

(1991) 06 AHC CK 0003

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 12082 of 1991

Dev Pal Singh

APPELLANT

Vs

Vice-Chancellor, G.B. Pant University of Agriculture and
Technology, Nainital and others

RESPONDENT

Date of Decision : 29-06-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1992 All 163 : (1991) 2 AWC 89

Hon'ble Judges : M.L. Bhat, J

Bench : Single Bench

Advocate : D.V. Jaiswal and Rastrapati Khare, for the Appellant; Dinesh Kakkar,
for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner has been dropped for two semesters i.e. I and II semesters 1990/91. The University campus and its farm were declared out of bounds for him. He was placed on conduct probation throughout his stay in the University after his re-registration in 1st semester 1991-92 if his re-registration is allowed. He was barred from seeking any employment in the University and admission for any higher degree programme in the University. This punishment of the petitioner is based on the charge sheet served on him on 30-1-91. He was charged for having indulged in the acts of indiscipline as mentioned in the said charge-sheet. These were as under :--

1. Showing disrespect to a teacher.
2. Threatening and abusing a University Staff under the influence of liquor.
3. Using Motor cycle during late night hours and forcibly entering in the house of a campus resident.
4. Showing disrespect and challenging the authority of the Vice-Chancellor and

Deans, and

5. Attempting to use illegal means to obtain grade in a subject which amounts to use of unfair means.

2. He was required to present himself along with his natural guardian before the Disciplinary Committee in the office of the Dean Student Welfare on 8-2-1991 at 11.00 A.M. to explain his conduct. The petitioner appeared on the appointed date. He denied the charges. Thereafter, by an order dated 8-4-91 he was awarded a punishment which is contained in Annexure III to the writ petition. The punishment awarded is already referred to in the beginning of this order.

3. The petitioner challenges the order of punishment on the grounds that he was not given materials in support of the allegation mentioned in Annexure-I. Disciplinary Committee's finding was not given to the petitioner nor was he afforded any opportunity to make a representation against the punishment. The statements of witnesses or even its gist and copy of the complaint was not supplied and he was denied fair opportunity to defend himself. The allegations levelled against the petitioner were grave. The petitioner has denied those allegations. The show cause letter did not mention any punishment. The enquiry proceedings which were conducted at the back of the petitioner are said to be illegal, perverse, arbitrary and violative of principles of natural justice.

4. In their counter-affidavit the respondents have state that the petitioner was found guilty of misbehaviour. Prior to the occurrence in the institution in question, the petitioner was fined Rs. 125/- for misbehaving with the cafe staff. The complaint against the petitioner was made by Sri K.P.S. Tyagi, a teaching Associate in which it was alleged that the petitioner had misbehaved with him. The petitioner had gone to the residence of the said teacher along with other students at about 1] O'clock in a drunken state. The petitioner is said to have used derogatory language in respect of Sri Tyagi and had gone up upon the bed of Sri Tyagi with the intention of beating him. He is said to have pressurised him as to why Mr. Tyagi had awarded "D" Grade to the petitioner. He abused Mr. Tyagi and attempted to beat him. His colleagues saved Mr. Tyagi. These allegations are said to have been enquired into by the senior officers of the University who found the petitioner guilty of the charges. Before arriving at a conclusion the petitioner was afforded opportunity to appear before the Disciplinary Committee and give his statement. Four Teaching Associates are said to have given their written statement certifying the correctness of the occurrence mentioned by Mr. Tyagi in his complaint. Copy of these statements are annexed as Annexures C.A. 4 and CA-5 to the counter-affidavit. A third year student has testified that the petitioner had taken alcohol in his room along with three other persons. Copy of that statement is Annexure CA-6. However it is admitted that copies of the statements were not furnished to the petitioner but he was fully aware of the contents of the statement and complaint which were available to him at the time when he appeared before the Disciplinary Committee. In the proceeding of this nature opportunity to cross-examine the witnesses is not available to student

and the petitioner was not afforded opportunity to cross-examine the witnesses nor were the witnesses examined in the presence of the petitioner.

5. The petitioner has filed rejoinder-affidavit also in which it is stated that Sri K.P.S. Tyagi is in habit of making false complaints, He has also levelled some allegations against Mr. Tyagi which are new facts and which have not been replied by the respondents, therefore, I do not consider those facts. The allegations levelled against the petitioner are denied and he has refuted the correctness of the contents of the counter-affidavit.

6. The short question which falls for consideration in this case is whether the principles of natural justice have been observed in arriving at the conclusion to punish the petitioner.

7. I have heard learned counsel for the parties at length. The petitioner has relied on an authority of this court reported in Ajai Kumar Mittal Vs. Vice-Chancellor, Roorkee University, Roorkee and others, . The facts of the said case are that as a consequence of a scuffle in the cinema hall (Hanger) of the Roorkee University two students suffered injuries and the matter was reported to the Vice-Chancellor who had constituted an inquiry committee and pending decision of the inquiry the petitioner was suspended from attending classes with immediate effect. The Vice-Chancellor on a representation, however, allowed the petitioner to appear in the spring semester examination 1989-90 pending decision of the inquiry committee. The examination of the petitioner commenced from 5/7-5-90 and continued up to 25-5-90. The statement of the petitioner was recorded by the inquiry committee on 2/3-5-90 and by letter dated 4-5-90 the petitioner was directed to appear before the inquiry committee on 5-5-90 at 4.15 p.m. The petitioner was asked to reply some charges which he did by denying the allegation. On 14-5-90 a charge-sheet was given to the petitioner. The petitioner was asked to show cause why he should not be rusticated from the University for the period of one academic year 1990-91 and he be placed on probation for the remaining period of stay in the University after he rejoins in July, 1991. Along with that show cause notice no material was supplied to the petitioner. He is said to have requested the University authorities to supply also inquiry report and other evidence which might have been relied upon against him. Registrar of the University had informed the petitioner on 19-5-90 that after due deliberation the inquiry committee had submitted the report and at that stage statement of witnesses could not be provided. The petitioner was permitted to submit his reply by 30-5-90 and to see the inquiry report in the office on any day before 30-5-90. He is said to have requested them to furnish the copy of the statements of the witnesses or permit him to have inspection but this was not allowed by the University authorities and on 25-6-90 the impugned order rusticating the petitioner was passed. On these grounds the Hon'ble Justice Sharma, J. allowed the writ petition and quashed the order of rustication as being violative of principles of natural justice. It was held that evidence collected behind the back of the student was not supplied to him nor was gist of inquiry report given to

him, therefore, he was prevented from making representation and principle of natural justice were held to have been violated.

8. Mr. Kakkar appearing for the other side has submitted that the complaint made by Mr. Tyagi and corroborated by the statements of other witnesses was relied upon by the Disciplinary Committee and the evidence collected at the back of the petitioner was put to him when he appeared in response to the notice of show cause. He did not give convincing reply, therefore, punishment awarded to him was perfectly legal and cannot be said to be violative of principles of natural justice because the petitioner was heard before the punishment was awarded to him. He has relied on some authorities which are required to be mentioned in this judgment.

9. Ratiram Singh Yadav Vs. Principal, Government Polytechnic, Harda and Another, relied upon by M.r. Kakkar is a case of misbehaviour by students in an examination hall. Because the misbehaviour had taken place in the examination hall, it was held that hearing of student was not necessary before taking disciplinary action. It was held that disciplinary action against the student who misbehaved in the examination hall could be taken without hearing him but when the misbehaviour was detected afterwards the requirement of observance of principles of natural justice do arise. In Kamal Singh v. The Chancellor, Allahabad University reported in 1981 UPLBEC 393 : (1981 UPLT 169) it was held that principles of natural justice are not inflexible and cannot be imprisoned in straight jacket of a rigid formula. They differ in different circumstances. Observance of principles of natural justice differ from case to case. Mere depriving the petitioner to cross-examine the witnesses who stated against him was not against the concept of natural justice. The procedure adopted was fair and it could not be considered unreasonable. However, the enquiry was held in that case in presence of the petitioner. In The Principal, Government Engineering College, Trichur Vs. John K. Kurien and Another, it was held that in academic disciplinary proceedings the principles of natural justice should not be applied with strict standards, provided the proceedings are substantially fair. This was a case of ragging. An inquiry was conducted in this case by two professors and statements of victims of the rigging was recorded in presence of the petitioner and the petitioner was allowed to cross-examine them and in the end report was submitted which was considered by the College Council and punishment, thereafter was recorded. In Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another, it was held that when a proper enquiry is hold by an enquiry committee consisting of three respectable and independent members of the staff as appointed by the Principal of Medical College to enquire into the complaint of the inmates of the Girls hostel against certain male students of that College about their indecent behaviour with them in the hostel compound itself during odd hours of night, in such a case the rules of natural justice do not require that statement of girl students should be recorded in presence of the male students concerned or that the latter should be furnished with the report of the enquiry committee. In the enquiry the girl had identified

four students though they were many more. Statements of the girl students were not recorded in presence of the male students for obvious reasons. It was a case of indecent misbehaviour which was being probed into. The enquiry committee, therefore, did not think it proper to compel the girl students to repeat the indecent behaviour of the students in presence of various students who had indulged in that behaviour. It was a peculiar case of its nature. The moral decency was sought to be restored by awarding punishment to those who had eroded in respect of students of weaker gender.

10. After giving my thoughtful consideration to the facts of the case I am of the opinion that the punishment awarded to the petitioner cannot be sustained because the same is arrived at on the basis of the evidence which was recorded at the back of the petitioner. The petitioner was not given gist of the statement of even the enquiry report to enable him to make a representation explaining his conduct. He was summoned before the committee and given a charge-sheet and asked to reply the charge-sheet there and then. After denying the charge by the petitioner, it was necessary for the respondents to initiate an enquiry in which the petitioner was also to remain present. It was not necessary to give him opportunity to cross-examine the witnesses. However, the statements of the witnesses should have been recorded in his presence if the same was made basis for punishment. He was entitled to give his explanation in the enquiry if he was given a show cause notice as to why he should not be punished. The show cause notice which is in the form of charge-sheet does not propose any punishment. It only wants to hear the petitioner in respect of the charge on a particular date. Had he admitted the charge and pleaded guilty he could be straightway punished and in that case he would not be heard to say that principles of natural justice were violated. After denying the charge, it was necessary to initiate an enquiry in accordance with the rules of natural justice. The impugned order has obviously affected the petitioner. It has visited him with penal consequences. Therefore, it was necessary to give him a chance to show cause about the proposed penalty. He should have been given a gist of the statements of the witnesses and a copy of the complaint as also the enquiry report so as to enable him to make an effective representation explaining his position. Thereafter conclusion should have been drawn by the Disciplinary Committee.

11. The allegations of misconduct against the petitioner are grave. Therefore, if the respondents are so advised they can still hold an enquiry in respect of the charge which are levelled against the petitioner and give the petitioner a right of hearing and record the statements of the witnesses in his presence and allow him to explain his position. If they choose to do so they may conduct an enquiry within one month from the date of presentation of a certified copy of this judgment before the respondents. Should such an enquiry be initiated it should conform to the rules of natural justice.

12. For the reasons stated above, I allow this writ petition and quash the impugned order dated 8-4-91. However, it is made clear that this judgment will

not stand in the way of the respondents to initiate a fresh enquiry against the petitioner if so advised and conduct the said enquiry in accordance with the principles of natural justice by associating the petitioner in the said enquiry and allow him a reasonable time to explain his conduct.

13. Accordingly, the writ petition succeeds and is allowed to the extent indicated above.

14. Petition allowed.