

(2011) 05 UK CK 0010

In the Uttarakhand High Court

Case No : Writ Petition No. 318 of 2005 (S/B)

Govind Singh Patwal

APPELLANT

Vs

Managing Director and Others

RESPONDENT

Date of Decision : 12-05-2011

Acts Referred:

Citation : (2011) 1 UD 454

Hon'ble Judges : Barin Ghosh, C.J.;Serves Kumar Gupta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Hon"ble Barin Ghosh, C.J.—In a charge sheet issued to the petitioner, five charges were levelled. We are not concerned with the second charge, as the Inquiry Officer as well as the Disciplinary Authority exonerated the petitioner in respect of the said charge.

2. The third and the fourth charges were pertaining to writing letters by the petitioner to different authorities in the capacity of an office bearer of the Employees" Union. In respect of the letters that were written by the petitioner, there is no dispute. The Inquiry Officer and the Disciplinary Authority also found that those letters were written by the petitioner. At the same time, both of them also found that those letters were written by the petitioner on behalf of Employees" Union. It was not alleged that the Employees" Union, on whose behalf the petitioner had written those letters, was an unauthorized Union. There is also no finding to that effect.

Therefore, a prudent person, in the circumstances, could only conclude that the views expressed in those letters were the views of the recognized Union and that the letters were of Union. Petitioner could not be held guilty for having expressed views as contained in those letters or for writing them. In the inquiry report, proceeding on the basis, contrary to the evidence on record, that those letters were personal letters of the petitioner, it was opined that the petitioner may be

warned. Warning is not one of the punishments awardable under the Rules. The Disciplinary Authority felt that for what has been reported by the Inquiry Officer, a punishment of censure, which is a permissible punishment under the Rules, can be awarded and he awarded the same. As aforesaid, petitioner could not be punished for the action of a third party. Petitioner may be signatory to the letters, but those having been written by the recognized Union, the views expressed therein, the words used for expressing such views and the matters complained of therein were that of the recognized Union and, accordingly, was of a third party and the petitioner, accordingly, could not be made responsible therefor. We, accordingly, quash the punishment order pertaining to charge Nos. 3 and 4.

3. The fifth charge was execution of construction work by the petitioner during the period between 30 September, 2000 to 30th October, 2000, when he was relieved. In respect of the said charge, petitioner has been awarded a punishment of censure. Having regard to nature of the findings of the Inquiry Officer and the Disciplinary Authority, we do not interfere with the impugned punishment order censuring the petitioner for the fifth charge.

4. The first charge, contained in the charge sheet, was a serious charge. In that, it was alleged that a particular pipeline project was executed by the petitioner unnecessarily and without authority, causing a loss to the State to the tune of Rs. 3,89,527.00. In reply to the charge sheet, petitioner contended that he was authorized to work on the project and such authority was given to him by his superior. Inquiry Officer reported that the petitioner was according permission to spend Rs. 1,89,300.00 on 9 January, 1996 and another sum of Rs. 26,202.81 on 5 February, 1996 in connection with the work of the said project. The Inquiry Officer, further, reported that the remaining out of Rs. 3,89,527.00 was the cost of material. Recording such finding, Inquiry Officer held that it would not be appropriate to hold the petitioner responsible in respect of the said charge, but action must also be taken against the superior of the petitioner. The Disciplinary Authority did not, at any point of time, indicate to the petitioner, in writing or otherwise, that it is not accepting the findings of the Inquiry Officer or that the evidence on record suggests that the opinion of the Inquiry Officer is not correct. The Disciplinary Authority, while concluding the disciplinary proceedings by passing the punishment order, held that the said work was carried out by the petitioner without sanction of estimate and appraisal and that the money spent on that account proved meaningless and, as a result, the Department incurred loss. The Disciplinary Authority, further, recorded that, in respect of the first charge, petitioner was found guilty, when the finding of the Inquiry Officer was contrary to that. Next, Disciplinary Authority contended that after determining the share of the petitioner in actual loss, a sum of Rs. 2,53,193.00 be recovered from the petitioner and he be disciplined by directing permanent stoppage of two of his annual increments with cumulative effect. The finding recorded in respect of the first charge in the order of the Disciplinary Authority is contrary to the finding of the Inquiry Officer. As aforesaid, petitioner was not told that the Disciplinary

Authority is not accepting the findings of the Inquiry Officer indicating reasons therefor and giving the petitioner an opportunity to make a representation in respect thereof. That being the situation, the finding, as recorded by the Disciplinary Authority in respect of the first charge, is per se illegal and, on the basis thereof, he could not award any punishment to the petitioner. We, accordingly, quash the punishment awarded by the Disciplinary Authority in respect of the first charge.

5. After having had done so, the question is whether we should permit the Disciplinary Authority to do what the Disciplinary Authority should have done after having had received the copy of the inquiry report. In the normal circumstances, we would have permitted the Disciplinary Authority to do so. But, in the instant case, we are not permitting the Disciplinary Authority to do so, inasmuch as, in the order of the Disciplinary Authority, where he has expressly differed with the views of the Inquiry Officer, the Disciplinary Authority has not recorded that the evidence brought on record do not suggest that the petitioner was permitted on 9 January, 1996 to spend a sum of Rs. 1,89,3000.00 and on 5th February, 1996, a sum Rs. 26,202.81 and that the remaining amount was the cost of material. That being the situation, if we allow the Disciplinary Authority to do what he should have done after received the inquiry report, the same would tantamount to further harassment of the petitioner.

6. The writ petition is, accordingly, allowed to the extent as above. In the event, the order, as above, has been implemented, within a month from today, respondents are directed to undo what they did while implementing the order.