
(2016) 04 AHC CK 0020
In the Allahabad High Court
Case No : Writ - A. No. 10552 of 2016

Atul Darbari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-04-2016

Acts Referred:

Citation : (2016) 5 AILLJ 505 : (2016) LIC 4415 : (2016) 3 LLN 39

Hon'ble Judges : Vimlesh Kumar Shukla and M.C. Tripathi, JJ.

Bench : Division Bench

Advocate : Ram Krishna, for the Appellant;

Final Decision : Dismissed

Judgement

M.C. Tripathi, J.—1. Dr. Atul Darbari is before this Court for issuance of a writ, order or direction in the nature of certiorari quashing the order dated 4.2.2016 passed by respondent No. 1.

2. This Court, on the presentation of the writ petition in question on 8th March, 2016, had proceeded to pass the following order:-

"Supplementary affidavit filed today be accepted and taken on record.

Put up this matter on next Tuesday i.e. 15.3.2016 in computer list and on the next date fixed apart from obtaining requisite instructions relevant record be also produced."

3. On the matter being taken up on 15.3.2016, in compliance of the order of this Court dated 8.3.2016, Shri Pankaj Rai, Additional Chief Standing Counsel has produced the original record.

4. The background facts of this case are that the petitioner was initially appointed as Medical Officer in Employees State Insurance Labour Medical Services in the year 1989 and was posted as Medical Officer in ESI Dispensary, Naini, Allahabad. At present, he is discharging his duties as Medical Officer, ESI

Dispensary-I, Naini, Allahabad. On 21.9.2012 the petitioner received a charge sheet dated 24.8.2012, which was approved by the Principal Secretary, Labour, Government of UP, Lucknow, from the Enquiry Officer, alleging that while working as Nodal Officer, Court Cases, K.R.B. Scheme, Labour Medical Services, the petitioner did not provide the certified copy of the judgement and order of this Court dated 12.3.2004 passed in Writ Petition No. 8350/1991, as a result of which directives issued by this Court in the order dated 12.3.2004 were complied with after long delay and the services of ineligible candidates, namely Shri Vijay Narayan Yadav, E.C.G. Technician and Shri Ram Lakhan Saini, O.T. Technician, were dispensed with on 11.5.2010. The Government unnecessarily had to pay Rs. 17,41,755/- towards salary to the ineligible candidates with effect from 12.3.2004 to 11.5.2010. The petitioner was charged for performing his duties with negligently and carelessly, as a result of which loss of Rs. 17,41,755/- had occurred to the Government and patients were at risk in taking help of ineligible candidates during the treatment. The petitioner submitted his reply to the charge sheet dated 24.8.2012. On 1.3.2013 the petitioner received a supplementary charge sheet dated 15.1.2013 containing seven charges to which he submitted a detailed reply. Thereafter the respondent No. 2 submitted his enquiry report dated 29.9.2014 to the charge sheet dated 24.8.2012 and another enquiry report dated 14.10.2014 to the supplementary charge sheet dated 15.1.2013.

5. It has been alleged that by complete misreading of the enquiry reports and on distorted facts, a show cause notice dated 13.1.2015 was served on the petitioner stating that out of 8 charges, six charges were found proved against the petitioner and he was asked to submit his reply in this regard. Pursuant to the show-cause notice, the petitioner had replied in detail containing 200 pages on 20.2.2015. Thereafter, the petitioner was also afforded an opportunity of personal hearing before the Principal Secretary, Labour on 27.8.2015. It has been averred in the writ petition that as per information received by the petitioner, the respondent No. 1 i.e. Principal Secretary, Labour had proceeded to absolve the petitioner from all the charges but the said decision was not communicated to him. Suddenly on 13.2.2016 the petitioner received a charge sheet dated 4.2.2016 signed by the enquiry officer (without mentioning his designation), which was approved by the Principal Secretary, Labour containing the same 8 charges for which the enquiry had already been concluded on 27.8.2015. Thereafter the petitioner had proceeded to obtain certain information, and then it transpired that an order dated 4.2.2016 has been passed by the respondent No. 1 by which she did not agree with the earlier enquiry reports dated 29.9.2014 and 24.10.2014 wherein the earlier enquiry initiated vide order dated 24.8.2012 has been dropped and a denovo enquiry (re-enquiry) has been directed to be conducted into the matter. The same are extracted hereinbelow:-

6. Shri Shashi Nandan, Senior Advocate assisted by Shri Ram Krishna, appearing for the petitioner submitted before us that the impugned order dated 4.2.2016 is in teeth of Circular/Government Order dated 22.4.2015, which provides that if disciplinary/appointing authority disagrees with the report of enquiry officer, then

he shall record his proposed opinion and reason and would communicate the same to the delinquent employee. It also proceeded to make a mention that in such case the enquiry should be completed in a time bound period and as such, the impugned order dated 4.2.2016 passed by respondent No. 1 cannot sustain in the eye of law and in the present facts and circumstances no re-enquiry could be made. He further made submission that while passing the order impugned the respondent No. 1 had not not given any reason for disagreement with the enquiry reports and as such, the same is contrary to Rule 9 of U.P. Government Servants (Discipline & Appeal) Rules, 1999 (in short, Rules 1999). In pith and substance, it has been argued that the impugned order dated 4.2.2016 is simple harassment to the petitioner as the earlier enquiry continued for more than three years and once the enquiry officer had come to the logical conclusion, the respondent No. 1 passed the impugned order without assigning any reason or giving any reason for disagreement with the earlier enquiry reports in question. He further made submission that on 8.3.2016 this Court had proceeded to direct learned Standing Counsel for producing the original record and as per record in question, this much is reflected that while exercising such power for re-enquiry no point of disagreement had been averred in the record in question and the same had been passed on their own whims and fancies and as such, the impugned order cannot sustained and is in teeth of the provisions contained in Rule 9 of Rules 1999. The order impugned is malafide and the same has been passed keeping in mind that all the retiral benefits of the petitioner can be forfeited.

7. On the other hand, Shri Pankaj Rai, Additional Chief Standing Counsel alongwith Shri Sanjay Kumar Singh, Standing Counsel has vehemently opposed the writ petition precisely on the ground that the present discretion, which has been exercised by the answering respondent, is strictly in accordance with law. Record itself speaks that at no point of time the petitioner had been exonerated from all the charges levelled against him and as per Rules 1999, the respondent No. 1 has ample powers to issue direction for re-enquiry into the matter. The materials were available before the respondent No. 1 for disagreeing the enquiry reports, which were submitted on 29.9.2014 and 14.10.2014 and as such, the allegations levelled against the answering respondent do not have any legs and without substantiating such materials, no otherwise inference can be drawn and as such, allegation of arbitrariness is unwarranted and unsustainable and no indulgence is required in the matter. Shri Pankaj Rai has further submitted that once the disciplinary authority comes to the conclusion that the enquiry officer has failed to properly investigate the facts, then in such situation the competent authority has ample powers to issue direction for re-enquiry.

8. Be that as it may, the question is whether the disciplinary authority could have resorted to such a practice of abandoning the enquiry already undertaken and resort to appointment of a fresh enquiring officer.

9. In the present matter, initially the charge sheet dated 24.8.2012 was served

on the petitioner on 21.9.2012 after approval from the Principal Secretary, Labour, U.P. Lucknow to which he submitted his reply. Thereafter the enquiry officer had proceeded to serve the supplementary charge sheet dated 15.1.2013 on the petitioner containing seven charges. The same was also replied by the petitioner. The respondent No. 2 had proceeded to submit the enquiry report on 29.9.2014 to the initial charge sheet dated 24.8.2012 with a conclusion that after perusal of the explanation submitted by the petitioner and the evidences filed in support of the explanation, it is clear that a letter dated 22.3.2005 was sent from the Directorate during the tenure of the petitioner serving Nodal Officer with a direction to obtain the certified copy of the order of this Court dated 12.3.2004 and provide the same to the Directorate. The said letter was received by Shri A.N. Pandey, Suit Clerk on 30.3.2005 but the said letter in question was not produced before the petitioner by Shri Pandey. Therefore, the allegation was not found proved against the petitioner. The enquiry officer had again proceeded to submit the enquiry report on 14.10.2014 to the supplementary charge sheet dated 15.1.2013 in which the petitioner was not found guilty. Thereafter, the petitioner was served with the show cause notice dated 13.1.2015 alleging that out of 8 charges, 6 charges were found proved against the petitioner and he was asked to submit his reply. The petitioner had proceeded to submit exhaustive reply on 20.2.2015 containing more than 200 pages to the said show cause notice. No doubt in the present matter, even the personal hearing was also afforded by the Principal Secretary of the department on 27.8.2015. It has been averred in para-14 of the writ petition that after giving an opportunity of personal hearing the Competent Authority had proceeded to exonerate the petitioner from all the charges but the said order was not communicated to him. All of sudden on 13.2.2016 the petitioner was served with a charge sheet dated 4.2.2016 signed by the enquiry officer and approved by the Principal Secretary, Labour containing the same 8 charges, which were already subject matter in the earlier enquiry, and the same had already been concluded on 27.8.2015 in which the petitioner was exonerated from all the charges.

10. We have occasion to peruse the order impugned and find that nothing has been enumerated in the order impugned to indicate the points of disagreement with the enquiry reports in question. While passing the order impugned the competent authority at no point of time had considered any concrete material available on record for disagreeing with the earlier enquiry reports dated 29.9.2014 and 14.10.2014.

11. As per original record, this much is reflected that much reliance has been placed that in similar circumstances, certain punishment had been imposed on the other officers, who were involved in the case. Therefore, on this additional fact, the competent authority has taken a decision that once the punishment has been imposed on the other persons, who were involved in the case, then in the present matter, the denovo enquiry is required to be conducted.

12. We have also occasion to peruse the original record in question and find that

no doubt certain observation was made that the disciplinary enquiry was held against the then Medical Superintendent Dr. (Smt.) Vipula Vajpayee and Shri Shailendra Rai, who was posted as Pharmacist and the charges were found proved against them and consequently recommendations were made to the U.P. Public Service Commission to take suitable action against them. Only on the basis of the said observation, the initiation of denovo enquiry against the petitioner, solely relying on the report submitted against the then Medical Superintendent and Pharmacist, is not sustainable in law.

13. The controversy in hand has been subjected to detailed scrutiny by a Constitution Bench of the Supreme Court in K.R. Deb V/s. the Collector of Central Excise, Shillong , AIR 1971 SC 1447 in which Hon''ble Apex Court has proceeded to examine the question in the context of Rule 15(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1957. It was a case where an enquiry was ordered against a sub-Inspector, Central Excise. The inquiry officer held that the charge was not proved. Thereafter the disciplinary authority appointed another inquiry officer "to conduct a supplementary open inquiry". Such supplementary inquiry was conducted and a report that there was "no conclusive proof" to "establish the charge" was made. Not satisfied, the disciplinary authority thought it fit that "another inquiry officer should be appointed to inquire afresh into the charge". In K.K. Deb's case (supra) Hon''ble Supreme Court observed that an Enquiry Officer may be asked by the Disciplinary Authority to record further evidence if there had been no proper enquiry because of some serious defect or because some important witnesses were not examined. The Court categorically held therein that the previous enquiry could not be set aside on the ground that the report of the Enquiry Officer did not appeal to the disciplinary Authority. Relevant paragraphs 12 and 13 of the judgement are reproduced hereinafter:-

"12. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in Rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under Rule 9.

13. In our view the rules do not contemplate an action such as was taken by the Collector on February 13, 1962. It seems to us that the Collector, instead of taking responsibility himself, was determined to get some officer to report against the appellant. The procedure adopted was not only not warranted by the rules but was harassing to the appellant."

14. In Union of India and others V/s. P. Thayagarajan , 1999 (2) An. W.R. 106

(SC) : (1999) 1 SCC 733, the Supreme Court reiterated the principle that the disciplinary authority could order a *denovo* enquiry when it found that the enquiry officer had not followed the correct procedure in taking the evidence of witnesses and not merely because the Enquiry Officer's report did not appeal to the said authority.

15. In *Kanailal Bera V/s. Union of India and others* , (2007) 11 SCC 517, the Supreme Court observed:

"6 Once a disciplinary proceeding has been initiated, the same must be brought to its logical end meaning thereby a finding is required to be arrived at as to whether the delinquent officer is guilty of charges leveled against him or not. In a given situation further evidences may be directed to be adduced but the same would not mean that despite holding a delinquent officer to be partially guilty of the charges levelled against him another inquiry would be directed to be initiated on the selfsame charges which could not be proved in the first inquiry."

16. It appears that the respondent No. 1 dissatisfied with such earlier enquiry reports, ordered a *de novo* enquiry under the impugned order dated 4.2.2016 and appointed Shri Rudra Kumar Gupta, Special Secretary, Labour Department, Government of UP as Enquiry Officer. This practice of the respondent No. 1 in carelessly and callously discarding enquiry reports, which are not to its liking and ordering for *denovo* enquiry without even disclosing the reasons, which weighed with it for rejecting the findings of the previous enquiry Officer, is a clear transgression of the law and requires to be deprecated in the strongest terms.

17. In *Union of India V/s. M.L. Capoor and others* , AIR 1974 SC 87, the Supreme Court observed:

"28. ... Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable.... "

18. Again in *S.N. Mukherjee V/s. Union of India* , AIR 1990 SC 1984, a Constitution bench of the Supreme Court had occasion to observe:

"35. Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decisions-making. "the said purpose would apply equally to all decisions and its

application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review...."

19. "Reasons" are the milestones which chart the journey of the "decision-maker" in reaching his destination. Absence of reasons thus leaves the decision-making process without a rudder and open to arbitrariness. Viewed in this light, the approach of respondent No. 1 in instituting *denovo* enquiry by appointing Enquiry Officer afresh without even setting aside the findings recorded by the earlier Enquiry Officer, giving due reasons therefor, is clearly unsustainable in law.

20. In the present matter, it has been urged that the impugned order is in teeth of Rules 8 and 9 of Rules 1999. For ready reference, Rules 8 and 9 of Rules 1999 are extracted:-

"8. Procedure for imposing major penalties - (1) No order imposing any of the major penalties specified in Rule 6 shall be made except after an inquiry is held as far as may be, in the manner provided in this rule and Rule 10, or, provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850) where such inquiry is held under that Act.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a member of the Service, it may appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

(3) Where a Board is appointed as the inquiring authority it shall consist of not less than two senior officers provided that at least one member of such a Board shall be an officer of the service to which the member of the service belongs.

9. Action on Inquiry Report.-- (1) The Disciplinary Authority may, for reasons to be recorded in writing, remit the case for re-inquiry to the same or any other Inquiry Officer under intimation to the charged Government servant. The Inquiry Officer shall thereupon proceed to hold the inquiry from such stage as directed by the Disciplinary Authority, according to the provisions of Rule 7.

(2) The Disciplinary Authority shall, if it disagrees with the findings of the Inquiry Officer on any charge, record its own findings thereon for reasons to be recorded.

(3) In case the charges are not proved, the charged Government servant shall be exonerated the Disciplinary Authority of the charges and informed him accordingly.

(4) If the Disciplinary Authority, having regard to its findings on all or any of charges is of the opinion that any penalty specified in Rule 3 should be imposed on the charged Government servant, he shall give a copy of the inquiry report

and his findings recorded under sub-rule (2) to the charged Government servant and require him to submit his representation if he so desires, within a reasonable specified time. The Disciplinary Authority shall, having regard to all the relevant records relating to the inquiry and representation of the charged Government servant, if any, and subject to the provisions of Rule 16 of these rules, pass a reasoned speaking order imposing one or more penalties mentioned in Rule 3 of these rules and communicate the same to the charged Government servant."

21. It is apparent that Rule 8(1) prohibits imposition of any major penalty without holding an enquiry either in accordance with the procedure prescribed under the Rules or under the provisions of the Public Servants (Inquiries) Act, 1850. Rule 8(2) specifically authorises the disciplinary authority to appoint an authority to enquire into the truth of any imputation of misconduct or misbehaviour against a member of the service if the disciplinary authority is of the opinion that there are grounds to inquire into. Such an authority could be appointed either in exercise of the power conferred under Rules or under provisions of the Public Servants (Inquiries) Act, 1850. Rule 8(3) contemplates appointment of a Board as an Inquiring Authority and stipulates that such Board shall consist of not less than two senior officers of whom at least one should be an officer of the service to which the delinquent officer belongs. The expression "Board" is not defined under the Rules. The only conclusion that can be drawn from the scheme of Rules 8(2) & (3) is that the expression "Enquiring Authority" implies either a single member authority or Board consisting of two or more members.

22. Rule 9 prescribes action on the enquiry report. Rule 9(1) provides that the Disciplinary Authority may, for reasons to be recorded in writing, remit the case for re-inquiry to the same or any other Inquiry Officer under intimation to the charged Government servant. The Inquiry Officer shall thereupon proceed to hold the inquiry from such stage as directed by the Disciplinary Authority, according to the provisions of Rule 7. Rule 9(2) provides that the Disciplinary Authority shall, if it disagrees with the findings of the Inquiry Officer on any charge, record its own findings thereon for reasons to be recorded. Rule 9(3) provides that in case the charges are not proved, the charged Government servant shall be exonerated the Disciplinary Authority of the charges and informed him accordingly. Rule 9(4) provides that if the Disciplinary Authority, having regard to its finding on all or any of charges is of the opinion that any penalty specified in Rule 3 should be imposed on the charged Government Servant, he shall give a copy of the inquiry report and his finding recorded under sub-rule (2) of Rule 9 to the charged Government Servant and require him to submit his representation if he so desires, within a reasonable specified time. The Disciplinary Authority shall having regard to all the relevant records relating to the inquiry and representation of the charged Government Servant, if any, and subject to the provisions of Rule 16 of these rules, passes a reasoned order imposing one or more penalties mentioned in Rule 3 of these and communicate the same to the charged Government Servant.

23. It can be seen from the above that the normal rule is that there can be only one enquiry. Hon"ble Apex Court has also recognized the possibility of a further enquiry in certain circumstances enumerated therein. The decision, however, makes it clear that the fact, that the report submitted by the enquiring authority is not acceptable to the disciplinary authority, is not a ground for completely setting aside the enquiry report and ordering a fresh denovo enquiry. Therefore, we are of the considered opinion that the principle laid down in K.R. Deb's case, would squarely apply to the case in hand.

24. Therefore, it becomes necessary for us to examine the legality of the impugned order in the light of the law laid down in K.R. Deb's case i.e. whether a further enquiry is really warranted on the facts of the case. The respondent No. 1 did not give any reasons in the impugned order while disagreeing with the earlier enquiry reports dated 29.9.2014 and 14.10.2014. It is also not reflected from the record in question that at any point of time the competent authority had proceeded to go through the complete material available on record or assign any reason for disagreeing with the enquiry reports in question. Nothing has been indicated either in the order impugned or it can be extracted from the record that in the present matter Rules 1999 had been violated while the enquiry officer had proceeded to conduct the enquiry.

25. In our opinion, on general principles, there can be only one enquiry in respect of charges for a particular misconduct and that is also what the Rules usually provide. If, for some technical or other good ground, procedural or otherwise the first enquiry or punishment or exoneration is found bad in law, there is no principle that a second enquiry cannot be initiated. Therefore, when a completed enquiry proceedings is set aside by a competent forum on a technical or on the ground of procedural infirmity, fresh proceedings on the same charges is permissible.

26. In the present case, the charge sheet and the supplementary charge sheet were issued and served on the petitioner and after submission of the enquiry reports dated 29.9.2014 and 14.10.2014, a show cause notice dated 13.1.2015 was again served on the petitioner stating that 6, out of 8 charges against him stood proved. The petitioner was also afforded personal hearing by the Principal Secretary, Labour on 27.8.2015 and thereafter, in case the competent authority had found some technical flaws or procedural infirmity in the said enquiry in question, the Disciplinary Authority could direct for fresh proceeding on the same charges, but no such features are available in the present case.

27. A bare perusal of the order impugned and the record in question this much is accepted position that at no point of time the disciplinary authority had proceeded to give any reason for disagreeing with the earlier enquiry reports in question. Therefore, in these circumstances there is no justification for conducting a second enquiry on the very same charges. Law is clear on the subject, and permits only disciplinary proceedings and same cannot be approved as harassment and allowing such practice is not in the interest of public service.

Same view has also been approved by Hon''ble Apex Court in Nand Kumar Verma vs. State of Jharkhand and others , (2012) 3 SCC 580 and Vijay Shankar Pandey vs. Union of India and another , (2014) 10 SCC 589.

28. We, therefore, have no hesitation in holding that the impugned order dated 4.2.2016 for denovo/a fresh enquiry against the petitioner on the same charges, which were subject matter of the enquiry reports dated 29.9.2014 and 14.10.2014, is illegal and arbitrary; and hence, is liable to be set aside. The impugned order dated 4.2.2016 is consequently set aside.

29. The writ petition is accordingly allowed and the respondent No. 1 is directed to take appropriate decision in the light of the enquiry reports dated 29.9.2014 and 14.10.2014 within a period of two months from the date of production of a certified copy of this order before him. There shall be no order as to costs.