
(2013) 03 AHC CK 0305
In the Allahabad High Court
Case No : Writ Petition No. 1926 of 1997

Vijai Prakash Rai

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-03-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 5 Rule 15
Constitution of India, 1950 — Article 226
Police Act, 1949 — Section 7

Citation : (2013) 5 ALJ 181

Hon'ble Judges : Shabihul Hasnain, J

Bench : Single Bench

Advocate : Amit Bose, for the Appellant;

Judgement

Shabihul Hasnain, J.—Heard learned counsel for the petitioner and the learned standing counsel. The instant writ petition arises out of the order dated 26.9.2006 passed by the Commandant, 33rd Battalion, P.A.C. Jhansi, whereby the petitioner has been removed from service purportedly on the ground that certain allegations levelled against him, have been found proved in departmental proceedings conducted against him u/s 7 of the Police Act.

2. The facts giving rise to the present writ petition are that on 28.7.1995, the petitioner was produced in the orderly room of the 42nd Battalion, P.A.C., Naini, Allahabad before the Commandant of the Battalion for action in respect of an alleged act of misconduct committed by the petitioner. When the petitioner appeared in the orderly room concerned, the Commandant required the petitioner to explain his act of not proceeding for duties with his company when he was deputed for duties at post Rajruppur on 7.6.1995.

3. The petitioner in the orderly room denied the allegations levelled against him but despite the said denial, the petitioner was awarded the punishment of drill for a period of ten days. Later the petitioner submitted before the Commandant that he did not accept the said punishment as the said punishment has been

illegally imposed upon him.

4. On 28.7.1995, by an order passed by the Commandant, the petitioner was placed under suspension on the allegations that he had refused to accept the punishment imposed upon in the orderly room. During pendency of his suspension order, the petitioner was transferred to 33rd Battalion, Jhansi on 22.11.1995. It has been said in para-6 of the writ petition, that since the petitioner was not required to perform any duties while under suspension, there was no question of his transfer, therefore, the petitioner did not join at 33rd Battalion. Still a charge-sheet was issued by the Assistant Commandant, 33rd Battalion requiring the petitioner to submit a reply to the charge-sheet that he had committed misconduct in not accepting the punishment awarded to him in the orderly room by the Commandant, 42nd Battalion.

5. It has been alleged in para-8 of the petition that instead of serving the charge-sheet as well as notice on the petitioner, they were served on his brother and service thereof on the petitioner, the enquiry officer proceeded to record the evidence in absence of the petitioner. After examining the witnesses in support of the charges, the enquiry officer recorded his finding to the effect that the charges have been proved and recommended the punishment of removal of the petitioner from service.

6. A show cause notice was issued against the petitioner with regard to proposed punishment, but the said notice was also served on the petitioner's brother and not on him, but treating the said service on the petitioner, the punishment of removal from service has been passed against the petitioner.

7. Learned counsel for the petitioner has argued that the entire departmental proceedings against the petitioner were conducted ex parte behind his back. Neither the charge-sheet, nor notice in respect of various dates fixed in the inquiry nor show-cause notice were served on the petitioner, but in fact the same were served on his brother. The presumption of service could not have been drawn in the manner the service have been deemed sufficient. He was also neither informed about recording of evidence nor he was given a chance to produce his defence witness. Therefore, the departmental proceedings against the petitioner and imposing the punishment of removal from service on the ground that he did not accept the punishment awarded to him in the orderly room, is patently illegal and without jurisdiction.

8. Learned standing counsel has produced the record, which were directed to be brought before this Court. It was also to be presented by the Court's order. The original record shows that on 7.5.1996, special messenger took the charge-sheet for delivery upon the petitioner, but the petitioner said to be not present in the house and in his absence charge-sheet was served on his brother Jai Prakash Rai. Subsequently, another letter was sent by special messenger for recording evidence of the prosecution witnesses and argument. Letter was received once again by Jai Prakash on 23.3.1996. The date for recording prosecution evidence

and the argument was postponed and once again it was fixed as 10.5.1996. This information was again sent and which was received by his brother Jai Prakash on 7.5.1996. Since the petitioner never turned up one more opportunity was given to him and letter was written on 31.5.1996, by which date for recording evidence and argument was fixed as 4.6.1996. This information was received by the relative of the petitioner Sri Lalta Rai.

9. One prosecution witness appeared on the fixed date 4.6.1996 and since the petitioner was not forthcoming, the statement of the prosecution witness was recorded in absence of the petitioner. Thereafter, 30.6.1996 was fixed for examining the prosecution witness and this information was sent by special messenger to the petitioner but in his house one Baba Bhole Nath Rai received this notice on 24.6.1996. The petitioner did not appear again. Again 14.7.1996 was fixed for recording statement of the prosecution witness and by special messenger this information was sent and was received by Chandra Prakash Rai on 10.7.1996. The statement of other prosecution witnesses Mewa Lal Singh and Shiv Pujan were recorded on 26.7.1996. and for this date, information was sent to the petitioner on 21.7.1996. Again the information letter was received by the brother of the petitioner Jai Prakash Rai. Lastly, time was granted and the date was fixed for the petitioner to present any defence witness or to cross-examine the prosecution witness on 8.8.1996. Special messenger was once again sent and information was given on 31.7.1996, which was received by Chandra Prakash Rai, but the petitioner did not present himself. The inquiry was completed. The order of removal was passed against the petitioner on 26.9.1996 and when said letter was sent, the petitioner was again found absent in his house and hence in presence of Manoj Kumar Rai son of Virendra Rai and Jai Prakash son of Jitendra Rai, the order of removal was pasted at the door of the petitioner on 28.9.1996.

10. Provision for service has been provided under Order V, Rule 15 of the Civil Procedure Code, which is as under:--

15. Where service may be made on an adult member of defendant's family-- Where in any suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf service may be made on any adult member of the family, whether male or female, who is residing with him.

11. It is clear from the above, that every effort was made by the department to procure the presence of the petitioner. There was deliberate attempt on the part of the petitioner not to appear before the inquiry officer. The argument that no date and time was fixed, is misconceived. The petitioner was in the know of the proceedings, dates and the time but he deliberately avoided the proceedings. He wants to take benefit of oft -quoted law, which has become common ground against departmental proceedings. Courts have declared that if no time, date and

place has been fixed for oral inquiry, then the inquiry will be vitiated. A writ Court sitting in Art. 226 jurisdiction has to see that conduct of the petitioner is also relevant factor in administration of justice.

12. The petitioner admits that he was suspended but was ignorant about the disciplinary proceedings and at the same time never moved any application for his reinstatement against the suspension. The record shows that the petitioner was suspended on 28.7.1995. The removal order has been passed on 26.9.1996. More than an year had passed. It is strange that a person who remained under suspension for one year, does not make any inquiry from his officers as to why he is being placed under suspension without any inquiry. He never tried to find out whether any inquiry is going on or not in his matter. Such a conduct is not normal. It cannot be assumed that the petitioner is simply enjoying the suspension without making any effort to get himself reinstated or waiting for the inquiry to be initiated after a year or more. Presumption arises against him.

13. The fact that almost four members of his family, and near relatives have been served with different copies of summon and the fact that removal order was also pasted at his residence, goes to show that there was deliberate avoidance on his part. He did not want to cooperate in the inquiry and later take up a plea that the inquiry was not in accordance with law.

14. If knowledge of law becomes source of its abuse, then the equity Court will be within jurisdiction to see whether the petitioner is approaching the Court with clean hands or not. This Court is of the considered view that in the present case, hands of the petitioner are not clean. The Court refuses to entertain pleas of the petitioner at the threshold. Merits apart, the writ Court will not exercise jurisdiction in favour of a person who is trying to avoid due process of law and does not co-operate in the inquiry and later, takes up a plea that the law has not been kind and judicious to him. The writ petition is devoid of merit, it is accordingly dismissed.