

A.F.R.

Court No. - 7

Case :- SERVICE SINGLE No. - 24979 of 2020

Petitioner :- P.N.O.052150337 Mohd.Farman

Respondent :- State Of U.P.Thru.Prin.Secy. Home & Ors.

Counsel for Petitioner :- Mohd. Shujauddin Waris

Counsel for Respondent :- C.S.C.

And

Case :- SERVICE SINGLE No. - 17225 of 2021

Petitioner :- P.N.O. 052150337 Mohd. Farman

Respondent :- State Of U.P. Thru. Prin. Secy. Home Lko. & Ors.

Counsel for Petitioner :- Mohd. Shujauddin Waris,Abhishek Bose,Sankalp Dewari

Counsel for Respondent :- C.S.C.

Hon'ble Rajesh Singh Chauhan,J.

1. Heard Sri Amit Bose, learned Senior Advocate assisted by Sri Abhishek Bose, learned counsel for the petitioner and learned Standing Counsel for the State-respondent.

2. By means of first writ petition, the petitioner has assailed the Circular dated 26.10.2020 issued by the Director General of Police, U.P. Lucknow (Annexure No.01) whereby the guidelines have been issued in respect of wearing proper uniform and proper appearance warranted for the member of disciplined force.

3. The petitioner has also assailed the suspension order dated 05.11.2020 passed by Deputy Inspector General of Police/Senior Superintendent of Police, Ayodhya (Faizabad) (Annexure no.02) whereby the petitioner has been placed under suspension in contemplation of departmental inquiry for the reason that the petitioner despite being the member of disciplined

force is maintaining his beard and despite the specific direction being issued by the superior authority to shave the beard he did not follow such direction.

4. The petitioner has also assailed the order dated 13.11.2020 passed by Deputy Inspector General of Police/Senior Superintendent of Police, Ayodhya (Faizabad) (Annexure No.03) rejecting the application of the petitioner dated 03.11.2020 whereby the petitioner had sought permission to maintain his beard in accordance with tenets of Muslim religion.

5. Whereas, by means of second Writ Petition (S/S) No. 17225 of 2021 the petitioner has assailed the charge-sheet dated 29.07.2021 issued by Superintendent of Police (Rural Area), Ayodhya (Faizabad) which is contained as Annexure No.04 to the writ petition.

6. Since the facts of both the cases are common, therefore, both the writ petitions are being decided by the common judgment/order.

7. In the first writ petition so far as the order of suspension dated 05.11.2020 is concerned, it is to be noted here that the charge-sheet has been issued against the petitioner on 29.07.2021 which has been challenged in the second writ petition, therefore, as per my considered opinion if the charge-sheet is issued against any employee who is under suspension, the employee should submit his defence reply taking all pleas and grounds which are available to him enclosing therewith the copies of relevant documents which are necessary for disposal of the issue and the departmental inquiry should be conducted and concluded strictly in accordance with law by following the principals of natural justice with expedition preferably within a period of three months from the date the defence reply to the charge-sheet has been filed. Thereafter, the disciplinary authority may pass final order providing copy of the inquiry report and seeking explanation from the petitioner as per law. Therefore, the suspension order may not be interfered at least for the aforesaid period of three months till the departmental inquiry concludes. However, if the

departmental inquiry does not conclude subject to the proper cooperation of the petitioner with the inquiry proceedings within a period of three months from the date of receipt of the defence reply to the charge-sheet, the suspension order shall be kept in abeyance and the petitioner shall be entitled for consequential relief. However, in that case the departmental inquiry may go on and final order may be passed but strictly in accordance with law.

8. So far as the Circular dated 26.10.2020 issued by the Director General of Police, U.P. Lucknow (Annexure No.01) issuing guidelines in respect of wearing proper uniform and maintaining the appearance in a manner required for member of disciplined force is concerned, I am of the considered opinion that this is a domain of competent authority to issue guidelines in respect of wearing proper uniform and keeping the appearance in a manner required for the members of disciplined force and no interference should be done, inasmuch as, maintaining and wearing proper uniform as well as maintaining physical appearance is one of the first and foremost requirement of the members of disciplined force. The parameters determined for the members of disciplined force are not the same as of parameters relating to the members of other services. By means of Circular dated 26.10.2020, the Director General of Police, U.P. Lucknow has followed other circulars referred in the circular itself issued from time to time with effect from 1985 till 2018 and the members of disciplined force are strictly following such guidelines.

9. Therefore, I do not find any infirmity or illegality in the Circular dated 26.10.2020. Likewise, the application of the petitioner dated 03.11.2020 has been rejected in terms of Circular dated 26.10.2020 assigning the reasons, therefore, I do not find any infirmity or illegality in the order dated 13.11.2020 rejecting the application of the petitioner dated 03.11.2020 whereby he had requested to maintain his beard in accordance with the tenets of Muslim religion. The order dated 13.11.2020 is a speaking and reasoned order, therefore, it may not be interfered.

10. In view of aforesaid facts and reasons stated herein above, the first Writ Petition (S/S) No. 24979 of 2020 is hereby *dismissed*.

11. It is needless to say that the Inquiry Officer shall conduct and conclude the departmental inquiry strictly in accordance with law, following the principals of natural justice with expedition preferably within a period of three months subject to the cooperation of the petitioner, inasmuch as, no departmental inquiry may be concluded to its logical end unless the employee cooperates with the inquiry proceedings properly.

12. So far as the prayer of second writ petition is concerned whereby the petitioner has assailed the charge-sheet dated 29.07.2021 which is contained as Annexure No.04 to the writ petition, learned Additional Chief Standing Counsel has raised preliminary objection regarding maintainability of the writ petition by submitting that this is a premature writ petition, inasmuch as, the writ court may normally not interfere with the charge-sheet or show-cause-notice. So as to strengthen his aforesaid objection regarding maintainability of the writ petition, Sri Vivek Kumar Shukla has placed reliance on the judgment of the Hon'ble Apex Court in re:- *Secretary, Ministry of Defence and others vs. Prabhaskh Chandra Mirdha* [reported in (2012) 11 Supreme Court Cases 565] referring para 10 which is being reproduced herein below:-

"10. Ordinarily a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the court. (Vide State of U.P. v. Brahm Datt Sharma²⁵, Bihar State Housing Board v. Ramesh Kumar Singh²⁶, Ulagappa v. Commr.²⁷, Special Director v. Mohd. Ghulam Ghouse²⁸ and Union of India v. Kunisetty Satyanarayana²⁹.)"

13. He has further drawn the attention of the Court towards dictum of Hon'ble Apex Court in re:- ***State of Orrisa and another vs. Sangram Keshari Misra and another*** [reported in (2010) 13 Supreme Court Cases 311] referring para 10 which reads as under:-

"10. Though there appears to be some merit in the said contentions of the first respondent, it is unnecessary to examine the correctness of these contentions as normally a charge-sheet is not quashed prior to the conducting of the enquiry on the ground that the facts stated in the charge are erroneous. It is well settled that the correctness or truth of the charge is the function of the disciplinary authority (vide Union of India v. Upendra Singh¹ SCC p. 362, para 6). Therefore we reject the contention that the charge ought to have been quashed without reserving to the State to proceed in accordance with law."

14. Further, he has drawn the attention of the Court towards dictum of the Hon'ble Apex Court in re:- ***Union of India and others vs. Upendra Singh*** [reported in (1994) 3 Supreme Court Cases 357] referring para 6 which reads as under:-

"6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal v. Gopi Nath & Sons⁵. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus : (SCC p. 317, para 8)

"Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the

manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

15. He has also placed reliance on the decision of Hon'ble Apex Court in re:- ***State of U.P. vs. Shri Brahm Datt Sharma and another*** [reported in AIR 1987 SC 943) by submitting that the Hon'ble Apex Court has held that when a show-cause notice was issued to a government servant under the statutory provisions calling upon him to show cause, ordinarily the government servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. The purpose of issuing show cause is to afford opportunity of hearing to the government servant and once cause is shown it is open to the Government to consider the matter in the light of the facts and submissions placed by the government servant and only thereafter a final decision in the matter could be taken. Interference by the Court before that stage would be premature.

16. Therefore, on the basis of aforesaid settled propositions of law, the learned Additional Chief Standing Counsel, Sri Vivek Kumar Shukla has submitted that the charge-sheet should not be interfered by this Court.

17. However, Sri Amit Bose, learned Senior Advocate appearing on behalf of the petitioner has submitted that since the alleged conduct of the petitioner does not come within the purview of misconduct, therefore, no departmental inquiry against the petitioner should be conducted in the light of dictum of Hon'ble Apex Court in re:- ***Upendra Singh (supra)***. Therefore, the impugned charge-sheet is a nullity in the eyes of law.

18. Sri Amit Bose referring the dictum of the Hon'ble Apex Court in re:- ***Bijoe Emmanuel and others vs. State of Kerala and others*** [reported in (1986) 3 SCC 615] has submitted that the Hon'ble Apex Court has held that even if any student or set of students does or do not sing National

Anthem in school prayer due to their religion belief, even such right is protected under Article 25 of the Constitution of India, therefore, rejecting the request of the petitioner for maintaining beard in the light of Circular dated 26.10.2020 is violative of Article 25 of the Constitution of India.

19. Having heard learned counsel for the parties and having perused the material available on record, I am of the considered opinion that a member of a disciplined force must strictly follow the executive orders or circulars or instructions issued by the department or by the higher authority of the department as those executive orders etc. are as good as service condition.

20. As a matter of fact such executive intimation/order has been issued to maintain the discipline in the force directing to keep the appearance and uniform befitting for the members of disciplined force. Further, police force has to be a disciplined force and being a law enforcing agency, it is necessary that such force must have secular image which strengthen the countenance of national integration. Sri Amit Bose, learned Senior Advocate while assailing the charge-sheet has submitted that the conduct of the petitioner not cutting his beard despite the specific direction being issued by the superior authority does not come within the purview of misconduct, therefore, no charge-sheet should have been issued against the petitioner to conduct the departmental inquiry.

21. So as to appreciate the aforesaid submission of Sri Amit Bose, I am considering the definition of "*Misconduct*" as per Black's Law Dictionary Ninth Edition is a dereliction of duty; unlawful or improper behaviour. As per The New International Webster's Comprehensive Dictionary of the English Language (Encyclopedic 2013 Edition), the "*Misconduct*" is to behave improperly, to mismanage or bad behaviour. As per P. Ramanatha Aiyar's The Law Lexicon Encyclopedic Law Dictionary with Legal Maxims, Latin Terms and Words & Phrases Second Edition, the "*Misconduct*" means a transgression of some established and defend rule

of action, a forbidden act, a dereliction from duty, unlawful behaviour, willful incharacter, improper or wrong behaviour, misdemeanor, misdeed, misbehaviour, delinquency, impropriety, mismanagement etc.

22. Therefore, non-cutting the beard despite making the petitioner aware by the In-charge Station House Officer of police station Khandasa when the petitioner was posted as constable to the effect that the police personnel may not have beard as it is a violation of direction/circular being issued by the higher officials is not only a wrong behaviour but the same is misdemeanor, misdeed and delinquency of the petitioner. So the submission of Sri Amit Bose is not acceptable to the effect that the alleged conduct of the petitioner is not misconduct. However, his misconduct/misdeed shall be examined by the Inquiry Officer during the course of inquiry, strictly in accordance with law by affording him an opportunity of hearing on that no observations of this Court are required.

23. So far as the submission regarding protection of fundamental right enshrined under Article 25 of the Constitution of India is concerned, it is clear that Article 25 guarantees freedom of conscience and free profession, practice and propagation of religion, therefore, having beard by a member of disciplined force may not be protected under Article 25 of the Constitution of India, inasmuch as, Article 25 of the Constitution of India does not confer absolute right in this regard, all the rights have to be viewed in the context and letter and spirit in which they have framed under the Constitution. As a matter of fact rights guaranteed under Article 25 of the Constitution of India have inbuilt restrictions.

24. Sri Amit Bose, learned Senior Advocate has drawn the attention of the Court towards Annexure no.12 which is judgment and order dated 12.12.2012 passed by the Division Bench of Mumbai High Court in re:- ***Zahiroddin Shamsoddin Bedade vs. State of Maharashtra and others*** [reported in 2013 (3) MH. LJ page 701] whereby the Division Bench has held that keeping beard by a police constable professing Islam is not a

fundamental right guaranteed under Article 25 and 26 of the Constitution of India. Sri Bose has submitted that the aforesaid judgment and order dated 12.12.2012 passed by the Mumbai High Court has been assailed before the Hon'ble Apex Court by filing Special Leave Petition (Civil) No. 920 of 2013. The Hon'ble Apex Court has issued notices to the parties granting interim protection to that petitioner staying the disciplinary proceedings vide order dated 22.01.2013. Therefore, Sri Bose has submitted that since the final adjudication is yet to come by the Hon'ble Apex Court in the identical issue, the pending departmental proceedings against the present petitioner may be stayed.

25. Replying the aforesaid point, Sri Vivek Kumar Shukla, learned Additional Chief Standing Counsel has referred the dictum of Hon'ble Apex Court in re:- ***Shree Chamundi Mopeds Ltd. vs. Church of South India Trust Association CSI Cinod Secretariat, Madras*** [reported in (1992) 3 SCC 1] by submitting that the Hon'ble Apex Court has not stayed the judgment and order dated 12.12.2012 passed by the Division Bench of Mumbai High Court. Even if such order was stayed issuing notices to the opposite parties, in that case the judgment and order of Mumbai High Court would have been a good law unless such order is quashed/set-aside by the Hon'ble Apex Court. As per Sri Shukla, since the notices have been issued in that case by the Hon'ble Apex Court without staying the operation of the judgment and order dated 12.12.2012, only the disciplinary proceedings have been stayed, therefore, the judgment and order dated 12.12.2012 passed by the Division Bench of Mumbai High Court may not be treated as nonest in the eyes of law. As a matter of fact till the quashing of judgment and order passed by the Mumbai High Court, such judgment shall hold the field and shall be treated as good law.

26. Three Judges of the Hon'ble Apex Court in re:- ***Mohammed Zubair Corporal No. 781467-G vs. Union of India and others*** [reported in (2017) 2 SCC 115] has held that regulations and policies in regard to personal appearance are not intended to discriminate against religious

beliefs nor do they have effect doing so. Their object and purpose is to ensure uniformity, cohesiveness, discipline and order which are indispensable to the force.

27. In this case also the Hon'ble Apex Court was examining the question as to whether the police personnel can keep beard taking shelter of Article 25 and 26 of the Constitution of India. Before the Hon'ble Apex Court in re:- **Mohammed Zubair (supra)** this fact could not be established by the litigant as to whether there is any specific mandate in Islam which prohibits the cutting of hairs or shaving the facial hairs and no substantial material was placed before the Hon'ble Apex Court to convince that a police personnel professing Islam may not cut his beard or hairs. Para 15 & 18 of the judgment are being reproduced herein below:-

"15. During the course of the hearing, we had inquired of Shri Salman Khurshid, learned Senior Counsel appearing on behalf of the appellants whether there is a specific mandate in Islam which "prohibits the cutting of hair or shaving of facial hair". The learned Senior Counsel, in response to the query of the Court, indicated that on this aspect, there are varying interpretations, one of which is that it is desirable to maintain a beard. No material has been produced before this Court to indicate that the appellant professes a religious belief that would bring him within the ambit of Regulation 425(b) which applies to "personnel whose religion prohibits the cutting off the hair or shaving off the face of its members". The policy letters which have been issued by the Air Headquarters from time to time do not override the provisions of Regulation 425(b) which have a statutory character. The policy circulars are only clarificatory or supplementary in nature."

"18. We see no reason to take a view of the matter at variance with the judgment under appeal. The appellant has been unable to establish that his case falls within the ambit of Regulation 425(b). In the circumstances, the Commanding Officer was acting within his jurisdiction in the interest of maintaining discipline of the Air Force. The appellant having been enrolled as a member of the Air Force was necessarily required to abide by the discipline of the Force. Regulations and policies in regard to personal appearance are not intended to discriminate against religious beliefs nor do they have the effect of doing so. Their object and purpose is to ensure uniformity, cohesiveness, discipline and order which are indispensable to the Air Force, as indeed to every Armed Force of the Union."

28. In view of the facts, reasons and case laws so cited by the respective parties, I do not find any infirmity or illegality in the impugned charge-sheet dated 29.07.2021 issued against the petitioner by the Senior Superintendent of Police, Ayodhya/Faizabad (Annexure No.04 to the writ

petition). I am also of the considered opinion that the departmental inquiry against the petitioner should be conducted and concluded to its logical end as directed above. The judgment of Hon'ble Apex Court in re:- *Upendra Singh (supra)* may not rescue the petitioner, inasmuch as, the allegation levelled in the charge-sheet, *prima facie*, constitute misconduct subject to the specific findings of the Inquiry Officer on that.

29. Therefore, I hereby dismiss the writ petition being misconceived and direct the Inquiry Officer to conduct and conclude the inquiry against the petitioner in a manner directed above and the disciplinary authority may pass final order strictly as per law.

30. It is, however, made clear that no prejudice shall be caused to the petitioner for the reason that he has filed the aforesaid writ petitions challenging the suspension order and charge-sheet.

31. No order as to costs.

Order Date :- 12.8.2021
Vikas/-

[Rajesh Singh Chauhan,J.]