
(2003) 08 UK CK 0008

In the Uttarakhand High Court

Case No : Writ Petition No. 29008 of 1995-Old Number and Writ Petition No. 5388 (S/S) of 2001-New Number

Bhopal Singh Jalal

APPELLANT

Vs

The Managing Director and Others

RESPONDENT

Date of Decision : 21-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 1 UC 139

Hon'ble Judges : M.M. Ghildiyal, J

Bench : Single Bench

Judgement

Hon"ble M.M. Ghildiyal, J.—The Petitioner has challenged order dated 20.09.1995 passed by the Divisional Lodging Manager, U.P. Forest Corporation Nainital dismissing the Petitioner from services.

2. Heard Sri J.C. Joshi Learned Counsel for the Petitioner, Sri V.K. Singh Learned Counsel for Respondent No. 1 and Sri V.K. Bist Learned Counsel for Respondents" No. 2, 3 and 4.

3. The Petitioner was appointed as scalar with Respondents on 08.05.1990. At the relevant time he was posted as scalar at Dalmoti range Ranikhet. He was transferred vide order dated 25.05.1993 to Khansun range Nainital. The Petitioner represented the authority that he was transferred to Dalmoti only four months back and as such his transfer may be stayed. The Respondents thereafter on 30.06.1993 transferred the Petitioner to Tanakpur range. The Petitioner did not join at Tanakpur. According to him there was a threat to his life at Tanakpur because of the complaint made by him against some of the officials. For disobedience of order passed by superior authority the Petitioner was charge sheeted on 23.05.1994 and on the basis of finding recorded by the inquiry officer the Petitioner has been dismissed vide order dated 20.09.1995 which is order impugned in the present petition.

4. The Respondents have filed counter affidavit and supplementary counter affidavit. In reply the Petitioner has filed rejoinder affidavit and supplementary rejoinder affidavit.

5. Learned Counsel for the Petitioner has submitted that the Petitioner has been victimized for performing his duties as he had pointed out to the higher authorities about the misappropriation of corporation wood by the senior officers which fact was subsequently established by the inquiry report of the District Magistrate, Almora with the result he has been transferred from Dalmoti Ranikhet to Nainital vide order dated 25.05.1993. The order of transfer was mala fide. He made a representation to the authorities that only four months back he was posted at Dalmoti and he has been transferred within four months as a punishment as he had made a complaint against the guilty officials of Corporation. The authorities were adamant to transfer him from Ranikhet. The earlier transfer order was cancelled and he was transferred to Tanakpur from where he has got threat to his life. Consequently, he could not join at Tanakpur. The fact was fully known to the authority also. The transfer of the Petitioner was a consequence of the complaint made by the Petitioner is proved from the fact that in spite of the report of District Magistrate that there was misappropriation of wood of the corporation no FIR was lodged against the guilty officials of the corporation. The Petitioner thereafter filed a writ petition No. 2047 of 1995 before the Allahabad High Court and the Hon'ble Court on 03.08.1997 has passed the following order:

We have perused the record of this case and have heard Learned Counsel for the parties. Let the Regional Manager, U.P. Forest Corporation, Nainital appear before this Court on 03.09.1997 and inform the court why the report as prayed in this petition is not being lodged. Let a copy of this order be given to learned A.G.A. on his making an application within 24 hours who shall ensure appearance of Regional Manager, U.P. For-est Corporation, Nainital here in this Court on the date fixed.

6. On 03.09.1997 the court passed the following order:

In pursuance of this Court's order dated 13.08.1997 we are informed that Divisional Logging Manager alone is present in the court as communication sent by the Government Advocate was not addressed to the Regional Manager himself. Sri V.K. Singh Learned Counsel appearing on behalf of Respondent No. 1 has consequently requested that the case may be adjourned and another date may be fixed so that the Regional Manager, U.P. Forest Corporation, Nainital may be able to attend the court and inform this Court about the action taken by him in pursuance of the order dated 13th of August 1997. On the request made by Sri V.K. Singh Learned Counsel appearing on behalf of Respondent No. 1 let this case be list again on 15.10.1997 on which date the Respondent No. 1 Regional Manager, U.P. Forest Corporation Nainital shall appear before this Court.

7. It is made clear that on that date if the FIR has been lodged by him its copy

shall be filed alongwith the supplementary affidavit.

8. On 15.10.1997 while disposing of the writ petition the court passed an order as under:

The main grievance of the Petitioner is that Respondent No. 1, Regional Manager, U.P. Forest Corporation, Nainital is not taking interest in initiating criminal proceedings against the accused.

9. The Respondent No. 1, Regional Manager, U.P. Forest Corporation, Nainital is personally present. He has assured that criminal proceedings against the accused shall be launched and a FIR has been lodged. The grievance of the Petitioner is, therefore, satisfied by the department concerned and nothing is left to be decided. It is directed that police authorities will proceed expeditiously against the accused in accordance with law.

10. Thus, it is clear that though the complaint was made in 1993 the department lodged the FIR in the year 1997 and that too when the High Court took serious view and issued directions to lodge the report. The apprehension of the Petitioner that he has been victimized and was transferred mala fide in the circumstances is not baseless.

11. The Respondents in paragraph No. 40 of the counter affidavit have stated that the complaint by the Petitioner regarding the theft of corporation property was fully enquired upon by the competent authority and the complaint was found baseless and unfounded for. The submission cannot be accepted as the counter affidavit has been sworn on 03.11.1995 and the department in the year 1997 has lodged the FIR. The fact that the Petitioner had made a complaint in the year 1993 and the Petitioner was transferred from Dalmoti Ranikhet within four months creates suspicion.

12. The Learned Counsel for the Respondents has submitted that the Petitioner has a remedy against the dismissal order before the Labour Court and as such the writ petition is not maintainable. The parties have fairly conceded that under the Regulations existing at the relevant time there was no provision for appeal. In any case it is well settled law that availability of alternative remedy is no absolute bar for entertaining petition under Article 226 of the Constitution of India in appropriate cases particularly where impugned orders are found to have been passed wholly illegally or without jurisdiction.

13. Learned Counsel for the Petitioner has submitted that the appointing authority of the Petitioner is the Regional Manager whereas the Divisional Logging Manager has passed the dismissal order which is lower authority than the appointing authority. Learned Counsel for the Respondents has submitted that the Petitioner was appointed by the Divisional Logging Manager with prior approval of Regional Manager and he has been dismissed by the Divisional Logging Manager after obtaining approval from Regional Manager and as such there is no illegality in the dismissal order. My attention was drawn to the

approval, which was granted by the Regional Manager, and as such there is no force in the submission of the Learned Counsel for the Petitioner. The dismissal order has been passed after obtaining approval from the Regional Manager.

14. The Learned Counsel has further submitted that no copy of enquiry report was supplied to the Petitioner, which is mandatory in view of Apex Court judgment in the case of Union of India and others Vs. Mohd. Ramzan Khan, . He has placed reliance on the paragraph 18 of the aforesaid judgment, which is quoted as under:

We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter.

15. The Hon''ble Supreme Court in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., while dealing the effect of non-supply of copy of inquiry report to the delinquent officer has held as under:

Hence in all cases where the inquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of the punishment on the ground that the report was not furnished as is regrettably being done at present.

16. Five charges were levelled against the Petitioner. Charge No. 1 was to the effect that the Petitioner has not complied with the order of superior authorities. In support of charge one of the witness was Sri R.P. Katiyar, Divisional Logging Manager, Tanakpur who himself was the enquiry officer. In the enquiry report he has not dealt how the Petitioner has not obeyed the order passed by the Divisional Logging Manager Tanakpur. Since the Divisional Logging Manager Tanakpur was a witness he should not have been appointed enquiry officer and the Petitioner time and again requested to change the enquiry officer. His prayer was rejected. Learned Counsel for the Petitioner has submitted that the Petitioner was seriously prejudiced by not supplying a copy of the enquiry re-port.

17. In charge No. 5 it was stated that the Petitioner has made false report against the officials of the Corporation. The Petitioner in absence of copy of enquiry report could not show the disciplinary authority that the main cause for

initiating disciplinary proceedings is the complainant made by the Petitioner against some senior officials for misappropriation of corporation wood. The District Manager Almora also found substance in the complaint. However, the Corporation took no action against guilty person and the Petitioner was compelled to file writ petition before the Hon"ble Court and it was only after the direction of Hon"ble Court the FIR was lodged against the accused. Thus, the Petitioner was seriously prejudiced by non-supplying of copy of enquiry report.

18. Learned Counsel for the Respondents has further submitted that it is well settled law that where the punishing authority is the enquiry officer also then in that case supply of copy of enquiry re-port to the delinquent is not necessary. In the present case the enquiry was conducted by Sri R.P. Katiyar, Divisional Logging Manager, Tanakpur whereas the Petitioner has been dismissed by the order passed by Sri A.K. Jain Divisional Logging Manager, Nainital. The designation was the same. However, the dismissal order was passed by the person who was not the enquiry officer.

19. The Learned Counsel for the Petitioner has further submitted that though Sri R.P. Katiyar was a witness in support of the charge sheet and he him-self has conducted enquiry. The enquiry officer cannot rely on his own evidence. No officer can be a judge and a witness because it is against the principles of natural justice. I find force in the argument of the Learned Counsel for the Petitioner.

20. For the reasons recorded above I allow the writ petition and set aside the order dated 20.09.1995 passed by the Divisional Lodging Manager, U.P. Forest Corporation Nainital dismissing the Petitioner from services. However, in the circumstances the Petitioner would be entitled to 50% back wages only. No order as to costs.