
(2011) 01 AHC CK 0114
In the Allahabad High Court
Case No : Service Bench No. 1608 of 2009

Dharam Raj Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-01-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2011) 3 ADJ 169 : (2011) 128 FLR 959

Hon'ble Judges : Devi Prasad Singh, J; Anil Kumar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Anil Kumar, J.—Heard Sri S.C. Yadav, learned Counsel appearing for the Petitioner and Sri Sudeep Seth, learned Counsel for the Respondents and perused the record.

2. Affidavits have been exchanged between the parties.

3. With the consent of the parties' counsel, the writ petition is finally heard and is being decided at admission stage.

4. The Petitioner who was a Dy. General Manager in Respondent Cooperative Bank has approached this Court under Article 226 of the Constitution of India, being aggrieved of the impugned order dated 24.08.2009 (Annexure-1) by which the Petitioner has been dismissed from service after disciplinary proceedings.

5. While serving as Dy. General Manager in the Respondent Bank at Banda the Petitioner was served with a charge-sheet dated 12th February, 2008, a copy of which has been filed as Annexure No. 10 to the writ petition. While serving the chargesheet, 9 charges relating to slackness and misconduct were levelled against the Petitioner. After receipt of the chargesheet, the Petitioner vide letter dated 22th February, 2008, demanded certain documents relating to allegation on record. The Inquiry Officer, by his letter dated 13.03.2008 wrote to the

Secretary/General Manager, District Cooperative Bank Ltd. Pratapgarh to provide the relevant documents relating to the charges. However, a plea was taken by the Petitioner that complete documents or order were not supplied to him. While taking such plea the Petitioner has also submitted reply dated 27th March, 2008 with a request to the Inquiry Officer to provide a copy of the complaint but the same was not provided to him. However, according to the Petitioner's counsel, the alleged complaint was the very foundation to proceed against the Petitioner. The Petitioner also denied the charges levelled against him and stated that he has performed his duties up to mark and no irregularity or illegality has been committed by him.

6. After receipt of reply to the chargesheet dated 12th February, 2008, the Inquiry Officer conducted inquiry and submitted a report to the disciplinary authority and in consequence thereof, the disciplinary authority by the impugned order dismissed the Petitioner from services.

7. After submission of reply dated 27th March, 2008, the Petitioner has sent a letter dated 03th February, 2009 to the Member Secretary, Cadre Authority, Cooperative Bank, Centralised Services, Lucknow mentioning therein that the Petitioner has made a request to the Inquiry Officer for fixing date, time and place to record evidence, coupled with the prayer to provide opportunity of personal hearing but the same has not been allowed to the Petitioner. Accordingly, it was stated by the Petitioner before Member Secretary, Cadre Authority, Cooperative Bank, Centralised Services, Lucknow that inquiry seems to be continuing against him ex-parte and as such the report submitted by the Inquiry Officer cannot be allowed to be believed. The Member Secretary, Cadre Authority, Cooperative Bank, Centralised Services, Lucknow instead of taking a decision on the letter submitted by Petitioner on 03rd February, 2009 issued a Show Cause Notice dated 16th April, 2009 to the Petitioner calling his explanation with regard to the report submitted by the Inquiry Officer. In response to it, the Petitioner submitted a reply dated 24th April, 2009 to the Cadre Authority mentioning therein that inquiry report submitted by the Inquiry Officer is violative of principle of natural justice as no reasonable opportunity was given to him to defend his cause and no date, time and place was fixed by the Inquiry Officer while proceeding with the inquiry.

8. Thereafter, by letter dated 12th May, 2009, the Additional Secretary of Cadre Authority, Cooperative Bank, Centralised Services, U.P., Lucknow has written a letter, granting a month's time to submit explanation. On 20th May, 2009, the Petitioner written letter to the Additional Secretary of Cadre Authority, Cooperative Bank, Centralised Services, U.P., Lucknow requesting time up to 30th June, 2009 which was granted to him. The Petitioner has submitted his explanation dated 22.07.2009 denying all the charges levelled against him and requested to provide relevant documents and opportunity to cross examine the witnesses in his defence. After receipt of reply from Petitioner, the Petitioner was dismissed from the service by the impugned order dated 24th of August, 2009.

9. At the face of record, it appears that in spite of repeated requests made by the Petitioner, the Respondents have not given reasonable opportunity to the Petitioner to defend his cause. The Petitioner made categorical request that some date, time and place be fixed by the Inquiry Officer. He also requested to give an opportunity to cross examine the witnesses and lead evidence in defence.

10. According to the Petitioner's counsel, even opportunity of hearing was not given to the Petitioner in spite of demand raised in writing. These facts have not been denied by Respondents' counsel.

11. Now, it is well settled proposition of law that regular inquiry means after serving the chargesheet and receipt of reply to the chargesheet, oral evidence should be recorded with opportunity to cross-examine the witnesses. Thereafter, the delinquent employee has a right to lead evidence in defence and opportunity of personal hearing should be given by the inquiry officer. Even if the government employee does not cooperate with the enquiry proceedings, it shall not give escape to the enquiry officer from concluding the enquiry in accordance with law. It shall always be incumbent upon the enquiry officer to record finding, may be by ex parte proceeding and thereafter submit a report to the disciplinary authority. It is also necessary that the documents relied upon by the prosecution should be proved vide JT 2010 (1) SC 618 State of Uttar Pradesh and Ors. v. Saroj Kumar Sinha 1990 LCD 486 Jagdish Prasad Singh v. State of Uttar Pradesh 1998 LCD 199 Avatar Singh v. State of Uttar Pradesh 1979 7 SCC 60 Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee, State of U.P. Vs. Shatrughan Lal and Another, State of Uttar Pradesh v. Shatrughan Lal 1998 SC 117 Chandrama Tewari v. Union of India and Ors. 1985 SC 1121 Roop Singh Negi Vs. Punjab National Bank and Others, Roop Singh Negi v. Punjab National Bank and Ors. and State of U.P. and Others Vs. Saroj Kumar Sinha,

12. In case for any reason, it is not feasible or possible to provide the copy of documents, then opportunity should be given to inspect the records.

13. In the present case, it appears that such opportunity has not been provided to the Petitioner. After receipt of reply to chargesheet, it was incumbent on the Inquiry Officer to adduce evidence to substantiate the charges and prove the document like other evidence so that the delinquent employee may cross examine the witnesses with regard to authenticity of documents. Of course, there may be a situation where documents are admitted by the delinquent employee under his own signature, then in such situation, it may not be necessary to prove such documents but so far as allegations contained in the chargesheet are confined, it should be proved like other evidence. After recording the evidence, it shall be incumbent on the Inquiry Officer to give an opportunity to delinquent employee to lead evidence in defence and if necessary may produce its own witness to assail the charges, Inquiry Officer should also afford opportunity of personal hearing with regard to evidence collected during the course of inquiry from over either side. Thereafter he or she may submit the

report to the disciplinary authority.

14. Attention has been invited to recent judgment of Hon"ble Supreme Court in the case of State of U.P. and Others Vs. Saroj Kumar Sinha, The aforesaid proposition of law has been reiterated by Hon"ble the Supreme Court. For convenience, the relevant portion from the judgment of Saroj Kumar Sinha (Supra) is reproduced hereunder:

The proposition of law that a government employee facing a department enquiry is entitled to all the relevant statement, documents and other materials to enable him to have a reasonable opportunity to defend himself in the department enquiry against the charges is too well established to need any further reiteration. Nevertheless given the facts of this case we may re-emphasise the law as stated by this Court in the case of The State of Punjab Vs. Bhagat Ram,

The State contended that the Respondent was not entitled to get copies of statements. The reasoning of the State was that the Respondent was given the opportunity to cross- examine the witnesses and during the cross-examination the Respondent would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the Respondent with the gist of the evidence.

The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against the charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the government servant he will not be able to have an effective and useful cross-examination.

It is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the government servant. A synopsis does not satisfy the requirements of giving the government servant a reasonable opportunity of showing cause against the action proposed to be taken.

We may also notice here that the counsel for the Appellant sought to argue that Respondent had even failed to give reply to the show cause notice, issued under Rule 9. The removal order, according to him, was therefore justified. We are unable to accept the aforesaid submission. The first enquiry report dated 3.8.2001, is clearly vitiated, for the reasons stated earlier. The second enquiry report can not legally be termed as an enquiry report as it is a reiteration of the earlier, enquiry report. Asking the Respondent to give reply to the enquiry report without supply of the documents is to add insult to injury.

In our opinion the Appellants have deliberately misconstrued the directions issued by the High Court in Writ Petition 937/2003. In terms of the aforesaid order the Respondents was required to submit a reply to the charge sheet upon supply of the necessary document by the Appellant. It is for this reason that the High Court subsequently while passing an interim order on 7.6.2004 in Writ Petition No. 793/2004 directed the Appellant to ensure compliance of the order passed by the Division Bench on 23.7.2003. In our opinion the actions of the enquiry officers in preparing the reports ex-parte without supplying the relevant documents has resulted in miscarriage of justice to the Respondent. The conclusion is irresistible that the Respondent has been denied a reasonable opportunity to defend himself in the enquiry proceedings.

15. Taking into aforesaid proposition of law in the present context, there appears to be no justification on the part of the Respondents not to record oral evidence and provide the copy of relevant documents which has got bearing with the controversy in question. Sri Sudeep Seth, learned Counsel for the Respondents submits that the allegation against the Petitioner relates to infringement of trust deposited upon him by the bank and being serious one, no liberal view should be taken by the court.

18. Submission of Respondent's counsel seems to be not correct. The gravity of offence or misconduct may have got bearing with the quantum of punishment but so far as procedural law is concerned, that should be enforced in its letter and spirit.

19. Article 14 is the pulse beat of the Constitution of India and in the democratic polity governed by rule of law, the procedure prescribed by the law must be followed in letter and spirit without being influenced by gravity of offence. Gravity of offence does not give an option to the employer to proceed in its own very manner and arbitrarily. It has been consistent view of the courts right from the Privy Council that in a civilized society, every person is entitled for equal protection.

20. It is settled law that in case the authorities want to do certain things, then that should be done in the manner provided in the Act or statutory provisions and not otherwise vide AIR 1936 253 (Privy Council) Deep Chand Vs. The State of Rajasthan, Patna Improvement Trust Vs. Smt. Lakshmi Devi and Others, State of Uttar Pradesh Vs. Singhara Singh and Others, The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, Chandra Kishore Jha Vs. Mahavir Prasad and Others, Delhi Administration Vs. Gurdip Singh Uban and Others, Dhanajay Reddy v. State of Karnataka AIR 2001 SC 1512, Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, Ram Phal Kundu Vs. Kamal Sharma, Nika Ram Vs. State of Himachal Pradesh, Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, Chettian Veetil Ammad and Another Vs. Taluk Land Board and Others, State of Bihar and Another Vs. J.A.C. Saldanha and Others, A.K. Roy and Anr. v. State of Punjab and Ors. AIR 1986 SC 3160 ; State of Mizoram Vs. Biakchhawna,

21. Hence Petitioner cannot divested from due compliance of principle of natural justice only because allegation on record are serious.

22. The Respondents' counsel has relied upon a case reported in Haryana Financial Corporation and Another Vs. Kailash Chandra Ahuja,

23. In the case of Kailash Chandra Ahuja (Supra) their Lordships of Hon'ble Supreme Court observed that in case, violation of principle of natural justice has not caused prejudice to the Petitioner concerned, then it shall not create a ground to assail the orders passed by authority. The case of Kailash Chandra Ahuja (Supra) is not applicable to the facts and circumstances of the case for two reasons viz. Firstly, it has been delivered by a Bench of Hon'ble two Judges and the case relied upon by Petitioner's counsel i.e. Saroj Kumar Sinha (supra) is also by Hon'ble two Judges which is a latter decision and under the law of precedence in case there is conflict between two judgments of coordinate bench, the latter should be followed.

24. The second reason is that in the present case, the repeated requests made by Petitioner pointing out the illegality and prejudice which may be caused due to non-furnishing of documents and recording of evidence were not considered by the Respondents. Once the delinquent employee himself well in time raised a plea that he shall be prejudiced in case he is not provided an opportunity to cross examine the evidence or lead evidence in defence, then in such situation, the denial of principle of natural justice shall cause prejudice and cannot be defended under the colour of principle of no prejudice.

25. The other judgment relied upon by the Respondents' counsel is reported in Union of India (UOI) and Others Vs. Alok Kumar, Union of India (UOI) and Others Vs. Alok Kumar, . In case of Alok Kumar (Supra) while reiterating the aforesaid principle of no prejudice, their Lordships held that in case de facto prejudice caused to the employees, then in such situation, if necessary, court can interfere with the departmental inquiry but for that employee must show that prejudice has been caused to him. The "*Judicia Posteriora sunt*" in lege fortiora requires to show that de facto prejudice has been caused.

26. In the present case, the Petitioner from the very beginning submitted that de facto prejudice has been caused. Even before passing of the impugned order or during continuance of inquiry by submitting a representation to the Cadre Authority (supra) the Petitioner made representation that some date, time and place be fixed by the Inquiry Officer and the documents be provided, otherwise, he may be prejudiced. Vide letter dated 11th April, 2008, the Petitioner has dismissed one Sri Daya Ram in accordance with rules while discharging his obligation. All these aspect of the matter and none supply of material document, shows that in case the Petitioner would have been given opportunity to cross examine the evidence, he would have pleaded better to defend his cause. Accordingly, because of non- compliance of principle of natural justice the Petitioner has suffered a set back.

27. Apart from above, under regulation 61 of the Regulations, quoted in para 14 of the writ petition, it was incumbent on the Inquiry Officer to produce the evidence with opportunity to cross examine the witness after serving chargesheet. Opportunity should have also been given to the Petitioner to adduce his own evidence with liberty to the Presenting Officer to cross examine the witnesses. For convenience Regulation 61(a), quoted in para 14 of the writ petition is reproduced as under:

Para 14 - That regulation 61 speaks about Disciplinary proceedings which is quoted herein under:

Disciplinary Proceedings:

61. (a) The disciplinary proceedings against a member shall be conducted by the Inquiry Officer (referred to in Clause (d) below with due observances of the principles of natural justice for which it shall be necessary that:

(i) the member shall be served with a charge sheet duly approved by the member secretary containing specific charges and mention of evidence in support of each charge and he shall be required to submit explanation in respect of the charge within reasonable time which shall not be less than fifteen days:

(ii) such a member shall also be given an opportunity to produce at his own cost or to cross-examine witnesses in his defence and shall also be given an opportunity of being heard in person, if he so desires:

(iii) if no explanation in respect of charge sheet is received or the explanation submitted is unsatisfactory the competent authority may award appropriate punishment considered necessary.

(b)(i) Where the member is dismissed or removed from service on the ground of conduct which has led to his conviction on a criminal charge: or (ii) Where the member refuses or fails without sufficient cause to appeal before the Inquiry Officer which specifically called upon in writing to appear: or (iii) Where a member has absconded and his whereabouts are not known to authority for more than three months: or (iv) Where it is otherwise (for reasons to be recorded) not possible to communicate with him, the competent authority may award appropriate punishment without taking or continuing disciplinary proceedings.

(c) Disciplinary proceedings shall be taken by the appointing authority against the member either suo motu or on a report made to this effect by an inspecting Authority or the Chairman of the bank under whose control the member is working or may have worked.

(d) The Inquiring Officer shall be appointed by the Member Secretary.

28. Once the statute itself provides certain procedure with regard to disciplinary proceeding, then it shall be incumbent on the Inquiry Officer to adhere to the procedure. It is well settled law that a thing should be done in the manner as provided in the statute and not otherwise (*supra*). Thus so far as present case is

concerned, Petitioner's right for compliance of natural justice is statutory as well constitutional.

29. Accordingly, it shall not be open to the Respondents to proceed in a manner different than what has been provided in regulation 61 of the Regulations provided for the disciplinary proceedings.

30. The principle of "judicia Posteriora sunt" in lege fortiora i.e. requirement to show de facto prejudice shall not be applicable when the statute itself provides certain procedures regulating the disciplinary proceeding, Rules, regulations and mode of disciplinary proceeding provided under the statute should be followed in true sense. Hence, the submission made by Sri Sudeep Seth, learned Counsel for the Respondent seems to be not correct.

31. In all, what has been stated herein above, the impugned order seems to be violative of not only principle of natural justice but also statutory provisions (supra) regulating the disciplinary proceedings.

32. The writ petition is liable to be and is hereby allowed. A writ in the nature of certiorari is issued quashing the impugned order dated 24th August, 2009, as contained in Annexure-1 to the writ petition with consequential benefit. The Petitioner will be restored in service and be paid salary forthwith. However we agree with the submission made by the Respondents' counsel and provide that it shall be open for the Respondents to take work or not, from the Petitioner but he be paid salary. So far as the back wages is concerned, it shall be subject to fresh inquiry, if any, conducted by the Respondents. In case the Respondents take a decision to hold fresh inquiry, then that shall be held expeditiously and preferably within a period of six months from today. Parties to communicate judgment forthwith.

Writ petition is allowed accordingly.