(2006) 05 AHC CK 0266

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 16795 of 2001

Govind Prasad Singh		APPELLANT
	Vs	
U.P. State Public Services Tribunal, State of U.P.		RESPONDENT

Date of Decision: May 26, 2006

Acts Referred:

- Constitution of India, 1950 - Article 226
- Criminal Procedure Code, 1973 (CrPC) - Section 155(2), 155(3), 157, 157(1), 159
- Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 - Rule 11, 14(1)
- Uttar Pradesh Police Regulations, 1948 - Regulation 486
- Uttar Pradesh Provincial Armed Constabulary Act, 1948 - Section 29, 7

Citation: (2006) 6 AWC 6489

Hon'ble Judges: Sanjay Misra, J; R.K. Agrawal, J

Bench: Division Bench

Advocate: Kamlesh Shukla and Prabhakar Awasthi, for the Appellant; S.K. Mehrotra and C.S.C., for the Respondent

Final Decision: Dismissed

Judgement

Sanjay Misra, J.

The petitoner seeks quashing of the judgment and order of U.P. State Public Services Tribunal Lucknow, the order dated 28.2.1996 passed by the Inspector General of P.A.C. Kanpur Sector Kanpur and the order dated 6.9.1995 passed by the Commandant 42nd Bn. P.A.C. Naini Allahabad. The petitioner was dismissed from service. His appeal was rejected and his claim petition before the tribunal was also dismissed.

2. Before the tribunal the petitioner had raised various grounds while assailing the order of dismissal and rejection of his appeal. The Tribunal while considering the

submission of the petitioner, to the effect, that all departmental proceedings which have been taken against the petitioner without complying with the provision of para 1 of Regulation 486 of the U.P. Police Regulations are vitiated and the consequent punishment order is illegal and without jurisdiction, has held that the provisions of para 1 of Regulation 486 were not attracted to the present case and the proceedings taken against the petitioner by virtue of para III of Regulation 486 were rightly taken and therefore, the enquiry was conducted under the provisions of U.P. Subordinate Police Officers (Punishment and Appeal) Rules, 1991. The finding of the Tribunal on this ground has been assailed by learned Counsel for the petitioner in this writ petition. Para 1 of Regulation 486 of the Regulation is quoted here under:

486 (I), Every information received by the police relating the commission of a cognizable offence by a police officer shall be dealt with in the first place under Chapter XIV (now chapter XII), Criminal Procedure Code, according to law, a case under the appropriate section being registered in the police station concerned provided that -

(1) if the information is received, in the first instance, by a Magistrate and forwarded by the District Magistrate to the police, no case will be registered by the police;

(2) if the information is received, in the first instance by the police, the report required by Section 157, Criminal Procedure Code, shall be forwarded to the District Magistrate, and when forwarding it the Superintendent of Police shall note on it with his own hand what steps are being taken as regards investigation or the reasons for refraining from investigation.

(3) Unless investigation is refused by the Superintendent of Police u/s 157(1)(b) , Criminal Procedure Code and not ordered by the District Magistrate u/s 159 or unless the District Magistrate orders a magisterial inquiry u/s 159 investigation u/s 159 Criminal Procedure Code shall be made by a police officer selected by the Superintendent of Police and higher in rank than the officer charged;

(4) On the conclusion of the investigation and before the report required by Section 173, Criminal Procedure code, is prepared the question whether the officer charged should or should not be sent for trial shall be decided by the Superintendent of Police. Provided that before an officer whose dismissal would require the concurrence of the Deputy Inspector General under paragraph 479 is sent for trial by the Superintendent of Police , the concurrence of the Deputy Inspector General must be obtained;

(5) The charge sheet or final report u/s 173, or Section 169, Criminal Procedure Code, as the case may be, shall be sent to the District Magistrate; if the Superintendent of Police or the Deputy Inspector General had decided against a prosecution, a note by the Superintendent of Police giving the reasons for this decision shall be endorsed on, or attached to the final report;

(6) When the reason for not instituting a prosecution is that the charge is believed to be baseless, no further action will be necessary; if the charge is believed to be true and a prosecution is not undertaken owing to the evidence being considered insufficient or for any other reasons the Superintendent may, when the final report u/s 173, Criminal Procedure Code, has been accepted by the District Magistrate; take departmental action as held down in paragraph 490.

3. From a perusal of above it is seen that para 1 (6) contemplates that departmental action can be taken only after final report u/s 173 Cr.P.C. has been accepted by the District Magistrate. It is contended that mandatory provision of para 1 has to be complied with otherwise any departmental enquiry or order of dismissal would become illegal. It is stated that upon the allegations made against the petitioner, an offence u/s 7(c) of the U.P. P.A.C. Act, 1948 has been prima facie made out since the essential ingredients that there was gross insubordination or insolence during execution of official duties is alleged. It is therefore, stated that if an offence u/s 7 (c) of the U.P.P.A.C. Act is prima facie made out, then mandatory procedure prescribed under para 1 of Regulation 486 of the Police Regulations has to be followed. Learned Counsel for the petitioner submits that such procedure was not followed in the present case and therefore, entire proceedings are liable to be held illegal and set aside. The Tribunal while considering the aforesaid submission has concluded that the charge against the petitioner did not relate to any offence during discharge of his official duties or execution of his official duty in as much as the charge relates to the petitioner''s conduct in the officer''s mess after duty hours when the petitoner had gone to have his night meal. It has concluded that the procedure under para 1 of Regulation 486 of the Police Regulation would not be applicable.

4. Para III of Regulation 486 provides that when the Superintendent of Police decides to take action for an offence committed u/s 7 of the U.P.P.A.C. Act, which he considers unnecessary at that stage to report to the District Magistrate under para II, he can cause to be made a departmental enquiry to test the truth of the information regarding the alleged offence. Upon conclusion of this enquiry the Superintendent of Police will decide whether further action is necessary for trying the charged officer departmentally or to move the District Magistrate for taking cognizance of the case under the provisions of Code of Criminal Procedure. While considering the aforesaid provisions the Tribunal has held that the enquiry contemplated is evidently a preliminary enquiry for the purpose of satisfaction of the Superintendent of Police to enable him to reach a decision on the question as to whether the matter should be dropped or should be proceeded further. On the basis of this preliminary enquiry the Superintendent of Police has to form his opinion with respect to proceedings against the officer either under para II of Regulation 486 or under para (1) of the said Regulation .In the present case since the offence alleged against the petitioner did not relate to an offence during discharge or execution of his duties the submission of learned Counsel for the petitioner, that once the alleged offence u/s 7 (c) of the U.P.P.A.C. Act has been

prima facie found to have been committed then the mandatory provisions of para 1 of Regulation 486 of the Regulations has to be complied with, cannot be accepted. The Tribunal has rightly held that the Superintendent of Police can in his opinion get the matter enquired into by a Senior Officer to test the truth of the charge. It is only thereafter that he can form an opinion as to whether the matter requires to be proceeded with or dropped. In case he decides to move the District Magistrate to take cognizance of the case under the Criminal Procedure Code then he shall forward a report in writing to the District Magistrate under Para II of 486 of the Regulations. Para II reads as under:

II. When information of the Commission by a police officer of a non-cognizable offence (including an offence u/s 29 of the Police Act) is given in the first instance to the police, the Superintendent of Police may, if he sees reason to take action, either (a) proceed departmentally as laid down under head III of this paragraph and in paragraph 490- or (b) as an alternative to, or at any stage of the departmental proceedings, forward a report in writing to the District Magistrate with a request that he will take cognizance of the offence u/s 190(1) (b), Criminal Procedure Code; provided that reports against Police Officers of having committed non-cognizable offences will (when made to the police and unless there are special reasons for desiring a magisterial inquiry or formal police investigation under the Code) ordinarily be inquired into departmentally and will not ordinarily and then only if be referred to the District Magistrate until departmental inquiry is complete, a criminal prosecution is desired.

On receiving information either by means of a report in writing from the Superintendent of Police as laid down above, or otherwise as laid down in Section 190(1)(a) and (c). Criminal Procedure Code, of the Commission by a Police Officer of a non-cognizable offence, the District Magistrate may, subject to the general provisions of Chapter XV (now Chapter XIII) part. B Criminal Procedure Code:

a) proceed with the case under Chapter XVII (now Chapter XVI) Criminal Procedure Code;

b) order an inquiry by a Magistrate or an investigation by the police u/s 202, Criminal Procedure Code; or an investigation by the police u/s 155(2);

c) decline to proceed u/s 203, Criminal Procedure Code, If an investigation by the police is ordered, it would be made u/s 155(3), Criminal Procedure Code by an officer selected by the Superintendent of Police and higher in rank that the officer charged and all further proceedings will be exactly as laid down for cognizable cases in paragraph 486(1) (4) (5) and (6) above.

If no investigation by the police is ordered and the District Magistrate after or without magisterial inquiry, declines to proceed criminally with the case, the Superintendent of Police will decide, in accordance with the principles set forth in paragraph 486 (1) (6) above and subject to the orders contained in paragraph 494

whether departmental proceedings under paragraph 490 are required.

5. However if upon the report of the preliminary enquiry the Superintendent of Police decides not to move the District Magistrate , he can decide to proceed against the charged officer by ordering a departmental trial under para III of Regulation 486 of the Regulations. Para III of Regulation 486 is quoted here under:

When a Superintendent of Police sees reasons to take action on information given to him, or on his own knowledge or suspicion, that a police officer subordinate to him has committed an offence u/s 7 of the Police Act or a non-cognizable offence including an offence u/s 29 of the Police Act) of which he considers it unnecessary at that stage to forward a report in writing to the District Magistrate under Rule 11 above, he will make or cause to be made by an officer senior in rank to the officer charges, a departmental enquiry sufficient to test the truth of the charge. On the conclusion of this inquiry he will decide whether officer charged should be departmentally tried , or whether the district Magistrate should be moved to take cognizance of the case under the Criminal Procedure Code ; provided that before the District Magistrate is moved by the Superintendent of Police to proceed criminally with a case u/s 29 of the Police Act or other non cognizable section of the law against an inspector or sub-inspector , the concurrence of the Deputy Inspector General must be obtained. Prosecution u/s 29 should rarely be instituted and only when offence can not be adequately dealt with u/s 7.

6. In the present case admittedly the offence alleged against the petitoner was committed when he was off duty and it did not disclose any cognizable offence hence action taken under para III by the Superintendent of Police by ordering departmental proceedings under Rule 14(1) of the Rules of 1991 cannot be said to be illegal.

7. The second ground argued before the Tribunal was that extraneous material has been taken into consideration while passing the order of dismissal without giving any opportunity to make representation against the said consideration/material. The Tribunal while considering this ground found that the previous conduct and history of service of the petitioner was mentioned by the enquiry officer although the same was neither mentioned in the charge sheet nor in the show cause notice. The Tribunal after going through the record has found that the petitoner had taken defence before the enquiry officer as also before the disciplinary authority to the effect that he had a good and excellent record and his higher authorities had appreciated and recommended him for his exemplary work. The Tribunal found that the enquiry officer and disciplinary authority considered this plea of the petitoner and it was negated on the basis of petitioner''s previous history and conduct. Therefore, the Tribunal held that such consideration by the enquiry officer and the disciplinary authority could not be said to be for the purpose of determination of quantum and nature of punishment nor for the purpose of proving the charges levelled against the petitoner. Having recorded the said finding the Tribunal

concluded that it cannot be said that any extraneous material was used for holding the petitoner guilty of the charges or for the purpose of determining the quantum and nature of punishment. No illegality can be found in the said finding of the Tribunal.

8. Learned Counsel for the petitioner has contended that the preliminary enquiry report was not supplied to the petitoner and therefore he was handicapped in submitting his reply to the charge sheet. He has placed reliance on a decision of the Hon''ble Supreme court in the case of Kashinath Dikshita Vs. Union of India (UOI)and Others, and in the case of State of Uttar Pradesh Vs. Mohd. Sharif (Dead) through Lrs., Reliance was placed on paragraph No. 3 which is quoted as under:

3. After hearing counsel appearing for the State, we are satisfied that both the appeal Court and the High Court were right in holding that the plaintiff had no reasonable opportunity of defending himself against the charges levelled against him and he was prejudiced in the matter of his defence, Only two aspects need be mentioned in this connection. Admittedly , in the charge sheet that was framed and served upon the plaintiff no particulars with regard to the date and time of his alleged misconduct of having entered government forest situated in P. C. Thatia District Farrukhabad and hunting a bull in that forest and thereby injured the feeling of one community by taking advantage of his service and rank, were not mentioned . Not only these, where particulars with regard to date and time of the incident not given but even the location of the incident in the vast forest was not indicated with sufficient particularity. In the absence of these plaintiff was obviously prejudiced in the matter of his defence at the enquiry. Secondly , it was not disputed before us that a preliminary inquiry had preceded the disciplinary inquiry and during the preliminary inquiry statements of witnesses were recorded but copies of these statements were not furnished to him at the time of the disciplinary inquiry. Even the request of the plaintiff to inspect the file pertaining to disciplinary inquiry was also rejected. In the face of these facts which are not disputed it seems to us very clear that both the first appeal Court and the High Court were right in coming to the conclusion that the plaintiff was denied reasonable opportunity to defend himself at the disciplinary inquiry; it cannot be gainsaid that in the absence of necessary particulars and statement of witnesses he was prejudiced in the matter of his defence. Having regard to the aforesaid admitted position, it is difficult to accept the contention urged by the counsel for the appellant that the view taken by the trial court should be accepted by us. We are satisfied that the dismissal order has been rightly held to be illegal, void and inoperative. Since the plaintiff has died during the pendency of the proceedings the only relief that would be available to the legal heirs of the deceased is the payment of arrears of salary and other emoluments payable to the deceased.

9. In the present case the facts are totally different. The petitioner was served the charge sheet giving the date, place and time of the misconduct. The charge against

the petitoner was specific and the evidence to be relied against the petitoner was also disclosed. Therefore, even if it is accepted that Preliminary Enquiry Report was not supplied, its non-supply could not be said to have handicapped the petitioner in replying to the charge sheet. The Hon''ble Supreme Court in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., has held as quoted here under ;-

Para 30.

(i) ****

(ii) ****

(iii) ***

(iv) ****

(v) The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answering to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the enquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to indicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact , prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an ''unnatural expansion of justice'' which in itself is antithetical to justice.

10. The above law on the theory of reasonable opportunity and principles of Natural justice laid down by the Hon''ble Supreme Court is clearly applicable in the facts and circumstances of the present case. Upon a Preliminary Enquiry a charge sheet was made against the petitioner. Copy of the charge sheet has been filed as Annexure-1 to the Writ Petition. A perusal indicates that the charges are specific. They give the time, date , place and imputation categorically. The witnesses to be relied upon are also detailed therein. The witness cited at serial No. 11 was for proving the Preliminary Enquiry . The petitoner was informed of the charges and evidence to be

relied upon in great detail. Each witness cited was for proving specific incident and the same was also detailed against his name. It cannot be said that the petitioner was in any way not informed of the charges and evidence which he had to meet in his defence. In the case of MDECII (Supra) the Hon''ble Supreme Court has clearly laid down that if non-supply of Enquiry Report results in prejudice to the employee then the enquiry can be set aside. However, in case non supply of report would make no difference to the ultimate punishment then whether prejudice has been caused is to be considered on the facts and circumstances of each case. It is to be noted that the aforesaid case related to non-supply of enquiry report. In the present case enquiry report was supplied. It is the allegation of non-suply of the Preliminary Enquiry Report that is being argued. It has not been shown as to how the petitoner was prejudiced in his defence due to alleged non-supply of Preliminary Enquiry Report. The facts of this case and those in the case of State of U.P. v. Mohd. Sharif (Supra) are totally different.

11. The petitoner has raised the ground of not having been given proper and reasonable opportunity of hearing and defence. While considering the aforesaid grounds the Tribunal has found that the petitioner was supplied with all the documents including preliminary enquiry report, general diary, medical report etc. During enquiry the petitoner was given opportunity to cross examine the witness and also to lead his evidence in the form of witnesses. The statement of all the witnesses was given to the petitoner. The enquiry report was furnished to the petitioner along with show cause notice and the petitoner had submitted his detailed reply. At that stage the petitoner had not raised any objection regarding non-supply of documents or denial of reasonable opportunity before the enquiry officer. The Tribunal has held that disciplinary authority considered the entire evidence and explanation of the petitioner while recording its findings, as such no illegality or perversity was found either in the proceedings before the enquiry officer or before the disciplinary authority . The Tribunal also found that the petitioner could not point out any document which was not supplied to him due to which his allegations that he was prejudiced by non-supply of documents can be upheld. The Tribunal found that the petitoner had inspected documents himself and that he was not handicapped in either giving his reply to the show cause or in his defence before the enquiry officer. Apart from making allegation that the petitoner was not given reasonable opportunity of hearing and defence the petitoner has admitted his participation in the Enquiry proceedings. He submitted documents in his defence and produced seven defence witnesses . It therefore, cannot be said that the principles of natural justice were violated during the enquiry proceedings. The petitoner has replied to the show cause notice. The disciplinary authority while passing the impugned order has considered each and every ground raised by the petitoner and has recorded his findings and conclusions on the basis of evidence led by the parties. The findings of fact recorded by the Disciplinary Authority were the basis for his arriving at his conclusion for awarding punishment to the petitioner. A

perusal of the order dated 6.9.1995 indicates that the authority has considered the explanation of the petitoner and given his reasons for concurring with the findings of the Enquiry Officer. No error can be found in the enquiry proceedings nor in the decision making process of the Disciplinary Authority.

12. On the submission of the petitoner to the effect that he had not taken liquor, which fact is corroborated by the medical evidence and the statement of doctor, it has been found that the medical examination was done after more than six hours of the incident and the Tribunal has held that evidence with respect to the misconduct led before the enquiry officer in the form of statement of eyewitnesses cannot be disbelieved only on the basis that the medical examination done after six hours of the incident did not find evidence of liquor . It has therefore, been concluded by the Tribunal that the petitioner''s misbehavior with persons in the mess was sufficiently proved by the eye witnesses and therefore, the said misconduct stood conclusively proved . The findings recorded by the Enquiry Officer have been accepted by the Disciplinary Authority and confirmed by the Appellate Authority. Findings of fact recorded by the Authorities were based on evidence led by the parties. The petitoner was given full opportunity of hearing and leading his evidence. The proceedings were held in accordance with the procedure contemplated in Rule 14(1) of the Rules 1991.

13. In the case of B.C. Chaturvedi v. Union of India and Ors. reported in 1996 SCC (L&S) 80 the Hon''ble Supreme Court has held as quoted hereunder:

Judicial review is not an appeal from a decision of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of law. When an inquiry is conducted on charges of misconduct by a public servant, the Court/ Tribunal is concerned to determine whether the enquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But the finding must be based on some evidence.

Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support there from the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. In the

conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of reach case.

The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot he permitted to be canvassed before the Court/ Tribunal. In Union of India v. H.C. Goel this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could he issued.

14. In view of the facts and circumstances of this case no error can be found in the decision making process. The findings and conclusion of the authorities are based on evidence. The principles of natural justice have been followed and the petitioner has been given full opportunity to defend himself. The Disciplinary Authority and the Appellate Authority have considered the evidence on record and have arrived at a conclusion which cannot be said to be perverse or to suffer from any error. This Court would therefore, not interfere in exercise of its jurisdiction under Article 226 of the Constitution of India.

15. For the reasons stated above, no illegality can be found in the judgment and order of the Tribunal or in the impugned orders dated 28.2.1996 and 6.9.1995. This writ petition lacks merit and is therefore, dismissed. No order is passed as to costs.