
(2010) 08 AHC CK 0354

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8056 of 1998

Girija Shanker Gupta

APPELLANT

Vs

U.P.State Public Services Tribunal, Lucknow and others

RESPONDENT

Date of Decision : 01-08-2010

Acts Referred:

Citation : (2010) 08 AHC CK 0354

Hon'ble Judges : Sunil Ambwani, J and Kashi Nath Pandey, J

Final Decision : Allowed

Judgement

Sunil Ambwani and Kashi Nath Pandey, JJ.—Heard Sri Ashok Khare, learned senior counsel assisted by Sri J.B.Gupta for the petitioner. Sri K.K.Tiwari, learned counsel appears for the respondents.

2. The petitioner served as Assistant Agricultural Inspector, Grade III in the department of Agricultural, U.P., at Basti from 1964 to 1971 and thereafter at Gorakhpur from 23.04.1971. He was suspended by Director of Agriculture, U.P. on account of financial irregularities during his tenure at both the places i.e. Basti and Gorakhpur. He was served with chargesheets by the enquiry officer initiating departmental proceedings on 10.09.1976, and on 07.12.1976 in respect of allegations relating to Gorakhpur and Basti respectively.

3. The petitioner did not give reply to the charge sheets. He requested for staying enquiry proceedings, as criminal cases in respect of allegations against him both at Basti and Gorakhpur were pending in those districts. The enquiry officer concluded the enquiry proceedings and sent the enquiry report to the Director of Agriculture. A show cause notice was issued to the petitioner. The petitioner did not reply to this notice, as well. He was dismissed from service on 18.02.1982 with an order of recovery of Rs.61,082.71p.

4. The petitioner filed a Claim Petition No. 44/F/III/1985 in the State Public Service Tribunal, Lucknow, which was dismissed on 26.11.1997 giving rise to this writ petition.

5. The Tribunal has considered all the contentions raised before it. On the payment of subsistence allowance the Tribunal found that it was necessary for the petitioner to give a certificate as per requirement of Rule 53(2) of the Financial Hand Book, volume II, to the effect that he was not engaged in any other work, business, trade, profession or vocation during the period of suspension, in order to entitle him to the subsistence allowance. For the purpose of establishing charges, it was not necessary to hold oral enquiry and to prove the documents produced against the petitioner as the petitioner did not give any reply to the charges.

6. We have carefully gone through the judgment of the Tribunal and the orders of acquittal in the criminal cases in respect of district Basti dated 25.307.2008 and Gorakhpur dated 31.03.1983, and the order by which the petitioner was dismissed from service.

7. The department took a long period of 6 years to conclude the proceedings. The petitioner was not paid subsistence allowance for the entire period. He demanded the documents relied upon to prove charges both from the offices of the Agricultural Department of Basti and Gorakhpur. He did not submit reply as he was bonafidely of the opinion that any reply given by him will prejudice him in criminal cases.

8. We find that the departmental enquiry was vitiated on the well settled principles of natural justice that even if no reply is submitted to the charge sheet, the documents relied upon by the department should have been proved by the Presenting Officer before the Enquiry Officer. Further there is substance in the submissions of the learned counsel for the petitioner that when both the orders of acquittal were placed before the Tribunal, it should have given some weight to the findings recorded by the Courts, after taking evidence.

9. Sri Khare, has pointed out that the charges relate to the period of petitioner's service both at Basti and Gorakhpur and that in respect of these chargesheets namely on item no. 5 for misappropriation of Rs.25,955.33p. and item no. 9 for misappropriation of Rs.16,136.05p. the enquiry officer has observed that in case receipt no. 16/8750 dated 20.03.1971 is proved, Sri Gupta should be exonerated from the charges. For item no. 5 he had observed that the recovery should be made only after survey report is obtained from the competent authority. These conclusions are drawn in respect of the stores of the year 1971, for which the receipts could not be found by the enquiry officer.

10. Learned standing counsel states that unless certificate of income is not produced, the subsistence allowance was not payable and that the petitioner did not reply to the charge sheets. It is not necessary for the department to prove the allegations against him by adducing oral evidence.

11. In State of U.P. Vs. Shatrughan Lal and another (1998) 6 SCC 651, the Supreme Court set aside the enquiry proceedings on the ground of not supply of the documents relied upon by the enquiry officer to prove the charges violates

principles of natural justice. The Supreme Court also held that examining witnesses in the absence of delinquent employee amounts to denial of effective opportunity of hearing.

12. Where the same incident is in issue and the same witnesses are relied upon in criminal trial and in departmental enquiry, the disciplinary enquiry, and if the delinquent employee is acquitted subsequent to award of punishment, the Tribunal or the Court must examine the findings and give due weight to such findings. In Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd., 1999 (2) ESC 1009 (SC) the Supreme Court held:

"32. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely the raid conducted at the appellant's residence and recovery of incriminating articles therefrom. The findings recorded by the Inquiry Officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by Police Officers and Punch Witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the findings that that "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the exparte departmental proceedings to stand.

33. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference the distinction which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case."

13. We are satisfied that the enquiry was vitiated for non payment of suspension allowance for six years and also on the ground that by not supplying necessary documents the principles of natural justice were violated. The enquiry officer also found the charges were proved only conditionally. The Tribunal did not considered the effect of the judgments of acquittal orders in respect of both Criminal Cases at Basti and Gorakhpur respectively. The disciplinary enquiry is also vitiated on the ground that no witnesses were produced to prove the documents in support of the charges.

14. The writ petition is allowed.

15. The order dated 18.02.1982 terminating the petitioner from service is

quashed and the judgment of the Tribunal dated 26.11.1997 and also the recovery proceedings are also set aside.

16. The petitioner has since retired. The matter in issue relates to the stocks of the year 1964-1977. The enquiry officer had found even at that time that relevant documents and the records were not complete, for concluding the enquiry in the year 1982. It is not possible that the records may be produced now, and the officers will be able to prove them.

17. We therefore, do not find it appropriate to send the matter for conducting departmental enquiry afresh. The petitioner, will be paid half of the wages, which will include subsistence allowances till the date of his retirement, and will be paid full pension in accordance with the admissible Rules.