
(2001) 01 AHC CK 0060
In the Allahabad High Court
Case No : Writ Petition No. 1942 (S/B) of 2000

Devendra Singh Jeena

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 20-01-2001

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2001) 01 AHC CK 0060

Hon'ble Judges : S.H.A.Raza, J and R.P.Nigam, J

Final Decision : Allowed

Judgement

1. The petitioner of this writ petition, who before the order of dismissal was passed against him, was working as Accounts Officer in the U.P. Hill Electronics Corporation Limited (herein after referred to as the "Corporation"). On 3102000 he was chargesheeted for committing alleged financial irregularities on 28112000, the petitioner submitted his reply against the chargesheet and on December 6, 2000 he was dismissed from service.

2. Being aggrieved against the order of dismissal the petitioner knocked the door of this Court by filing the present writ petition mainly on the following grounds:

(a) The enquiry officer did not hold any enquiry and no witnesses were examined.

(b) No date for hearing was fixed and after submission of the explanation of the petitioner the dismissal order was passed without giving any opportunity to the petitioner to showcause against the said order.

3. The basis of proof of the charges contained in the chargesheet is specially the audit report which is only an opinion of the Auditor and can not be taken to be a substantive piece of evidence unless the same is proved by an officer.

4. The order of punishment suffers from colourable exercise of powers inasmuch as at the behest of the petitioner the Managing Director of the said Corporation who is also Secretary of the Government was summoned by the High Court in

the contempt proceedings.

5. We have also summoned the record of the enquiry proceedings and perused the same. The record does not indicate that after the petitioner submitted his reply on 28112000, the Managing Director who himself assumed the role of an Enquiry officer, examined any witness or held any enquiry or fixed any date for hearing. The Enquiry Officer straightaway passed the order of dismissal from service against the petitioner.

6. Undoubtedly the charges levelled against the petitioner were very grave. Whenever such charges are levelled against a delinquent the responsibility of the Enquiry Officer is much greater. The enquiry should be conducted in a manner where the charges are proved in accordance with law. It is incumbent upon the Enquiry Officer to give reasonable opportunity to the delinquent to cross-examine the departmental witnesses and produce the evidence.

7. In reply of the charges the petitioner contended for giving him an opportunity of hearing and he should be given photostat copies of the relevant documents and inspection of the file by an Officer who may be so designated, having no connection with the corporation. The petitioner also asserted that on the basis of the Audit report, particularly when the related material mentioned in the audit report were not furnished, raises a suspicion about the authenticity of the audit report itself, hence all the relevant records mentioned in the audit report should be furnished to the delinquent by him.

8. The petitioner also submitted that on the basis of the audit report, no person can be held guilty. The Officers of the Corporation who are corrupt, with a view to save their neck, have got the audit report prepared. It has also been asserted by the petitioner that whenever any objection in the audit report is raised, then the department has to submit an explanation and after considering the explanation of the department, the audit report is finalised. In the present case it was not done. It was asserted by the petitioner that in case the department had given any explanation about the audit report then a copy of that explanation be also furnished to the petitioner.

9. The first question which calls for consideration appears to be is that whether an audit report should be relied as a piece of substantive evidence. It is well settled that the audit report is an opinion of the Auditor. It is not substantive piece of evidence but if it is relied upon it must be proved. The view which we have taken is fortified by the observations of a Division Bench decision of this Court in the case of Dilip Singh Rana v. State of Uttar Pradesh, 1994 LAB. I.C. 491, where serious charges of dereliction of duty, misappropriation of funds, embezzlement etc., were levelled against the delinquent Dilip Singh Rana. Only a chargesheet was furnished to the delinquent, no oral evidence was led before the enquiry officer, no enquiry was held or no witnesses were examined by the Enquiry Officer.

10. In view of the aforesaid facts and circumstances of the case, the writ petition

filed by Dilip Singh Rana was allowed and the order of removal was quashed. Although the Division Bench left it open to the departmental authorities to hold fresh enquiry into the charges but directed reinstatement with payment of salary etc. While dealing with that aspect of the matter, the Court observed as under:

"The audit report could not be used as substantive evidence of the genuineness of bonafide nature of the transactions referred to in the accounts. Audit is official examination of the accounts in order to make sure that the accounts have been properly maintained according to the prescribed mode. Audit report is a statement of facts pertaining to the maintenance of accounts coupled with the opinion of the Auditor in respect thereof based on those facts."

It was further observed that:

"the audit report has to be proved like any other fact by relevant and admissible evidence".

11. Probably it was forgotten by the Enquiry Officer that the person with whom he was dealing with, was a public servant. According to the principle of "audi alterem partem" which is embedded under Article 14 of the Constitution of India before a person is proceeded with a departmental enquiry he should have a right to cross-examine the witnesses and submit his defence against the charges. If no evidence is adduced, during the enquiry, the right to reasonable opportunity of being heard in respect of the charges will be illusory. It is only on the basis of the evidence adduced during the enquiry that the person facing the enquiry may effectively exercise his right of being heard in respect of the charges against him by showing that the charges have not been established and that penalty of dismissal, removal or reduction in rank is not justified.

12. In the present case as stated above, as soon as the petitioner submitted his explanation on 28/12/2000, against the chargesheet dated 31/02/2000, the enquiry officer straightaway passed the order of dismissal from service. Since no enquiry was held, no witness was examined, no date of hearing was fixed, it can not be said that while holding the enquiry, the principle of "audi alterem partem" was observed by the Enquiry Officer.

13. The next point which requires consideration is the allegation of malafide, which has been levelled against the respondent No. 4 by the petitioner, it appears that at the behest of the petitioner, the respondent No. 4, who is also Managing Director of the Corporation and the Secretary of the State Government, was summoned in a contempt proceeding. The contempt proceedings are judicial proceedings, if rightly or wrongly a person feels that the order passed by the Court has not been complied with, he may file a contempt petition and on the basis of averments made on affidavit, the Court often issued notices. Whenever a notice is issued to a person in a contempt proceeding, it does not always mean that the person against whom the notice has been issued, has committed contempt of Court. He has a right to file an objection before the Court that he has not committed disobedience of the Court's order and when he

succeeds in establishing his contention, then the notices can be withdrawn by the Court.

14. We have perused the shortcounteraffidavit filed by the respondent No. 4. In his counteraffidavit, the respondent No. 4 averred that the petitioner filed a contempt case, through respected Mr. Amit Bose and succeeded in his evil designs by getting the Secretary to the Government of U.P. summoned in person on 11102000. Thereafter he submitted that the petitioner taking advantage of lawyers strike on 24102000, he himself stood up in open Court and raised hue and cry that he was suffering from blood cancer and succeeded in his ingenuity by getting the Secretary to the Government of U.P. summoned in person again for the second time on 2112000.

15. We are of the view that the averments made by the respondent No. 4 is not befitting to his status who is senior member of an Indian Administrative Services. No person can ever succeed in his evil design to get a higher officer of the State Government summoned before the Court. Whenever the Court summons a higher officer of the State Government it is either for assistance or in a contempt proceeding, after being satisfied that a prima facie case exists, for summoning a person. No person can succeed in his ingenuity by getting an officer of the State Government summoned in person before this Court.

16. The contention of the petitioner is that on account of that animosity against the petitioner, the respondent No. 4 himself assumed the charge of the enquiry officer and dismissed the petitioner. We are of the view that it is not expected from a person belonging to an Indian Administrative Service to deal with a delinquent in such a manner. He might have felt that after the issuance of chargesheet, the petitioner did not submit his reply on the due date and tried to drag on the enquiry and when he was asked, he filed his explanation against the chargesheet. The Enquiry Officer undoubtedly might have acted, in haste and within fifteen days from the date of submission of the explanation by the petitioner, he dismissed the petitioner from service without holding any enquiry and fixing a date for hearing. It was incumbent upon him to substantiate the allegations raised in the audit report during the departmental enquiry after giving an opportunity to the delinquent to cross-examine the witnesses and allowed him to adduce the evidence in his defence, if he so wanted, and only then the Enquiry Officer should have passed the final order.

17. In view of the aforesaid reasons, we are of the view that the Enquiry Officer acted in a most hasty and arbitrary manner. Arbitrariness is another facet of discrimination, which is the sworn enemy of fairness, justness and reasonableness which is ingrained under Article 14 of the Constitution of India.

18. In view of what has been stated above, the writ petition is allowed and a writ in the nature of certiorari quashing the impugned order of dismissal dated 6122000, contained in Annexure No. 1 to the writ petition is issued. However, it will be open for the respondents to hold a fresh enquiry from the stage the fault

has occurred in the enquiry.

WP allowed.