
(2009) 03 AHC CK 0024
In the Allahabad High Court

Govind Lal Srivastava

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-03-2009

Acts Referred:

Citation : (2009) 3 AWC 28 : (2009) 2 UPLBEC 1864

Hon'ble Judges : Ashok Bhushan, J;Arun Tandon, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Ashok Bhushan and Arun Tandon, JJ.—Heard Sri Govind Lal petitioner in person and learned standing counsel on behalf of the respondents.

2. Petitioner before this Court was appointed as Block Development Officer in the Rural Development Department of the State of Uttar Pradesh after selection by the U. P. Public Service Commission by direct recruitment on 17.8.1984. The petitioner was placed under suspension pending enquiry into the charges under an order dated 30th March, 1992. This order of suspension was subjected to challenge by means of Writ Petition No. 1835 of 1992. The writ petition was disposed of by the Court with a direction to respondent authorities to complete the departmental proceedings against the petitioner within two months from the date a certified copy of the order is filed before the authority concerned. Since departmental proceedings were not completed against the petitioner within the time specified, the writ petitioner filed second petition, being Writ Petition No. 46862 of 1992. A Division Bench of this Court by means of order dated 6.11.1992 was pleased to revoke the order of suspension with liberty to the State respondents to conduct the enquiry in accordance with the rules. The departmental proceedings were conducted and the petitioner was served with an order of punishment (Removal from service) dated 15.5.1998.

3. Not being satisfied with the order so passed, the petitioner filed Writ Petition No. 353 (SB) of 2002 before the Lucknow Bench of this Court. The writ petition

was allowed vide judgment and order dated 28.9.2004 and following directions were issued:

Since the order of punishment (removal from service) has been quashed not on merits but on technical grounds, we provide that the State Government shall hold, the enquiry afresh from the stage of submission of the reply to the charge-sheet by affording due opportunity to the petitioner. The petitioner shall be reinstated in service forthwith but he shall not be paid salary for the period commencing from the date of passing of the orders of removal from service till passing of the present order, which would depend upon the outcome of the enquiry so held. The petitioner shall cooperate in the enquiry and the enquiry shall be completed within a period of four months from the date of receipt of a certified copy of this order.

4. The disciplinary proceedings are stated to have not been completed within the period prescribed under the judgment and order of the Division Bench. The petitioner, therefore, filed Writ Petition No. 34735 of 2007 for quashing of the departmental proceedings in relation to the charge-sheet dated 9.9.2002 and additional charge-sheet dated 2.5.2005 with a further prayer that the respondents may be restrained from imposing any punishment upon the petitioner on the basis of the enquiry report dated 25.7.2006.

5. Before the writ petition could be entertained by this Court, it appears that the petitioner was served with an order of punishment dated 3rd August, 2007. He, therefore, made an amendment application seeking quashing of the order of punishment dated 3.8.2007 amongst other reliefs. The amendment application was allowed by the Court on 7th August, 2007. Necessary amendments have accordingly been incorporated in the writ petition. On the same day the Division Bench required the standing counsel to produce the records of the entire enquiry proceedings relating to the petitioner.

6. Parties have exchanged their affidavits, original records pertaining to the departmental proceedings have also been produced before us.

7. Challenging the order of punishment the petitioner has vehemently contended that no State witness was examined to prove the charges and no oral evidence of the State witnesses was recorded in the presence of the petitioner. It has further been stated that no opportunity to cross-examine the persons, who have deposed against the petitioner, was afforded and therefore there was manifest violation of the statutory Rule 7 (7) of the U. P. Government Servants (Discipline and Appeal) Rules, 1999 (hereinafter referred to as "Rules, 1999") in conducting the departmental enquiry resulting in an illegal order being passed. He further submits that the direction issued by the Division Bench of this Court in its judgment dated 28.9.2004, passed in Writ Petition No. 353 (SB) of 2002, referred to above, have also not been complied with.

8. Petitioner submits that the notarial affidavits, which were filed by the writ petitioner in support of his innocence, were ignored. It is pointed out that the

petitioner was served with the copy of the enquiry report alongwith show cause notice dated 10th March, 2007. The petitioner submitted his reply vide letter dated 10th March, 2007, which not only point-wise dealt with the finding recorded by the enquiry officer but also specifically pointed out the violation of statutory Rule 7 (7) of the Rules, 1999 in conducting the enquiry as also the violation of the directions issued by this Court in the earlier writ petition, referred to above. He contends that none of the objection so raised by the petitioner in his reply have been taken note of by the disciplinary authority and similarly no reasons have been recorded as to why the explanation furnished by the petitioner has not found favour with the disciplinary authority. He contends that the order passed by the disciplinary authority contains absolutely no reasons for disagreeing with the explanation furnished by the petitioner and, therefore, the order being unreasoned is on the face of it arbitrary and in violation of Rule 9 (4) of the Rules, 1999.

9. The contentions so raised on behalf of the writ petitioner is opposed by the State respondents and it has been submitted that entire enquiry records have been produced before this Court. This Court may examine the legality of the procedure followed. It is explained that since the disciplinary authority agreed with the findings recorded by the enquiry officer, same become the reasons for inflicting the punishment upon the petitioner in the facts of the case.

10. We have heard petitioner and learned standing counsel and we have also examined the original enquiry records, which have been handed over to the Court by the learned standing counsel.

11. With regard to the violation of provisions of Rule 7(7) of Rules, 1999, namely of date and time being fixed for enquiry and recording of evidence of witnesses with a further opportunity to the petitioner to cross-examine the said witnesses, reference has been made to the facts stated in paragraphs 13, 15, 16, 17, 18, 19 and 22 of the writ petition. Reply to the said paragraphs is contained in paragraph 16 of the counter-affidavit filed on behalf of the State respondents and except for stating that the enquiry has been completed in accordance with the provisions of Rule 7 (7) of the Rules, 1999 and full opportunity have been offered to the petitioner, absolutely no particular facts have been disclosed as to on which date the enquiry officer has fixed the matter for recording of the evidence of the witnesses of the department and for cross-examination thereof by the petitioner. The petitioner has specifically stated that at no point of time any witness was produced in his presence to establish the authenticity of the document produced by the State respondent for proving of the charge nor any date for their cross-examination was informed to the writ petitioner. The counter-affidavit filed on behalf of the State respondent is completely silent on the aforesaid aspect of the matter.

12. We further find that the Division Bench of this Court while deciding Writ Petition No. 353 (SB) of 2002 vide its judgment and order dated 28.9.2004 had issued specific directions for the enquiry being conducted after affording due

opportunity to the petitioner. It is surprising to note that absolutely no date has been disclosed on which the petitioner was required to appear before the enquiry officer. The letters of the petitioner dated 14.2.2005 and dated 12.7.2005 (enclosed as Annexures-5 and 6 to the writ petition), seeking an opportunity to cross-examine the witnesses, 11 in number as detailed in the applications itself, and for fixation of date and time for their cross-examination during enquiry, have been vaguely replied by the State respondents without disclosing in any manner, as to whether these letters of the petitioner were acted upon or not and as to whether any date and time for cross-examination of witnesses was indicated to the petitioner.

13. What is surprising to note is paragraph 17 of the counter-affidavit, which reads as follows:

17. That the contents of paragraph Nos. 23 to 25 of the writ petition are not admitted as stated. It is further respectfully submitted that from the perusal of the report of the enquiry it is evident that the Enquiry Officer after considering the evidence on record produced by the department as well as by the petitioner in support of his defence has submitted his report dated 27.7.2006 holding the petitioner guilty of committing gross misconduct which will be demonstrated at the time of hearing of the instant writ petition.

14. From the aforesaid paragraph 17 of the counter-affidavit it is more or less now an admitted position that the departmental enquiry against the writ petitioner has not taken place in accordance with the provisions of Rule 7 (7) of the Rules, 1999. It is established on record that no date for recording of the evidence for proving the document which could bring home the charge against the petitioner was ever notified to the petitioner nor the petitioner was afforded any opportunity to cross-examine the said witness.

15. In our considered opinion such a procedure followed by the enquiry officer is in manifest violation of the principle of natural justice as also in violation of the statutory Rule 7 (7) of the Rules, 1999, and the directions of the Hon"ble High Court as per the judgment and order dated 28.9.2004.

16. The Hon"ble Supreme Court of India in the case of Ministry of Finance and Another Vs. S.B. Ramesh, has clarified that even in respect of an ex parte enquiry proceedings it is mandatory that the documents relied upon for bringing home the charge must be proved by some evidence to be led by the department.

17. In the facts of the case the situation is even worst. What we find is that despite repeated application by the petitioner before the enquiry officer, neither any date for examination of the witnesses has been fixed nor any opportunity to cross-examine such witnesses has been afforded. The Hon"ble Supreme Court in the case of Kumaran Vs. Mohammed Khader, has specifically held that if none is examined to establish the case set up by the employer, the penalty has to be set aside.

18. Similarly, a Division Bench of this Court in the case of Surya Bhan Singh Vs. U.P. Lok Sewa Adhikaran and Others, has held as follows:

8. ...Even in a case where only documentary evidence is to be relied upon for proving the charges, it cannot be said that such documents need not be proved at all, may be that rigour of proof, as is required in the criminal trial are not needed but some sort of proof is necessary to attach authenticity to such document. While doing so, it cannot be lost sight of that the delinquent has every right to appear before the Enquiry Officer and to bring to his notice that the documentary evidence, which is being made the basis of the charges cannot be relied upon for very many reasons; for example, the said record/documentary evidence is not admissible in law or for any other reason, such documentary evidence could not have been looked into and if such a documentary evidence is shown to the petitioner, he may adduce some evidence to rebut such documentary evidence and prove that the documentary evidence adduced by the department is not worthy of any reliance. Merely because the department was of the view that the charges are based on documentary evidence and, therefore, there was no necessity to either prove those documents/records or to give any opportunity to the petitioner in the enquiry proceedings cannot be said to be correct approach, according to law.

19. In view of the aforesaid we have no hesitation to record that in the facts of the present case the petitioner is justified in contending that the departmental enquiry, which has resulted in passing of the impugned order, has not been held in accordance with the provisions of the statutory Rule 7 (7), the directions issued by the Division Bench of this Court in Writ Petition No. 353 (SB) of 2002 as also in accordance with the principles of natural justice.

20. The other aspect of the matter which requires consideration of this Court is that despite specific reply being submitted by the petitioner to the show cause notice issued alongwith enquiry report pointing out the infirmities in the procedure followed during departmental enquiry and despite specific denial of all the charges, found proved by the enquiry officer, pointwise by the petitioner in his reply running into nearly 80 pages, the disciplinary authority has chosen to ignore the pleas so raised. The manner in which he has dealt with the reply filed by the petitioner shocks the conscience of the Court. The only relevant paragraph in the order impugned of the disciplinary authority considering the explanation furnished by the writ petitioner is paragraph 6 and the same reads as follows:

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21. We record that such unreasoned orders are an anathema to the rule of law. The Hon''ble Supreme Court of India in the case of Raj Kishore Jha Vs. State of Bihar and Others, has held that reasons are the heartbeat of every conclusion and without the same, it becomes lifeless. The Hon''ble Supreme Court of India in the case of S.N. Mukherjee Vs. Union of India, has explained that reasons are necessary links between the facts and the findings recorded in the administrative orders, which visit a party with evil civil consequences. In absence of reasons such an order cannot be permitted to stand.

22. We, therefore, have no hesitation to hold that not only departmental enquiry has been conducted in a patently illegal manner, the order of punishment impugned in the present writ petition only reflects upon the highhandedness of the respondent authorities while passing an unreasoned order. We, therefore, come to a conclusion that the order dated 3.8.2007, impugned in the present writ petition, inflicting the punishment upon the petitioner cannot be sustained and is hereby quashed.

23. This leads the Court to the issue as to what should be the consequential order to be passed in respect of the following two subjects:

(a) payment of salary to the petitioner for the period he was out of employment subsequent to the order of punishment.

(b) the departmental enquiry should be permitted to be initiated afresh from the stage it has gone wrong even after expiry of nearly 15 years from the date the charge-sheet was served upon the writ petitioner.

24. The petitioner, with reference to the judgment in the case of Dinesh Kumar Shukla Vs. State of U.P., and Chandra Prakash Jain v. State of U.P. and Ors. 1997 (2) AWC 707 has contended that because of the inordinate delay in the holding of proper departmental enquiry, the entire charge-sheet and proceedings should be quashed.

25. Similarly, with reference to the judgment in the case of Sunder Vs. Union of India (UOI), and in the case of R.K. Singh v. Director/Appointing Authority and Anr. 2001 (3) AWC 1964, the petitioner has contended that he is entitled to full back salary for the period he has been kept out of employment because of illegal order of the respondent authorities.

26. We have considered the submissions and perused the records.

27. In the facts of the case we find that earlier a Division Bench of this Court had quashed the order of punishment on the ground that the enquiry had been conducted in violation of the principles of natural justice and a specific direction was issued to hold an enquiry after affording opportunity of hearing to the writ petitioner. The respondents not only violated the statutory rules while holding a

patently illegal enquiry, they have also disobeyed the order of this Court referred to above. The reply submitted by the petitioner has not been considered while inflicting the punishment.

28. In the totality of the circumstances we find that in the facts of the case interest of substantial justice demands that the petitioner should be reinstated with full back wages.

29. Accordingly, it is directed that the petitioner shall be reinstated within one month from the date a certified copy of this order is filed before respondent No. 1 and he shall be paid full salary/emoluments for the period he was kept out of employment because of illegal order passed by the respondents within a period of three months thereafter.

30. So far as the holding of de novo enquiry proceedings is concerned, we find that it would not be in the interest of substantial justice to quash the departmental proceedings only because of the delay, as claimed by the petitioner in the facts of the case.

31. It is not in dispute that charge-sheets have been served upon the petitioner to which he has also submitted reply. We feel that departmental enquiry against the petitioner should be permitted to be commenced afresh from the stage it has gone wrong. We, therefore, direct that the disciplinary authority shall appoint an enquiry officer for holding fresh departmental enquiry against the petitioner in respect of the charge-sheet already served, within one month of the receipt of this order. Such enquiry officer shall conduct the enquiry strictly in accordance with the provisions of Rule 7 (7) of the Rules, 1999 and in accordance with the directions of the Division Bench in Writ Petition No. 353(SB) of 2002. The petitioner shall cooperate in the enquiry. The departmental enquiry shall be brought to its logical end at the earliest possible, preferably within four months from the date the enquiry officer is so appointed. The disciplinary authority shall forward the enquiry report to the writ petitioner with an opportunity to meet his say qua the findings recorded therein. He shall thereafter proceed to pass final orders supported by reasons strictly in accordance with law at the earliest possible.

32. With the aforesaid observation, writ petition stands allowed.

33. Original records in respect of the departmental enquiry may be returned to the learned Standing Counsel.