

Ram Pratap Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Nov-02-1998

Reported in : 1998(4)AWC347

Judge : R.H. Zaidi, J.

Acts : [Constitution of India](#) - Articles 14, 226, 311 and 311(2); Uttar Pradesh Disciplinary Proceedings (Administrative Tribunal) Rules, 1974

Appeal No. : Writ Petition No. 9411 of 1989

Appellant : Ram Pratap

Respondent : State of U.P. and Others

Advocate for Def. : C.S.C.

Advocate for Pet/Ap. : D.S. Chaube, ;S.K. Asthana and ;Satish Sharma, Advs.

Judgement :

R.H. Zaidi, J.

1. By means of this petition, under Article 226 of the [Constitution of India](#), the petitioner prays for issuance of a writ, order or direction in the nature of certiorari quashing the order dated 11.9.1989 whereby the petitioner was removed from the post of Junior Engineer by the respondent No. 1. Prayer to issue a writ, order or

direction in the nature of mandamus commanding the respondents to treat the petitioner as in continuous service with consequential benefits of salary, increments, seniority and promotion, etc. has also been made.

2. The facts of the case giving rise to the present petition in brief are that it was on 28.10.1968 that the petitioner was appointed as Junior Engineer (Mechanical) in Irrigation Department, U. P., Lucknow. During the period from June, 1969 to April, 1971, the petitioner was posted in Emergency Lift Irrigation Department, Allahabad at Lohra Pump Canal. The appointment of the petitioner was approved by the Public Service Commission in the year 1973 and he was confirmed on the aforesaid post on 1.3.1978. Petitioner, according to him, had good service record and was not awarded any adverse entry. He was granted increments in his salary and was also permitted to cross efficiency bar in the meanwhile. He was in the year 1980-81 that some irregularities alleged to have been committed by the petitioner and others were detected. The matter was referred to the Administrative Tribunal constituted under U. P. Disciplinary Proceedings (Administrative Tribunal) Rules, 1974. The Administrative Tribunal No. 2 issued a charge-sheet dated 18.2.1981 which was served upon the petitioner on 26.3.1981, Petitioner was called upon to submit his explanation. It will not be out of place to state that similar charge-sheet was also issued to Sri Khushal Singh, the Assistant Engineer working in the aforesaid division and canal with the petitioner. The main charge against the petitioner and Khushal Singh was that during the aforesaid period when they were posted at aforesaid Lohra Pump Canal, they in collusion with one Paras Nath Misra prepared a farzi/fictitious muster roll and caused financial loss to the Government of Rs. 735.50 paise. The quantum of amount of loss of the Government funds has, however, been found to be incorrect on account of wrong calculation by the punishing authority in the impugned order. The correct amount is stated to be Rs. 622.50 paise and according to the calculation of petitioner it comes to only Rs. 480.

3. The petitioner after receipt of the charge-sheet submitted his explanation on 31.3.1981 denying the charges levelled against him. It was stated that petitioner was not responsible for any loss of Government Funds, It was not his duty to personally and individually verify the payment of wages to the muster roll

employees. It was asserted that there was absolutely no evidence on the record that work was not taken from muster roll employees. during aforesaid period. It was also asserted that payment of wages was actually under the direct control and supervision of the Assistant Engineer and not under the petitioner. Petitioner also submitted his written arguments on 21.9.1985 before the Tribunal. Since the petitioner denied the charges levelled against him, inquiry was conducted by the aforesaid Administrative Tribunal in which one Sri Nazim Ali Shaida. the then Engineer-in-Chief (Mechanical) Irrigation Department. U. P., Lucknow was appointed as Assessor. He. however, did not express his opinion regarding the misutilisation of Government funds against the petitioner. Meanwhile on 24.11.1987 petitioner was granted selection grade by the competent authority and was also promoted to cross efficiency bar. It was on 17.8.1989 that the petitioner was selected for promotion to the post of Assistant Engineer (Mechanical) and a Government Order of the same date was also issued and in pursuance of the aforesaid order, the petitioner handed over the charge of the post of Junior Engineer in Maneri Bhali Construction Division. Uttarkashi and proceeded to Join the post of Assistant Engineer at Azamgarh. Meanwhile, the impugned order of removal dated 11.8.1989 was passed against the petitioner on the basis of the recommendation alleged to have been made by the Administrative Tribunal. The petitioner, therefore, had to approach this Court and file the present petition for the abovementioned reliefs.

4. On behalf of the contesting respondents, a counter-affidavit has been filed in which the relevant facts stated in the writ petition were not denied. It was, however, asserted that since the petitioner was found guilty of the charges levelled against him, he was rightly removed by the respondent No. 1 on the basis of the inquiry report submitted by the said tribunal. In the rejoinder-affidavit filed on behalf of the petitioner, the facts stated in the counter-affidavit have been controverted and the facts stated in the writ petition have been reasserted and reaffirmed. It is stated that the counter-affidavit is vague and misleading and that reliance should not be placed on the said affidavit as Sri Raghunath Misra, the deponent of the said counter-affidavit could not have any personal knowledge regarding the facts of the present case. It was asserted that the explanations submitted by the petitioner was neither considered by the Administrative Tribunal

nor by the Punishing Authority and petitioner was dismissed from service wholly arbitrarily and illegally in violation of provisions of Article 311 of the [Constitution of India](#) and Principle of Natural Justice.

5. Learned counsel for the petitioner vehemently urged that the impugned order of dismissal was passed in violation of principle of natural justice and the same was not a speaking order. It was urged that the contents of the inquiry report on the basis of which petitioner was removed from service were never disclosed to him. In the impugned order of punishment, the explanation submitted by the petitioner was not at all considered. The Impugned order was discriminatory inasmuch as Sri Khushal Singh, who was actually responsible for the payment of wages of the muster roll employees. and against whom the Administrative Tribunal recommended for awarding the major penalty of dismissal, was awarded only minor punishment of stoppage of three yearly increments. It was also urged that the punishment of removal from service awarded to the petitioner was disproportionate to the misconduct alleged to have been committed by him. It was arbitrary and that on the basis of alleged misconduct the petitioner could not be removed from service.

6. On the other hand, learned standing counsel supported the validity of the impugned order. It was urged that the charges levelled against the petitioner were held to have been proved, therefore, the competent authority committed no error of law in removing the petitioner from service.

7. I have considered the submission made by the learned counsel for the parties and perused the record.

8. It is evident from the material on record that the charges levelled against the petitioner related to the period when he was recruited in service, i.e.. 1969 to 1971. The alleged irregularity regarding preparation of fictitious muster roll is stated to have been detected ten years thereafter and after about twenty years, the impugned order of removal has been passed against the petitioner. In the meanwhile, petitioner was confirmed on the post of Junior Engineer, during the aforesaid period he was not awarded any adverse remark. On the other hand, he was given yearly increments, was permitted to cross efficiency bar, was granted

selection grade and was also recommended for promotion as Assistant Engineer. The impugned order of removal on the face of it is not a speaking order. It simply records conclusions, which are based on the inquiry report submitted by the Administrative Tribunal, which was never supplied to the petitioner. The petitioner was thus deprived of his right to defend himself. In *Managing Director E.S.I.L. v. B. Karunakar*, AIR 1994 SC 1074, the Apex Court was pleased to rule as under :

'When the Inquiry Officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the Inquiry Officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the inquiry Officer's report before the disciplinary authority takes its decision on the charges is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.'

9. It is no doubt correct that the law laid down by the Apex Court in *Mohd. Ramzan Khan's case* AIR 1991 SC 171, has been made applicable prospectively and will not affect the order passed prior to the decision of the aforesaid case, but since 1989 the matter is subjudice and is pending disposal before this Court, therefore, in my opinion, in the present case the petitioner is entitled to the benefit flowing from the aforesaid decision of the Apex Court. The impugned order of removal passed against the petitioner has not yet become final. Further in *B. P. Chaurasia v. State of U. P. and others*, 1983 (1) LCD 169, the Division Bench of this Court was pleased to rule as under :

'Although under the amended Article 311(2) of Constitution, it is not necessary to give to delinquent a second opportunity of showing cause against the proposed penalty, and only one opportunity is given at the stage of enquiry, yet the proceeding being quasi-judicial in nature, it is expected that the final order would be speaking order. The order. Annexure-12 is a non-speaking order inasmuch as it does, not discuss either the evidence or the reasons for the conclusion arrived at by the tribunal, nor does it make the inquiry report a part of the dismissal order. Mere statement of conclusion is different from reasons for the conclusion. The

order merely states the conclusion, without giving any reasons therefor and without enclosing the inquiry report either. As such it is a non-speaking order. It must, therefore, be held to be illegal.'

10. Similar view was taken by another Division Bench of this Court in Syed Jamil Ahmad v. State of U. P., 1990 (8) LCD 221.

11. In the present case, the ratio of the aforesaid decisions is fully applicable inasmuch as the order of removal passed against the petitioner is a non-speaking order as it did not record the reasons, it simply contains conclusions. The impugned order is thus non-est and unenforceable in law.

12. In the writ petition, it was specifically stated that against Khushal Singh, the Assistant Engineer working with the petitioner, similar charges have been levelled as were levelled against the petitioner. The Administrative Tribunal conducted the inquiry and recommended for his dismissal from service but he was awarded only a minor punishment of stoppage of three yearly increments. In the counter-affidavit, no reason whatsoever has been disclosed as to why discriminatory treatment was given to the petitioner and as to why the petitioner was removed from service, particularly when Khushal Singh was awarded only minor punishment of stoppage of yearly increments. The impugned order is thus violative of Article 14 of the [Constitution of India](#) and is liable to be set aside on this ground also.

13. Learned counsel for the petitioner was also right in his submission that the punishment awarded to the petitioner is disproportionate and not commensurate of the misconduct alleged to have been committed by him. As for the loss of Rs. 622.35 or Rs. 480 as the case may be. It was not open to the respondent No. 1 to remove the petitioner from service, particularly when the order of punishment was to be passed after about twenty years of the commission of misconduct and when in the meanwhile the petitioner was confirmed on the post of Junior Engineer, he was granted increments in his salary, he was permitted to cross efficiency bar. was awarded selection grade and was also selected for promotion to the post of Assistant Engineer and as his service record was unblemished as he was not awarded any adverse remark in the meanwhile. A reference in this regard may be

made to the decision of Bhagat Ram v. State of Himachal Pradesh, 1983 SCC (L&S;) 342, wherein it has been ruled as under :

'.....that the penalty imposed must be commensurate with the gravity of misconduct and that any penalty disproportionate to the gravity of misconduct would be violative of Article 14 of the Constitution.'

14. The aforesaid decision was relied upon by a Division Bench of this Court in Syed Jamil Ahmad's case (supra) and it was held that even if it was assumed that the petitioner has caused loss to the tune of Rs. 581 (less than the loss alleged to have been caused by the petitioner, i.e., Rs. 480). the penalty imposed cannot be said to be commensurate with the gravity of misconduct and the same was illegal and arbitrary. In view of the aforesaid, discussion the impugned order of removal dated 11.9.89 is liable to be quashed.

15. The writ petition succeeds and is allowed. The order dated 11.9.89 is hereby quashed. The respondents are directed to reinstate the petitioner on the post of Assistant Engineer (Mechanical) to which he was promoted, and treat him in continuous service. Petitioner will be entitled to all consequential benefits.

16. No order as to costs.

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