

(2000) 04 AHC CK 0028
In the Allahabad High Court
Case No : Writ Petition No. 3090 (S/S) of 1991

Babu Lal

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 21-04-2000

Acts Referred:

Uttar Pradesh Nagar Mahapalika Sewa Niyamawali, 1962 — Rule 31, 31(1), 32, 32(2)

Citation : (2001) 2 UPLBEC 1825

Hon'ble Judges : Kamal Kishore, J; Amarbir Singh Gill, J

Bench : Division Bench

Advocate : Ashok Nigam, for the Appellant; C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Amarbir Singh Gill, J.—The petitioner seeks issuance of writ order or direction in the nature of certiorari quashing the order dated 10th May, 1991 as contained in Annexure-1 of his dismissal from service.

2. The case of the petitioner is that he was working as Executive Officer, Municipal Board, Sitapur and became member of U.P. Palika Centralised Services in the year 1966. He was placed under suspension by Secretary, Nagar Vikas, U.P. Government, Lucknow, opposite party No. 1 by an order dated 8th January, 1986 (Annexure-2) on the allegation that he had submitted a note in respect of a tender for supply of bitumen while posted at Nagar Palika, Jaunpur. The petitioner filed Writ Petition No. 341 of 1996 before this Court and by interim order, the suspension order was stayed. Thereafter the petitioner was served with a charge- sheet but no enquiry was conducted nor any witness was examined in the enquiry against him. Thereafter another charge-sheet dated 27th February, 1990 was served on the petitioner without accompanying any document referred to in the charge-sheet. The petitioner had to file another Writ Petition No. 275 of 1990 which was disposed of finally on 20th September, 1990 by an order (Annexure-9) wherein this Court while disposing of the writ petition observed that in case the enquiry is not completed within three months, the

suspension order shall stand revoked. The opposite parties could not complete the enquiry within the stipulated time and the petitioner was reinstated by an order dated 4th December, 1990 (Annexure-10). The petitioner submitted a detailed reply to the charge-sheet. The petitioner was never supplied the documents referred to in the charge-sheet nor any further enquiry was conducted. However, the opposite parties by the impugned order dismissed the petitioner from service. The petitioner challenges his dismissal order on the grounds that he was not supplied the documents referred to in the charge-sheet nor, he was supplied the copy of the report of the Enquiry Officer nor the same was produced by the opposite parties in Court. No second opportunity to show cause against the proposed punishment was served on the petitioner as per service rules. Besides, the impugned order is non-speaking order without application of mind as it refers only to the charges having been found proved by the Enquiry Officer's report. It does not refer to the pleas of the petitioner.

3. In the counter-affidavit filed by opposite party No. 1 it has been asserted that the petitioner was served with two separate charge-sheets and two separate Enquiry Officers were appointed to inquire into the charges levelled against him and the reply to the charge-sheet was duly considered and the petitioner participated in the enquiry and possible reasonable opportunity was afforded to him. The petitioner was allowed to inspect the records. In paragraph 7 of the counter-affidavit it is asserted that enquiry report submitted by two different Enquiry Officers was considered by competent authority along with record and competent authority had taken decision to revert the petitioner but no order of reversion was issued to the petitioner and in paragraph 8 it is submitted that the enquiry report submitted by the Enquiry Officer pertain to posting of the petitioner at Sitapur has been considered by the Enquiry Officer including the report relating to his posting at Jaunpur and the competent authority proposed the punishment of dismissal from service.

4. Heard the learned Counsel for the parties.

It is not disputed that the petitioner belonged to U.P. Nagar Palika Centralised Service and was governed by U.P. Nagar Mahapalika Sewa Niyamawali, 1962. The contentions raised by learned Counsel for the petitioner mainly are on legal issues. The first contention being that no enquiry of any kind was conducted in this case as after serving the charge-sheet, the petitioner was never asked to appear or participate in the enquiry proceeding at any time. No enquiry report was served on the petitioner. In the counter-affidavit this plea has gone un rebutted. The petitioner initially was served with charge-sheet dated 8th January, 1986 (Annexure-2). The gravamen of the charge against the petitioner was that while he was working as Executive Officer in Nagar Palika, Jaunpur he recommended supply of bitumen from a firm which was not approved on the purported recommendations of Sharda Prasad Singh, Junior Engineer and that he had issued work order in favour of the firm which appeared to be fictitious. There is no enquiry report placed on record by opposite parties and the allegations of

the petitioner have to be considered as no such enquiry report was ever supplied on him. The explanation of the factual position pertaining to these charges is available in paragraph 13 of the writ petition wherein the petitioner has asserted that the charge-sheet was framed on entirely incorrect, false and fabricated facts and was issued with mala fide intention to protect the high officers who had issued the order for supply of bitumen. He explains that he was in no way concerned with the approval of the tender nor he had issued any order in favour of the firm nor the same was done during his tenure. According to him as also has been indicated in the impugned order of dismissal (Annexure-1) that the quotations of the said firm were directly submitted before Sharda Prasad Singh, Junior Engineer for supply of bitumen. The bitumen was required for construction of road and Sharda Prasad Singh, Junior Engineer was incharge of the construction. The quotation was neither received nor signed nor recommended by the petitioner as is evident from the photo copy of the tender application (Annexure-5) which was supplied to the petitioner by the opposite parties after charge-sheet. The tender application was entirely dealt with by Sharda Prasad Singh, Junior Engineer who made a report on the same on 10th of July, 1974. This report was submitted to the petitioner for forwarding the same to the Prabhari Adhikari/Administrator for final orders. The petitioner being a non-technical man had no reason to differ with the Junior Engineer so also the tender submitted by the said firm was the lowest as per the report of the Junior Engineer. Besides that as indicated in the report the said firm out of the seven firms was ready to supply the bitumen on the conditions of payment at the time of supply while all other firms were demanding advance payment. The petitioner thus pointed out these two factors while forwarding the tender application to Administrator through Officer Incharge. The Officer Incharge as well as the Administrator were to accept or reject the recommendations. The petitioner was thereafter transferred from Jaunpur Nagar Palika. The tender was never finalised during the tenure at Jaunpur. The Office Incharge had made enquiries and thereafter submitted the report on 25.7.1974 for acceptance of the quotation. The Administrator finally accepted the tender and work order was issued on 31.7.1974 much after the departure of the petitioner from Jaunpur. The work order as well as the payments were subsequently released by the incumbent Executive Officer. The petitioner was transferred on 16.7.1974 whereas on the report of the Junior Engineer the payment order was passed on 8.8.1974. The matter was examined by the Officer Incharge who was a P.C.S. Officer and independently came to the same conclusion as per the report of the Junior Engineer and the final order was passed by the A.D.M. of the district. Since no enquiry was conducted there was no evidence" before the Enquiry Officer of any involvement of the petitioner for receiving or accepting the tender of the firm. More so, none of the officers who issued actual work order or payment order i.e. Officer Incharge or Administrator were questioned muchless charged with any dereliction of duty. In reply to the above averments of the petitioner, the only answer given in the counter-affidavit of the opposite parties is that the petitioner has been found guilty on the report of the Enquiry Officer and charges have been

proved against him. The impugned order (Annexure-1) indicates that some C.I.D. enquiry was done in the case and in the report prima facie case was made out against some officials of Nagar Palika against whom criminal case was filed before the competent Court but since no case or complaint was made against the petitioner it shows that even in the C.I.D. probe nothing was available against the petitioner.

5. The second charge-sheet (Annexure-7) against the petitioner consisted of four charges firstly that the petitioner had attested lease deed of a plot in favour of Alok Kumar as a witness executed by the President of Nagar Palika, secondly that he did not press the review application filed in three cases initiated by the Nagar Palika, thirdly that a resolution of the Nagar Palika dated 8.11.1989 for creation of post of Revenue Inspector and appointment of Kailash Nath Mehrotra was sent to the State Government directly against the Government Order dated 25th March, 1984 requiring the such resolution to be sent through the District Magistrate to the Government and fourthly that on inspection by the Sub-Divisional Magistrate, Sitapur regarding sanitation condition in the city he found garbage stored at many places. The petitioner has explained these charges in the writ petition. He has submitted that the Nagar Palika, Sitapur had passed a unanimous resolution on 8th January, 1990 in respect of a plot in favour "of Alok Kumar and lease deed was executed by President of Nagar Palika and being his subordinate if the petitioner attested the lease deed he cannot be held guilty of transferring the plot. Besides that the construction on the plot was made in accordance with sanctioned plan of the Nagar Palika and that did not amount to any encroachment for which he has no reason to be blamed. Besides the petitioner submits that the resolution of the Board granting the lease of plot in favour of Alok Kumar could have been cancelled by the District Magistrate exercise his power u/s 28 of the Act. However, the District Magistrate has taken no such action if the allegation in respect of the transfer of plot in favour of Alok Kumar was correct. Since the resolutions of the Board are forwarded to the District Magistrate in normal course. In respect of second charge the petitioner has said that he did not press the review application in three cases initiated by the Nagar Palika on the ground that compromise was effected between the Nagar Palika and opposite parties. The application for not pressing the review application was made after obtaining legal opinion from the District Government Counsel. The Collector no doubt rejected the petitioner's application but his order was stayed in writ petition filed by the opposite parties. The copy of the Court order is Annexure 11. The third charge against the petitioner was not at all related to him as the Nagar Palika, Sitapur had passed resolution on 8th November, 1989 creating post of Revenue Inspector and appointing Kailash Nath on the post and the resolution was forwarded to the Government. According to the earlier Government Order dated 25th March, 1989, Municipal Board was required to correspond with the State Government through the District Magistrate. The petitioner states that the resolution was directly sent by the President to the State Government without informing him by letter dated 16th

January, 1990 as contained in Annexure 12. The petitioner had in fact, brought to the notice of President of Municipal Board the Government Order in his report dated 4th May, 1989 itself i.e. on the next date of receipt of the Government Order in the Nagar Palika. Copy of the report is Annexure 13 on the record. Even the Government Order merely suggested that the resolution should be sent through the District Magistrate in order to save time. The President of the elected Board was conscious of such a Government Order. However, there was no illegality if the resolution was sent straight to the Government. In respect of charge No. 4 the petitioner asserts that he was in no way, responsible for the sanitation of the city which was the responsibility of the Nagar Swasthya Adhikari u/s 60 of the Act who is a Class-1 officer belonging to P.M.S. service who holds charge of sanitation and health work of the city. The petitioner had no control over him and he did not belong to municipal cadre either. The Health Officer was working under the Chief Medical Officer. The petitioner even otherwise had earlier informed the Nagar Swasthya Adhikari and sought action against the erring officials and sent a note on 9th March, 1989 (Annexure 15). However on the inspection made by Sub-Divisional Magistrate some garbage was found lying at some places. The Nagar Swasthya Adhikari should have been taken to task beside that on the note sent by the petitioner (Annexure 15) to the Swasthya Adhikari, the latter had objected to the note as interference in his work for which the Executive Officer has no role and he also lodged a report with the President of the Board against the petitioner.

6. The above narrated charges against the petitioner and his explanation to them have gone unrebutted on record as in the counter-affidavit as already indicated above, the opposite parties have stated only that the charges have been found proved by the Enquiry Officer and the petitioner has been found guilty. Normally the explanation of delinquent official is not required to be referred to. However in the absence of the any corresponding plea or in absence of the enquiry report on the record, the nature of the charges and the explanation, if any, of the petitioner has been considered and it appears from the aforesaid stand taken by the Petitioner that the petitioner is not responsible for the charges and more so when no enquiry has been conducted, no material has been gathered during the enquiry nor the petitioner has been confronted with any such evidence and the enquiry report if any. relied upon by the competent authority to pass the impugned order has not seen the light of the day till the decision of this writ petition. It has been indicated above that the service of the petitioner was governed by U.P. Nagar Mahapalika Sewa Niyamawali, 1962. Chapter-III of the Rules refers to punishment and appeals. Rule 31 refers to procedure for disciplinary proceeding. Rule 31 (1) makes incumbent the holding of an enquiry into charges against a delinquent official before an order of dismissal or removal from service is passed against him which requires informing him in writing of the grounds on which it is proposed to take action and he has to be afforded an adequate opportunity of defending himself. He is required to be served with definite charges which shall be clear and precise in terms. He shall be required to

submit within reasonable time, to put in a written statement of his defence and to state if he desires to be heard in person. If he so desires or if the authority concerned so directs an oral enquiry shall be held in respect of such allegations as are not admitted. At that enquiry such oral evidence shall be heard as the Enquiry Officer considers necessary and the person charged shall be entitled to cross-examine the witness to give evidence in person and to have such witnesses called as he may wish. Rule 32 which is further relevant in this case is reproduced below :

"32. (1) After an inquiry against a servant has been completed and after the punishing authority has arrived at provisional conclusions in regard to the penalty to be imposed, the servant charged shall, if penalty proposed is dismissal, removal or reduction in rank, be supplied with a copy of the proceedings prepared under Rule 31 excluding the recommendations, if any, in regard to punishment made by the officer conducting the inquiry and asked to show-cause by a particular date, which affords him reasonable time, why the proposed penalty should not be imposed on him:

Provided that if for sufficient reasons the punishing authority disagrees with any part or whole of the proceedings prepared under Rule 31 the point or points of such disagreement, together with a brief statement of the grounds thereof, shall also be communicated to the officer or servant charged along with the copy of the proceedings under Rule 31.

(2) Every order of dismissal, removal or reduction in rank shall be in writing and shall specify the charge or charges brought, the defence, if any, and the reasons for the order."

7. It is apparent from the record of this case that in the case of the petitioner there is total absence of the compliance of Rules 31 and 32 of the U.P. Nagar Mahapalika Sewa Niyamawali, 1962. It is common case that the Enquiry Officer did not conduct any proceeding after the receipt of the explanation to charge-sheet from the petitioner. No evidence or material was collected nor any witness was examined in the enquiry nor even the petitioner was called to participate in the enquiry itself. Besides the report of the Enquiry Officer prepared under Rule 31(1) was not served upon the petitioner along with show-cause notice as required under Rule 32. It is admitted case that neither the enquiry report was served on the petitioner nor any show-cause notice was issued. Besides the impugned order (Annexure-1) further stand discredited as it does not comply with the requirement of sub-rule (2) of Rule 32 aforesaid. The impugned order does not refer to the findings of the Enquiry Officer nor the defence taken by the petitioner nor it specifies any reason for passing the impugned order of dismissal and obviously it is a non-speaking order. Even apart from the requirement of the Rules 31 and 32 of the Nagar Palika Niyamawali aforesaid the petitioner's defence has been totally prejudiced for non-supply of the enquiry report in view of the law laid down by Hon'ble Supreme Court in Union of India and others Vs. Mohd. Ramzan Khan, , as also in case of Managing Director, ECIL, Hyderabad,

Vs. Karunakar, etc. etc., . It has been observed in the aforesaid decisions:

"When the Inquiry Officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the Inquiry Officer's report before the disciplinary authority arrives at its conclusion with regard to the guilt or innocence of the employee with regard to the charges levelled against him. The right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the Inquiry Officer's report before the disciplinary authority takes its decision on the charges is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice."

The decision of the Mohd. Ramzan Khan's case (supra) has been held to be prospective in application with effect from 28th November, 1990. The impugned order in this case was passed on 10th May, 1991 (Annexure-1). The impugned order in the circumstances was not only against the specific Rules 31 and 32 of the Niyamawali aforesaid but also against the law laid down by the Hon'ble Supreme Court in the aforesaid cases.

8. The impugned order (Annexure 1) as has already been referred to above is a non-speaking one as it sans reasons and is against sub-rule (2) of Rule 32 to that extent Besides it shows absence of application of mind. A speaking order has an element of reasons on the basis of which an action is taken by the competent authority. Giving of "reasons" is an essential component, rather one of the fundamentals of administrative law. The recording of reasons Is a deterrent against arbitrary action and prevents the infiltration of personal prejudice, bias or malice or for that matter, unfairness into the decisional process. A reasoned order has appearance of justice having been done in the matter and is a healthy check against the bias or misuse of power (See Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, . Since sub-rule (2) of Rule 32 of Niyamawali aforesaid imposes a duty, is mandatory in nature, with the result failure to give reason is fatal to action token. It may also be stated that giving of reasons is an essential ingredient of the whole process of natural justice. The Hon'ble Supreme Court has also held that though it is not necessary for the administrative authority to write a judgment as Courts of law will do but at least the outline of process of reasoning must be given (See Shriram Vilas v. Chandra Sekharan, AIR 1966 SC 107). The impugned order of dismissal (Annexure 1) thus suffers from non-compliance of mandatory provisions of the service rules indicated above. Besides the petitioner has been deprived of reasonable opportunity to meet his defence before the order of punishment was passed against him as he could not know the grounds on which the charges are claimed to have been proved and he had no opportunity to furnish explanation to the report in any case. The mandatory show- cause notice under Rule 32 (1) was also not served on the petitioner. The impugned order is based on the report of Enquiry Officer but without holding any enquiry against the petitioner. The impugned order in the circumstances has no legal foundation.

9. The impugned order was served, on the petitioner hardly 9 days earlier to his superannuation from the service. He has since retired from service. It is not a case as facts narrated above would reveal that the opposite parties can be allowed to have a retake of another enquiry against the petitioner, more so keeping in view nature of the allegations/charges against him. The impugned order has been passed ignoring mandatory provision of the Rules as well as the law laid down by the Hon"ble Supreme Court. The charges relate back to 1974 when the petitioner was posted at Nagar Palika, Jaunpur. The first charge-sheet was served in the year 1986. The second charge-sheet pertain to year 1990 when the petitioner was posted at Sitapur Nagar Palika. It would be futile to accept any substantive material available against the petitioner on such allegations as mentioned in both the charge-sheets in view of the detailed explanation given by him which has gone unchallenged in the counter-affidavit.

10. In view of the reasons given above and the circumstances of the case, the order of dismissal as contained in Annexure 1 is hereby quashed and the petitioner shall be entitled to all consequential benefits as if no such order was passed against him. No order as to cost.