

Mumtaz Hussain Ansari

Vs

State of U.P. and Another

Civil Appeal No. 1234 of 1977

(Syed M. Fazal Ali, A. Varadarajan, Ranganath Misra JJ)

21.03.1984

JUDGMENT

VARADARAJAN, J. -

1. This appeal by special leave is directed against an order of a Division Bench of the Allahabad High Court dated August 19, 1974 dismissing in limine Miscellaneous Writ Petition No. 4827 of 1974 which had been filed by the appellant for quashing the first respondent's order dated May 3, 1974 removing him from service pursuant to the finding of the second respondent U. P. Administrative Tribunal, Lucknow dated July 10, 1972 that the appellant was guilty of three of the four charges framed against him the appellant was employed as a Deputy Superintendent of Police at Pilibhit at the relevant time. The fourth charge of which the appellant has been exonerated was that he had transferred his Vespa scooter bearing Registration No. UPI 9117 and valued at more than Rs. 500 to one Lal Mohd. without obtaining the previous sanction of the appropriate authority and the he thereby contravened Rule 24 (2) of the U. P. Government Servant's Conduct Rules, 1956. The appellant's defence was that the transfer was effected through a reputed dealer and therefore previous sanction of the appropriate authority was not necessary. The Tribunal found that the transaction of sale of the scooter by the appellant to Lal Mohd. was effected through M/s Anand Agencies, automobile engineers and reputed dealers in scooters and therefore there was sufficient compliance with Rule 24 (2).
2. Charges 1 to 3 were more serious ones. The substance of the first charge was that the appellant while posted as Deputy Superintendent of Police at Pilibhit was granted 30 days leave with effect from November 11, 1967 and had to resume his duties on December 10, 1967 but failed to resume his duties and absented himself without previous permission or intimation to the Superintendent of Police and without good or sufficient cause. He failed to report about his whereabouts until an application was made by him on April 1968 for extension of the leave. The appellant's defence was that he suffered from an attack of a mental disease, melancholia and was under the treatment of Dr. Mukerji at Calcutta from December 1, 1967 to April 20, 1968 and he had informed about his sudden illness and had applied for extension of the leave directly and also through his wife and he had furnished his leave address when he proceeded on 30 days leave. The substance of the second charge was that while applying for extension of leave on April 20, 1968 he attempted to wilfully deceive the Inspector-General of Police by attempting to make him believe that he had been ill from December 1, 1967 to April 20, 1968 and was under treatment of a doctor at Calcutta although in fact he had been to Pakistan during the period and had obtained a medical certificate through deceitful and fraudulent means. The defence of the appellant was one of denial. He reiterated that he was under treatment of Dr. Mukerji at Calcutta from December 1, 1967 to April 20, 1968 and contended that in that period he was treated by Dr. Das at Howrah from January 10, 1968 to January

30, 1968 for injuries to his nose. The substance of the third charge was that after having proceeded on leave with effect from November 11, 1967 he unauthorisedly and unlawfully visited Karachi in Pakistan sometime between November 22, 1967 and April 20, 1968 without any valid passport or travel document and he thereby contravened Section 3 of the Passport Act, 1967. The appellant denied the charge and contended that he had never visited Karachi and had been suffering from melancholia and treated by Dr. Mukerji at Calcutta.

3. A number of witnesses for the department and some witnesses for the defence were examined before the Tribunal which after considering the oral and documentary evidence found charges 1 to 3 against the appellant. One Harish Kumar, Superintendent of Police who was appointed as an assessor in the inquiry conducted before the Tribunal agreed with the findings of the Tribunal. Subsequently, the Tribunal submitted copies of its findings to the Government with its recommendation that the appellant may be dismissed from service, The Governor accepted the Tribunal's findings, took a tentative decision to dismiss the appellant from service, and issued a second show-cause notice dated September 29, 1972 to him. The appellant submitted his interim reply and final reply on November 19, 1972 and March 32, 1973 respectively. After considering the appellant's replies the Governor agreed with the Tribunal that the charges 1 to 3 are fully established against the appellant and ordered his removal from service by the order date August 1, 1974.

4. The appellant challenged his removal from service in W. P. No. 4827 of 1974 which was dismissed in limine by a Division Bench of the Allahabad High Court. Hence this appeal by special leave.

5. This appeal deserves to be allowed on a short point which unfortunately has not been noticed by the learned Judges of the High Court before dismissing the writ petition in limine. The appellant had prayed for summoning 8 witnesses for being examined in his defence by filing an application dated January 17, 1972 for that purpose. The Tribunal dismissed that application on January 19, 1972 on the ground that it had already taken into consideration the relevant rules in the Financial Code Volume III and that it does not consider it necessary to revise its views. The Tribunal observed in that order that the appellant has to bear the expenses of the witnesses who are private persons if he wanted to has them examined in his defence. He was, however, given one weeks time to deposit a sum of Rs. 900 initially by way of travelling and daily allowances for the witnesses as well as compensation for the loss of their professional income and he was ordered to make good any shortfall. The appellant had not deposited that amount and the witnesses had not been summoned for being examined in his defence. The question for consideration is whether on this Account there is non-compliance with the principles of natural justice.

6. The Tribunal had relied upon Rule 20-A of the Travelling Allowance Rules (Financial Handbook Volume III) in making the above order. Sub- rule (1) of that Rule reads thus :

20-A (1) Persons, who not being servants of the Government, are called as witnesses in a departmental inquiry either by the authority conducting the inquiry or on behalf of the government servant whose conduct is under inquiry, shall receive the same travelling allowance and diet money as are admissible to non-official witnesses summoned in criminal cases, provided that in the case of such persons who are called on behalf of the government servant whose conduct is under inquiry, the payment of travelling allowance and diet money shall be subject to the following principles :

(a) travelling allowance may be paid to witnesses summoned in the event of the

government servant concerned clearing himself :

(b) such allowances will be paid only in respect of witnesses whose evidence is considered of material value by the authority conducting the inquiry; and

(c) in exceptional cases the authority conducting the inquiry may, on grounds to be recorded, recommend to the Government that the principles laid down above be departed from owing to special reasons. In such cases it will be for the Government to decide, after taking into consideration all the circumstances of the case, whether the recommendation should be accepted or not.

the authority conducting the inquiry shall determine the class of each witness for the purpose of calculating travelling allowance and diet money under the scale prescribed for witnesses in criminal cases.

7. This sub-rule is not quite clear, for it does not say who should bear the expenses initially or whether the reference to be made by the inquiring authority under class (c) should be made before or after the examination of the witnesses. Clause (b) of this sub-rule seems to have been considered satisfied in the present case as the Tribunal had decided to summon the witnesses provided the amount was deposited by the appellant as directed. The appellant has contended in para 31 of his writ petition that in view of G. O. No. 4197R/VIIIA-500 (146) /68 travelling allowance and diet money of witnesses to be examined before the Tribunal must have been paid by the State Government but he was asked to deposit a sum of Rs. 900 for the witnesses being summoned and this is in violation of the relevant provision relating to conduct of proceeding before the Tribunal. The said G. O. marked as Annexure 11 to the writ petition relates to one Kunhi Ram and was evidently intended to clarify Rule 20-A of the Travelling Rules and it reads thus :

In continuation of G. O. No. 1371-1/VIII-B-2000 (10/16, dated July 3, 1961) I am directed to say that in the special appeal the appellant had contended that the additional S. P., Agra had asked him to deposit the expenses for T. A. etc. of defence witnesses before he summoned them. The position in this connection has been examined by the Govt. and is being clarified here. Under para 490 (5) of the police regulations the S. P. has to decide whether he should refuse to summon a witness whose evidence he does not consider material to the issue. The witnesses who are accepted by the S. P. for being produced in defence can be either summoned by him or allowed to be produced by the party charged. So far as the question of payment of expenses for the journey by a defence witness is concerned it is not material when once a witness is permitted to be produced whether he is summoned officially or is called by the party charged himself. The responsibility for payment of travelling expenses to the defence witnesses produced during departmental trial conducted under Section 7 of the police Act is of the Government Thus if a witness has been permitted to be produced in defence it is not open to the inquiring officer to lay down a condition that his travelling expenses should be first deposited before he is summoned. However, no expenses are to be paid for persons who are not permitted to be produced in defence.

The position with regard to the payment of travelling expenses to the defence witnesses is as follows :

(i) Government servants who appear as defence witnesses to give evidence of the facts which come to their knowledge in their official capacity are governed by Rule 59 (1) of the Financial Handbook Volume III for the purpose of travelling allowance.

(ii) As regards government servant who appear as witnesses to facts which have come to their knowledge in the private capacity and appear as private individuals the position under Rule 59 (2) of Financial Handbook Volume III is that they are entitled to receive their actual travelling expenses from the court and as such they will get T. A. on an ad hoc basis and as on tour. Thus if he is a government servant travelling in a train.... as an ordinary passenger and has to bear witness to that in his private capacity he should be paid T. A. as on tour. The Meharrirs of the police stations bringing records which they maintain at P. Ss. in their official capacity will be governed by class (1) above.

(iii) Non-official witnesses called or allowed to be produced by the S. P. will get T. A. under Rule 20-A of Financial Handbook Volume III.

8. This G. O. makes it clear that responsibility for payment of travelling allowance to defence witnesses produced in departmental inquiry conducted under Section 7 of the Police Act is of the Government and that if a witness has been permitted to be produced in defence it is not open to the inquiry officer to lay down a condition that his travelling expenses should be first deposited by the delinquent officer before the witness is examined. In the present case, the Tribunal has considered the witnesses to be material but has insisted on the appellant depositing initially a sum of Rs. 900 for the travelling expense and daily allowance of the witnesses with an obligation to make good any shortfall in those allowances and loss of professional income of the witnesses. Mr. Prithvi Raj, senior counsel appearing for the respondent-State did not contend that this G. O. does not apply to the case of the appellant. Moreover, the appellant was under suspension from December 11, 1967 and there is nothing on record to show that he was financially sound and in a position to deposit the sum of Rs. 900 and pay any further amount which may be required to meet any shortfall in the travelling and daily allowances and the loss of professional income of the 8 more witnesses whom he wanted to be examined on his side. The failure to cause the production of those witnesses at the expense of the Government might have caused prejudice to the appellant for it cannot be predicted what conclusion the Tribunal would have reached in regard to charges 1 to 3 if the evidence of those witnesses was available for its consideration. We are, therefore, of the opinion that there is no compliance with the principles of natural justice in this case. The appeal has to be allowed on this short ground and it is accordingly allowed. The finding of the Tribunal that the appellant is guilty of charges 1 to 3 and the consequent order of the Government/Governor removing the appellant from service are quashed. The matter is remitted to the Tribunal for fresh disposal after summoning at Government expense such of the material witnesses as the appellant may wish to be examined in his defence. The appellant shall be entitled to costs quantified at Rs. 2000. It is needless to say that the appellant would be entitled to subsistence allowance from the date of his removal from service until the proceedings taken against him terminate and final order is passed. This shall be paid in six weeks.

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