

Neutral Citation No. - 2024:AHC-LKO:64386-DB

Reserved on 12.07.2024

Delivered on 18.09.2024

Court No. - 2

Case :- WRIT - A No. - 6573 of 2022

Petitioner :- Prem Nath

Respondent :- State Of U.P. Thru Addl.Chief Secy. Home Lucknow
And Ors.

Counsel for Petitioner :- Ram Charitra Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Rajan Roy,J.

Hon'ble Om Prakash Shukla,J.

(Per Om Prakash Shukla, J.)

1. Heard Shri Ram Charitra Pandey, learned Counsel for the petitioner and Shri Indrajeet Shukla, learned Additional Chief Standing Counsel along with Shri Akash Sinha, learned Standing Counsel for the State -respondents.
2. The present writ petition has been filed by the petitioner challenging the order dated 05.03.2014 passed by State Public Service Tribunal (Annexure No.1), dismissal order dated 26.09.2001 (Annexure No.2), appellate order dated 27.02.2002 (Annexure No.3) and revisional order dated 16.04.2003 (Annexure No.4) and also for treating to him to be in continuous service with all consequential service benefits.
3. Briefly stated, the petitioner was appointed on the post of Constable in Armed Force in Civil Police in the year 1976 and was subsequently promoted to the post of Head Constable in the year 1982. In the year 1996, he was posted in District Faizabad and during his posting on 10.07.1998, he received an information relating to his mother being seriously ill. Allegedly, on that very date, the petitioner informed Shri T.N.

Shukla, Additional District Magistrate, Faizabad and Reserve Inspector, Police Line Shri Baburam Yadav about his mother's illness and immediately left for Lucknow and kept his AK-47 rifle in his box at the barrack. After improvement in the health of his mother, he returned back to Faizabad on 17.08.1998 and submitted his joining report to the Reserve Inspector, Police Line, however, the petitioner was immediately arrested on the basis of an FIR being Case Crime No.2060/1998, P.S. Kotwali Nagar, District Faizabad, lodged by Reserve Inspector Baburam Yadav under Section 409 of Indian Penal Code (*hereinafter referred to as 'I.P.C.'*). He was placed under suspension vide order dated 17.08.1998.

4. The petitioner thereafter was placed under suspension due to his alleged involvement in the aforesaid FIR. Subsequently, it is the case of the petitioner that a final report No.95/99 dated 16.04.1999 was filed after conclusion of investigation, wherein it was found that there had been no misappropriation of arms and ammunitions by the petitioner and accordingly the said case was dropped against him.
5. It has been alleged by the petitioner that although he was granted bail on 21.09.1998, but he was not paid any subsistence allowance throughout his suspension period.
6. Further contention by the petitioner is that in the intervening period, he challenged the suspension order dated 17.08.1998 by filing a Writ Petition No.2608 (S/S) of 1999 before this Court, wherein vide an order dated 27.05.1999, the said suspension order was stayed. It is the case of the petitioner that the respondents neither complied with the interim order of this Court nor paid the full salary or the subsistence allowance, inspite of various requests.

7. Interestingly, after two years of the petitioner's suspension, he was served with a charge sheet dated 12.08.2000 alleging therein that he had been absent from duty w.e.f. 17.07.1998 with arms and ammunitions given to him. Although, the charge sheet mentioned about some documents, the same as claimed were not supplied to the petitioner.
8. The petitioner after receipt of the said charge sheet, sent an application to the Superintendent of Police (Rural), Faizabad stating that he was placed under suspension on 17.08.1998 and although his suspension had been stayed by this Court on 27.05.1999, no payment of salary or even the subsistence allowance had been made to him and as such he and his family had been living in a state of vagrancy and, most importantly, because of the said financial difficulty, he was not able to participate in the disciplinary proceedings.
9. It has been claimed by the petitioner that although he sought the documents forming part of the charge sheet on 21.08.2000, but only a preliminary enquiry report was provided to him and even written request on 24.03.2001 for payment of subsistence allowance did not yield any result. The petitioner although sought time for filing reply to the charge sheet on 24.08.2001, but due to paucity of funds, he could not participate in the disciplinary proceedings.
10. The records reveal that after conclusion of inquiry, he was served with a show cause notice on 23.08.2001 as to why the petitioner may not be dismissed from services. Again no reply to the show cause notice was submitted by the petitioner, allegedly due to paucity of funds, leading to his dismissal from service on 26.09.2001.

11. An appeal was preferred by the petitioner as per rules, however, the same was rejected on 27.02.2002 and similarly the revision petition of the petitioner met with the same fate on 16.04.2003.
12. Against the aforesaid background, the petitioner preferred a Claim Petition No.192 of 2003 before the State Public Services Tribunal, Lucknow (*hereinafter referred to as 'the Tribunal'*), however, the said claim petition was rejected by the Tribunal vide an order dated 05.03.2014. It is this order along with punishment, appellate and revisional order passed against the petitioner which have been challenged in the present writ petition.
13. Apparently, the petitioner had joined service in the year 1976 on the post of Constable in the Armed Police and was promoted to the post of Head Constable in the year 1982. The petitioner has already been in service for 22 years (1976 to 1998) and would have retired on attaining the age of superannuation on 15.10.2016 but for his dismissal from service.
14. The contention of the learned Counsel for the petitioner was that although the petitioner was arrested on account of an FIR being Case Crime No.2060/1998, P.S. Kotwali Nagar, District Faizabad, registered under Section 409 of I.P.C. against him, which also led to his suspension from service, however, the investigation of the said FIR culminated in a final report no.95/99 dated 16.04.1999, wherein it was found that there was no misappropriation of arms and ammunition by the petitioner. Therefore, it is contended that his continued suspension after the said final report was illegal and arbitrary. It has also been contended that although the suspension order clearly mentions that the petitioner would be provided subsistence allowance inspite of repeated request and certificates to the effect that he was not employed elsewhere, no allowance was paid to him.

Further, it has been contended that even the said suspension order was stayed by this Court vide order dated 27.05.1999 passed in Writ Petition No.2608 (S/S) of 1999, however, the respondents did not care to reinstate the petitioner in service nor paid him salary nor even paid subsistence allowances.

15. It is the submission of the learned Counsel for the petitioner that the petitioner was never paid any subsistence allowances, leading to his starvation and if that was not enough, a charge sheet was served on the petitioner after two years of his suspension on the pretext that the petitioner was absent from duty w.e.f. 17.07.1998 with arms and ammunitions.
16. It has been contended by the petitioner that his repeated requests for supply of documents yielded no result and since no subsistence allowance was being paid, the petitioner was unable to defend and participate in the departmental enquiry properly and effectively and no reply to the charge sheet or even to the subsequent show cause notice issued after an enquiry report could be filed by him, leading to his dismissal from service.
17. It has been argued by learned Counsel for the petitioner that the dismissal order is a non-speaking order, passed without application of mind. Even the appeal as well as revision filed by the petitioner against the said dismissal order were rejected, without any application of mind.
18. The learned Counsel submitted that any recommendation by the Enquiry Officer on the point of punishment is an illegality and relied on the judgment of **Masood Vs. U.P. Public Services Tribunal (Writ Petition No.11867 of 2017)** and **Yashpal Singh Vs. State of U.P. (Writ Petition No.23402 of 2014)**.

19. It has been further submitted by learned Counsel for the petitioner that neither a copy of the preliminary report nor relevant documents were supplied to the petitioner and the proceedings had been conducted ex parte against him and as such the award of major punishment of dismissal from service was not justified in any manner. It has also been contended that the authorities did not follow the mandate of Regulation 493 of Police Regulation, 1991. It was, thus, contended that since the petitioner had been exonerated in the criminal proceeding, the departmental proceedings are vitiated and the punishment order, based thereon are liable to be quashed in view of the judgment passed in **Kedar Nath Yadav Vs. State of U.P. & others, 2005(3) ESC 1955** and **Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd., 1993 (3) SCC 1416**.
20. Learned Counsel for the petitioner also relied upon the judgment of this Court in **Satya Ram Singh Vs. D.M. Kanpur Dehat (1998) (16) ACD 740** and **Depot Manager APSRTC & Anr. Vs. Surendra, AIR 2008 SCW 5446**, to buttress his submission that the penalty imposed must be commensurate to the gravity of misconduct and that any penalty disproportionate to the gravity of misconduct would be violative of Article 14 of the Constitution.
21. Per contra, it has been contended by the learned Counsel for the respondents that the petitioner was afforded adequate opportunity to defend his case, however, he willfully did not participate in the departmental proceedings. According to him, the enquiry was conducted as per the provisions of the Police Regulation, 1991 and in the enquiry, charges levelled against the petitioner were found to be proved and after following due procedure, impugned order of dismissal from service had been passed.

22. Learned Additional Chief Standing Counsel has also argued that the petitioner belongs to a disciplined force and apparently it has come on record that without any notice or approval from any person, he absented himself unauthorizedly with arms and ammunitions and returned back only after a long period, which amounts to gross negligence, indolence and indiscipline in his duties leading to dismissal from service. It has been argued that ample opportunity was given to the petitioner, however, he deliberately did not turn up before the Enquiry Officer in order to delay the enquiry proceedings. It is also contended that in the entire pleadings of the writ, the petitioner has failed to mention any specific document, which was not made available to him or as to how the same had caused prejudice to him. According to him, these are merely sweeping allegations and as such relied on the judgment of **Rajasthan State TPT Corpn. & Anr. Vs. Bajrang Lal, 2014 (4) SCC 693.**
23. Learned Additional Chief Standing Counsel referring to paragraph 15 of the Service Tribunal Order has argued that it is well recorded that during the suspension period the petitioner was absent from the police line and as such he could not have claimed the subsistence allowances. Thus, it has been argued by the respondents that the order passed by the disciplinary authority, appellate authority, revisional authority and the Tribunal are just, legal and valid and they do not require any interference. As to the aspect whether the departmental proceedings can be quashed as the petitioner had been exonerated in the criminal proceedings, learned Additional Chief Standing Counsel has relied upon a judgment in the case of **State of Karnataka Vs. Umesh, 2022 (6) SCC 663.** At the conclusion of the argument, question as to the status of payment of salary w.e.f. 25.04.1999, i.e. after reinstatement of the petitioner up to the dismissal of service was put to the learned Counsel for the respondents, for which a response has

been filed along with the written submissions, stating therein that no payment of salary had been made to him during this period as allegedly he was absent from duty. As to the question put by this Court relating to whether there is any procedure for depositing the arms and ammunitions everyday by a police engaged in the security duty, it has been responded that there is no such procedure, however, it has been stated that it was always incumbent on the police engaged in security duty to deposit such arms and ammunitions, in case he has to go on leave.

24. This Court has given thoughtful consideration to the contentions of both the parties. Having heard the submissions of learned Counsel for the parties, this Court is of the view that by the present petition, the petitioner is seeking quashing of the dismissal order as well as appellate and revisional order primarily on five grounds. The first being that the petitioner was not granted subsistence allowances and as such he could not diligently participate in the departmental proceedings and the second that opportunity to defend was not adequately provided to the petitioner as documents were not supplied to him. Further the third ground, has been agitated that since the petitioner was exonerated in the FIR lodged against him on the same set of facts and circumstances, he could not have been held guilty in the departmental enquiry leading to his dismissal from service and the fourth being that the major punishment of dismissal from service is not commensurate to the charges levelled against him. Fifth the Enquiry Officer could not have recommended punishment of dismissal in his enquiry report in view of Appendix to Rule 14 of Rules 1991.
25. As far as the ground agitated by the petitioner that he was not granted subsistence allowance on account of which he could not participate in the departmental proceedings, this Court finds

that the learned Tribunal has dealt with the said aspect vividly in paragraph 13, 14 and 15 of the impugned order dated 05.03.2014, which, *inter alia*, is reproduced hereinunder :-

"13. The petitioner has contended that he has not been paid subsistence allowance, so he could not be able to participate in the departmental inquiry. In this respect, we have carefully pursued the records. The petitioner was placed under suspension on 17.08.98. He had challenged his suspension order before the Hon'ble High Court in which interim order was granted in favour of the petitioner on 27.05.1999 and suspension order was stayed. The S.S.P. Faizabad reinstated the petitioner vide order dated 25.4.1999 before passing the order of Hon'ble High Court and the departmental inquiry was initiated against him.

14. It is clear from the records that the petitioner was sent in security duty of A.D.M. (City) Faizabad from police lines, Faizabad on 23.06.1998 along with one A.K.47 rifle, four magazines, one bannet and 200 cartridges. On 17.7.1998, the A.D.M.,city, Faizabad has informed on telephone that the petitioner has absented himself from 11.7.98. The R.I. had made search of the petitioner, but no trace was found then he made entry of absence of the petitioner on 17.7.98 at 18.20 hours and on the same date, F.I.R. was also lodged in Kotwali Nagar, Faizabad against the petitioner on crime no.2060/1998 under section 409 of I.P.C. It is also clear that during the investigation on 18.08.1998, the petitioner was arrested alongwith rifle, cartridges etc. and sent to jail. Prosecution sanction was also granted against him on 18.4.1999, but on the legal advice, criminal case was dropped and the departmental inquiry was initiated against the petitioner.

15. It is also clear from the G.D. report no.56 dated 9.4.2000 that the petitioner has made his entry of arrival on 9.4.2000 at 18.20 hours after

unauthorized absence of 638 days 18 hours and 15 minutes in police lines, Faizabad. In this way, it is clear that the petitioner was not present in the police lines from the date of suspension i.e. 18/08/98 to 25/04/99 during which he was placed under suspension. It is provided under sub-rule (2) of rule 53 of the Financial Hand Book Vol.II part II to IV that no payment under sub-rule(1) shall be made unless the Government servant furnishes a certificate that he is not engaged in any other employment, business, profession or vacation during period of suspension. In view of aforementioned provisions of sub-rule (2) of rule 53 of the Financial Hand Book, Vol.II part II to IV, the petitioner is not entitled for subsistence allowance unless completes the requirement of aforesaid provision."

26. Apparently, it comes out from the records that the Senior Superintendent of Police, Faizabad had already reinstated the petitioner vide order dated 25.04.1999 before passing of the order dated 27.05.1999 by this Court staying his suspension order, however, the petitioner did not join and an entry had been made in the records in this regard on 09.04.2000. Thus he was absent from 18.08.1998 to 25.04.1999 (suspension period) and thereafter till 09.04.2000, i.e. from 18.08.1998 to 09.04.2000, which was unauthorized. The Tribunal has recorded a finding regarding non-compliance of sub-rule (2) of Rule 53 of the Financial Handbook Vol. II Part II to IV. In absence of such compliance, no payment of subsistence allowance could be made. The petitioner has not pleaded before the Tribunal about compliance by him of the prerequisites mentioned in the above Rule nor submitted any proof. No such proof has been submitted before it. Petitioner has not been able to rebut the findings of the Tribunal in this regard nor has he been able to point out any perversity therein. The petitioner having been reinstated in service on 25.4.1999 itself the suspension ceased from the said date, consequently, he should

have joined his service, which he did not do. The disciplinary proceedings were initiated subsequently, therefore, the plea that he could not participate therein on account of non-payment of subsistence allowance, is untenable, as, suspension had already come to an end much prior to initiation of such disciplinary proceedings.

27. The next ground taken by the petitioner is about not having been provided reasonable opportunity to defend his case in the departmental proceedings and also that all the documents had not been supplied to him. In this regard, we find that the learned Tribunal has recorded a finding after perusing the records that various dates were fixed for enquiry with due communication to the petitioner about the same and adequate opportunity was given to him to defend himself. It would be profitable to quote paragraph-9 of the judgment of the Tribunal in this regard, which, *inter alia*, states as follows :-

"9. In view of above arguments, we have perused the records. Perusal of record shows that a departmental inquiry against the petitioner was initiated and Dy. S.P. (Rural) Shri Shreekant was appointed as inquiry officer. He had issued charge sheet against the petitioner on the allegations that the petitioner was deputed on security duty of the then Addl. District Magistrate, city on 18.6.1998. He was provided one A.K.47 rifle with 4 magazine, one banet and 200 cartridges, but the petitioner un-authorisedly absented himself from his duty w.e.f 11.7.1998 alongwith above arms and ammunition without any information. The said charge sheet was provided to the petitioner on 12.8.2000 and charge was explained to the petitioner in hindi. The petitioner had made his signature on 12.8.2000 for the same. The petitioner has not filed any reply to the charge sheet. He had sent a letter through post to the inquiry officer, by which he had demanded certified copy of the preliminary report and certified copy of

some other evidences. The inquiry officer had considered to provide him certified copy of preliminary inquiry report and also ordered to inspect the file. Thereafter, the said inquiry was transferred to Sri Dinesh Chand, Addl. S.P. Faizabad. He had informed the petitioner to receive the photocopy of preliminary inquiry report and for inspection of the file and fixed 12.9.2000. The said letter was received to the petitioner on 16.9.2000. The inquiry officer again vide his letter dated 28.9.2000 informed the petitioner to file his reply to the charge sheet and copy of the said letter was received by the petitioner on 4.10.2000, but no reply was submitted. The inquiry officer had fixed the date of recording the evidence of prosecution on 11.1.2001 and the petitioner was duly informed about the date and again the date of recording of prosecution evidence was adjourned for 26.2.2001. The petitioner was informed on 22.2.01 about the said date and he had made his signature regarding the said information. Due to absence of the witnesses, the hearing of inquiry was adjourned for 12.3.01. The petitioner was again informed on 5.3.01. The petitioner had demanded 10 days more for submitting his reply and also asked for supply of copy of the preliminary inquiry report on 13.3.01 and again 23.3.01 was fixed for recording of prosecution evidence. The petitioner had made his signature regarding information and receiving of copy of preliminary inquiry report. The petitioner had again sent a letter on 23.3.01 through post by which he asked two month's time for submitting his reply to the charge sheet. The inquiry officer had granted only 20 days time for submitting reply to the charge sheet and fixed 17.4.01 for prosecution evidence. The said information was received to the petitioner on 10.4.01 and he made his signature to that effect. The petitioner had again requested for 25 days' time on 17.4.01. Hearing of prosecution evidence was adjourned for 21.5.01 and the said information was sent to the petitioner which was received by the father of the petitioner. On 21.5.01 the petitioner had not appeared at the time of hearing of inquiry

proceeding. The inquiry officer had recorded evidence of Sit Babu Ram Armed Assistant, P.A.C. Azamgarh, head constable Mohd. Museed, Seema Parichhetra Behraich and again 30.5.01 was fixed as next date for recording of prosecution evidence. The information of next date was sent to the petitioner which was received by him on 28.5.01. The petitioner had again asked for 14 days' additional time which was rejected by the inquiry officer and again 11.6.01 was fixed for prosecution evidence. The said information was sent to the petitioner on 2.6.01 which was received by him. At this stage, the said departmental inquiry was transferred to Sri Rajendra Singh S.P. City. He had fixed 30.7.01 for prosecution evidence vide order dated 23.7.01. The information was sent to the petitioner on 25.7.01, but the petitioner had not appeared on the date fixed. On 30.7.01 in the absence of the petitioner, the evidence of S.I. Dhani Ram Verma, CO R.P. Singh, constable Sri Prakash Pandey and constable Dev Mani Pandey was recorded. Information regarding completion of departmental inquiry was sent to the petitioner which was received to him on 2.8.02, but he did not appear, so, the Inquiry officer after considering the oral and documentary evidences, submitted his inquiry report to the punishing authority on 9.8.2001. From the perusal of record, it is also clear that a show cause notice was issued by the punishing authority on 23.8.2001 along with copy of inquiry report, but he has not filed any reply to the show cause notice, then the punishing authority has passed the impugned order of punishment.

(Emphasis supplied)

28. The petitioner's Counsel could not point out any perversity in these findings of the Tribunal nor rebut them based on any evidence. The petitioner was always informed about the each stage of enquiry and was given adequate opportunity to defend himself, however, the petitioner did not avail the same and only as an afterthought has taken the plea of not being provided

opportunity in the inquiry. The petitioner was not able to point out as to which document was not provided to him in the departmental proceedings and what was its relevance in the matter. The contention of the petitioner relating to non-supply of documents, in the absence of any specific enumeration as to how the same prejudicially affected him, is devoid of any merit and as such this ground of challenge also fails.

29. The next ground taken by the petitioner is that since the petitioner was exonerated in the FIR lodged against him on the same set of facts and circumstances, he could not have been held guilty in the departmental inquiry leading to his dismissal from service. The charge against the petitioner in the disciplinary proceeding was of unauthorized absence from 11.07.1998 with arms and ammunition in his possession which was a gross misconduct, whereas the allegation in the FIR was with respect to commission of an offence under Section 409 I.P.C. In the final report submitted by the police, it is mentioned that it was essentially a case of absence of service and not misappropriated of arms and ammunition, therefore, no offence was made under Section 409 I.P.C. Thus apparently the allegation in the disciplinary proceedings were different from those in the FIR and considering the distinct nature of two proceedings and standard of proof therein, no benefit is available to the petitioner merely on account of submission of final report in the criminal case.
30. Now the next question is whether the punishment awarded is commensurate to charges levelled against the petitioner. No doubt, the charges levelled against the petitioner have been proved but considering the fact that petitioner had rendered almost 22 years of service from 1976 till 26.09.2001 when he was dismissed from service and the allegation of misappropriation of arms and ammunitions has not been found

proved in the criminal case and as there was no loss of arms and ammunitions, the extreme punishment of dismissal from service in the facts of the case does appear to be harsh and excessive and is required to be reconsidered, which could be substituted by a lesser punishment or may be even a compulsory retirement from the date of his dismissal or from a date when the age limit/requisite service referred in FR 56 was satisfied, without any arrears of salary or enhancement based on any pay revision.

31. In view of the above, the judgment of the Tribunal stands modified only to the extent of reconsideration of the quantum of punishment imposed, as aforesaid. A decision shall be taken in this regard by the disciplinary authority within three months. The dismissal order shall be subject to the fresh decision to be taken as aforesaid.
32. The writ petition is **allowed in part**.

(Om Prakash Shukla, J.) (Rajan Roy, J.)

Order Date :- 18th September, 2024
Anand Sri./-