
(2001) 08 AHC CK 0006
In the Allahabad High Court
Case No : C.M.W.P. No. 13601 of 1997

H.S. Mishra

APPELLANT

Vs

Secretary/General Manager, Mau-Aima Sahkari Katai Mills
Ltd. and Another

RESPONDENT

Date of Decision : 22-08-2001

Acts Referred:

Citation : (2001) 4 AWC 2681 : (2001) 91 FLR 503 : (2002) 1 UPLBEC 327

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Advocate : H.N. Tripathi, S.M. Misra and N.K. Srivastava, for the Appellant; J.N. Tiwari and Rakesh Tewari, for the Respondent

Final Decision : Allowed

Judgement

Ashok Bhushan, J.—Heard Sri S.M. Misra counsel for the petitioner and Sri J.N. Tiwari counsel for the respondents. Counter and rejoinder-affidavits have been exchanged and with the consent of the parties the writ petition is being finally decided.

2. The writ petition has been filed praying for quashing the impugned order dated 18.3.1997 Annexure-8 to the writ petition by which the petitioner has been dismissed from service, The facts of the case as emerge from the pleadings of both the parties are that U. P. Co-operative Spinning Mills Federation Ltd., Kanpur, is an apex society as defined in U. P. Cooperative Societies Act, 1965. The petitioner states that the Federation is the recruiting body and the appointing authority of the petitioner. Petitioner has stated that he was posted in different Katai Mills and ultimately, he was transferred and posted at Mau Aima Sahkari Katai Mills Ltd., in the year 1992. Petitioner was suspended by letter dated 8.7.1996 and was served with a charge-sheet dated 16.9.1996. On 15.10.1996 petitioner submitted reply to the charge sheet. Petitioner's case is that after submission of reply by him. no enquiry was held and the enquiry officer without holding an enquiry submitted enquiry report on 4.11.1996.

Petitioner was issued a show cause notice, after submission of the enquiry report which was replied by the petitioner on 19.11.1996, by an order dated 18.3.1997 petitioner was dismissed from service. The respondents in their counter-affidavit have stated that the Federation has adopted U. P. State Textiles Corporation (Disciplinary) bye-laws, 1978 vide resolution dated 4.3.1992 and the said bye-laws are applicable for the disciplinary proceedings against the employees of the Katai Mills. It has been stated in the counter-affidavit that there were charges against the petitioner on which enquiry was held and enquiry report reveals serious irregularities on the part of the petitioner. The order of dismissal was justified. It has been further stated that the provisions of the U. P. Co-operative Employees Service Regulations, 1975, are not applicable. Counsel for the petitioner submitted that the dismissal order is vitiated due to non-holding of any enquiry by the enquiry officer. Counsel for the petitioner referred to paragraph 17 (d) of the writ petition and paragraph 5 of the supplementary-affidavit dated 10.12.2000 in which it was stated that no information or notice regarding date of any enquiry was given and the dismissal order has been passed on the basis of ex parte enquiry report dated 4.11.1996. Counsel for the petitioner has submitted that since petitioner has denied the charges in reply to the charge-sheet, it was incumbent upon the respondents to have held the enquiry.

3. Sri J.N. Tiwari senior advocate appearing for the respondents refuting the submissions of the counsel for the petitioner has stated :

(i) In the facts of the present case and looking to the nature of charges, there was no necessity to hold any enquiry. Reliance has been placed on Orissa Mining Corporation and Anr. v. Ananda Chandra Prusry 1997 (1) ESC 148 (SC).

(ii) No prejudice has been caused to the petitioner by not holding the enquiry. It has been submitted that even if there is violation of principle of natural justice but unless a prejudice is proved by an employee, the dismissal order is not liable to be set aside. Reliance was placed on Aligarh Muslim University and Others Vs. Mansoor Ali Khan,

(iii) It has been further submitted that even if any defect is found in the enquiry, respondents be permitted to complete the enquiry from that stage.

4. Counsel for the petitioner placed reliance on following decisions : (I) D. B. judgment dated 7.9.1999 in Writ Petition No. 33291 of 1996. Subhash Chandra Sharma v. Managing Director, U. P. Co-operative Spinning Mills Federation Ltd. and Ors., copy enclosed as Annexure-1 to the supplementary-affidavit ; a judgment of this Court in Writ Petition No. 13747 of 1998. Dinesh Kumar Johari v. Chairman, U. P. Co-operative Spinning Mills Federation Ltd., Decided on 18.5.2001 : Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant and Ors. 2000 7 Supreme 112 and Subodh Kumar Trivedi v. State of U. P. and Ors. 2001 AWC 515.

5. Before considering the facts of the present case, it is relevant to note the rules and procedure which is prescribed for holding a disciplinary enquiry against the

employee of Katai Mills. Respondents in the counter-affidavit have stated that enquiry is to be held in accordance with the U. P. State Textiles Corporation (Disciplinary) Bye-laws, 1978. Rule 14 of the aforesaid bye-laws provides procedure for imposing major penalty. Rule 14 of the bye-laws is extracted below :

"14. Procedure for imposing major penalties (1).--No order imposing any of the major penalties shall be made except after an enquiry held in accordance with this bye-law.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for enquiring into the truth of any imputations against an employee. It may itself enquire into the truth thereof or may appoint any officer (hereinafter called the enquiry officer) for the purpose.

(3) Where it is proposed to hold such enquiry, the disciplinary authority shall frame definite charges on the basis of the allegations against the employee. The charges, together with the said allegations, shall be communicated in writing to the employee who shall be required to submit within a reasonable time a written statement whether he admits or denies any or all of the charges. He shall also be required to state whether he desires to be heard in person, whether he desire to cross-examine any of the witnesses proposed to be produced against him and also whether he has any witnesses to produce in his defence, and, if so, what each witness is expected to testify. He shall also give the full particulars and the address of each witness.

Note.--The charge-sheet shall be accompanied by copies of any statements made previously in any informal and confidential enquiry into the allegations against the employee. Further below each charge shall be listed the documents and proof proposed to be taken into account at the enquiry and the particulars of any witness proposed to be examined in support of each charge.

(4) Before submitting his written statement of defence to the enquiring officer the charged employee may ask to be allowed to inspect the documents along with the charge-sheet or any other relevant record and/or also ask for copies of other relevant documents. Reasonable facilities for inspection will be allowed to him and he may be supplied with copies of such documents as, in the opinion of the enquiring officer, are such that the requirements of reasonable opportunity of defence cannot be fulfilled without their inspection or the supply of copies as the case may be.

(5) The disciplinary authority may nominate any officer to be known as the "presenting officer" to present on its behalf the case in support of the charge ;

(6) The charged employee may take the assistance of any one of his colleagues in the Corporation, but shall not engage any legal practitioner for the purpose.

(7) On the date fixed for hearing by the enquiring officer the oral and documentary evidence by which the charges are proposed to be proved shall be

considered by the enquiring officer. The witnesses may be cross-examined by the charged employee if he desires to do so. The enquiring officer may also put such questions to the witnesses as he thinks fit.

(8) The enquiring officer may allow the production of evidence not specified in the charge-sheet or may himself call for new evidence or recall or re-examine any witness, in such a case the charged employee shall be given an opportunity to inspect the documentary evidence brought on record or to cross-examine a witness who has been so summoned.

(9) The evidence on behalf of the charged employee shall then be produced. The employee may himself have his statement recorded as a witness in his own behalf, if he so chooses. The witnesses produced by the employee shall then be examined, cross-examined and re-examined, as may be necessary, with power to the enquiring officer to put any question to any witness.

(10) The enquiring officer may, after the employee closes his case, generally question him on the circumstances appearing against him in the prosecution evidence with a view to enabling the employee to explain any circumstances appearing in the evidence produced against him :

Provided that such questioning may not be necessary if the employee has already given his statement as a witness and in the course of which the enquiring officer has already questioned him as aforesaid."

6. The issue which has been raised in the writ petition is as to whether it is necessary for the enquiry officer to hold an enquiry or it can without holding an enquiry submit an enquiry report. In the present case, facts which have come on record, show that after submission of the reply by the petitioner to the charge-sheet, enquiry officer did not fix any date for enquiry nor hold any enquiry and straightaway submitted enquiry report. The intention of the rule-makers on the aforesaid issue can be found out after close scrutiny of the bye-laws. By law 14 (3) contemplates that charges shall be communicated in writing to the employee who shall be required to submit within a reasonable time, written statement where he admits or denies any or all of the charges. Sub-Clause (3) further provides that he shall also be required to state whether he desires to be heard in person, whether he desires to cross-examine any of the witnesses proposed to be produced against him and also whether he has any witnesses to produce in his defence. There is no difficulty in a situation when employee shows his desire of hearing in person or states that he will produce oral evidence. In that situation, there is no difficulty in holding that the enquiry has to be held by enquiry officer. What will be the consequences when employee does not indicate in his reply that he be heard or he proposes to produce witnesses, has to be considered. Where when employee did not ask for hearing or pray for producing witnesses or to cross-examine witnesses, it is discretionary on the part of the enquiry officer to hold enquiry or not to hold enquiry is an issue which has to be answered in the present case. For examining the aforesaid question, the

procedure contemplated by the rule has to be closely scrutinised. For examining the aforesaid issue, Sub-rules (5), (6), (7) and (8) throw sufficient light on the intent of rule-making authority. Sub-rule (5) requires that the disciplinary authority may nominate any officer to be known as presenting officer to present on his behalf the case in support of the charge. Obviously, the presenting officer has to present the case in the enquiry after the charge-sheet is issued. Further, Sub-rule (6) gives right to employee to take assistance of any one of his colleagues for the purpose. If the rule does not contemplate holding of an enquiry, the giving of right to the employee to take assistance of any one of his colleagues will become nugatory. Further, Sub-rule (7) requires that on the date fixed for hearing by the enquiry officer, the oral and documentary evidence by which the charges are proposed to be proved shall be considered by the enquiry officer. The aforesaid rule contemplates production of oral and documentary evidence by the employer to prove the charges. The charges obviously have to be proved in the enquiry. Charge-sheet is only an imputation of charges and the charges cannot be held to be proved unless they are proved by any evidence. Of course, there can be one situation when holding of an enquiry may be obviated, that is situation when the employee admits all the charges. However, when the employee denies the charges, the question of proof may arise. The most crucial provision is Sub-rule (8). Sub-rule (8) gives the power to the enquiry officer to allow the production of evidence not specified in the charge-sheet or may himself call for any new evidence. This power has to be exercised by the enquiry officer to unfold the truth. The purpose of appointment of the enquiry officer is to find out truth of the allegations and unless an enquiry is held, there will be no occasion to exercise jurisdiction of enquiry officer to find out truth as contemplated by Sub-rule (8): The scheme of Rule 14 thus, contemplates holding of an enquiry whenever employee denies a charge, to hold that it is the discretion of the enquiry officer to hold the enquiry or not to hold enquiry on the nature of the charges and the reply of an employee may lead to arbitrary exercise of discretion and defeat the principle of fair enquiry. Thus, from the scheme of the bye-law, it is clear that even if employee does not demand a hearing or ask for production of his witnesses, enquiry is required to be held. Holding of an enquiry can be obviated under only one circumstance when the employee accepts the charge. The Division Bench of this Court in Subhas Chandra Sharma's case (supra), after considering several Apex Court's judgments has laid down :

"We are of opinion after the petitioner replied to the charge-sheet a date should have been fixed for the enquiry and the petitioner should have been intimated the date, time and place of the enquiry and on that date the oral and documentary evidence against the petitioner should have been led in his presence and he should have been given an opportunity to cross-examine the witnesses against him and also he should have been given an opportunity to produce his own witnesses and evidence. If the petitioner in response to this intimation had failed to appear for the enquiry then an ex parte enquiry should

have been held but the petitioner's service should have not been terminated without holding an enquiry. In the present case it appears that no regular enquiry was held at all without was done that after receipt of the petitioner's reply to the charge-sheet he was given show cause notice and thereafter the dismissal order was passed. In our opinion this was not the correct legal procedure and there was violation of the rules of natural justice. Since no date for enquiry was fixed nor any enquiry held in which evidence was led in our opinion the impugned order is clearly violative of natural justice."

The other judgments cited by the counsel for the petitioner also do support the submission of the counsel for the petitioner.

7. Counsel for the respondents has placed much reliance on the judgment of the Apex Court in Orissa Mining Corporation and another (supra). In the aforesaid case, the Apex Court held in paragraph 5 which is extracted below :

"5. On a consideration of the totality of the facts and circumstances of the case including the nature of charges we are not inclined to interfere in the matter. The position with respect to burden of proof is as clarified by us hereinabove viz. that there is no such thing as an absolute burden of proof, always lying upon the department in a disciplinary inquiry. The burden of proof depends upon the nature of explanation and the nature of charges. In a given case the burden may be shifted to the delinquent officer, depending upon his explanation. For example take the first charge in this case. The charge was that he made certain false notings on account of which loans were disbursed to certain ineligible persons. The respondent's case was that those notings were based upon certain documents produced and certain records maintained by other employees in the office. In such a situation it is for the respondent to establish his case. The department is not expected to examine those other employees in the office to show that their acts or records could not have formed the basis of wrong notings made by the respondents."

8. The aforesaid judgment was on the issue of burden of proof. The Apex Court's judgment did not consider the issue which is raised in the present writ petition as to whether it is necessary to hold enquiry when an employee denies the charges. The aforesaid case is thus not applicable on the facts of the present case. However, it is necessary to look into the nature of the charge and its reply to come to the conclusion as to whether under facts of the present case, the department was not obliged to prove any charge. The charges which were levelled against the petitioner were to the effect that the petitioner purchased certain items on the basis of old quotations without obtaining fresh quotations, and contrary to normal purchase procedure. All the aforesaid charges were replied by the petitioner who stated that looking to the immediate urgency of purchase, the said procedure was adopted. Further, the purposes were made with the consent of the purchase committee. The counsel for the petitioner has also referred to and relied on paragraph 3.3.8 of "Stores Procedure Instruction Manual" for U.P.S.T.C. paragraph 3.3.8 is quoted below :

"3.3.8 EMERGENCY PURCHASE :

(1) The indent for Rush Purchase is shown in Exhibit 3.9.

(2) The Chief Executive/Financial Controller may waive the compliance of normal purchase procedure and store and purchase officer be allowed to effect purchase provided materials so acquired are urgently required and normal purchase procedure could not be followed for want of time.

(3) The Rush Purchase Requisitions will be filed in chronological order."

9. From the aforesaid Manual, it is clear that emergency purchase is also one mode of purchases contemplated in the Manual. When the petitioner in his reply has stated that there was urgency of purchase and secondly, the purchase was made with the consent of the purchase committee, it was to be enquired as to whether there was any necessity of immediate purchase and secondly, whether purchase committee has given any such consent. These two issues could have been decided only when the relevant papers pertaining to purchase including demand for purchase was placed before the enquiry officer. It cannot be said that the aforesaid issues could have been decided without holding an enquiry.

10. In view of the above, it cannot be said that the department had no burden to prove the allegations against the petitioner.

11. The second submission of the counsel for the respondents on the basis of the judgment of Apex Court in Aligarh Muslim University's case (supra) has also to be considered. In the aforesaid judgment, the Apex Court has held that there can be exception to normal rule that violation of principle of natural justice vitiates the order. The aforesaid exception is to be applied upon admitted or indisputable facts. From the impugned order dismissing the petitioner, it is clear that the case was not a case indisputable facts. While considering charges No. 2 and 4, the disciplinary authority has held that there was no necessity of immediate purchase, hence normal purchase procedure ought to have been adopted. Whereas the petitioner in his reply has stated that in view of urgency in purchase, the purchase was made on old quotations. In view of the above, the present case was not a case of admitted or indisputable facts. Further, counsel for the petitioner is right in his submission that prejudice has been caused to him by not holding an enquiry. Since in the enquiry he could have proved that purchases were made due to urgent requirement and was in accordance with the procedure of emergency purchase as contemplated in Purchase Manual. In view of the above, it cannot be said that no prejudice was caused to the petitioner by non-holding of enquiry. There is one more aspect of the matter which needs to be noticed. The enquiry officer in the enquiry report Annexure-6 to the writ petition has not held that petitioner is guilty of charges rather enquiry officer has accepted the petitioner's reply that purchase were made with the consent of the purchase committee. A copy of the enquiry report was given to the petitioner along with following note of the General Manager. The aforesaid note of the General Manager is extracted below :

"Managing Director, vide his order dated 4.11.1996 has allowed time up to 15.11.1996, to submit your comments reply if any, on the enclosed "enquiry report" dated 30.10.1996, which is in connection with the charge-sheet issued to you vide this Office Order No. 8909 11/SMF/96 dated 16.9.1996. If no explanation is received within the stipulated time, it will be presumed that you have nothing to say in this matter."

12. The aforesaid note did not say that the enquiry report is wrong and all the charges against the petitioner are proved. The disciplinary authority in the dismissal order has held charges against the petitioner proved whereas the enquiry officer did not find the charges proved. It was within the power of the disciplinary authority to take his own decision on the basis of the charges, reply of the petitioner and the enquiry report but petitioner was entitled for an opportunity and was required to give an opportunity to the petitioner. The Division Bench of this Court in Jagdish Prasad Yadav v. State of U. P. and Ors. 2001 (2) UPLBEC 1039 has held that the disciplinary authority was required to issue notice to the delinquent regarding disagreement with the findings of the enquiry officer and the order of dismissal passed without such notice was held to be illegal. In view of this also, there was violation of principle of natural justice in passing the dismissal order.

13. With regard to third submission of the counsel for the respondents that the respondents be directed to complete the enquiry from the stage when the defect crept in the enquiry, it is well-settled principle that when an enquiry is vitiated due to failure to observe principle of natural justice, it is open to the (disciplinary authority to complete the enquiry after complying with the principle of natural justice. There is force in the submission of the counsel for the respondents that the respondents be permitted to complete the enquiry after following the principle of natural justice.

14. In view of the above discussion, the writ petition is allowed and the dismissal order dated 18.3.1997 Annexure-8 to the writ petition is quashed. However, it will be open to the respondent to complete the enquiry after the stage of submission of reply to the charge-sheet.