

(2018) 08 UK CK 0036
In the Uttarakhand High Court
Case No : Special Appeal No. 586 of 2015

Bhola Nath	Vs	APPELLANT
Indian Institute of Technology, Roorkee & others		RESPONDENT

Date of Decision : 07-08-2018

Acts Referred:

Citation : (2018) 08 UK CK 0036

Hon'ble Judges : RAJIV SHARMA, J; MANOJ K. TIWARI, J

Bench : Division Bench

Advocate : Bhola Nath, Vipul Sharma

Final Decision : Allowed

Judgement

RAJIV SHARMA, ACJ

MANOJ KUMAR TIWARI, J.

1. The present appeal has been preferred by the appellant against the judgment dated 17.06.2014 passed by learned Single Judge of this Court in

WPSS 519 of 2010 as well as order dated 28.10.2015 passed in Review Application No.607 of 2015.

2. Key facts necessary for the adjudication of this appeal are that the appellant/petitioner was served with the charge-sheet on 28.05.2009. Petitioner

filed reply to the same on 13.08.2009. Thereafter, three members committee was constituted by Indian Institute of Technology (in short "IIT") to

look into the allegations leveled against the petitioner. The enquiry report was submitted by the said Committee to the disciplinary authority on

24.02.2010, which is at page 118 of the Special Appeal. The petitioner was issued show cause notice on 25.03.2010 to explain why major penalty

(compulsory retirement) be not imposed upon him. The petitioner filed detailed

reply to the same on 16.04.2010. Thereafter, the penalty of compulsory retirement was imposed upon the petitioner vide letter dated 29.04.2010.

3. The petitioner has not been supplied the copy of the enquiry report to enable him to make representation against the findings recorded by Enquiry Officer and also to point out the infraction, if any, to the mandatory provisions of enquiry. The petitioner was definitely prejudiced by non-supply of copy of the inquiry report. The disciplinary authority had already made up its mind to impose major penalty of compulsory retirement upon the petitioner vide letter dated 25.03.2010.

4. The petitioner has been charged of unauthorized absence. Every absence is not willful absence. The Enquiry proceedings are quasi criminal in nature. Even if the petitioner was proceeded ex parte, the evidence produced was required to be discussed in a dispassionate manner.

5. The petitioner had received a notice on 16.04.2010 and the disciplinary authority, without taking into consideration the reply of the petitioner, has imposed major penalty of compulsory retirement on 29.04.2010. What is stated in the impugned order is that enquiry report was considered along with his representation. The order dated 29.04.20210, whereby major penalty has been imposed upon the petitioner is a non-speaking order. The disciplinary authority ought to have supplied the copy of the inquiry report to the petitioner and thereafter, considering his representation the show cause notice was to be issued why particular penalty be not imposed upon him. Their Lordships of Honâ??ble Supreme Court in (1993) 4 SCC 727 in the case of Managing Director, ECIL Vs. B. Karunakar have held as under:

26. The reason why the right to receive the report of the Inquiry Officer is considered an essential part of the reasonable opportunity at the first stage and also principle of natural justice is that the findings recorded by the Inquiry Officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusion. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary

authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is the negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the Inquiry Officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the Inquiry Officer along with the evidence on record. In the circumstances, the findings of the Inquiry Officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the Inquiry Officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the Inquiry Officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusion, the delinquent employee should have an opportunity to reply to the Inquiry Officer's findings. The disciplinary authority is then required to consider the evidence, the report of the Inquiry Officer and the representation of the employee against it.

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It will thus be seen that where the Inquiry Officer is other than the disciplinary authority, the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusion on the basis of the evidence, Inquiry Officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. If the disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached.

The employee's right to receive the report is thus, a part of the reasonable opportunity of defending himself in the first stage of the inquiry. If this right is denied to him, he is in effect denied the right to defend himself and to prove his innocence in the disciplinary proceedings.â??

6. Accordingly, the appeal is allowed. The judgment dated 17.06.2014 passed by learned Single Judge of this Court in WPSS 519 of 2010 as well as order dated 28.10.2015 passed in Review Application No.607 of 2015 is hereby quashed. The dismissal order dated 29.04.2010 is also quashed and set aside. The petitioner shall be deemed to be in continuous service with all consequential benefits.