(2011) 05 AHC CK 0354

Allahabad High Court

Case No: Civil Misc. Writ Petition No. 53585 of 2009

Mahesh Kumar		APPELLANT
	Vs	
State of U.P. and Others		RESPONDENT

Date of Decision: May 13, 2011

Acts Referred:

- Constitution of India, 1950 - Article 14
- Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 - Rule 14(1), 2

Hon'ble Judges: V.K. Shukla, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

V.K. Shukla, J.

Petitioner has rushed to this Court questioning the validity of the dismissal order dated 18.04.2008 passed by Commandant 38th Battalion P.A.C. Aligarh which has been further affirmed in Appeal and Revision vide orders dated 15.09.2008 and 25.03.2009 respectively by the Deputy Inspector General of Police, P.A.C. Western Zone and Inspector General of Police P.A.C. Agra Region Agra.

2. Brief background of the case is that Petitioner has been member of disciplined force. In the year 2007 Petitioner was posted at 38 battalion, P.A.C. Aligarh. On 28.09.2007 at the point of time when he was to be produced in the orderly room he was found in intoxicated state and Petitioner was accordingly sent for medical examination and was found intoxicated state. Thereafter Petitioner was put for disciplinary proceedings by submitting charge-sheet on 12.12.2007 under Rule 14(1) of U.P. Police Officers of the Subordinate Rank (Punishment and Appeal) Rules 1991. Petitioner, after receiving said charge sheet, submitted his reply and thereafter inquiry has been so held. Witness produced in the inquiry are namely P.W. 1 Sri Azad Mohmad, P.W. 2 Dharm Veer Singh, P.W. 3 Ram Kripal, P.W. 4 Vinod Kumar, P.W. 5

Bantesh Kmar, P.W. 6 Gulab Singh, P.W. 7 Rajendra Singh, P.W. 8 Ramchandra, P.W. 9 Rohan Singh, P.W. 10- Amar Singh, P.W. 11, Company Commander Chandrapal Sharma, P.W. 12 Captain Dr. Abhay Kumar Rastogi, P.W. 13 Surajbhan Singh Bhadoria. Petitioner was given full opportunity to cross-examine the witnesses, in the said disciplinary proceeding and thereafter Enquiry Officer submitted his report on 24th March, 2008. Show cause notice was issued to the Petitioner on 29th March, 2008. Petitioner submitted his reply contending therein that he has not taken liquor. Disciplinary authority found misconduct and accordingly passed order and said order has been affirmed in Appeal and Revision. At this juncture present writ petition has been filed.

3. Pleadings inter se have been exchanged and thereafter present writ petition has been taken for final hearing and disposal with the consent of the parties.

4. Sri Sushil Kumar Srivastava, learned Counsel for the Petitioner contended with vehemence that lenient view ought to have been taken against the Petitioner and some lesser punishment should be accorded to him and the fact of the matter is that Petitioner has taken medicine and was not at all intoxicated stage as has been mentioned in the impugned order, as such present writ petition deserves to be allowed.

5. Countering the said submission learned Standing Counsel on the other hand contended that Petitioner is member of disciplined force and has been found in intoxicated stage during the service hours as such no interference should be made.

6. After respective arguments have been advanced factual situation which is emerging in the present case, that after Petitioner has been found in intoxicated stage during duty hours he was sent for medical examination and even in the said examination the concerned Doctor found Petitioner to be in intoxicated stage. In the disciplinary proceedings so undertaken Petitioner has been given full opportunity wherein he has submitted his reply and even proceeded to cross examine the witness who appeared namely P.W. 1 Azad Mohd. who has clearly proceeded to mention that before Petitioner was to be produced in orderly room he was stinking and he was taken to Commandant Hospital. Statement to the similar effect has been made by P.W. 2 Dharamveer Singh, P.W. 3 3 Ram Kripal that Petitioner was taken for medical examination. Statement of fact has also been made by P.W. 4 Vinod Kumar and P.W. 5 Bantesh for taking the Petitioner to the Doctor. P.W. 6 Gulab Singh clearly mentioned that it was he who was informed the Commandant and Commandant asked him to take the Petitioner for medical examination. P.W. 8 Ram Chandra has made similar statement that he has taken the Petitioner for medical examination. P.W. 9 Rohan Singh stated that mouth of Petitioner was stinking. P.W. 10 also made statement for taking the Petitioner to medical examination. Statement to the similar effect has been made by P.W. 11 Company Commander Chandra Pal Sharma in respect of having directed other incumbent to take the Petitioner for medical examination. Dr. Abey Kumar Rastogi, P.W. 12 he has also supported the

version of Petitioner being intoxicated state. Evidence thereafter was scrutinized and categorical finding of fact has been returned that during the duty hours Petitioner was in intoxicated stage. Once there is evidence in support of the charges and it has been found that Petitioner was in intoxicated state then scope of interference in such matter is very very limited.

7. The question of interference on the quantum of punishment has been subject matter of consideration by Hon''ble Apex Court in catena of judgments, and therein view has been taken if the punishment awarded is disproportionate to the gravity of misconduct, it would be arbitrary and the same would violate the mandate of Article 14 of the Constitution. This proposition has been summed up in the case of B.C. Chaturvedi Vs. Union of India and others, In the said judgment earlier view of Hon''ble Apex Court in the case of Ranjit Thakur Vs. Union of India (UOI) and Others, has been relied upon, and conclusion has been that in exercise of power of judicial review court cannot substitute its own conclusion on penalty. However, if the penalty imposed by the authority shocks the conscience of the Court, it may appropriately mould the relief either directing the authority to reconsider the penalty imposed or in exceptional cases and rarest of rare cases in order to shorten the litigation itself impose appropriate punishment with cogent reasons in respect thereof. While examining the issue of proportionality the Court should also consider the circumstances under which misconduct was committed and in a given case the prevailing circumstances which might have forced him to do so, for which he had no intention to do so, the court may further examine the fact and if it is satisfied the penalty may be substituted by some other penalty. Said view has been followed in the cases of Teri Oat Estates (P) Ltd. Vs. U.T., Chandigarh and Others, V. Ramana Vs. A.P.S.R.T.C. and Others, , State of Meghalaya and Others Vs. Mecken Singh N. Marak, Hon''ble Apex Court in the case of State of M.P. and Others Vs. Hazarilal, has taken the view that proportionality may also be adhered to by the court and the court should be clear with the order of determination.

8. On the parameters of the aforesaid decisions, it is amply clear that while exercising power of judicial review the Court should normally not substitute its own conclusion, but in cases where penalty imposed by the authority shocks the conscience of the court, the relief can be appropriately moulded either by directing the authority to reconsider the penalty imposed and in exceptional cases and rare of rarest cases in order to shorten the litigation itself impose penalty with cogent reasons. The Court at the said point of time has to consider the circumstances under which misconduct was committed as in a given case the circumstances might have forced him to do an act for which he had no intention to do so, and punishment has to suit the misconduct committed and the corresponding punishment has to be awarded to the delinquent employee also to maintain internal discipline within the establishment.

9. Petitioner has placed reliance on the judgments of Punjab and Haryna High Court, 1983 (2) SLR 159, for the proposition that consuming of liquor is not such a serious act warranting serious disciplinary action resulting into compulsory retirement . Said judgment will not come to rescue of Petitioner, as in the said case, Petitioner was found under influence of liquor, when he was not on duty. Second judgment, relied upon, namely Sukhdeo Singh v. State of Punjab 1983 (2) SLR 645. is based on the first judgment with slight modifications/improvements. Reliance has also been placed on the division Bench judgment in case of Sahdeo Singh v. U.P.P.S.T. 2001 (2) LBSER 269 and single Judge judgment in the case of Amarjeet Singh v. State of U.P. 2004 (1) ESC 366. Both these judgments will not help the Petitioner, as Hon''ble Apex Court in the case of Government of Tamilnadu v. Vel Raj AIR 1997SC 1990, wherein the constable was sent for official duty, and he returned from duty to the police station in drunken stage, by consuming Ark (intoxicant substance), said act was construed as misconduct by Hon''ble Apex Court. Hon''ble Apex Court took the view that police force is supposed to be disciplined force and its member should behave in disciplined manner, particularly when the police personnel is on duty. The punishment of compulsory retirement was not found excessive. This judgment of Hon''ble Apex Court is the key to argument advanced on behalf of Petitioner. Relevant paragraphs 2, 3, 4, 6 and 7 of the said judgment are being quoted below:

2. The Respondent is a Head Constable and as such a member of Tamil Nadu Police Subordinate Service. On 20-7-84, he was served with a charge memo for an act of misconduct committed on 7-7-84, and a departmental enquiry was thereafter initiated against him. The charge was held proved and by way of punishment he was reverted to the lower grade, that is, from Head Constable to Police Constable Grade I. He appealed against that order. As the appellate authority was of the view that the punishment imposed upon the Respondent was very lenient it issued a show cause notice to him for enhancement of the penalty. His appeal was dismissed and by way of punishment he was compulsorily retired. The Respondent then filed a writ petition in the High Court of Madras challenging not only the punishment imposed upon him but also initiation of the enquiry against him. That petition was transferred to the Tamil Nadu Administrative Tribunal and was numbered as T.A. No. 271 of 1992.

3. The charge against the Respondent was that on 7-7-84, he was deputed to attend a case pending before the Sub-Divisional Judicial Magistrate, Usilampatti. He left the police station and returned to it at about 8 p.m. and reported before the Sub-Inspector of Police who was In-charge of the Police Station. At that time he was drunk and was in ''mufti''. During the enquiry evidence was led to prove that the Respondent was in a drunken condition, that he had admitted before the Sub-Inspector of Police that he had consumed ''arrack'' and that he was in ''mufti'' at that time though on duty. The fact that he was in ''mufti'' was not disputed but an attempt was made in cross-examination of the witnesses by way of suggestions that he was often suffering from stomach plain and was, therefore, taking medicine. He

also examined a doctor in his defence who deposed that for stomach pain he had prescribed medicine known as B.G. Phos and that is sufficient quantity of that medicine is consumed there would be smell of alcohol and the eyes would become reddish.

4. The Tribunal held that initiation of the enquiry against the Respondent was bad because the charge memo was issued by the Deputy Superintendent of Police who was not an appointing authority and it is a well-settled principle of law that only the appointing authority can take disciplinary action and that the said power cannot be delegated. On merits, the Tribunal considered the evidence as if it was sitting in appeal and held that the evidence was inconsistent and it was not proved "beyond all doubts that he had consumed prohibited liquor". It also held that neither consumption of alcohol by a member of the police force nor appearance in "mufti" in the police station can be considered as an act of misconduct. It also held that the appellate authority had not conducted the enquiry in the prescribed manner before enhancing the punishment and, therefore, the order passed by him was also bad. It, therefore, allowed the application, quashed the impugned order of punishment and directed the authorities to reinstate the Respondent with all consequential benefits.

5. It was contended by the learned Counsel for the Appellant-State that the Tribunal has committed an error of law in holding that initiation of the disciplinary enquiry against the Respondent was not lawful. He submitted that there is nothing in the Tamil Nadu Police Subordinate Services (Discipline and Appeals) Rules, 1955, which requires that a charge memo has to be issued only by an appointing authority or an authority holding a higher rank. This point is now covered by the decision of this Court in Inspector General of Police and another Vs. Thavasiappan, We, therefore, hold that the Tribunal was wrong in holding that there was no valid initiation of the disciplinary proceeding against the Respondent.

6. The learned Counsel for the Appellant was also right in his criticism that the Tribunal transgressed its jurisdiction in examining the evidence as if it was an appellate authority. The law on this point is also now well-settled. The Tribunal obviously committed a mistake in re-examining the evidence and holding that it did not deserve to be accepted because of the inconsistencies therein. The Tribunal was not holding a criminal trial and, therefore, ought not to have exonerated the Respondent by holding that it was not proved "beyond all doubts that the applicant had consumed prohibited liquor". The finding recorded by the Enquiry Officer and confirmed by the appellate authority were based upon the evidence led during the enquiry and it was not even contended that the said findings were perverse. It was, therefore, not open to the Tribunal to record contrary findings and hold that the charge against the Respondent was not proved.

7. The Tribunal was also wrong in holding that what was alleged against the Respondent did not amount to an act of misconduct. Under Rule 2 of the Rules punishment can be imposed upon a member of the service ''for good and sufficient

reason''. Therefore, the Tribunal ought to have examined the case from that angle. The Respondent when he appeared before the P.S.I. at 8 p.m. on 7-7-84 was on duty. He had returned to the police station for reporting to the PSI as to what he had done regarding the directions given to him earlier. At that time he was found in a drunken condition and was in ''mufti''. He has even admitted before the P.S.I. that he had consumed ''arrack'' and it was for that reason that he was smelling of alcohol. In this context, it was required to be considered whether there was ''good and sufficient reason'' for initiating a disciplinary proceeding against him and imposing the punishment of compulsory retirement. The Police force has to be a disciplined force and member of the Police force has to behave in a disciplined manner particularly when he is on duty. The Respondent even though he was sent for official work and was on duty returned to the police station in ''mufti'' and in a drunken condition after consuming ''arrack''. He had returned to the police station to report to his superior officer as to what happened to the work which was entrusted to him. Under these circumstances, his behaviour has to be regarded as an act of gross misconduct. It is difficult to appreciate how the Tribunal could persuade itself to take a contrary view. In view of the facts and circumstances of this case it is not possible to say that the punishment which was imposed upon him was highly excessive. The appellate authority after considering his previous record and after giving him an opportunity to show cause against the proposed enhancement had passed the order of punishment. Though the Tribunal has held that the enquiry was not conducted by the appellate authority as required by the Rules it has not been pointed out which requirement of the Rule had not been complied with. The Tribunal was, therefore, wrong on this count also. In the result, this appeal is allowed and the order passed by the Tribunal is quashed and set aside. In view of the facts and circumstances of the case, however, there shall be no order as to costs.

10. View taken by Hon''ble Apex Court in the case of Government of Tamilnadu v. Vel raj AIR 1997 SC 1990 has been followed by this Court while delivering the judgment in Civil Misc. Writ Petition No. 2350 of 2005 (Manoj Kumar Tiwari v. The Union of India and Ors.) decided on 14.02.2007.

11. In the present case also charges have been established, full opportunity has been afforded to the Petitioner, defence set up by Petitioner that he has taken medicine has not been accepted. In this background once Petitioner is member of discipline force and has been found in intoxicated state then there is no occasion for this Court to interfere and intervene in the matter in exercise of its authority of judicial review.

12. Consequently, present writ petition is dismissed.