

Ram Dular Tripathi Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Sep-03-1997

Reported in : 1998(1)AWC282

Judge : R.A. Sharma and ;K.D. Shahi, JJ.

Acts : Civil Services (C.C.A.) Rules, 1930 - Rule 49A and 49A(1); Discipline and Appeal Rules - Rules 3 and 4

Appeal No. : C.M.W.P. No. 22323 of 1997

Appellant : Ram Dular Tripathi

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : C.P. Ghildyal, Adv.

Judgement :

R. A. Sharma, J.

1. Normally this Court does not interfere with the order of suspension of Government servant but for the reasons given hereinafter, the instant case warrants Interference with such an order suspending the petitioner.

2. On 21.5.1997 and 22.5.1997 the Vice-President of India had a programme at Varanasi. According to the scheduled programme, the Governor and the Chief Minister of Uttar Pradesh were to receive the Vice-President at Babatpur airport on 21.5.1997. The petitioner who is Deputy Superintendent of Police, Varanasi, was entrusted with the duty to lead the fleet of the Chief Minister from the airport to the Circuit House, Varanasi in which arrangements for stay of the Vice-President and the Chief Minister were made. As per programme, the Vice-President was to stay in the Governor's suite and the Chief Minister was to stay in another suite in the Circuit House. On 21.5.1997 on his arrival at Babatpur airport, the Vice-President was received by the Governor and the Chief Minister. Thereafter, the fleet of the Vice-President followed by the fleets of the Governor and the Chief Minister moved from the airport to the Circuit House. As the Governor and the Chief Minister were accompanying the Vice-President to the Circuit House, all the three fleets, namely, the fleets of Vice-President, Governor and the Chief Minister were almost merged. All the three fleets entered the Circuit House and the car carrying Vice-President stopped under the Governor's portico where the Vice-President got down from the car and proceeded to the suite reserved for him. Till the Vice-President entered his suite, the fleet of the Chief Minister did not move on account of which there was delay of two/three minutes in taking her to other portion of the Circuit House where a suite was reserved for her. This delay is said to have caused some inconvenience to the Chief Minister on account of which Sri Ved Singh, T.S.I, who also accompanied the Chief Minister's fleet along with the petitioner was suspended on the spot. The Deputy Inspector General of Police/Senior Superintendent of Police, Varanasi (respondent No. 3) sent a report dated 21.5.1997 (fax message) to the Principal Secretary, Home, U. P., Lucknow, Director General of Police, O. P. and other officials informing them about the inconvenience caused to the Chief Minister on account of stopping of her fleet near the Governor's portico where the Vice-President got down from his car, On the receipt of the fax message, the Principal Secretary, Home, U. P., Lucknow passed on an order on 21.5.1997 itself suspending the petitioner in contemplation of enquiry. Being aggrieved by the said order of suspension, the petitioner has filed this writ petition.

3. Two counter-affidavits have been filed on behalf of respondents. Petitioner has filed rejoinder-affidavit in reply thereto. We have heard the learned counsel for the petitioner and the learned standing counsel for the respondents.

4. The order of suspension does not mention the provision under which it has been passed. The petitioner in his writ petition and the respondents in counter-affidavits have also not specified the provision under which the petitioner has been suspended. Sri S. K. Kushwaha, learned standing counsel, however, stated that the impugned order of suspension has been passed under Rule 49A (1), the Civil Services (Classification, Control and Appeal) Rules, 1930. As applicable in U. P. (hereinafter referred to as the Rules). Rule 49A (1), so far as it is relevant, is reproduced below :

'49A. (1) A Government servant against whose conduct an inquiry is contemplated, or its proceeding may be placed under suspension pending the conclusion of the inquiry in the discretion of the appointing authority.'

5. Under Rule 49A, a Government servant can be suspended during pendency or in contemplation of inquiry. Five Judges Full Bench of this Court in State of U. P. v. Jai Singh Dixit and others, 1975 ALR 64, has laid down that the inquiry contemplated by Rule 49A is the one held under Rule 55 which relates to formal departmental /disciplinary inquiry where the major punishment of dismissal, removal or reduction in rank can be imposed. Therefore, a Government servant can be suspended under Rule 49A only in those cases where his conduct warrants imposition of one of three major punishments on him. If the conduct of the Government servant with regard to which an inquiry is being held or is contemplated is such on the basis of which one of three major punishments cannot be inflicted on him, the order of suspension cannot be passed. Therefore, in each case before passing an order of suspension, the Government has to consider the gravity of charge levelled against the Government servant, nature of evidence and impact it will have on the service. The order of suspension cannot be passed in a routine manner. In this connection, a reference may be made to State of Orissa v. Bimal Kumar Mohanty, AIR 1994 SC 2296, in which the Supreme Court has laid down as under :

'It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing Authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee.'

Each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending enquiry or contemplated enquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or enquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental enquiry or trial of a criminal charge.'

6. In paragraph 4 of the counter-affidavit filed on behalf of respondent No. 1, which is reproduced below. It has been stated that the impugned order of suspension has been passed in pursuance of the report dated 21.5.1997.

'4. That, the impugned order dated 21.5.1997 has been passed by the respondent No. 1 in pursuance of report submitted by senior Superintendent of Police, Varanasi on 21.5.1997. It is necessary to submit here that the occurrence is alleged to have taken place on 21.5.1997 as the petitioner has admitted himself, therefore, a further preliminary enquiry was not required by the State Government before passing the suspension order. The factual aspect has already been given by the petitioner and the same facts have also been submitted by Senior

Superintendent of Police to the respondent No. 1 and in pursuance of the said report, the impugned order has been passed by the competent authority.'

7. The extract of the said report which has been filed as Annexure 1 to the writ petition, so far as it is relevant, is reproduced below :

^ekuuh;k eq[; ea=hth] egkefge mi jk'Vifr egksn; ds LokxrKfKZ ckcriqj ,;jiks VZ ij egkefgeegksn; ds vkokxeu ds iwoZ gh vk x;h Fkh A rRi'pkr~ egkefge mi jk'Vifr ,oaegkefge Jh jkT;iky egksn; i/kkjs A vfr fof'k'V egkuqHkkox.k fu/kkZfjr yhVds vuqlkj ckcriqj ,;jiks VZ ls izLFkku fd;s A jkLrs esa funsZ'kks ds vUrxZr O;kidln`<+ iqfyl O;oLFkk dh x;h Fkh A egkefge mi jk'Vifr egksn; dh yhVds izHkkjh iqfyl v/kh{k d izfr{k.k ,oa lqj{kk 'kk[kk vfHklwpuk foHkkx] y[kurFkk ekuuh;k eq[; ea=h th dh yhV ds izHkkjh jktif=r vf/kdkjh Jh jke nqykj f=ikBhiqfyl mikf/k{k d tuin okjk.klh Fks A

egkefge mijk'Vifr egksn; ds vkokl gsrq xouZj lwV ds nkuksa d{kksa esa rFkk ekuuh;keU=h th ds fy, iwohZ lfd ZV gkml ds d{k la[;k&1 esa O;oLFkk dh x;h Fkh A mDrIHkh egkuqHkkoksa dk yhV lfd ZV gkml ifij esa izos'k fd;k A ekuuh;k eq[; eq=hth dk okgu lfd ZV gkml esa muds fy, fu/kkZfjr LFky ij u igqap dj igys u;slfd ZV gkml ds iksfVZdks ds ikl [kM+h dh x;h A blds ckn xouZj lwV ds iksfVZdks ds ikl [kM+h dh x;h A ckn esa ekuuh;k eq[; eU=h th dk okgu muds fy, fu/kkZfjriqjkus lfd ZV gkml esa igqapk;k x;k ftlesa ekuuh;k eq[; eU=h th dks vlqfo/kk gqb ZA ik;yV esa yxs Vh- ,l- vkbZ- Jh osn flag }kjk vius dr ZO; dk fuoZgu tkx:drk lsugha fd;k x;k A vr% Jh osn flag Vh- ,l- vkbZ- dks fuyfEcr dj fn;k x;k gS A yhVfM;wVh esa yxs izHkkjh jktif=r vf/kdkjh Jh jke nqykj f=ikBh iqfyl mikf/k{k d }kjkRle; foosdiq.kZ dk;Zokgh ugha dh x;h vU;Fkk ;g fLFkfr mRiUu ugh gqbZ gskrh vkSjekuuh;k eq[; eU=h th dks vlqfo/kk ugha gskrh A Jh jke nqykj f=ikBh iqfyl mikf/k{k d n~jk fM;wVh esa i;kZIr fuiq.krk iznf'kZr u fd;s tkus ds IEca/k es tkap vnsf'krdj nh x;h gS A tkapks&ijkUr; vfxze vko';d dk;Zokgh izfpfyr dh tk;sxh**

The said report mentions the following two things/circumstances against the petitioner (1) taking the Chief Minister's fleet to the Governor's suite where the Vice-President got down from the car instead of taking it straight to the suite which was reserved for the Chief Minister due to which a few minutes' delay was caused to her in reaching her suite on account of which some inconvenience was caused to her (2) such a situation could have been avoided if the petitioner has taken

prudent action at that time. He has failed to show efficiency/skill in discharge of the duty.

8. The only conduct/misconduct attributed to the petitioner in the report dated 21.5.1997 on the basis of which he has been suspended is lack of prudent action and want of efficiency/skill in discharge of duty. Whether on the basis of such conduct, the petitioner could have been suspended is the question. In *Union of India and others v. J. Ahmed*, AIR 1979 SC 1022, the Supreme Court has laid down that lack of efficiency, or want of attainment of highest standards in discharge of duty attached to public office, would not ipso facto constitute misconduct. In this connection, the relevant extracts from the said decision of the Supreme Court are reproduced below ;

'The five charges listed above at a glance would convey the impression that the respondent was not a very efficient officer. Some negligence is being attributed to him and some lack of qualities expected of an officer of the rank of Deputy Commissioner are listed as charges. To wit, charge No. 2 refers to the quality of lack of leadership and charge No. 5 enumerates inaptitude, lack of foresight, lack of firmness and indecisiveness. These are qualities undoubtedly expected of a superior officer and they may be very relevant while considering whether a person should be promoted to the higher post, or not or having been promoted, whether he should be retained in the higher post or not, or they may be relevant for deciding the competence of the person to hold the post, but they cannot be elevated to the level of acts of omission or commission as contemplated by Rule 4 of the Discipline and Appeal Rules so as to incur penalty under Rule 3.

.....

Failure to come up to the highest expectations of an officer holding a responsible post or lack of aptitude or qualities of leadership would not constitute as failure to maintain devotion to duty.

.....

It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of Judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high.

.....

But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct not for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty.'

9. In the instant case in the report dated 21.5.1997, the only conduct/misconduct attributed to the petitioner is that he has failed to take prudent action and has not shown efficiency/skill in discharge of duty at that time. As held by the Supreme Court, a Government servant cannot be suspended on such a conduct. In this connection, paragraphs 11 and 12 of the writ petition being relevant are reproduced below :

'11. That as per protocol and as a matter of courtesy Hon'ble the Chief Minister was presumed to accompany His Excellency The Vice-President of India to the place of his stay and thereafter to proceed where arrangements for the stay of Hon'ble the Chief Minister was made.'

'12. That the entire fleet. including the fleet of Hon'ble the Chief Minister, entered the Circuit House and after His Excellency The Vice-President and His Excellency the Governor of U. P. got-down, Hon'ble the Chief Minister it appears faced some inconvenience and a delay of 2 or 3 minutes in taking her fleet to the other portion of the Circuit House where the arrangements of her stay were made. The aforesaid, it appears, infuriated Hon'ble the Chief Minister and it appears that she directed action to be taken against the guilty persons.'

10. Paragraphs 9 and 10 of the counter-affidavit filed on behalf of respondent No. 3 which contain the reply of paragraphs 11 and 12 of the writ petition are also reproduced below :

'9. That, the contents of para 11 of the writ petition are not admitted as stated. There were separate arrangements for all the V.I.Ps. for their stay.'

'10. That, the contents of para 12 of the writ petition are admitted to the extent that due to merger of the fleets, the Hon'ble Chief Minister faced some inconvenience and there was also some delay in her programme. Rest of the averments made in para under reply are incorrect, hence denied. As per programme, the Hon'ble Chief Minister was required to stay in Room No. 1 of Eastern Circuit House and it was the duty of the petitioner to stop the fleet at scheduled place, but due to negligence of the petitioner, the fleet headed by the petitioner, was stopped at different places, therefore, the said delay was occurred.'

11. There is no reply to the aforementioned paragraphs of the writ petition in the counter-affidavit filed on behalf of respondent No. 1.

12. From the pleadings of the parties and report dated 21.5.1997, it is quite apparent that the respondents have suspended the petitioner in a mechanical manner without applying mind to the relevant considerations when they learnt that some inconvenience has been caused to the Chief Minister on account of stopping her fleet near the Governor suite. A Government Servant can be suspended only if his conduct is such so as to warrant the inquiry under Rule 55 where one of the three major punishments can be imposed. Mere lack of efficiency/skill or failure to attain the highest standards in discharge of duty would not ipso facto constitute misconduct. The suspension of the Government Servant on such a ground cannot be sustained. Although it is the duty of the Government servants to look after the convenience and comforts of the Chief Minister but merely because some inconvenience has been caused to the Chief Minister, a Government servant cannot be suspended unless his conduct is such which constitutes 'misconduct', in connection with which an enquiry under Rule 55 can be contemplated or instituted. In the present case that is not the position. The impugned order has been passed in a mechanical and casual manner without taking into consideration the relevant

factors. The said order is absolutely arbitrary and no reasonable person could have passed such an order on the basis of the material available on the record.

13. In this connection, it may also be mentioned that in the impugned order two reasons have been given for suspending the petitioner, namely (i) causing inconvenience to the Chief Minister due to stopping her fleet near the Governor's suite and (ii) thus causing danger to the security arrangements of the Chief Minister. In paragraph 4 of the counter-affidavit filed on behalf of respondent No. 1, it has been stated that the only basis for passing impugned order of suspension is the report dated 21.5.1997. In that report, there is no mention of apprehension or danger to the Chief Minister's security. There was nothing before the Government excepting the said report when the suspension order was passed. The observation in the impugned order about the danger to the Chief Minister's security is not supported by any material on record.

14. The Circuit House, Varanasi has two blocks, old and new. Governor's suite was in the new block and the Chief Minister's suite was in the old block. Both the blocks are in the same campus. From the Governor's suite to the Chief Minister's suite, the vehicle has to move in the Circuit House itself. It is well-known fact that whenever some V.I.Ps. stay in the Circuit House, it is converted into a highly protected fort. In such a situation, the question of danger to the Chief Minister's security does not arise. It is quite apparent that the observations/ statement about the threat to the Chief Minister's security have been made in the impugned order in order to give colour to it without there being any material on the record in support thereof.

15. Here it may further be mentioned that the Superintendent of Police, Varanasi has sent a report dated June 19, 1997 to the higher authorities requesting for revocation of the order of suspension of the petitioner. In the said report, it has been mentioned that the preliminary enquiry is being conducted against the petitioner but so far nothing has been found against him so as to justify his suspension. But in paragraph 5 of the counter-affidavit filed on behalf of respondent No. 1, the said suggestion/request has been brushed aside by the Government on the ground that it has not appointed the Superintendent of Police to hold the

enquiry, In this connection, it may be mentioned that in his report dated 21.5.1997. which is the basis of the impugned order, the Senior Superintendent/D.I.G. Police, Varanasi, has mentioned that an enquiry into the matter has been ordered by him. The Superintendent of Police who has sent the said report dated June 19. 1997, appears to have been appointed by D.I.G./S.P.. Varanasi to make the preliminary enquiry.

16. Before parting with this case, it may also be observed that if the Government servants are suspended on such flimsy ground, it will have adverse effect on the service which may ultimately affect the working of the Government.

17. For the reasons given above, this writ petition is allowed with costs. Impugned order dated 21.5.1997 (Annexure 2 to the writ petition) is quashed. The respondents are directed to reinstate the petitioner with full salary and allowances for the period during which he remained under suspension, forthwith.