
(2001) 08 AHC CK 0117
In the Allahabad High Court
Case No : C.M.W.P. No. 34689 of 1997

Vijendra Pal Singh

APPELLANT

Vs

State of Uttar Pradesh and Another

RESPONDENT

Date of Decision : 31-08-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 4 AWC 2738 : (2001) 91 FLR 409 : (2001) 3 UPLBEC 2659

Hon'ble Judges : Onkareshwar Bhatt, J;O.P. Garg, J

Bench : Division Bench

Advocate : Gopal Krishna, S.U. Khan, Prem Babu Verma and Dharmendra Singh, for the Appellant; S.M.A. Qazmi and Sudhir Agrawal, for the Respondent

Final Decision : Allowed

Judgement

Onkareshwar Bhatt, J.—By means of this writ petition under Article 226 of the Constitution of India, the petitioner has prayed for quashing of the order of removal dated 11.7.1997, Annexure-9 to the writ petition. The petitioner has also prayed for issuance of a writ, order or direction in the nature of mandamus commanding the respondents to take the petitioner in service without any interruption or break and further to pay all the benefits as admissible under Rules.

2. Affidavits have been exchanged and we have heard Sri S. U. Khan, learned counsel for the petitioner and Sri Sudhir Agarwal, learned counsel for the respondents.

3. The petitioner is a direct recruit to Higher Judicial Service and he joined the service on 7.12.1986. From June. 1991 till May 31, 1994, the petitioner was working as Additional District and Sessions Judge at Budaun. At Budaun he performed the duties of Incharge District Judge from September, 1992 till June 1, 1993. The District Magistrate and the Superintendent of Police, Budaun, made complaints against the petitioner. The District Judge called for comments of the

petitioner which was submitted by him. The District Judge reported his observations on the complaint. The then Inspecting Judge recommended that regular disciplinary enquiry be instituted against the petitioner on 2.6.1995. The petitioner was placed under suspension by order dated 4.11.1995. The charge-sheet was issued against the petitioner on 10.4.1996 and six charges were levelled against him. The petitioner submitted his reply to the charge-sheet. The Inquiry Judge submitted her report on 8.10.1996 and held the petitioner guilty of the charges No. 2, 3, 4 and 5. He was exonerated from the charges No. 1 and 6. The Inquiry Judge's recommendations were placed before the Administrative Committee and before the full court which recommended for punishment of removal of the petitioner from service. The respondent No. 1 accepted the recommendations and passed the order of removal on 11.7.1997, which is impugned in this writ petition.

4. The charges No. 2, 3, 4 and 5 pertain to grant of bail in four cases. The finding of the Inquiry Judge regarding grant of bail on charge No. 2 is that "the reasons recorded in the bail order are not at all convincing and that bail order is not a judicious order and, therefore. It is improper." It has further been held that "so far as the motive for granting this improper bail is concerned, the District Judge in his, report has opined that there is no evidence against this order regarding illegal gratification and bribe, etc. The Inquiry Judge has further found that "bail has been granted improperly to all the three accused in this case. If it is not for illegal gratification, it could be for favouring the said accused. It cannot, therefore, be said that the charge against the petitioner is without any basis." On the third charge, the finding is that "there is no doubt that the delinquent officer has granted bail most improperly. the order is wholly perverse." On charge No, 4, the Inquiry Judge has found that "..... there was absolutely no justification for grant of bail in the facts and circumstances of this case. Regarding the motive behind the grant of bail, it is not possible to allege illegal gratification in the absence of any positive proof. However, the conclusion that bail was granted to bestow favour on the accused is inescapable. On charge No. 5 the Inquiry Judge has found that "to allow the third application was, in fact, unwarranted. The profit and motive theory taken into consideration at this stage shows total lack of understanding of criminal law. Some kind of extraneous consideration for granting bail in this manner cannot be ruled out. The grant of bail to above accused is, therefore, most improper."

5. The Inquiry Judge in her report has mentioned that on the question of allegations and consequent charge of illegal gratification and bribe, etc.. the District Judge was directed to hold enquiry and as per his report, the allegations of illegal gratification and bribe, etc. were not found substantiated as there was no proof forthcoming that the bails were granted though improperly, but for extraneous consideration or bribe, etc. The Inquiry Judge accepted this report and held "the officer not guilty of accepting any bribe or illegal gratification. The Inquiry Judge held that "so far as the charge of misconduct is concerned, by granting bails improperly, the petitioner has committed impropriety and violated

the settled principles of grant of pre- trial bail. The Inquiry Judge further held that "the manner in which the officer has granted bail in four cases, have been granted recklessly completely ignoring the settled norms of granting bails. He is, therefore, guilty of misconduct to this extent."

6. The finding of the Inquiry Judge goes to show that the petitioner has committed impropriety and violated the settled principles of grant of pre-trial bail and the bail has been granted in four cases recklessly. To the above extent, the petitioner has been found guilty of misconduct.

7. On behalf of the petitioner, it has been contended that the orders of grant of bail passed by him were in exercise of judicial powers and at the most, the orders could be wrong and erroneous and that the charges do not disclose any misconduct. It is also contended that copy of the note dated 2.6.1995 prepared by the Inspecting Judge was not provided to him which has vitiated the enquiry, that in any case punishment awarded to the petitioner is wholly disproportionate.

8. For initiating disciplinary proceedings against the officer performing judicial or quasi-judicial functions, guidelines have been laid by the Apex Court in the case of Union of India and others Vs. A.N. Saxena, . It has been laid down that:

"It is true that when an officer is performing judicial or quasi-judicial functions disciplinary proceedings regarding any of his actions in the course of such proceedings should be taken only after great caution and a close scrutiny of his actions and only if the circumstances so warrant. The initiation of such proceedings, it is true, is likely to shake the confidence of the public in the officer concerned and also if lightly taken likely to undermine his independence. Hence, the need for extreme care and caution before initiation of disciplinary proceedings against an officer performing judicial or quasi-judicial functions in respect of his actions in the discharge or purported to discharge his functions. But it is not as if such action cannot be taken at all. Where the actions of such an officer indicate culpability, namely, a desire to oblige himself or unduly favour one of the parties or an improper motive there is no reason why disciplinary action should not be taken."

9. Again in the case of Union of India and Others Vs. K.K. Dhawan, , it has been observed that :

"Thus, we conclude that the disciplinary action can be taken in the following cases :

(i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty ;

(ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty :

(iii) if he has acted in a manner which is unbecoming of a Government servant ;

(iv) If he had acted negligently or that he omitted the prescribed conditions

which are essential for the exercise of the statutory powers ;

(v) if he had acted in order to unduly favour a party :

(vi) if he had been actuated by corrupt motive however, small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great."

10. Again in the case of Zunjarrao Bhikaji Nagarkar Vs. U.O.I. and Others, It has been held that:

"To maintain any charge-sheet against a quasi-Judicial authority something more has to be alleged than a mere mistake of law, e.g. in the nature of some extraneous consideration influencing the quasi-Judicial order. If every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi-judicial officers like the appellant. The entire system of administrative adjudication whereunder quasi-judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings. When we talk of negligence in a quasi-judicial adjudication, it is not negligence perceived as carelessness, inadvertence or omission but as culpable negligence. A wrong interpretation of law cannot be a ground for misconduct.

11. In a very recent judgment delivered in Civil Appeal No. 5182 of 2001 arising out of SLP (Civil) No. 5132 of 2001, P.C. Joshi v. State of U.P. and Ors. decided on 8.8.2001, the Supreme Court has observed that :

"That there was possibility on a given set of facts to arrive at a different conclusion is no ground to indict a Judicial officer for taking one view and that too for alleged misconduct for that reason alone.

If in every case where an order of a subordinate court is found to be faulty a disciplinary action were to be initiated, the confidence of the subordinate judiciary will be shaken and the officers will be in constant fear of writing a judgment so as not to face any disciplinary enquiry and thus judicial officers cannot act independently or fearlessly.

..... merely because the order is wrong or the action taken could have been different does not warrant initiation of disciplinary proceedings against the Judicial officer."

12. We have mentioned the findings of the Inquiry Judge on the four charges earlier. The findings show that bail order was not Judicious order and, therefore, it was improper, the order is wholly perverse and there was absolutely no Justification for grant of bail in the facts and circumstances of the case. The Inquiry Judge has held in connection with the grant of bail relating to charge No. 2 that if it is not for illegal gratification, it could be for favouring the said accused. Similar is the observation regarding bail order which relates to charge

No. 4. Regarding the bail order in respect of charge No. 5 the Inquiry Judge has held that extraneous consideration for granting bail in this manner cannot be ruled out. So far as the finding regarding charge No. 5 is concerned, the same is contradicted by later finding of the Inquiry Judge, who has held that the officer is not guilty of accepting any bribe or illegal gratification. The concluding portion of the finding of the Inquiry Judge shows the order granting bail in four cases have been granted recklessly, completely ignoring the norms of granting bails and the petitioner was found guilty of misconduct to that extent. The report of the Inquiry Judge shows that the inquiry Judge has examined the bail orders to arrive at a conclusion whether bail should have been granted in each one of those cases or not. The examination of each one of the charges in relation to grant of bail the Inquiry Judge proceeded to consider the case on merits. There can be no doubt that the orders passed on bail applications were passed in Judicial proceedings by the petitioner. We have examined the findings of the Inquiry Judge and it is clear that inferences have been drawn on merits of the cases. No specific material was brought on record to show or prove that there was any mala fide or extraneous reasons on the part of the petitioner in passing the orders. There is categorical finding that the officer is not guilty of accepting any bribe or illegal gratification.

13. The petitioner was a direct recruit, who joined Judicial service in December, 1986. He was Incharge District Judge from September, 1992 to July, 1993, by which time he had put in about 6-1/2 years of service. The above period of 6-1/2 years was not sufficient to find that he was an experienced officer from whom sufficient knowledge of criminal law was expected, as has been found by the Inquiry Judge. There is definite finding by the Inquiry Judge that the petitioner was not guilty of accepting any bribe or illegal gratification. Any error of judgment which may be unintentional cannot be considered to be an act of misconduct. Suspicion cannot be substituted for a proof. Presumption or assumption cannot lead to a conclusion that the petitioner has committed an act of misconduct with oblique motive for extraneous consideration. The bail orders which have been passed by the petitioner have been passed in exercise of judicial functions in judicial proceedings. The orders granting bail by the petitioner was passed after taking one view in the matter. The possibility that a different conclusion is possible, is no ground to indict a Judicial Officer for having taken that view. Nothing has been brought on record to show that the order of grant of bail has been upset. The finding of the Inquiry Judge that the bail order was granted to bestow favour on the accused is based on conjecture and surmises in view of the positive finding that the petitioner is not guilty of accepting any bribe or illegal gratification.

14. The Apex Court in the case of P. C. Joshi v. State of U. P. and Ors. (supra) has mentioned its observations in the case of Ishwar Ghana Jain a. High Court of Punjab and Haryana and Anr. 1988 Supp (1) SCR 396, as follows :

".....While exercising control over the subordinate Judiciary under the

Constitution, the High Court is under a constitutional obligation to guide and protect judicial officers. An honest, strict judicial officer is likely to have adversaries. If complaints are entertained on trifling matters relating to judicial officers, which may have been upheld by the High Court on the judicial side, and if the judicial officers are under constant threat of complaints and enquiry on trifling matter, and if the High Court encourages anonymous complaints, no judicial officer would feel secure, and it would be difficult for him to discharge his duties in an honest and independent manner.....An independent and honest Judiciary is a sine qua non for the Rule of law. It is imperative that the High Court should take steps to protect its honest judicial officers by ignoring ill-conceived or motivated complaints made by unscrupulous lawyers and litigants (p. 409)."

15. The next contention of the petitioner is that copy of note dated 2.6.1995 prepared by the Inspecting Judge was not supplied to him. In the case of State Bank of Patiala and others Vs. S.K. Sharma, it has been held that non-furnishing of copies of statements of the witnesses has not vitiated the enquiry. The Supreme Court has held that test of prejudice has to be applied. The petitioner has failed to show that how non-supply of the note of the Inspecting Judge has prejudiced him. We have gone through the enquiry report. The Inquiry Judge has considered the materials and has arrived at a finding Independently and no reliance was placed on the note of the Inspecting Judge dated 2.6.1995. The note dated 2.6.1995 was only referred by the Inquiry Judge to fortify the conclusion which was arrived at independently by her. Therefore, by non-supply of the note dated 2.6.1995 the enquiry is not vitiated.

16. In view of the aforesaid discussions, we find that the petitioner is not guilty of the misconduct and the order of his removal from service dated 11.7.1997. Annexure-9 to the writ petition, is liable to be quashed and is accordingly quashed. The petition is allowed. The respondents are commanded to reinstate the petitioner in service immediately with continuity of service and all consequential benefits, such as payment of arrears of salary and other benefits, as admissible under the Rules.