

Kailash Singh Vs. Inspector General of Police and ors.

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Court : Allahabad

Decided On : Jan-11-2001

Reported in : (2001)2UPLBEC1760

Judge : S.R. Singh, J.

Acts : Uttar Pradesh Police Officers of the Sub-Ordinate Ranks (Punishment and Appeal) Rules, 1991 - Rule 20

Appeal No. : Civil Misc. Writ Petition No. 37405 of 1999

Appellant : Kailash Singh

Respondent : inspector General of Police and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : C.B. Yadav, Adv.

Disposition : Petition allowed

Judgement :

S.R. Singh, J.

1. Heard Shri C.B. Yadav, learned Counsel for the petitioner and learned Standing Counsel for the respondents.

2. The relief claimed in this writ petition is that the orders dated 23.3.1995, being Annexures 7 and 8, and the appellate order dated 30.3.1996/24.4.1996 being Annexure 9, as well as the revisional order dated 28.12.1997, being Annexure 12, are sought to be quashed.

3. By order dated 23.3.1995, being Annexure 1, censor entry was awarded to the petitioner and by order of even date, being Annexure 8, the period of absence from 21.4.1994 till 29.7.1994 was treated as leave without pay. He filed an appeal which was dismissed by an order dated 24.4.1996 referred to above. The revision filed by him was also dismissed by order dated 28.12.1997. The matter came up before this Court on 1.9.1999 on which date the following order was passed :-

'Heard Sri C.B. Yadav, learned Counsel for the petitioner as well as the learned Standing Counsel.

The petitioner is a Constable in Civil Police. After departmental enquiry the petitioner has been awarded the censure entry and has also been treated as being on leave without pay for a period of 90 days. The petitioner preferred an appeal under Rule 20 of U.P. Police Officers of the Sub-Ordinate Ranks (Punishment and Appeal) Rules, 1991 as well as revision under Rule 20 of the said Rules. Both of them have been rejected. Learned Counsel for the petitioner pointed out that the petitioner came to know of the orders on revision application only on 21.7.1999 when a counter-affidavit was filed on a contempt application. In support of his contention learned Counsel for the petitioner placed reliance on the decision of this Court reported in 1964 ALJ 31, Ramnath Singh v. State of Uttar Pradesh and the decision of the Apex Court reported in (1997) 6 SCC 415, State of Tamil Nadu and Ors. v. M. Natarajan and Anr.. On the strength of the above decision, it was urged that the order of punishment has been passed on total insufficient and non-existent grounds.

Let counter-affidavit be filed within six week.

List thereafter.'

4. Till date no counter-affidavit has been filed. I have accordingly examined the facts and circumstances set out in the writ petition and heard the learned Counsel for the parties with a view to dispose of the writ petition finally at this stage.

5. It would appear that the petitioner was initially granted leave for 3 days with effect from 17.4.1994 but he overstayed the leave and remained absent from duty from 21.4.1994 till 29.7.1994. The petitioner gave his joining report on 30.7.1994, He was given show show-cause notice on 9.9.1994 to explain as to why a censor entry be not awarded to him for his unauthorised absence from duty. It appears that a report was called from the Deputy Superintendent of Police vide order dated 9.2.1995 in the back drop of the show-cause notice. The later submitted a report on 8.3.1995 being Annexure 6 in which it was recommended that the show-cause notice proposing censor entry for the absence of the petitioner from 21.4.1994 till 29.7.1994, be cancelled and the petitioner be granted medical leave for that period. The disciplinary authority viz., the Senior Superintendent of Police did not agree with the recommendation and ordered vide impugned order dated 23.3.1995, that the censor entry as proposed be recorded in the service record of the petitioner and his 90 days absence be treated as leave without pay.

6. The question is as to whether the Senior Superintendent of Police was legally bound to record his reasons for differing with the recommendations of the Deputy Superintendent of Police and give notice to the petitioner as to why the recommendation made by the Deputy Superintendent of Police be not rejected and the censor entry as proposed be awarded. The legal position well settled in this regard is that the disciplinary authority is not bound to accept the report/recommendation of the enquiry officer but in case he does not accept the report/recommendation of the enquiry officer, then he must record its reasons and give an opportunity of hearing to the delinquent [see Punjab National Bank and Ors. v. Shri Kunj Behari Misra, JT 1998 (5) SC 548]. No such procedure was followed by the Senior Superintendent of Police. The orders impugned herein are, therefore, vitiated in view of the law laid down by the Apex Court in the case referred to above.

7. In the case of Ramnath Singh v. State of Uttar Pradesh, reported in 1964 ALJ 31, it has been held that where the officer conducting the enquiry had only recommended a reduction of grade for two years, the Senior Superintendent of Police had no jurisdiction to impose the extreme penalty of dismissal in utter disregard to the recommendation made by the Deputy Superintendent of Police. The law laid down in the case aforesaid is applicable to the facts of the present case also inasmuch as the Senior Superintendent of Police has recorded no reason for not accepting the recommendation made by the Deputy Superintendent of Police.

8. In the result, the writ petition succeeds and is allowed. The impugned orders 23.3.1995, being Annexures 7 and 8 and the appellate order dated 30.3.1996/ 24.4.1996, being Annexure 9, as well as the revisional order dated 28.12.1997, being Annexure 12 are hereby quashed.