
(2016) 07 AHC CK 0239

In the Allahabad High Court

Case No : Service Bench No. 1369 of 2010

Brijendra Kumar Agarwal

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 27-07-2016

Acts Referred:

Citation : (2016) 118 ALR 292 : (2017) 1 CLR 850 : (2016) 151 FLR 832

Hon'ble Judges : Satyendra Singh Chauhan and Anil Kumar, JJ.

Bench : Division Bench

Advocate : P.K. Srivastava, Advocate, for the Petitioner; C.S.C, for the Respondent

Final Decision : Allowed

Judgement

Satyendra Singh Chauhan and Anil Kumar, JJ.—Heard learned counsel for the petitioner and learned Standing Counsel.

2. By means of this writ petition, the petitioner has challenged the order dated 23rd June, 2010, by which certain punishment has been awarded by making recovery of the amount to the tune of Rs. 1,81,000/- and also reduction of pension to the extent of 20% from the petitioner.

3. The petitioner was placed under suspension by means of the order dated 20th June, 1986 while working on the post of Sales Tax Officer in the department. A departmental proceeding was initiated against him. The Deputy Commissioner(Executive) Moradabad was appointed as an Enquiry Officer vide order dated 21-08-1986. A Charge-sheet was also served on the petitioner on 03-09-1986. The petitioner demanded certain documents by means of letter dated 20th September, 1986. A reminder letter was also given by the petitioner in this regard on 09-1-1987. The Enquiry Officer supplied the copies of the documents on 19th February, 1987, but, it is stated that the said documents were not relevant. Ultimately, the petitioner retired from service on 12th November, 1987. The State Government issued an order staying the disciplinary

proceeding on account of pendency of a vigilance enquiry against him on 2nd April, 1988. However, the enquiry was restarted by lifting the said stay order. The Joint Commissioner (Establishment) Jhansi, informed the petitioner vide order dated 30th September, 2002 that he has been authorised to hold enquiry in the matter and sought reply from him within a week. The petitioner demanded copy of the order dated 30th September, 2002 indicating that the enquiry had already been stayed by the State Government, but, he did not receive any reply from the Enquiry Officer. The petitioner requested the Principal Secretary to the Government of U.P. to get conducted the enquiry at Ghaziabad keeping in view his ill health and old age by means of letter dated 21st April, 2004. On 11th January, 2005, a reminder was also given by the petitioner to the Enquiry Officer as well as to the Principal Secretary of the department, but, no reply was received from them. The Enquiry Officer proceeded with the enquiry ex-parte on 10th June, 2005. On 9th March, 2006, the State Government issued another order to continue the enquiry under Article 351-A of the Civil Service Regulations. A show cause notice was also issued to the petitioner along with the enquiry report on 7th April, 2006. The petitioner submitted reply to the show cause notice on 28th April, 2006. The Disciplinary Authority issued another notice to the petitioner on 12th April, 2007, by means of which he was informed that as to why the reduction of pension to the extent of 20% and recovery of Rs. 1,81,000/- should not be made from him. The petitioner submitted reply to the show cause notice dated 12th April, 2007. On 8th June, 2007, the State Government sought advice from the Public Service Commission, Allahabad and the Public Service Commission, Allahabad, gave its advice to the State Government on 20th May, 2010 and thereafter, the impugned order of punishment has been passed.

4. Learned counsel for the petitioner has submitted that while receiving the advice from the Public Service Commission, Allahabad by the State Government, its copy was never supplied to him, therefore, the impugned order is vitiated in the eyes of law. It also amounts to violation of principles of natural justice.

5. On the other hand, learned Standing Counsel has submitted that petitioner's punishment order has been passed in accordance with law and there was no delay in supply of the copy of advice of the Public Service Commission to the petitioner. He has also submitted that the enquiry was held in accordance with law.

6. We have gone through the record. From perusal of the record, we find that after initiation of disciplinary proceeding, an ex-parte enquiry was conducted against the petitioner. The opposite parties did not take into account the objections raised by the petitioner and ultimately a show cause notice was issued to the petitioner and the petitioner submitted reply to the said show cause notice. However, another notice was issued to him with regard to the proposed punishment. An advice was sought from the Public Service Commission, Allahabad and the copy of the advice was received by the State Government,

but, the same was never supplied to the petitioner. The non supply of document amounts to violation of principles of natural justice.

7. In this regard, learned counsel for the petitioner has relied upon a case reported in (2011) 4 Supreme Court Cases, 591 S.N. Narula v. Union of India and Others. Relevant paragraphs from the case of S.N. Narula (Supra) are reproduced as under:

"5. This order was challenged by the Union of India by way of Writ Petition before the High Court of Delhi and by the impugned judgment the High Court interfered with that order. The Writ Petition was partly allowed and it was directed that the matter be again considered by the Tribunal. Against that order the Appellant has come up in appeal by way of Special Leave Petition.

6. We heard the learned Counsel for the Appellant and the learned Counsel for the Respondent. It is submitted by the counsel for the Appellant that the report of the Union Public Service Commission was not communicated to the Appellant before the final order was passed. Therefore, the Appellant was unable to make an effective representation before the disciplinary authority as regards the punishment imposed.

7. We find that the stand taken by the Central Administrative Tribunal was correct and the High Court was not justified in interfering with the order. Therefore, we set aside the judgment of the Division Bench of the High Court and direct that the disciplinary proceedings against the Appellant be finally disposed of in accordance with the direction given by the Tribunal in Paragraph 6 of the order. The Appellant may submit a representation within two weeks to the disciplinary authority and we make it clear that the matter shall be finally disposed of by the disciplinary authority within a period of 3 months thereafter."

8. He has also relied upon a decision of the Hon'ble Supreme Court reported in (2011)4 Supreme Court Cases, 589, Union of India and Others v. S.K. Kapoor. Relevant paragraphs of the said case are reproduced as under :-

"8. There may be a case where the report of the Union Public Service Commission is not relied upon by the disciplinary authority and in that case it is certainly not necessary to supply a copy of the same to the concerned employee. However, if it is relied upon, then a copy of the same must be supplied in advance to the concerned employee, otherwise, there will be violation of the principles of natural justice. This is also the view taken by this Court in the case of S.N. Narula v. Union of India and Ors. Civil Appeal No. 642 of 2004 decided on 30th January, 2004.

9. It may be noted that the decision in S.N. Narula's case (supra) was prior to the decision in T.V. Patel's case (supra). It is well settled that if a subsequent co-ordinate bench of equal strength wants to take a different view, it can only refer the matter to a larger bench, otherwise the prior decision of a co-ordinate bench is binding on the subsequent bench of equal strength. Since, the decision in S.N.

Narula's case (supra) was not noticed in T.V. Patel's case (supra), the latter decision is a judgment per incuriam. The decision in S.N. Narula's case (supra) was binding on the subsequent bench of equal strength and hence, it could not take a contrary view, as is settled by a series of judgments of this Court."

9. We have considered the submissions of learned counsel for the petitioner and also the law laid down by the Hon''ble Supreme Court in the cases cited by the learned counsel for the petitioner and find that opposite parties have not supplied the copy of the advice of the Public Service Commission, which is in violation of principles of natural justice. Therefore, we are of the view that the punishment order on account of aforesaid fault cannot sustain. The petitioner has already attained the age of 82 years. In these circumstances, we allow the writ petition and set the impugned order of punishment directing the opposite parties to release all the post retrial dues including the revised pension to the petitioner.