
(2004) 01 AHC CK 0189
In the Allahabad High Court
Case No : C.M.W.P. No. 55148 of 2002

Gurucharan Singh

APPELLANT

Vs

National Thermal Power Corporation Ltd. and Others

RESPONDENT

Date of Decision : 28-01-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2004) 2 AWC 1365

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : F.S. Chauhan, S. Alim Shah, A.K. Misra and R.K. Malviya, for the Appellant; Ashok Khare, H.R. Misra, K.M. Misra and K.N. Misra, for the Respondent

Final Decision : Allowed

Judgement

Sunil Ambwani, J.—By this writ petition, the petitioner has prayed for quashing the enquiry report dated 19.9.1999 submitted by Sri S.R. Khaneja, and the consequential order dated 16.8.2001, passed by the General Manager, National Thermal Power Corporation Ltd., imposing a penalty of removal from service and to quash the order dated 14.9.2002, by which the petitioner's review application was dismissed.

2. I have heard Sri F.S. Chauhan and Sri S. Alim Khan for petitioner, and Sri H.R. Misra for respondents.

3. Sri H.R. Misra has raised a preliminary objection to the maintainability of the writ petition. He submits that a domestic enquiry was held and that all the grounds taken in the writ petition against the order of removal from service, are in violation of standing orders applicable to National Thermal Power Corporation (in short N.T.P.C.) employees, and thus the petitioner has alternative remedy of raising an industrial dispute under the Industrial Disputes Act, 1947. He relies upon Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant

and Others, in support of the objections.

4. Before dealing with the preliminary objections, it will be appropriate to set out the facts giving rise to this writ petition.

5. The petitioner joined National Thermal Power Corporation Ltd. on 23.7.1986, as Diesel Mechanic, Grade W3, at Rihand Super Thermal Power Project. He was transferred on 11.11.1991 and posted at Ash Handling Plant of National Capital Power Station at Vidyut Nagar, district Gautam Budh Nagar. The Principal and Teachers of Delhi Public School in the campus at Vidyut Nagar, made a complaint on 27.10.1998 against him of misbehaviour. The respondent No. 4, it is alleged, by his letter dated 29.10.1998, called for an explanation. The petitioner has disputed the service of this show cause notice upon him. An F.I.R. was lodged by Sri A. C. Chaturvedi, Assistant General Manager (H.R.), N.T.P.C. Ltd. against the petitioner on 31.10.1998 alleging that on 30.10.1998, the petitioner hit him from behind by his Scooter, near the shopping complex in the township at Vidyut Nagar, district Gautam Budh Nagar. The Deputy General Manager (Ash Handling Plant), suspended the petitioner from service on 31.10.1998. A memorandum of charge dated 5.11.1998 was served upon the petitioner by the Deputy General Manager (A.H.P.). Sri S.R. Khaneja, Ex-General Manager (I/C) was appointed as Inquiry Officer. The petitioner was granted bail in Case Crime No. 99 of 1998 under Sections 379, 338, I.P.C. registered in pursuance of the F.I.R. dated 31.10.1998. On 2.12.1998, Sri Pradeep Mehta, Manager (P.A. Admn.) N.T.P.C. Ltd. was appointed as Presenting Officer to conduct the proceedings.

6. The petitioner filed a Civil Misc. Writ Petition No. 16349 of 1999 with a prayer to stay the departmental enquiry until the conclusion of criminal trial in Case Crime No. 99 of 1998. By an order dated 20.4.1999, the Court disposed of the writ petition with the observation that it shall be open to the petitioner to file a fresh representation raising all the objections, which he may like to raise, as preliminary objection at this stage, regarding continuance of the disciplinary proceeding, so long as criminal case is not decided by the concerned authority. The concerned authority was directed to decide the representation by reasoned order within one month, and that for a period of two weeks the respondents were directed not to take any adverse action to the interest of petitioner. The Court expressed confidence that the authority will proceed in the matter impartially and act strictly in accordance with law. The disciplinary authority overruled the objection by giving detailed reasons.

7. A second Writ Petition No. 47471 of 1999 was filed by the petitioner challenging the order dated 22.5.1999 rejecting his representation. The writ petition was dismissed on 19.8.1999 with the finding that the nature of allegations in the criminal case do not appear to be such in which any serious prejudice can be caused by the disclosure of defence. There is no such right in favour of the petitioner under clause 28 (ii) (a) of the certified standing orders allowing petitioner assistance of another employee posted at Bangalore and that he may avail assistance of a co-workman who were available to the petitioner.

The Court also rejected the third argument that the enquiry is being conducted by unauthorised Inquiry Officer. The Court observed that the petitioner is trying to stall the departmental enquiry by raising all kinds of technical objections at the interlocutory stage, and that the jurisdiction under Article 226 of the Constitution of India cannot be exercised unless serious prejudice is caused at the interlocutory stage of departmental enquiry. The petitioner has a right to agitate his grievance after final result of the enquiry.

8. It is alleged that the petitioner met with serious accident on 14.6.1999 which rendered the petitioner unable to even sit or walk for about 4 months. In between, the Enquiry Officer continued with examination of management's witnesses. On 8.9.1999, inspite of medical certificates available with the Enquiry Officer, he closed the enquiry both, for the management as well as defence. The petitioner once again filed a Writ Petition , No. 39906 of 1999 (Third writ petition) for issuing an appropriate writ commanding the Inquiry Officer to grant him opportunity to cross-examine the witnesses and to produce his defence witnesses. This third writ petition was disposed of on 16.9.1999 with the following observations :

"By means of impugned order dated 8.9.1999 the petitioner has been asked to submit his proof in reply to the allegations made against him. As once the petitioner has been afforded an opportunity to submit his defence brief he could state all the facts which have been stated in this petition. He could again make an application for granting him an opportunity to produce evidence. If such an application with defence brief along with a certified copy of this order is filed, the competent authority shall take decision on the application filed by the petitioner expeditiously before proceeding with the further enquiry into the matter."

With these observations and directions, this writ petition stands finally disposed of.

9. It is contended that the order was served on the Inquiry Officer on 18.9.1999. A certified copy was also served on him on 11.10.1999, along with an application with the request to give him opportunity to examine defence witnesses. The disciplinary authority on 23.10.1999, advised the petitioner to state all the facts which were stated in the writ petition and then submit it to him. The petitioner submitted all the facts as his brief by Registered Post A.D. dated 21.12.1999. On 2.3.2000, the disciplinary authority informed the petitioner that the inquiry report has been submitted after giving the petitioner ample opportunity to defend the case and asking him show cause as to why punishment of dismissal may not be imposed on him. The petitioner submitted his reply on 6.4.2000. The impugned order dated 16.8.2001 was passed removing petitioner from service. The review petition filed by petitioner was dismissed on 14.9.2002. It is contended that an appeal against removal from service submitted by the petitioner, before the Executive Director (N.C.R.) N.T.P.C. Ltd. is still pending. The petitioner has been asked to vacate the quarters allotted to him at Vidyut Nagar.

10. Sri F. S. Chauhan submits that inspite of clear and specific direction given by this Court in its order dated 16.9.1999 in Writ Petition No. 39906 of 1999, the petitioner was denied opportunity to cross-examine witnesses and to produce defence witnesses. He submits that the entire proceedings are vitiated on the ground of bias against the petitioner, and that the petitioner was not afforded opportunity to defend himself. The Inquiry Officer was fully aware and had knowledge of the fact that petitioner has met with an accident and was undergoing treatment at A.I.I.M.S., New Delhi. He, however, proceeded with the enquiry and concluded the same as soon as the last witness of management was examined. The petitioner was not given any opportunity to lead evidence in his defence, and thus the entire proceedings of departmental enquiry are vitiated by violation of principles of natural justice. Sri Chauhan submits that petitioner has exhausted all departmental remedies provided under the Rules/Certified Standing Orders and has no other efficacious remedy but to approach this Court. It is contended that where it is established that there has been gross violation of principles of natural justice, the existence of alternative remedy, if any, is not a bar for invoking jurisdiction under Article 226 of the Constitution of India. He has relied upon the judgment in *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*, ; *The State of Uttar Pradesh Vs. Mohammad Nooh*, ; *Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar*, The petitioner has also relied upon a judgment of this Court dated 23.9.2003 in Writ Petition No. 26317 of 2002, *S.R. Gautam v. General Manager, N.T.P. C.* Sri Chauhan submits that inspite of three writ petitions filed and repeated requests made to the Inquiry Officer, the proceedings were closed in a great hurry. An order of this Court dated 16.9.1999 to take a decision on application with defence brief was not considered. In fact the Inquiry Officer returned the application and that the disciplinary authority by his letter dated 2.3.2000 refused to consider petitioner's defence on the ground that the Inquiry Officer has submitted his report and that he has been given ample opportunity to defend himself. It is submitted that the petitioner gave a detailed reply to the show cause notice dated 2.3.2000 setting out the facts in which, the petitioner was framed by respondent No. 5, in an accident to make out the charge against him. He submits that the petitioner had made an application and requested the respondent authorities from 1992-1998 for annual medical check up for all the employees working at the Ash Handling Plant. It was mandatory obligation u/s 48(1)(a)(b) of the Factories Act, 1948, and the fact that the Ash Handling Plant was a hazardous area. The petitioner's grievance did not get any response from the company on which the petitioner made an appeal and sent copies to the Director (Vigilance) Minority Commission, Human Rights Commission of India and Union Energy Minister. Respondent No. 5 is a Law Graduate and yielded influence over the officers of the company. His wife is working as a teacher in a branch of Delhi Public School run in the premises under the control of respondent company in Vidyut Nagar Dunderi. Sri Chauhan submits that at no stage of the proceedings the petitioner's defence has been considered.

11. Sri H.R. Misra, on the other hand, submits that the petitioner was afforded adequate opportunity to defend himself. The petitioner committed serious act of misconduct in misbehaving with superior officer and assault, and causing injury to the respondent No. 5 for which he was charge-sheeted. The petitioner deliberately avoided to co-operate in the enquiry. He filed successive writ petitions to stall the enquiry proceedings. The Inquiry Officer found that the petitioner was not interested in leading evidence and thus closed the inquiry. The show cause notice dated 2.3.2000 was enclosed with the enquiry report and that after considering his reply, he was removed from service. He committed serious act of misconduct which was proved by material evidence during the departmental enquiry and that a finding of fact were recorded by the Inquiry Officer supported by evidence on record, which does not call for interference from this Court under Article 226 of the Constitution of India. He submits that the Court should not be influenced by considerations other than the material available on record. The allegations of mala fide and bias are not proved and that taking the totality of the situation and that the fact that N.T.P.C. is public sector undertaking earning profits, should not be saddled with employees with proven charge of insubordination and misbehaviour. He reiterates that the petitioner has an alternative and efficacious remedy of enforcing standing orders by raising an industrial dispute.

12. I have considered the submissions, and have carefully gone through the record. The pleadings and documents clearly establish that the petitioner was not given opportunity to defend himself and that the principles of natural justice were deliberately violated. The petitioner was serving as Diesel Mechanic W3. He raised a grievance of medical examination of workers in the Ash Handling Plant which is a hazardous industry u/s 41C(c) of the Factories Act, 1948. The matter of his promotion was also pending for which he had made representations. It is not denied that the petitioner had submitted an appeal to redress his grievance, on 29.9.1998 and sent copies to the Director (Vigilance) Minority Commission, and Human Right Commission of India. The incident made subject-matter of charge was not connected with his official duties. The petitioner has denied that he was given any show cause notice in support to his misbehaviour with Principal and Teachers of the Delhi Public School. The fact of service of this notice is disputed. The F.I.R. lodged by Sri A.C. Chaturvedi, Deputy General Manager (P&A), N.T.P.C. alleged that on 30.10.1998 at 7.55 p.m. when he was going to New Shopping Complex, he found petitioner entering from the side entrance adjacent to the watch shop. The petitioner wished him and his wife as they were going out of the shopping centre. The petitioner thereafter started his scooter with high acceleration. He heard the sound of the same scooter approached him from behind, which hit him, on which he was knocked down on the road, and lost consciousness. These incidents were made subject-matter of charge against the petitioner as misconduct under the standing orders. The management produced witnesses and started examining them w.e.f. 27.2.1999. Sri A.C. Chauhan was examined on 27.2.1999 and cross-examined on 10.3.1999. Smt. Indira

Chaturvedi was examined on 13.3.1999 and cross-examined on 24.3.1999, and 27.3.1999. Sri Vishwaroop M.W.-3, was examined on 2.4.1999 and cross-examined on 1.7.4.1999. Smt. Simmi Arora, M.W.-4, was examined on 17.4.1999 and cross-examined on 22.4.1999. Sri S. P. Dudeja, M.W.-5, was examined on 28.4.1999. Smt. Chitravenkat was examined on 18.5.1999. Sri Manvir Singh was examined on 25.5.1999 and cross-examined on 1.6.1999. Sri A.K. Gupta, M.W.-8, was examined on 1.6.1999 and cross-examined on 5.6.1999 and Sri Arvind Srivastava, M.W.-9, was examined on 29.7.1999.

13. It is admitted to the respondents, that the petitioner met with an accident on 14.6.1999. Dr. Mukul Saxena, Medical Officer in National Capital Power Project Hospital found that the injury on petitioner's back required special treatment and referred him on 30.7.1999 to All India Institute of Medical Science, New Delhi. He also requested that an ambulance may be provided to the petitioner. The petitioner was examined on 7.8.1999 and he was referred for consulting Neurologist at Ganga Ram Hospital on 8.8.1999. The Chief Medical Officer, National Capital Power Project Hospital again referred the petitioner to A.I.I.M.S. Hospital to report at 7 a.m. on 9.8.1999. The O.P.D. Registration No. 266689 of 1999 dated 31.7.1999 and the Causality Card of A.I.I.M.S. Hospital Emergency Department dated 9.8.1999, shows that the petitioner was attended as a causality in A.M.M.S. Emergency Department and was required to report for review after three weeks to the Orthopedics O.P.D. on 7.10.1999. He was advised bed rest for three weeks. The petitioner has also enclosed the medical prescription and the follow up treatment. The petitioner sent an application along with this medical certificate to the Inquiry Officer on 31.7.1999. The Inquiry Officer considered these medical certificates and while directing the Chief Medical Officer, National Thermal Power Corporation, to report about his medical condition, fixed the matter for 9.8.1999. On the next date fixed on 9.8.1999, when the petitioner was at A.I.I.M.S., the Inquiry Officer concluded the proceedings with observation that as the petitioner was aware of the date fixed in the enquiry, he could have got his treatment postponed to some other date. On the same day the enquiry was closed.

14. In these circumstances, the petitioner approached this Court in Writ Petition No. 39906 of 1999. The grievance of the petitioner was considered and that this Court observed in its order dated 16.9.1999 that if the petitioner files an application with defence brief along with certified copy of the order of Court, the competent authority shall take decision on the application expeditiously before proceeding with further inquiry into the matter. I do not find any reason to believe that the petitioner did not produce this order before the Inquiry Officer. The order of the Court was sent to Inquiry Officer by speed post on 16.9.1999. Annexure-21 is a certificate by the Manager, Speed Post Centre, Ghaziabad stating that the letter dated 16.9.1999 sent by registered post was served upon Sri S.R. Khaneja on 18.9.1999. Sri Khaneja returned the registered letter to the petitioner to produce it before the disciplinary authority. By his letter dated 21/23.10.1999, the disciplinary authority acknowledged the order of the High

Court and directed the petitioner to submit an application as per direction of the High Court enabling competent authority to decide his application. The petitioner submitted a detailed application on 13.12.1999 before the Disciplinary Authority. After about five months, the disciplinary authority informed the petitioner that the Inquiry Officer has submitted his report which is being forwarded to him along with show cause notice. The show cause notice stated a fact that the petitioner has not submitted a copy of the petition, which, according to petitioner, was sent by registered post receipt No. 0640 dated 21.12.1999.

15. The Inquiry Report, running into 35 pages reiterates the charges against the petitioner. While considering petitioner's defence, the Inquiry Officer found that the defence has neither submitted the list of witnesses nor attended proceedings of enquiry in spite of repeated reminders. It was observed that the petitioner did, not carry out cross-examination of important and vital prosecution witnesses and did not submit his defence brief. The enquiry proceedings thus concluded ex-parte. The Inquiry Officer did not even find it reasonable to consider petitioner's reply to the charges.

16. The petitioner submitted a detailed written submission on 6.4.2000 to the second show cause notice running into 54 paragraphs. The disciplinary authority did not even refer to his reply and imposed penalty of removal from service after recording a finding that there is no substance in the petitioner's representation and it is nothing but repetition of what he has submitted earlier. It is pertinent to note that neither the earlier reply nor the later submission were considered by either the Inquiry Officer or by the Disciplinary Authority, and that the charges were held to be proved ex parte inspite of detailed reply submitted by the petitioner.

17. The Courts have consistently held that where the principles of natural justice have been violated, the remedy under Article 226 of the Constitution of India is not barred. The decision relied upon by the respondents are not contrary to this principle. The right to be heard before an order visiting civil consequence is passed, is inherent in every employee. It is a common law right which has its acceptance under Article 14 of the Constitution of India. It is not dependent upon any standing orders or statutory provisions. Rule 28 of the certified standing orders applicable to the company, provide for procedure of major penalty. This procedure merely recognised the right of an opportunity to be heard before any adverse order is passed. It provides that in the inquiry, the workmen concerned shall be afforded reasonable opportunity of his claim and defend his action with the assistance of a co-workman. The reasonable opportunity to be afforded need not be elaborated and explained. It must be spelled out from the proceedings.

18. The Rajasthan State Trading Corporation case was dealing with the remedy of suit ; when the forums under Industrial Disputes Act are available. The decision is not applicable to extraordinary remedy under Article 226 of the Constitution of India. Availability of alternative remedy does not oust the jurisdiction of High Court, specially in the facts and circumstances, where the

authorities deliberately refuse to comply with the orders of the High Court and inspite of clear directions refuse to consider his defence.

19. In the present case, I find that the petitioner was not only denied an opportunity to lead his evidence, the respondents completely failed to consider his defence. The Inquiry Officer did not even discuss petitioner's reply and the disciplinary authority did not consider it proper to even mention about it. The respondents were fully aware of the fact that the petitioner met with an accident and was undergoing treatment. In fact, the inquiry was concluded on the same day when the petitioner, within the knowledge of the respondents, was referred to and was being treated at A.I.I.M.S., New Delhi. The Inquiry Officer closed the inquiry by observing that the petitioner, who was in fact taken to A.I.I.M.S., New Delhi, in an ambulance, should have postponed his treatment and given priority to the inquiry proceedings. The respondents not only violated principle of natural justice but also violated petitioner's basic human rights. The conduct of the Inquiry Officer shows bias against the petitioner. The entire enquiry proceedings were thus tainted with bias and violative of principles of natural justice.

20. The writ petition is consequently allowed. The impugned orders dated 19.9.1999 and 14.9.2002, are set aside. The disciplinary inquiry against the petitioner is relegated to the stage of close of management's witnesses. The petitioner shall be re-instated in service and paid his entire arrears of salary. In the facts and circumstances of the case, the Disciplinary Authority is directed to change the Inquiry Officer by any other competent officer, after giving an opportunity to the petitioner to raise objection to his competence. The inquiry shall be concluded as expeditiously as possible. The petitioner shall be entitled to costs from the respondents.