

(2012) 02 AHC CK 0067

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 45321 of 2008

Vinod Kumar Srivastava

APPELLANT

Vs

Secretary, Public Works Department and Others

RESPONDENT

Date of Decision : 24-02-2012

Acts Referred:

Constitution of India, 1950 — Article 136

Citation : (2012) 4 ADJ 272 : (2012) 3 AWC 2791 : (2012) 133 FLR 992

Hon'ble Judges : S.K. Singh, J;Pankaj Naqvi, J

Bench : Division Bench

Advocate : Gyanendra Kumar Singh and Vipin Sinha, for the Appellant;

Final Decision : Allowed

Judgement

1. Heard Sri Vipin Sinha, learned Advocate in support of this writ petition and learned Standing Counsel. By means of this writ petition, petitioner has prayed for quashing of the impugned order dated 23.5.2006 passed by the respondent No. 1 (Annexure 10) by which in the disciplinary proceedings punishment of (i) censor (ii) stoppage of one increment with cumulative effect was given.

For disposal of the writ petition, facts in brief will suffice.

2. Petitioner was working as Assistant Engineer in Public Works Department in district Basti. In respect to widening of Duddhi - Lumbini - Mani Road on the charge of use of sub standard material, when in the night of 9.10.2001 a visit of the Minister concerned took place, some shortcomings were pointed out, upon which suspension of several officers followed and it is thereafter correspondence between higher officials and disciplinary proceedings started, resulting into the impugned action.

3. Submission is that the enquiry in the charge has not proceeded in the fair manner and although disciplinary proceedings proceeded against other officers also but all have been exonerated and the petitioner has been singled out for ulterior motive.

4. It is further submitted that departmental enquiry proceeded against D.P. Roy, Assistant Engineer and Sunil Kumar, Junior Engineer who were posted alongwith the petitioner for the same work and for the same charge but the proceedings against D. P. Roy was finally dropped and against Sunil Kumar also nothing wrong was found and he was exonerated and thus in an arbitrary manner petitioner has been punished.

5. Submission is that charge of sub standard material in completion of Duddhi - Lumbini Road related to Km. 97 against other officers also noted above who were associated with the same work but as no material on merits of charge was found against anyone, that has to apply for the petitioner also.

6. It is further submitted that in respect to two charges i.e. (i) at km, 97 level is not proper/lepan is not good (ii) at km. 98 the portion of the road which was widened is slightly low and painting is not good, the enquiry officer himself has found that second charge of the road being slightly uneven is not established and so far the first charge about "lepan not being proper" some discrepancies were found. Submission is that both aspects were interlinked. As two rainy season intervened after the initial work and no maintenance grant was also given in two years, the slight technical discrepancy as pointed out and that too only against the petitioner although, D.P. Roy, Assistant Engineer and Sunil Kumar, Junior Engineer were all at par cannot make the petitioner alone responsible and, therefore, it is a case where for no justification petitioner has been taken to task.

7. Submission is that the disciplinary authority has not taken into account the representation of the petitioner in relation to the enquiry officer's report and the ground that for same work at the same place two other co-ordinate officers have been exonerated and, therefore, it is just an arbitrary and whimsical exercise which needs to be quashed by this Court.

8. In response to the aforesaid, learned Standing Counsel submits that various submissions in respect to facts as advanced can be matter of examination from the record and in no case petitioner can take any advantage about the exoneration and dropping of the proceedings against D.P. Roy, Assistant Engineer and Sunil Kumar, Junior Engineer. As the enquiry officer has found one charge to be partially established if the disciplinary authority has awarded punishment then no exception can be taken to it.

9. Before dealing with the arguments on merits, we are to just notice the order of this Court dated 2.2.2011 wherein the submission of the petitioner side against adopting two standards in respect to same charge, for the same project, same length and period in which construction of road was there was noticed.

The order of this Court dated 2.2.2011 is hereby quoted -

It is submitted by Sri Vipin Sinha assisted by Sri Gynendra Kumar Singh for the petitioner that in respect of first part of both the charges, namely, un-evenness on the sides of the road, the enquiry officer has exonerated the petitioner. The

petitioner has been found guilty only of short-coming in painting of the road and punished by awarding a censure entry and withholding of one increment, permanently.

It is stated that inspection was made in the night after two years of completion of works. By that time the road was affected by heavy rain in two seasons. Alongwith the rejoinder-affidavit, the petitioner has annexed orders for exonerating Sri D.P. Rai Assistant Engineer and Sri Sunil Kumar Junior Engineer, on the same charges and in respect of same project, length and period of the road.

Learned standing counsel prays for and is allowed to weeks time to file supplementary counter-affidavit.

After the orders of this Court, State has filed Supplementary Counter-affidavit in April, 2011.

10. So far the averment/argument from the petitioner side that against D. P. Roy and Sunil Kumar the charge was the same and it was in respect to same project, about same length and period has not been specifically denied and a vague and evasive reply has been given just to conclude, by taking shelter of the report of the enquiry officer. The portion of the averment as made in paras 4, 16 and 21 of the Rejoinder-Affidavit are hereby quoted for convenience :

4.....Sri D.P. Roy, Assistant Engineer, who is also posted alongwith the petitioner on the said Road and he is also found guilty in the inspection made by the Hon"ble Minister but there was no any disciplinary proceedings initiated against Sri D.P. Roy, which is apparent from the order dated 8.3.2002.

16.....Firstly for the same charges the petitioner"s - Junior Engineer, namely, Sunil Kumar was exonerated from the said charge who is also posted on kilometer 97 - 99 but the petitioner was punished for the same without any rhyme or reason.

21.....The case of the petitioner as well as that of Sri D.P. Roy are the same as the same charges were levelled against the petitioner and Sri D.P. Roy but Sri D.P. Roy has been exonerated while the petitioner has been punished for the same and the Junior Engineer - Sunil Kumar who was also posted alongwith the petitioner and he also has been exonerated for the same charges and the petitioner has been punished for the same.

In the Supplementary Counter-affidavit there is just general denial and vague averment about proof of the charges against the petitioner and about no proof against others.

11. Petitioner has annexed the copy of the order passed in case of Sunil Kumar and at the same time the order passed in respect to D.P. Roy and copy of the charges also which we will just notice for the conclusion that the charges against all the three are the same, for the same project and for the same length/period

of the road.

12. Annexure 3 to the rejoinder-affidavit is the copy of the enquiry officer's report in the matter of Sunil Kumar which suggests about the charge against him which is to the following effect -

KM. 97 ME LEPAN THIK NAHI HAL SATAH SAMTAL NAHI HAT

13. The finding of the enquiry officer is that on account of traffic congestion the old road is found to be damaged in sufficient length and at the same time two rainy seasons intervened. It has been further stated that no final payment has yet been made and only running payment has been made and the contract is not yet complete.

14. There appears to be no dispute about the fact, from the facts stated above that in respect to the same project, same length/period of the road all the three i.e. the petitioner, D. P. Roy and Sunil Kumar were together. There is further no dispute that no maintenance grant was there for about two years and two rainy seasons intervened upon which slight damage, if any, to the work in question can be duly noticed. The work contract was still not complete and only running payment was made. In view of the circular issued by the department itself (Annexure 4 to the rejoinder affidavit) about lepan/painting work of the road Junior Engineer is responsible to the extent of 30% and the Assistant Engineer to the extent of 15%. It appears to be a case where after about two years of the initial work the Minister concerned just visited the site while going on the way and he reported the matter to the competent official, upon which impugned exercise was undertaken. Another Assistant Engineer and another Junior Engineer engaged with the petitioner were not found at fault.

15. Above mentioned facts leads to a situation that no action against two officers has been taken, although in different enquiries, in relation to the same project, same site, same length, period of the road nothing adverse by lapse of time and for various other reasons so stated in the enquiry officer's report dated 24.9.2004 (Annexure 3 to rejoinder-affidavit), is found then why the petitioner alone is to be punished. The Junior Engineer has been exonerated on the ground that nothing wrong on merit of charge was found. Factum of lapse of two years, two rainy seasons have intervened, no maintenance grant being there and as such it is a case where same factual premises can apply to the petitioner also. All these aspects were stated by the petitioner in his representation (Annexure SA-2) but nothing has been taken into account and the impugned order has been passed.

16. At this stage we can refer certain decisions of the Apex Court which deals with the issue of imposing different punishment for different delinquent if the charges are the same and opinion has been expressed that the charge being same and identical in relation to one and the same incident giving of different punishment would be discriminatory. It has been observed by the Apex Court in the case of Bongaigaon Refinery and P.C. Ltd. and Others Vs. Girish Chandra

Sarmah, :

18. After going through the report and the finding recorded by the Division Bench of the High Court, we are of opinion that in fact the Division Bench correctly assessed the situation that the respondent alone was made a scapegoat whereas the decision by all three Committees was unanimous decision by all these members participating in the negotiations and the price was finalised accordingly. It is not the respondent alone who can be held responsible when the decision was taken by the Committees. If the decision of the committee stinks, it cannot be said that the respondent alone stinks; it will be arbitrary. If all fish stink, to pick one and say only it stinks is unfair in the matter of unanimous decision of the Committee.

17. In another decision given by the Apex Court in the case of State of U. P. and others v. Raj Pal Singh, (2010) 5 SCC 783, following observation has been made :

5. Though, on principle the ratio in aforesaid cases would ordinarily apply, but in the case in hand, the High Court appears to have considered the nature of charges levelled against the five employees who stood charged on account of the incident that happened on the same day and then the High Court came to the conclusion that since the gravity of charges was the same, it was not open for the disciplinary authority to impose different punishments for different delinquents. The reasoning given by the High Court cannot be faulted with since the State is not able to indicate as to any difference in the delinquency of these employees.

6. It is undoubtedly open for the disciplinary authority to deal with the delinquency and once charges are established to award appropriate punishment. But when the charges are same and identical in relation to one and the same incident, then to deal with the delinquents differently in the award of punishment, would be discriminatory. In this view of the matter, we see no infirmity with the impugned order requiring our interference under Article 136 of the Constitution.

18. On the facts and totality of the circumstances we are satisfied that the respondents while awarding punishment to the petitioner have failed to consider the fact that charges against two other employees were the same but they were not punished, and thus have discriminated against the petitioner by inflicting a punishment and, therefore, the order passed by the respondent No. 1 is liable to be quashed.

19. For the reasons given above, this writ petition succeeds and is allowed. The impugned order dated 23.5.2006 passed by the respondent No. 1 (Annexure No. 10) is hereby quashed.