

(2003) 09 AHC CK 0237

Allahabad High Court

Case No: Civil Misc. Writ Petition No. 25681 of 1995

Chhotey Lal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Sept. 5, 2003

Acts Referred:

- Civil Services (Classification, Control and Appeal) Act - Section 54
- Civil Services (Classification, Control and Appeal) Rules - Rule 13

Citation: (2003) 6 AWC 5641 : (2004) 1 UPLBEC 99

Hon'ble Judges: Rakesh Tiwari, J

Bench: Single Bench

Advocate: Birendra Kumar Srivastava and R.C. Shukla, for the Appellant;

Final Decision: Allowed

Judgement

Rakesh Tiwari, J.

Heard Counsel for the parties and perused the record.

2. By means of this writ petition, the petitioner has challenged the order of termination dated 29.8.95, whereby he was removed from his services while working on the post of Assistant Revenue Accountant/ Assistant Wasil Baqil Navis.

3. The following reliefs in the form of prayers have been sought:

"(A) to issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 29.8.1995 (Annexure-11) passed by respondent No. 2;

(B) to issue a writ, order or direction in the nature of mandamus directing the respondent No. 2 to permit the petitioner to continue on his post of Assistant Revenue Accountant/Sahayak Rajaswa Lekhakar and to pay him salary month to month as and when the same falls due to him;

(C) to issue a writ, order or direction in the nature of mandamus directing the respondent No. 2 to make the payment of subsistence allowance to the petitioner during the period he remained under suspension i.e., from 2.2.1995 to 29.8.1995;

(D) to issue any other suitable writ, order or direction which this Hon"ble Court deems just and a proper in the circumstances of the case in the interest of justice."

4. The relevant facts leading to the controversy involved in the present case are to the effect that the petitioner was appointed as Assistant Wasil Baqil/Assistant Revenue Accountant on 2.8.75 in accordance with the provisions contained in the Subordinate Offices Ministerial Grade (Direct Recruitment) Rules, 1975. The petitioner was confirmed and was granted revised pay scale, promotional scale and the selection grade etc., from time to time as admissible under the law. His duties and responsibilities are prescribed under Chapter X of the Collection Manual which has been annexed as Annexure-1 to the writ petition. It is alleged that the duties and responsibilities of the petitioner is quite different than the duties and responsibilities on the post of Naib Nazir as prescribed in Paras 107 and 124 of the Revenue Manual.

5. The petitioner was suspended vide order dated 2.2.1995 in contemplation of the disciplinary proceedings for certain misconducts. The suspension order containing charges against the petitioner is as under :--

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1- vki tc lgk;d jktLo ys[kkdkj] lksjka ds in ij dk;Zjr Fks] rks vkius viuh i=kofy;ksa dk pktZ fdlh lgk;d jktLo ys[kkdkj dks ugha lkSaik vkSj u gh i=kofy;k♦ miyC/k djk;h A

2- jftLVj ua- 4 ns[kus ij ik;k x;k fd uhykeh dh /kujkf"k eq- 80]000@& fudkyus gsrq vkius vk;k izLrqr fd;k Fkk] fti ij rRdkyhu rglhynk@,-Vh-vks- us vkns"k Hkh fn;k Fkk] ysfdu jftLVj la;k&4 esa :;k izkIr djus dk fdlh dk gLrk{kj ugha gS vkSj u gh jftLVj&4 ls :;k fdlh dks fn;s tkus dh ckr fy[kh gS A bruk vo"; gS fd jftLVj esa tgk♦ ls Hkqxrku djus dk mYys[k fd;k tkrk gS vkSj izkIrdrkZ }kjk gLrk{kj cuk;k tkrk gS ogk♦ ij ,d dkxt ♦ij fpidk;k x;k gS A bl izdkj uhykeh dh /kujkf"k :- 80]000@&dk s xk;c djus esa vkidh lkft"k izrhr gksrh gS A

3- vkcdkjh ds cdk;snkj Jh tokgj yky iq= NksVs yky] fuoklh ifMyk ds edku la;k&215 iqjkuk cSjguk] "kgj bykgkckn dh uhykeh i=koyh fdlh dks LFkkukUrj.k gksus ds i"pkr i=koyh izkIr ugha djk;h x;h A

fuyEcu dh vof/k esa Jh NsVs yky mijksDr dks fo♦kh; fu;e laxzg] [k.M&2 Hkkx 2 ls 4 ds ewy fu;e 53 ds izkfo/kkuksa ds vuqlkj thou fuokZg Hk♦ks dh /kujkf"k v)Z vkSlr osru ij vFkok v)Z osru ds cjkj ns; gksxh rFkk mUgas thou fuokZg Hk♦ks dh /kujkf"k ij

egaxkbZ Hk◆kk] ;fn ,sls vodk"k osru ij ns; gS] Hkh vuqeU; gksxk] fdUrq ,ssls deZpkjh dks thou fuokZgh HkRrs ds lkFk dksbZ egaxkbZ HkRrk ns; ugha gksxk] ftUgsa fuyEcu ls iwoZ izkIr osru ds lkFk egaxkbZ HkRrk vFkok egaxkbZ HkRrs dk mikfUrd lek;kstu izkIr ugha Fkk A fuyEcu ds fnukad dks izkIr osru ds vk/kkj ij vU; izfrdkj HkRrs Hkh fuyEcu dh vof/k esa bl "krZ ij ns; gksaxs] tc bldk lek/kku gks tk; fd muds }kjk ml in esa O;; okLro esa fd;k tk jgk gS] ftlds fy, mDr izfrdj HkRrs vuqeU; gS A

mijksDr izLrj&2 esa mfYyf[kr enksa dk Hkqxrku rHkh fd;k tk;sxk tcfJh NksVs yky mijksDr bl vk"k; dk izek.k i= izLrqr djsa fd og fdlh vU; lsok;kstu] O;kikj] o'fRr O;olk; esa ugha yxs gSaa A

fuyEcu dh vof/k esa Jh NksVs yky mijksDr dks mifLFkfr Inj eq[;ky; ij jgsxh A

mijksDr foHkkxh; dk;Zokgh esa Jh ds-,u- f}osnh] vij uxj eftLV◆sV izFke dks tk◆p vf/kdkjh vuqDr fd;k tkrk gS tks lacaf/kr deZpkjh ds fo:) vkjksi i= 10 fnu esa rS;kj djds v/kksgLrk{kjh ls vuqeksfnr djkdj mldks rkehyh lacaf/kr deZpkjh ij lqfuf"pr djsa A tkap vf/kdkjh viuh tkap vk[:k izR;sd n"kk esa nks ekg ds vUnj v/kksgLrk{kjh dks izLrqr djasxs A

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6. A perusal of the suspension order indicates that three charges were levelled against the petitioner. According to the Counsel for the petitioner these charges are false and baseless and do not relate to the duties and responsibilities of the petitioner as prescribed in Chapter X of the Collection Manual referred to above.

7. It is submitted that respondent No. 3 was appointed Enquiry Officer for conducting the disciplinary proceedings against the petitioner and that a charge-sheet dated 7.4.95 was served on him levelling 7 charges though only three charges were indicated in the suspension order. It is alleged that the proposed evidence sought to be relied upon against the petitioner were neither supplied to him nor he was permitted to peruse the same even or repeated request made by him. It is further submitted that non-supply of the documents inspite of repeated requests and persistent demand created an impediment in the petitioner's way to file a proper and effective explanation. The petitioner, however, submitted his explanation dated 16.6.95 denying that he was not responsible for any of the misconducts and stated that it was rather, the Tahsildar, Naib Tahsildar and other Officers who were responsible and to maintain the auction file is not his duty or responsibility. He was never handed over the auction file in question. It is also pointed out that a report dated 6.2.95 made by the Tahsildar, Soraon indicates that there is no evidence that the sale-deed in question was. made available to Rajesh Kumar by the petitioner. Counsel for the petitioner argues that even the Officer Incharge Sanyukt Karyalaya has also in his report dated 31.12.1994 has clearly

stated that there is no case of embezzlement against the petitioner.

8. It is contended by the Counsel for the petitioner that denial to give copies of the documents and evidences to the petitioner as mentioned in the charge-sheet as demanded by him and submission of the enquiry report on 12.7.95 by the Enquiry Officer without discussing the aforesaid relevant reports dated 6.6.94 submitted by the Tahsildar and 31.12.1994, submitted by the Officer Incharge as well as the preliminary report dated 6.2.1995, rendered the findings against him illegal in the enquiry proceedings. It is submitted that the Enquiry Officer in his report has categorically held that the Revenue Accountant, Incharge, Naib Tahsildar and the then Sub-Divisional Officer were responsible for the said incident and their conduct and integrity was found doubtful. In so far as the petitioner is concerned he was found to be a bit negligent and partly responsible but his integrity was not doubted and as such, the Enquiry Officer did not propose any punishment for the petitioner rather, proposed that the enquiry to proceed against all those higher Officers referred to above.

9. In the enquiry report dated 12.7.1995 the Enquiry Officer has given cogent reasons showing the manner in which the petitioner has helped the other Officer in embezzlement and has rightly implicated and had recommended to turns measure to be taken against. The relevant portion of the enquiry report dated is as under :--

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vij ftykf/kdkjh ♦foRr ,oa jktLo♦ dks lEcksf/kr i= 213@jk-ys- lksjkao@fnukad 17-1-1995 fof/kor ,oa iw.kZ:is.k gksrh gSa A ;g rF; Loeso LrC/kdkjh vkSj vk;p;Ztud gksrs gq;s mRrjnk;h vf/kdkfj;ksa dh dk;Z iz.kkyh o IR;fu"Bk dks Hkh iz"ufpfUgr djrk gS A D;kksafd jktdh; ns;kssa dh okLrfod olwyh ls dgha vf/kd eux<ar olwyh ds vkdMs+ n"kkZdj dh xbZ dwV jpuv rFkk rnuw♦e esa vftZr iz"kalk ds ifjis{; esa ek= vipkjh dks nks"kh vo/kkfjr djuk U;k;ksfpr ugha gS A

♦x♦ of.kZr vkSj foosfpr ifjfLFkfr;ksa vkSj bu vR;Ur vleatldkjh vkSj LrC/kdkjd rF;ksa vkSj vkjksiksa ds ifjis{; esa rRdkyhu jktLo ys[kkdkj@izHkkjh uk;c rglhynkj@rglhynkj@ijxukf/kdkjhx.k dh Hkwfedk laca/kh izkjfEHkd tk♦p djkdj muds fo:) rRijrkiwoZd fof/kd@foHkkxh; dk;Zokgh vf/k"Bkfir fd;k tkuk yksdfgr esa loZFkk leqfpr] lehphu ,oa fu;e laxr gS] ftlls Hkkfo"; eas ,sls izdj.kksa dh iqujko`fRr djas ds fy, dksbZ deZpkjh@vf/kdkjh nq"lkgl u dj ldsA

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10. The grievance of the petitioner is that instead of taking action against the Higher Officers mentioned in the Enquiry Report an order dated 9.8.95 was passed by respondent No. 2 directing the petitioner to appear before him on 25.8.95. The impugned order dated 29.8.95 was passed by respondent No. 2 removing him from service is arbitrary, illegal and without consideration of the relevant facts and his explanation. It is assailed on the ground that it is based on total non-consideration of the enquiry report, Tahsildar's report dated 6.6.94, Officer Incharge's report dated 31.12.94 and the preliminary enquiry report dated 6.2.95 as well as other material on record and also without application of his independent mind by respondent No. 2 and further without considering the plea of the petitioner that he had not been afforded reasonable opportunity of defending himself. It is also submitted that the impugned order deserves to be quashed as no show cause notice was issued to the petitioner against the proposed punishment as required under the law and that he has been made a scape-goat to save other Higher Officers by inflicting major punishment on him which is not only quite disproportionate to the finding of a bit negligent against the petitioner but also are arbitrary and against the principles of natural justice.

11. The Counsel for the respondents contends that the petitioner had helped in the embezzlement of Rs. 80,000/- and had further helped in getting the offence concealed at his level while discharging additional duty of Revenue Accountant in addition to his original duty of Assistant Revenue Accountant and that the petitioner has been punished by the Competent Authority on the serious charges which have

been proved against him. Counsel for the respondents further submits that in the suspension order only those charges were referred which had been in the knowledge of the Competent Authority at the relevant time and it is also denied that the petitioner was not paid any subsistence allowance. In Paras 13, 21 and 28 of the counter-affidavit it has been specifically stated that the petitioner was allowed by respondent No. 3 to inspect the entire records on the basis of his own request dated 29.5.95 was not only allowed to inspect but also permitted to note down the relevant portion of the records and was also permitted to examine and cross-examine the witnesses.

12. It is urged that the petitioner had not availed of alternative remedy by filing a representation to the next Higher Officer/Punishing Authority or a petition under Rule 13 before the State Government within the prescribed period under the Punishment and Appeal Rules for Subordinate Services framed u/s 54 of the Civil Services (Classifications, Control and Appeal) Rules, 1930 and further by filing a reference against the impugned punishment order before the State Public Services Tribunal, U.P., Lucknow. It would not be proper to relegate the petitioner to the alternative remedy.

13. The respondent No. 2 has given cogent reasons for dismissal of service and has held that 5 charges against the petitioner are fully proved beyond doubt and other two partly proved and it would not be justified to have such a person in service :

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14. From the arguments advanced on behalf of the parties and perusal of the record, there is no doubt that the principles of natural justice were observed in his case and the petitioner was also given opportunity of personal hearing. The charges against the petitioner are serious which have been proved. It appears that the petitioner was instrumental in helping his higher officer in the embezzlement of the

amount of Rs. 80,000/- . Taking into over all circumstances of the case, it does not appeal to reason or justice that a person like the petitioner should be retained in public services. The petitioner has been given full opportunity of hearing by respondent No. 2 and has been found guilty of the charges levelled against him. The punishment awarded to the petitioner is not excessive under the facts and circumstances of the case and retention of such an employee as the petitioner would be detrimental in maintenance of a clean administration and public interest.

15. In [Ramchander and Others Vs. Additional District Magistrate and Others](#) , a two Judges Bench of the Apex Court has held that so long as the termination orders stood, the petitioners were not eligible for regularization. Taking a due from the judgment the relief claimed by the petitioner for continuing on his post of Assistant Revenue Accountant/Sahayak Rajaswa Lekhakar and to pay him salary month to month as and when it falls due cannot be granted as he is out of service since 1995 as at the time of admission, this Court was declined to grant relief to the petitioner as an interim measure and he is not in service since, the date of his termination from service i.e., 19.8.95. For these reasons reliefs A and B cannot be granted to him. However, the petitioner is entitled for payment of subsistence allowance as claimed in relief-C.

16. For the reasons stated above, the petition partly succeeds and is allowed. The respondents are, however, directed! to pay subsistence allowance, if any, for the period 2.2.95 to 29.8.95 with 10% interest till the date of payment. No order as to cost.