstly, if this much part of the case, i.e. separation of cases, is separated and ignored, it will not tilt the balance in favour of the petitioner. Secondly, it is not petitioner's case that it has caused any prejudice to him. " he case cannot be decided on mere technicalities as such an order is required to be examined to the touchstone of doctrine of prejudice.

30. Unless in a given situation the aggrieved party makes out a case of prejudice or injustice, some infraction of law would not vitiate the order/inquiry/selection/result. (Vide Jankinath Sarangi Vs. State of Orissa, ; Sunil Kumar Banerjee Vs. State of West Bengal and Others, ; Major G.S. Sodhi Vs. Union of India (UOI), ; Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., ; Krishan Lal Vs. State of Jammu & Kashmir, ; Rajendra Singh Vs. State of Madhya Pradesh and

others, ; State Bank of Patiala and others Vs. S.K. Sharma, ; S.K. Singh Vs. Central Bank of India and Others, ; Union of India (UOI) and Others Vs. Major A. Hussain (IC-14827), ; State of U.P. Vs. Shatrughan Lal and Another, ; State of U.P. v. Harendra Arora and Anr. 2001 SC 2319; and Debotosh Pal Choudhary Vs. Punjab National Bank and Others,

31. Order XIV Rule 1 of the CPC provides for settlement of issues and determination of suits on issues of law or on issues agreed upon. It is settled legal proposition that in a case where parties went to trial with the knowledge that a particular question was in issue and led evidence accordingly, though no-specific issue had been framed thereon, the trial cannot be held to be bad. (Vide AIR 1930 57 (Privy Council) ; Nagubai Ammal and Ors. v. B. Shama Rao and Ors. AIR 1656 SC 593 ; Nedunuri Kameswaramma Vs. Sampati Subba Rao, ; Kunju Kesavan Vs. M.M. Philip I.C.S. and Others, ; Kali Prasad Agarwalla v. Bharat Coking Coal Ltd. and Ors., AIR 1989 SC 1530; and Sayeda Akhtar Vs. Abdul Ahad,).

32. Even in a criminal trial, where standard of proof is much higher, and the case is required to be proved beyond reasonable doubt, such omission in the charges etc, is not fatal unless the accused establishes that his cause got prejudiced. In State of A.P. Vs. Thakkidiram Reddy and Others, , the Apex Court while dealing with a similar issue relied upon its earlier judgment in Willie (William) Slaney Vs. The State of Madhya Pradesh, , wherein it has been observed that in judging a question of prejudice, as of guilt, Courts must act with a broad vision and look to the substance and not to technicalities, and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given full and fair chance to defend himself, and rejected the contention that for omissions and errors in the charge, the trial stood vitiated.

33. Thus, in view of the above, as Mr. Rajvanshi does not suggest that petitioner's cause has been prejudiced by any means or by not framing the charge on the issue of separation of proceedings in case of Atul Mehrotra from other accused, the grievance remained mere technical and, thus, does not; require to be considered at all. Submissions in this regard are preposterous and thus rejected.

34. In a case like the one in hand, the Court can review only the "decision making procedure" and not the "decision" of the authority). The Court, not being a Court of Appeal, is not competent to substitute its own view on factual aspects of the case.

35. There is also a very little scope of judicial review on the quantum of punishment, and it has always been held that the Court can review to correct errors of law or fundamental procedural requirements, which may lead to manifest injustice and can interfere with the impugned order in "exceptional

circumstances".

36. In judicial review, the Court has no power to trench on the jurisdiction to appreciate the evidence and to arrive-at its own conclusion. Judicial" review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the-conclusion, which the authority reaches,-is necessarily correct in the view of the Court or the Tribunal. When the conclusion reaches by the authority is based on evidence, the Court or the Tribunal is devoid of power to. re-appreciate the evidence and would come to its own conclusion on the proved charges. The only consideration the Court/Tribunal has, in its judicial review, is to consider whether the conclusion is based on the evidence on record that support the finding, or whether the conclusion is based on no evidence." "

37. We have examined the matter microscopically and Shri Rajvanshi could not establish that the findings recorded by the Hon"ble Inquiry Judge were perverse and could not have been accepted by the Court. It is not the grievance of the petitioner that the inquiry has not been conducted in accordance with the statutory rules or there has been any violation of principles of natural justice or the punishment imposed is disproportionate to the misconduct. Petitioner had not only proceeded in undue haste but extended undue and unwarranted advantage to the main accused Atul Mehrotra, who was enlarged on bail without considering the gravity of the charge. Even if the petitioner had competence to entertain the bail application, there was no occasion for the petitioner to grant bail to the main accused on the ground of parity, if the co-accused carrier of the main accused had earlier-been enlarged on bail, for the reason that in such a fact-situation, there could be no parity. Undoubtedly, the learned Inquiry Judge had proceeded with the presumption that the petitioner was competent to entertain the bail application but also recorded the finding that though there was no direct evidence of passing the bail order on extraneous consideration, even otherwise the charge against the petitioner stood established. In such cases, there cannot be direct evidence for granting the relief on extraneous consideration by the Presiding Officer. However, presumption can be drawn from the attending circumstances.

38. In such a fact situation, we do not see any cogent reason to interfere in the matter. Petition lacks merit and is accordingly dismissed.