
(2013) 01 AHC CK 0157
In the Allahabad High Court
Case No : Writ Petition No. 5112 (SIS) of 2003

A.K.Chaturvedi

APPELLANT

Vs

Secretary, Sugar Industries & Cane Development Department
and Others

RESPONDENT

Date of Decision : 17-01-2013

Acts Referred:

Citation : (2013) 01 AHC CK 0157

Hon'ble Judges : Surendra Vikram Singh Rathore, J

Final Decision : Allowed

Judgement

Surendra Vikram Singh Rathore, J.—Heard learned counsel for the parties and perused the material available on record.

2. By means of the instant writ petition, the petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India to issue a writ in the nature of certiorari quashing the punishment orders dated 6.1.2003 and 11.8.2003 and also to issue a writ in the nature of mandamus commanding the opposite parties not to use the said punishment orders against the petitioner to deprive him any service benefits.

3. Brief facts necessary for disposal of the present controversy are that the petitioner was working on the post of Junior Engineer (Civil) in U.P. Cooperative Sugar Factories Federation. During his posting in the year 2000/2001 at Sugar Mill Sarsawan, he was entrusted with the work of construction of a sugar godown. He got the same constructed and made payment. Subsequently in the audit objection, several objections were raised regarding excess payment made by the petitioner. On the basis of the said audit objection, a disciplinary enquiry was initiated against the petitioner and one Ram Milan Singh was appointed as Inquiry Officer. The charge sheet was issued against him on 26.2.2002. The petitioner submitted his reply on 13.5.2002. After giving an opportunity of hearing to the petitioner, inquiry was concluded on 26.6.2002 wherein the petitioner was held guilty and accordingly by the impugned order dated

6.1.2003, he was inflicted with the following punishments:

- (i) His three increments were stopped permanently.
- (ii) Order for recovery of Rs. 1,25,438/ from the salary of the petitioner.
- (iii) His integrity was held to be doubtful and an adverse entry was also made in his character roll accordingly.

A departmental appeal was preferred against the said order and by the impugned order dated 11.8.2003, the appellate authority also dismissed the appeal of the petitioner. Feeling aggrieved by the said impugned orders, the instant writ petition has been filed.

4. The case of the petitioner is that no date, time and place was fixed for the inquiry by the Inquiry Officer and the copy of the audit report on the basis of which inquiry was initiated against him was also not furnished to him. It is also the case of the petitioner that in the Sugar Mill Sarsawan, in the bill of quantity, which was prepared after a long time, material and labour @ Rs. 19,500/ was mentioned. It was provided in the said bill of quantity that the schedule of PWD rate shall be taken into consideration. The case of the petitioner is that he has not committed any illegality and has not caused any loss to the department rather by his acts, the department saved Rs. 1,20,000/. The submission of learned counsel for the petitioner is that neither the Inquiry Officer nor the appellate authority had considered his submissions and without taking into consideration the defence taken by him, the impugned orders were passed and the principles of natural justice were violated rendering the inquiry proceedings vitiated.

5. This Court while entertaining the instant writ petition, vide order dated 21.8.2003 had stayed the recovery proceedings against the petitioner.

6. In the facts of this case, there were two charges against the petitioner; the first charge was for non payment at the scheduled rates to the labourers and for excess payment to the labourers, who were engaged for works by the petitioner. As per case of the department, the payment of the labourers was required to be made at the rate of Rs 3,500/ but the petitioner made payment of Rs. 5,500/ per tonne. The second charge was of flouting the fixed scale for using cement, the petitioner was found having used 6.66 bags of cement per square meter in place of 6.10 bags of cement per square meter.

7. In paragraph 4C of the counter affidavit, it was mentioned that the competent authority after giving due consideration to all the available documents and reply of the petitioner submitted to the show cause notice had given the punishment of stoppage of three increments permanently. The second punishment given by the competent authority was to recover the financial loss occurred due to the misconduct of the petitioner. From the petitioner, recovery of Rs. 1,25,438/ was ordered. The integrity of the petitioner was found doubtful and special adverse entry was given to the petitioner by the competent authority.

8. The grievance of the petitioner is that the principles of natural justice were violated. No oral evidence was recorded in this case. It is further submitted that the petitioner in his reply had given specific reasons for making the payment as stated above but the same was not considered at all either by the Inquiry Officer or by the appellate authority.

8A. It is an admitted fact that no oral evidence was recorded in this enquiry. Now it is to be considered as to what would be its effect.

9. A Division Bench of this Court in the case of Lucknow Kshetriya Gramin Bank v. Shri Devendra Kumar Upadhyay reported in 2009 (27) LCD 990 has considered this aspect and has held in para 11 as under:

In case an employee is charged of misconduct and charge sheet is issued, it has to contain precise and specific charges along with the evidence which the department wants to rely upon, in proving the charge and the charges along with the copy of documents should be provided to the delinquent. After asking the reply from the delinquent, the enquiry is to proceed where the charges are to be proved by the department concerned, on the basis of the evidence which the department chooses to produce, oral as well as documentary. The delinquent also has to be provided, adequate and reasonable opportunity to lead evidence in rebuttal, may be oral or documentary or both. It is on the basis of evidence so led and the material available on record that the Inquiry Officer has to apply his mind to find out whether the charge levelled against him stands proved or not.

10. In the case of Gyandas Sharma v. State of U.P. reported in 2009 (27) LCD 926 this Court has held in para 5 & 6 as under:

5. It is settled proposition of law that regular inquiry means opportunity to submit reply to chargesheet and also to lead evidence in defence. Even if the delinquent employee does not cooperate it shall always be incumbent on the inquiry officer to record oral evidence to substantiate the charges. Since the oral inquiry was not recorded to substantiate the charge as a natural consequence the delinquent employee could not avail the opportunity to cross examine witness vide judgment reported in 2000 (18) LCD 1239, Om Pal Singh v. District Development Officer, Ghaziabad and others, 1998 (16) LCD 358, Lalta Prasad v. State of U.P. and Others, 1997 (15) LCD 1213, Ram Bhul Sharma v. State of U.P. and Others, 2001 (19) LCD 168, Subodh Kumar Trivedi v. State of U.P. and Others, 1993 (11) LCD 495, Uma Shankar Yadav v. Registrar, Cooperative Societies, Lucknow and others. Submission of the petitioner's counsel in view of the above, seems to be correct.

6. In the present case, undoubtedly, no oral evidence was recorded during the course of inquiry proceedings. It was incumbent on the inquiry officer to record oral evidence to substantiate charges. Documents on record ought to have been proved by oral evidence but the same has not been done. The inquiry has been conducted in utter disregard to the principles of natural justice.

11. The Division Bench of this Court in the case of Subhash Chandra Sharma v. Managing Director and another reported in (2000) 1 UPLBEC 541 has observed that after service of the chargesheet evidence has to be led and opportunity has to be given to the employee to cross-examine the witnesses. The relevant observations are as follows;

"In our opinion after the petitioner replied to the chargesheet a date should have been fixed for the enquiry and the petitioner should have been intimated the date, time and place of the enquiry and on that date the oral and documentary evidence against the petitioner should have been led in his presence and he should have been given an opportunity to cross-examine the witnesses against him and also he should have been given an opportunity to produce his own witnesses and evidence. If the petitioner in response to this intimation had failed to appear for the enquiry then an ex parte enquiry should have been held but the petitioner's services should have not been terminated without holding an enquiry. In the present case it appears that no regular enquiry was held at all. All that was done that after receipt of the petitioner's reply to the charge sheet, he was given a show cause notice and thereafter the dismissal order was passed. In our opinion, this was not the correct legal procedure and there was violation of the rules of natural justice. Since no date for enquiry was fixed nor any enquiry held in which evidence was led in our opinion the impugned order is clearly violative of natural justice."

12. Again in the case of Om Pal Singh vs. District Development Officer Ghaziabad and others, reported in (2000) 2 UPLBEC 1591 this Court held that after service of charge sheet and submission of reply no date was fixed for evidence or for examination of witnesses which clearly shows that the principle of natural justice were violated. Thus the entire enquiry proceedings and the order of dismissal were bad and liable to be quashed including the order of dismissal. In Hulashi Ram Sagar vs. State of U.P. and others, reported in 2002 ESC, 497, a Division Bench of this Court also set aside the order of punishment on the ground that the same has been passed only after obtaining the reply to the charges, without holding any regular enquiry.

13. Hon'ble the Apex Court in the case of Kumaon Mandal Vikas Nigam Ltd. Vs. Girja Shankar Pant and others reported in [(2001) 1 SCC 182] has also considered this aspect and has held in paragraph no. 22 as under:

"22. The Sixtyfive page report has been sent to the Managing Director of the Nigam against the petitioner recording therein that the charges against him stand proved what is the basis? Was the enquiry officer justified in coming to such a conclusion on the basis of the chargesheet only? The answer cannot possibly be in the affirmative; if the records have been considered, the immediate necessity would be to consider as to who is the person who has produced the same and the next issue could be as regards the nature of the records unfortunately there is not a whisper in the rather longish report in that regard. Where is the presenting officer? Where is the notice fixing the date of

hearing? Where is the list of witnesses? What has happened to the defence witnesses? All these questions arise but unfortunately no answer is to be found in the rather longish report. But if one does not have it can it be termed to be in consonance with the concept of justice or the same tantamounts to a miscarriage of justice. The High Court answers it as miscarriage of justice and we do lend our concurrence therewith. The whole issue has been dealt with in such a way that it cannot but be termed to be totally devoid of any justifiable reason and in this context a decision of the King's Bench Division in the case of *Denby (William) and Sons Ltd. v. Minister of Health* may be considered. Swift, J. while dealing with the administrative duties of the Minister has the following to state:

"I do not think that it is right to say that the Minister of Health or any other officer of the State who has to administer an Act of Parliament is a judicial officer. He is an administrative officer, carrying out the duties of an administrative office, and administering the provisions of particular Acts of Parliament. From time to time, in the course of administrative duties, he has to perform acts which require him to interfere with the rights and property of individuals, and in doing that the courts have said that he must act fairly and reasonably; not capriciously, but in accordance with the ordinary dictates of justice. The performance of those duties entails the exercise of the Minister's discretion, and I think what was said by Lord Halsbury in *Sharp v. Wakefield* (AC at p. 179) is important to consider with reference to the exercise of such discretion. He there said:

"Discretion" means when it is said that something is to be done within the discretion of the authorities that that something is to be done according to the rules of reason and justice, not according to private opinion: *Rooke case*; according to law, and not humour. It is to be, not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself."

14. There is no dispute to the fact situation that stoppage of three increments permanently amounts to a major punishment, therefore, a detailed inquiry in accordance with law and following the principles of natural justice was necessary but the same has not been done in the instant case. A Full Bench of this Court in the case of *Asha Ram Verma and others Vs. State of U.P. and others* reported in [(2003) 21 LCD 493] in paragraph no. 9 has held as under:

"9. In the facts and circumstances of the case, the question referred to above, does not apply. However, after hearing the learned counsel for the parties, we answer to the question as follows:

The evidence Act is not applicable in the departmental enquiry but the principles of natural justice will be applicable. Whenever any evidence is produced either oral or documentary on behalf of any person/authority. In case an oral evidence is relied upon, the person concerned should be given opportunity to cross examine and if a document is relied upon, he should be given opportunity to explain it."

15. In the facts of this case, there was no oral inquiry. The respondents have only placed reliance on the audit report and the copy of the same was not served upon the petitioner. The petitioner had taken a specific defence that he had made payment to the labourers in accordance with agreement dated 6.12.2000, which was binding on the parties, therefore he has not committed any illegality. This aspect of his defence was not at all considered either by the appointing authority or by the appellate authority.

16. In view of the discussion made above and keeping in view the fact that the principles of natural justice were not followed, it rendered the proceedings vitiated as it has caused prejudice to the petitioner because his specific defence was not considered. In case of oral evidence he could have brought these facts on record by way of cross-examination. Accordingly, the writ petition deserves to be allowed and is hereby allowed. Impugned orders dated 6.1.2003 and 11.8.2003 passed by the respondents are hereby quashed. It is open for the respondents to proceed with the inquiry afresh from the stage of charge sheet and the same shall be concluded within a period of three months from the date when a certified copy of this order is produced before him. Enquiry shall be concluded keeping in view the observations made by this Court and after considering the specific defence taken by the petitioner in his explanation.