
(2007) 04 AHC CK 0322
In the Allahabad High Court

Abhai Pal Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-04-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226

Citation : (2008) 1 AWC 617

Hon'ble Judges : Devi Prasad Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Devi Prasad Singh, J.—The petitioner, under Article 226 of the Constitution of India, filed the present writ petition against the order of dismissal on the ground that while disagreeing with the report of the Enquiry Officer, the disciplinary authority has not issued any show cause notice to the petitioner. The other ground raised by the petitioner's counsel is that the appellate authority while deciding the appeal has not considered the material ground advanced by the petitioner while filing the appeal against the impugned order of dismissal passed by the disciplinary authority.

2. The brief facts relating to the present controversy are narrated as under:

The petitioner has been the member of the Agricultural Service Group-III. He was a permanent employee whose services were confirmed on 28.7.1995. In the year 1996, the petitioner was posted as Plant Production Supervisor in Barhpur unit of District Farrukhabad, which is situated in the remote area of the district adjoining forest land where a theft took place. According to the petitioner's counsel, the official residence provided to the petitioner, situate in the block office. A Class IV employee Shri Ramesh Chandra Shukla, who was working as chowkidar, was transferred by the District Plant/Agriculture Officer. The petitioner made request for posting of a guard/ chowkidar but his request could not get favour of the authority. In the night between 16th/17th November, 1996, a theft

took place and Government property was taken away by the thieves. A first information report was lodged by the petitioner at police station on 17.11.1996. However, apart from the incident of theft, the petitioner was suspended for other charges also, in consequence whereof, he filed Writ Petition No. 1393 of 1990 and the High Court has directed to expedite enquiry. The charge-sheet was served upon the petitioner consisting of five charges. A copy of the charge-sheet is filed as Annexure-4 to the writ petition. The petitioner has submitted his reply to the charge-sheet. According to the petitioner's counsel, during the course of enquiry, the petitioner demanded various documents including certain papers relating to theft of Government property which is alleged to be taken away by the thieves but the same was not supplied to him. However, the Enquiry Officer submitted a report dated 26.2.1999, a copy whereof is Annexure-7 to the writ petition. The Enquiry Officer has exonerated the petitioner from almost all the charges with a finding that the petitioner should have taken more precaution while discharging duty on the post in question. Copy of the enquiry report was provided to the petitioner by the respondents.

3. Instead of agreeing with the report of the Enquiry Officer, the disciplinary authority in his wisdom has interfered with the enquiry report and held that the petitioner is guilty of all the charges contained in the charge-sheet and liable for major penalty, i.e., of dismissal from service. Against the impugned order dated 17.4.2000, passed by the disciplinary authority as contained in Annexure-8 to the petition, the petitioner had filed a statutory departmental appeal dated 12.6.2000, a copy whereof is Annexure-10 to the writ petition. Alongwith the statutory appeal, the petitioner had filed various documents and also given narration of facts that he is not responsible for the allegations contained in the charge-sheet. He has further proceeded to submit that the report submitted by the Enquiry Officer should be accepted.

4. The appellate authority had dismissed the appeal by the impugned order dated 10.3.2004, contained in Annexure-11 to the writ petition. A finding has been recorded by the appellate authority that on account of the theft having taken place in the manner referred to hereinabove, the State exchequer has suffered a loss of Rs. 1,08,918.65 and it was the duty of the petitioner to protect the State property being incharge of the godown. However, the appellate authority has not considered the grounds raised by the petitioner while filing the statutory appeal that because of slackness on the part of the authorities, no regular chowkidar was appointed to protect the warehouse or the godown.

5. A perusal of the order, passed by the appellate authority indicates that the appellate authority was impressed by the fact that the theft took place in the godown causing the loss to State exchequer for an amount of Rs. 1 lac or more, as referred to hereinabove. No finding has been recorded by the appellate authority relating to the grounds and the question raised by the petitioner while assailing the order passed by the disciplinary authority. The appellate authority has also not recorded a finding relating to the inaction on the part of the district

authorities to take appropriate measure by providing chowkidar for the godown in question. The appellate authority has also not given any finding in regard to the grounds raised by the petitioner in his memo of appeal relating to non-supply of certain documents in spite of the demand made by the petitioner.

I have given my anxious consideration to the argument advanced by the petitioner's counsel.

6. So far as the argument, advanced by the petitioner's counsel that in case the disciplinary authority was disagreeing with the finding recorded by the Enquiry Officer, opportunity of hearing with the show cause notice should have been given to the petitioner to explain his conduct, is concerned, it seems to have, prima facie, got force. Learned Counsel for the petitioner has relied upon the Apex Court's judgment in *State Bank of India and Others Vs. K.P. Narayanan Kutty, and Ranjit Singh v. Union of India and Ors.* 2006 AIR SC 2177: 2006 (5) AWC 5274 .

7. In para 10 of the writ petition, the petitioner has categorically stated that no notice was served by the disciplinary authority while disagreeing with the report of the Enquiry Officer. It has been submitted that mere service of the enquiry report was not sufficient. In para 11 of the writ petition, it was stated that though the enquiry report was served upon the petitioner but no notice was served to him indicating the mind of the disciplinary authority for being disagreed with the report of the Enquiry Officer. The averments, contained in Para 11 of the writ petition, have not been categorically denied by the respondents while filing the counter-affidavit.

8. In the case of *State Bank of India (supra)* their Lordships of the Apex Court has held that in case the disciplinary authority is not agreed with the report of the Enquiry Officer, then a show-cause notice should be given indicating disagreement with the Enquiry Officer so that the delinquent officer may get an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the Enquiry Officer. Relevant portion from the judgment of the *State Bank of India (supra)* is reproduced as under:

3. Per contra, Mr. L. Nageswara Rao, learned senior counsel representing the respondent made submissions supporting and justifying the impugned order. He said that the Constitution Bench decision in the case of *Bidyabhushan Mohapatra* abovementioned, is distinguishable ; that was a case where this Court set aside the impugned order passed by the High Court in regard to the penalty imposed even on the proved charges. In the present case, it is clear from the order of the learned single Judge as well as that of the Division Bench of the High Court that the High Court did not go into the merits of other contentions or the factual aspects. The parties also focused their arguments as to whether an opportunity was to be provided by the disciplinary authority in case the disciplinary authority disagreed with certain findings recorded by the Enquiry Officer. Applying the principle as stated in *Punjab National Bank* case as already indicated above, the

High Court felt that providing an opportunity by the disciplinary authority was necessary. As is evident from the order of the learned single Judge, which was affirmed by the Division Bench, that the order of dismissal was set aside, however, liberty is given to the appellants to proceed in accordance with law, after giving opportunity to the respondent.

6. ...the delinquent officer will have to be given an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the Enquiry Officer, we find it difficult to accept the contention advanced on behalf of the appellants that unless it is shown that some prejudice was caused to the respondent, the order of dismissal could not be set aside by the High Court.

In the case of Ranjit Singh (supra), while reiterating the principle of law laid down by the Apex Court, it has been held that while disagreeing with the report of the Enquiry Officer, the disciplinary authority should give an opportunity to the delinquent officer to submit a response against the disagreement. It has been further held in the case of Ranjit Singh that it shall be incumbent upon the disciplinary authority to apply his mind over the material on record on the basis of which the Enquiry Officer has recorded a finding in favour of the delinquent employee. The relevant portion from the judgment of Ranjit Singh's case is reproduced as under:

22. In view of the aforementioned decisions of this Court, it is now well-settled that the principles of natural justice were required to be complied with by the disciplinary authority. He was also required to apply his mind to the materials on record. The Enquiry Officer arrived at findings which were in favour of the appellant. Such findings were required to be overturned by the disciplinary authority. It is in that view of the matter, the power sought to be exercised by the disciplinary authority, although not as that of an appellate authority, but, akin thereto. The inquiry report was in favour of the appellant but the disciplinary authority proposed to differ with such conclusion and, thus, apart from complying with the principles of natural justice it was obligatory on his part, in absence of any show cause filed by the appellant, to analyse the materials on records afresh. It was all the more necessary because even the Central Bureau of Investigation, after a thorough investigation in the matter, did not find any case against the appellant and thus, filed a closure report.

In the case of Ranjit Singh, as referred to hereinabove, a notice was given to the delinquent employee but while passing an order of punishment, the disciplinary authority has not applied his mind to the material which was considered by the Enquiry Officer while submitting a report in favour of the delinquent employee.

9. The next ground raised by the petitioner that the appellate authority has not applied his mind while dismissing the appeal seems also to be correct. A perusal of the memo of appeal, filed as Annexure-10 to the writ petition, indicates that the petitioner has brought sufficient material on record to assail the finding recorded by the disciplinary authority but the appellate authority, instead of

considering the grounds raised by the petitioner, has dismissed the appeal being influenced by the fact that the theft took place in the godown at the time when the petitioner was posted there. A perusal of the judgment in Ranjit Singh's case (supra), also indicates that whether it is the disciplinary authority or the appellate authority, it will always be incumbent on them to consider the entire relevant material on record while passing the order of punishment or dismissing the appeal. The relevant portion from the judgment of Ranjit Singh is reproduced as under:

...As the appellate authority in arriving at his finding, laid emphasis on the fact that the appellant has not filed any objection to the show cause notice ; ordinarily, this Court would not have exercised its power of judicial review in such a matter, but the case in hands appears to be an exceptional one as the appellant was exonerated by the Inquiry Officer. He filed a show cause but, albeit after some time the said cause was available with the disciplinary authority before he issued the order of dismissal. Even if he had prepared the order of dismissal, he could have considered the show cause as it did not leave his office by then. The expression "communication" in respect of an order of dismissal or removal from service would mean that the same is served upon the delinquent officer.

10. The other cases relied upon by the petitioner's counsel has been in Narinder Mohan Arya v. United India Insurance Co. Limited and Ors. (2006) 2 UPLBEC : 2006 (5) AWC 5314 and Director (Marketing) Indian Oil Corporation Limited and Anr. v. Santosh Kumar 2006 AIR SC 2849 : 2006 (7) AWC 7142 .

In the case of Santosh Kumar (supra), the Apex Court held that while deciding the appeal it shall always be incumbent upon the appellate authority to consider the grounds raised by the delinquent employee and order passed without application of mind shall not be sustainable under law. Relevant portion from the judgment of Santosh Kumar is reproduced as under:

11. A perusal of the order passed by the appellate authority would only reveal the total non-application of mind by the appellate authority. We, therefore, have no other option except to set aside the order passed by the disciplinary authority and the appellate authority and remit the matter for fresh disposal to the disciplinary authority. The disciplinary authority shall consider the detailed representation made by the respondent and also consider the detailed report of the Enquiry Officer and the records placed before him in its proper perspective and decide the matter afresh on merits. The disciplinary authority is directed to consider the entire case only on the basis of records already on record. The respondent is not permitted to place any further material or record before the disciplinary authority. The order passed by the High Court is set aside for the above reason....

11. Keeping in view the ratio of the Apex Court's judgment, referred to hereinabove and on the face of the record, it is evident that the appellate

authority has dismissed the appeal without applying its mind. Instead of being influenced by the incident of theft while dismissing the appeal, it was incumbent on the appellate authority to consider the grounds raised by the petitioner in his memo of appeal, a copy of which is Annexure-10 to the writ petition. The appellate authority has not considered the grounds raised by the petitioner at all relating to various charges discussed by the Enquiry Officer as well as the disciplinary authority.

12. The principle of natural justice, justness and fairness in action are the pulse beat of Article 14 of the Constitution of India. Right to livelihood is a fundamental right protected under Article 21 of the Constitution of India. Whenever during the course of departmental enquiry, a reply is submitted by a delinquent employee, then it shall always be incumbent on the Enquiry Officer to record the statement of the prosecution witnesses with an opportunity to the delinquent employee to cross-examine the witnesses. After recording of the prosecution witnesses, the Enquiry Officer must afford an opportunity to delinquent employee to defend himself by fixing a date and thereafter he should provide an opportunity of personal hearing. The law on this point is settled by a catena of judgments in Jagdish Prasad Singh v. State of U.P. 1990 LCD 486 : 1991 (1) AWC 384 Avatar Singh v. State of U.P. 1998 LCD 199 Town Area Committee, Jalalabad Vs. Jagdish Prasad and Others, as well as settled by Hon'ble Supreme Court in case in Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee, Subhash Chandra Sharma Vs. Managing Director, U.P. Co-op. Spg. Mills Federation Ltd., Kanpur and another, Anil Kumar Vs. Presiding Officer and Others, and Subodh Kumar Trivedi Vs. State of U.P. and others, It appears that while proceeding with the enquiry, the Enquiry Officer had not complied with the principles of natural justice keeping in view the settled provisions of law.

13. It shall always be necessary for the Enquiry Officer or the competent authority to supply a copy of all the documents or permit the delinquent employee to inspect the record. Principle on this score is settled by a catena of judgments.

14. In the present case, as discussed hereinabove, the disciplinary authority as being not agreed with the report of the Enquiry Officer had taken a different view and held the petitioner guilty of the charges levelled against him. The service of the enquiry report without disclosing that the disciplinary authority is not agreed with the enquiry report and proceeding to hold guilty of the charges levelled against the delinquent employee shall not be compliance of natural justice. Principle of natural justice requires that the disciplinary authority must inform the delinquent employee that he is not agreed with the findings of the Enquiry Officer and he is proceeding to hold the employee guilty of the charges levelled against him disclosing the reasons so that the delinquent employee may submit a reply to defend himself in the light of the disciplinary authority's having formed a different opinion than that of the Enquiry Officer's report. Since the disciplinary authority while sending the charge-sheet had not unveiled his mind relating to

disagreement to the report of the Enquiry Officer, it shall amount to denial of reasonable opportunity to defend from the charges and such a move shall be violative of principles of natural justice. In case the disciplinary authority would have disclosed his mind with reasoned order indicating deferment with the report of the Enquiry Officer, then the delinquent employee would have got opportunity to make submissions to defend himself and pursue the disciplinary authority to accept the report of the Enquiry Officer. In the present case, the petitioner has been denied reasonable opportunity to defend himself by the disciplinary authority.

15. Similarly, whenever statutory departmental appeal is preferred against the order of punishment raising certain grounds by delinquent employee, then the appellate authority must consider the relevant grounds raised by the charged officer. There may be a case where an employee with intention to defend himself raises various irrelevant pleas and grounds while preferring an appeal. In such cases, it shall be incumbent on the appellate authority to separate grains from chaff and consider those grounds which are co-relevant with the charges while assailing the order passed by the disciplinary authority. The appellate authority should consider the relevant grounds raised by the delinquent employee while filing the statutory appeal. The appellate authority while deciding an appeal works as a quasi-judicial authority. Accordingly, while deciding an appeal against the order passed by the disciplinary authority, the appellate authority should adopt judicial approach and decide the appeal judiciously after considering the relevant grounds raised by the appellant.

16. The dividing line between administrative power and the quasi-judicial power has been gradually obliterated. The requirement of acting judicially is nothing but it means to act justly and fairly and not arbitrarily or capriciously. Now it has been settled by Apex Court that even if a decision taken is on administrative side while holding selection or appointment, yardstick applicable to judicial or quasi-judicial authority in discharge of their duties shall also be applicable to administrative bodies. What was considered administrative power is now being considered as a quasi-judicial power [vide *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*,

17. In *A. K. Kraipak (supra)*, the Constitution Bench of Apex Court while considering the ambit and scope of writ of certiorari had proceeded to hold as under:

The Court of Appeal of New Zealand has held that the power to make a zoning order under Dairy Factory Supply Regulation, 1936 has to be exercised judicially see *New Zealand and Dairy Board v. Okita Co-operative Dairy Co. Ltd.* 1953 NZLR 366. This Court in Civil Appeal No. 1464 of 1968, *Purtabpore Co. Ltd. v. Cane Commissioner of Bihar* dated 21.11.1968 (SC), held that the power to alter the area reserved under the Sugar Cane (Control) Orders, 1966, is a quasi-judicial power. With the increase of the power of the administrative bodies it has become necessary to provide guidelines for the just exercise of their power. To

prevent the abuse of that power and to see that it does not become a new despotism, Courts are gradually evolving the principles to be observed while exercising such powers. In matters like these public good is not advanced by a rigid adherence to precedents. New problems call for new solutions. It is neither possible nor desirable to fix the limits of a quasi-judicial power. But for the purpose of the present case we shall assume that the power exercised by the selection board was an administrative power and test the validity of the impugned selections on that basis.

18. The gravity of an offence may be a ground for awarding of major punishment but it should not be a decisive factor for rejection of an appeal. The charges howsoever grave may be, while deciding an appeal, it shall always be incumbent on an appellate authority to adopt judicial approach and pass a reasoned order in accordance with law after considering the grounds raised by the delinquent employee. It is the part and parcel of justness and fairness in action, embodied in Article 14 of the Constitution of India. To act judiciously is also necessary to rule out any abuse of power or arbitrariness on the part of the disciplinary authority.

19. In the present case, the appellate authority was influenced by the fact that the public exchequer has suffered a loss of Rs. 1,08,918.65 but failed to consider the grounds raised by the petitioner on the basis of the evidence on record. Thus, the order of the appellate authority suffers from non-application of mind.

20. In view of the above, the impugned order passed by the appellate authority, being an outcome of arbitrary exercise of appellate power, does not seem to be sustainable under law. The appellate authority has acted not like a quasi-judicial authority but it had functus officio with the element of administrativeness.

The writ petition deserves to be allowed. A writ in the nature of certiorari is issued quashing the impugned order dated 17.4.2000 (Annexure-8) as well as the order dated 10.3.2004 (Annexure-11) with consequential benefits. However, it shall be open to the disciplinary authority to proceed afresh keeping in view the observations made hereinabove in accordance with law. So far as the back wages are concerned, since the petitioner has not discharged duty during the period in question, he shall be entitled for payment of 50% of the wages admissible under rules.

With the above direction, the writ petition stands allowed.

No order as to costs.