(2012) 10 AHC CK 0190

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No''s. 2454 and 315629 of 2012

Rama Pati Singh		APPELLANT
	Vs	
State of U.P. and Another		RESPONDENT

Date of Decision: Oct. 9, 2012

Citation: (2012) 11 ADJ 133 : (2013) 136 FLR 811

Hon'ble Judges: Virendra Vikram Singh, J; Sheo Kumar Singh, J

Bench: Division Bench

Advocate: Vikram Bahadur Yadav, M.K. Gupta and Prabhakar Dwivedi, for the Appellant;

Final Decision: Allowed

Judgement

Hon''ble Virendra Vikram Singh, J.

Heard Sri M.K. Gupta, learned Advocate assisted by Sri Prabhakar Dwivedi who appeared in support of this petition and learned Standing Counsel for the State. Prayer in this petition is for quashing the order dated 26.12.2011 passed by respondent No. 1 by which petitioner has been given adverse entry of withholding one increment permanently.

2. By an amendment application the order dated 11.4.2012 has also been challenged by which petitioner has been said to be not entitled to get full salary of the period of suspension and a further prayer is for a direction to the respondents to pay entire arrears of salary of the period of suspension also.

3. For disposal of the writ petition preliminary fact is to be noticed.

4. Petitioner was posted as Executive Engineer in District Kannauj under Pradhan Mantri Gramin Sadak Yojna (PMGSY). By Government Order dated 28.7.2010 reconstruction of the division under aforesaid Yojna was proposed. Under re-established division (Construction Division-2 Kanpur Nagar) was carved which is clear from the above Government Order. Petitioner was given charge of that division on 11.8.2010. By letter of the Superintending Engineer dated 15.9.2010 various Blocks of that Division and work related thereof was entrusted. Thus

petitioner got actual charge of the Division on 15.9.2010.

5. In the charge and work mentioned thereof, the work of internal road of Dr. Ambedkar Village, Newada Bhaggi reaching upto Primary School was not included and as such there was no question of construction of the said road upto Primary School and that was not within the jurisdiction of the petitioner.

6. Visit of Hon''ble Chief Minister was scheduled for 8.2.2011 and during that visit the said road was not found to be constructed upon which immediately order of suspension was announced and that was published in the daily newspaper of 9.2.2011. Petitioner was placed under suspension by order dated 10.2.2011 upon which petitioner filed writ petition in this Court in which on 13.2.2012 order for paying entire salary of the period of suspension was passed. SLP was filed by the State which was disposed of on 9.12.2012. The Inquiry Officer who was appointed, submitted his report on 20.6.2011 (Annexure-14 to the writ petition). In the inquiry report out of five charges no charge was found to be established.

7. After submission of the inquiry report again a fresh inquiry was directed and it is thereafter on 16.11.2011 the Chief Engineer (Central Region) again opined that he has examined the matter and heard both sides and he agrees with the earlier inquiry report which was submitted by the inquiry officer.

8. Dis-agreeing with both the inquiry reports a show cause notice was given to the petitioner which was replied and ultimately on 22.11.2011 in respect to punishment, show cause notice was given which was also replied. By order dated 26.12.2011 petitioner has been found to be guilty of the charges and the order of punishment was passed.

9. Submission of the learned counsel for the petitioner is that order of suspension was in fact announced/passed on that very date of the visit of Hon''ble Chief Minister i.e. on 8.2.2011 but that was given to the petitioner on 10.2.2011, and therefore, it is a case where without any verification of fact about responsibility of the officer who is connected with construction of the road, an arbitrary decision has been taken.

10. Submission is that petitioner was required to prepare estimate for construction which he immediately did after getting charge in November, 2010. Vide letter dated 27.12.2010 the District Magistrate also wrote to the Government for administrative/financial sanction for construction of the road upto the Primary School alongwith estimate and the same was again written by the District Magistrate on 17.1.2011 (Annexure 7 and 8 respectively) but it was never sanctioned and only three days back, amount was admitted to be sanctioned and thus within that time it was beyond any human effort to get the road constructed and thus without noticing this aspect petitioner has been punished.

11. Submission is that petitioner did what he could have done in the given set of fact, and therefore, inspite of two reports of the inquiry officers in which all the charges against the petitioner has been found to be false, decision of the disciplinary authority is just to satisfy the political boss. The report of the inquiry officer has taken into account merits in the charge, explanation given by the petitioner and the proof or otherwise in the light of material but the competent authority while taking different view has not properly adhered to all these aspects, and therefore, his decision is liable to be quashed.

12. Normally this Court do not interfere in the order of punishment if the competent authority has taken correct decision in the light of whatever materials exist before him as this Court is not supposed to be in place of both (the inquiry officers or the disciplinary authority) but certainly if disciplinary authority is found to have lacked in discharge of his duty so as to stand on the test in the judicial side of this Court, then this Court has to interfere. The inquiry officer who can be said to be the fact finding authority not once but twice (Two different inquiry officers) have found that none of the charges are proved against the petitioner.

13. Here is the case where there is no charge against the petitioner of financial impropriety or any kind of mis-conduct, indiscipline rather the charge is in respect to non completion of side road upto Primary School on the date of visit of the Hon''ble Chief Minister i.e. on 8.2.2011. Petitioner was suspended orally on that very date which was published in the newspaper and on 10.2.2011 he got the order.

14. Thus so far the order of suspension is concerned it is clear that it was without any inquiry of any kind in any manner and it was just at the pleasure of Hon''ble Chief Minister who without ascertaining the loopholes about construction of the road gave direction on the spot.

15. Once the order of suspension was ordered by Hon''ble Chief Minister necessarily the incumbent has to be taken to the task at its fullest length but certainly actual guilty will have to be found, Here we may feel that two inquiry reports are in favour of the petitioner wherein it has been found that each and every charge'' in the light of the material as available on the record, negatives the role and responsibility of the petitioner. It has been found as a fact that petitioner is not at fault. As the inquiry started straight way at the behest of the Hon''ble Chief Minister, giving of report by two different inquiry officers in favour of petitioner certainly means something. Due weight will have to be given to the finding given by inquiry officer who has an occasion to screen the evidence at the first instance. Taking of the different view by showing disagreement by the Principal Secretary of the Department who is the highest organ of the Government and certainly attached to the Big Boss directly can be just to show his commitment to the hierarchy. This may be a kind of short coming or lack of will and good faith in discharge of duty honestly when the matter/issue is directly connected or routed through the top of all.

16. Disciplinary authority is not discharging any administrative work. He is not to issue an administrative order. He is supposed in law to take a view in respect to findings so given by inquiry officer in a way which may confirm the norm in Judicial test. He has to re-examine all relevant evidence, aspects which has been examined, discussed by inquiry officer. He cannot just express his disagreement in casual way.

17. Before coming to the merits in the light of the aforesaid aspect as has been discussed by the two inquiry officers we will just refer to the initial facts which itself make it clear that how and to what extent petitioner can be held to be responsible for the charges.

18. Petitioner was given charge of the division only in the month of November, 2010 as is clear from the charge certificate (Annexure-4 to the writ petition). Internal road of Dr. Ambedkar Village, Newada Bhaggi reaching upto Primary School was not included in the charge which was initially handed over to him. In respect to construction of the road and otherwise there was a demand from the petitioner side which was forwarded by the District Collector by his letter dated 27.12.2010 and 17.1.2011 (Annexure 7 and 8 respectively) but no financial sanction was there. It is said that just three days before order was issued and thus to charge the petitioner about incomplete construction of the road upto the Primary School is totally misconceived.

19. It is in this background we can just analyse the detailed inquiry report submitted by the inquiry officer running into 15 pages. All the five charges have been discussed in great detail. In respect to each and every link road, side road which is linked with main road discussion is there. Lack of funds is mentioned. It has been found as a fact that whatever work with whatever means could have been done was done by petitioner and he did his best. In respect to all the five charges a clean chit by three senior officers and then by one as inquiry officer is there. The first report is dated 20.6.2011. As nothing was found against the petitioner, fresh inquiry was directed and again the Chief Engineer by looking all facts and materials reiterated and opined in the same way.

20. We can just summarize charge wise Inquiry Report.

21. Charge No. 1, 2 and 3 relate to repair of C.C. roads, cleanliness and smooth water drainage works and some incomplete works in the Ambedkar villages of the concerned district in respect of which, estimate was prepared by the public works department and the same was sent to the Government by the District Magistrate by letter dated 21.12.2010 which could not be approved/sanctioned till the date of inspection of Hon''ble Chief Minister and the Inquiry Officer after details analysis gave findings that the charges against the delinquent official are not proved.

22. Charge No. 4 relates to a letter of the District Magistrate dated 29.1.2011 which states about the absence of the delinquent official in the meetings. The finding of the Inquiry Officer in regard is that petitioner was never informed about the

meetings and no explanation whatsoever was ever asked from the delinquent official for non participation in the meetings called by the District Magistrate, although the delinquent official was remain posted in the division up to 11.2.2011 and thus this charge was also not found to be proved against the petitioner.

23. Charge No. 5 relates to some additional work in respect of which requisite sanction/approval was granted on 2.2.2011 which was received in the office of the Division only on 4.2.2011 and the inspection of the Chief Minister was fixed on 8.2.2011 and therefore, within a short span of only 4 days, it was not possible for the petitioner to complete the work and thus after detail analysis of oral and documentary evidence, the finding of the Inquiry Officer is that the charge against the delinquent official is not proved.

24. On a careful perusal of the inquiry report which runs into 15 pages, as noted above, this Court feels that there may not be any better report in the given set of facts wherein each and every document in the light of the version of the presenting officer, in the light of the explanation of the petitioner there is proper analysis to form an opinion. Certainly disciplinary authority after examining the reports of the inquiry officers in his own wisdom has a right to disagree but his task is slightly tough. Unless facts, evidence and analysis as detailed by the inquiry officer is met by disciplinary authority just by stating the charges he cannot conclude against the charged employee.

25. On a perusal of the decision so taken by the disciplinary authority it is clear that so far the charge No. 1 and 4 is concerned he found that they are not proved and at the same time in respect to charge No. 2 and 3 he mentioned that something was not complete and in respect to charge No. 5 he said that the officer should have got it sanctioned slightly earlier. Suffice it to say that both enquiry reports gave clear finding in respect to promptness in respect to attending the work and discharge of the duties and no slackness or any fault has been found but Disciplinary authority made vague and casual observation without reference to the material by which some charges are said to be not correct/proved but about some partial fault has been mentioned.

26. Here we are not to exercise our power as appellate authority over the exercise by the disciplinary authority but certainly we can see and peruse the details as mentioned by the inquiry officer in its report and the way in which disciplinary authority while disagreeing with the same has referred and analysed the material.

Role of Disciplinary Authority when he is to agree.

27. If the disciplinary authority is to confirm the finding of enquiry officer and he is to just agree with it then also it has to appear from the order that he has applied his mind to facts and evidence available on record. He has to mention the brief facts/charges and about opinion so formed by enquiry officer then he is to show his agreement.

28. The disciplinary authority while agreeing with the inquiry officer is not to write a lengthy order and assess the entire evidence just like first appellate Court/forum but nevertheless the material which weighed in the mind of enquiry officer as a fact to record a finding, will have to be referred.

29. In this regard the observation as made by the Apex Court in case of Amina Ahmed Dossa and Others Vs. State of Maharashtra, is quoted here--

We have noted with concern that the Special Court has unnecessarily spent valuable public time in writing lengthy judgment for disposing of the claims of the appellants which, we feel, could have been decided by a brief but speaking orders. Brevity of orders on application of mind and not the length of the order is the criterion for adjudicating the rights of the parties which are otherwise subject to the decision of a Civil Court. It would be appreciated that the Designated Courts which are otherwise overburdened shall refrain themselves from writing such unnecessary lengthy judgments and pass appropriate brief orders, surely dealing with all points. While adjudicating the claims of all the parties. At any rate we do not appreciate such lengthy orders for deciding interlocutory matters.

Role of Disciplinary Authority when he is not to agree.

30. So far the order of disagreement and reversal is concerned tough test is there for the higher forum/Court/Authority. The person/party has to feel that his case, evidence and reasoning given by Lower forum has been analysed in a critical way.

31. The aforesaid principle even though may strictly apply to the appellate forum but to some extent it may apply to the authority also who is not to confirm the report of enquiry officer and who is to award punishment which has serious consequence to the right/status and the social feel of the person concerned.

32. As observed above, the job of the disciplinary authority may not be of appellate authority but at the same time he has to show his agreement/disagreement with the lengthy enquiry report which is based on appraisal of the oral and documentary evidence. Some overt exercise besides referring to charges will have to be made. This can be for the satisfaction of the Court or the higher forum and thus the disciplinary authority cannot be permitted to behave in a casual manner when he is not approving the enquiry officer''s report wherein each and every finding has been given in favour of the charged employee.

33. If one is not to agree with a decision specially on the factual aspect then certainly he will have to work hard. His mind and feel has to appear from his pen so as to make it sure by the higher forum for being satisfied that the party got justice. Party will also feel satisfied that he got his point and evidence considered at fullest length, of course result may not finally satisfy everybody. That has to happen. One should not be afraid or bother for it but fairness in the discharge of the job has to be there and that can be only seen by his delivery and expression. This is the basic, which has

to be done and that is atleast expected in law.

34. Here we may refer some decided cases, although they are on the judgment of reversal but certainly here also a detailed enquiry report (two in number which is in favour of the petitioner) we may apply a yardstick which may match to those decisions as a principle or we can say as a guidance which may compel the disciplinary authority to apply his mind for either purpose.

35. Lord Denim in case of Breen v. Amalagmate Engineers Union, 1971 (1) All ER 1148 held that "giving of reasons is one of the fundamental of good administrator". Reason is the heart beat of every conclusion, without the same, it becomes lifeless as held by Hon''ble Supreme Court in the case of Raj Kishore Jha Vs. State of Bihar and Others, .

36. The observation as made by Hon''ble Apex Court in case of Raj Kishore (Supra) is quoted here-

Before we part with the case, we feel it necessary to indicate that non-reasoned conclusions by appellate Courts are not appropriate, more so, when views of the lower Court are differed from. In case of concurrence, the need to again repeat reasons may not be there. It is not so in case of reversal. Reason is the heartbeat of every conclusion. Without the same, it becomes lifeless.

37. Even the Hon''ble Apex Court in the case of Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others, held as under :

... Indisputably, the writ Court will bear in mind the distinction between some evidence or no evidence but the question which was required to be posed and necessary should have been as to whether some evidence adduced would lead to the conclusion as regards the guilt of the delinquent officer or not. The evidence adduced on behalf of the management must have nexus with the charges. The enquiry officer cannot base his findings, on mere hypothesis. Mere ipse dixit on his part cannot be a substitute of evidence.

38. On the facts, we are not satisfied with the assessment by the disciplinary authority which is just casual, vague. Each and every aspect as has been taken by the enquiry officer in the light of the material on the record has not been taken as such by the disciplinary authority, and therefore, conclusion so arrived appears to be based on just surmises.

39. Keeping in mind basic/initial admitted facts into account and totality of the circumstances it is clear that the action was against the petitioner just to satisfy the public cry and to satisfy them on the spot and thereafter without finding actual role and responsibility of petitioner as was found by two different inquiry officers. The disciplinary authority acting in disciplined way has passed the impugned order. Thus we are not to remit the matter as that may be just a futile exercise.

For the reasons given above, we are satisfied that this is a case where we can interfere.

Accordingly, this petition succeeds and is allowed. The impugned order passed by the respondent No. 1 dated 26.11.2011 (Annexure-1 to the writ petition) is hereby quashed.

Another order passed by respondent No. 1 dated 11.4.2012 filed with the amendment application is also hereby quashed.

Petitioner is entitled to get full salary for the period under which he was under suspension.

(Order on civil Misc. (Correction) Application No. 315629 of 2012)

40. The submission is that in the order dated 9.10.2012, on page 12 in paragraph 2, the date of order of respondent No. 1 and annexure number i.e., 26.11.2011 (Annexure 1 to the writ petition) has been wrongly incorporated whereas the correct date and annexure number in place thereof is 26.12.2011 (Annexure 20 to the writ petition).

41. The submission appears to be correct.

42. The correction application is allowed. On page 12 in paragraph No. 2, the date and annexure number i.e., 26.11.2011 (Annexure 1 to the writ petition) should be read as 26.12.2011 (Annexure 20 to the writ petition).