
(2012) 03 AHC CK 0241
In the Allahabad High Court
Case No : Writ Petition No. 933 of 1990

Janardan Prasad Srivastava

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-03-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 31(2)

Citation : (2012) 134 FLR 303

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Manish Misra, for the Appellant; Rakesh Sharma, for the Respondent

Final Decision : Allowed

Judgement

Anil Kumar, J.—Heard Sri Manish Misra, learned Counsel for the petitioner, learned State Counsel and perused the record:

By means of present writ petition, the petitioner has challenged the impugned order dated 16.9.1988 (Annexure No. 1) passed by opposite party No. 2/ District Judge, Faizabad. Facts, in brief, of the present case are that the petitioner Sri Janardan Prasad Srivastava was initially appointed as a Routine Grade Clerk on 3.2.1977 in the Civil Court, Faizabad, thereafter he was promoted to the next higher post in the pay scale of Rs. . 430-685 on 1.8.1983. On 2.9.1986 while the petitioner was working and discharging his duties in the Court of Ist Additional District Judge, Faizabad on the post of Ahalmad, a charge-sheet was served on to him, after receiving the same he submitted his reply thereafter the impugned order dated 16.9.1988 has been passed by the District Judge, Faizabad reverting the petitioner to the post of Routine Grade Clerk.

2. Sri Manish Misra, learned Counsel for the petitioner while assailing the impugned order submits that no date time and place for conducting the disciplinary inquiry has been fixed, as such the order passed by the District Judge Faizabad is illegal, arbitrary and violative of Article 14 of the Constitution of India

as well as against the principle of natural justice. He also submits that the impugned order is in contravention of Rule 4 of the U.P. Subordinate Court Staff Rule 1976, so the same is liable to be set aside.

3. Learned State Counsel on the basis of the document/counter-affidavit on record submits that there is no illegality or infirmity in the impugned order under challenge in the present writ petition, but he does not dispute the fact that after giving the reply to the charge-sheet, no fact finding inquiry has been done.

4. After hearing the learned Counsel for the parties and from the perusal documents on record, it transpires that after submitting the reply by the petitioner to the charge-sheet, no date time and place has been fixed for holding fact finding enquiry.

5. In view of the factual background and after taking into consideration, it is well settled proposition of law that regular inquiry means opportunity to submit reply to charge-sheet and also to lead evidence in defence. Even if the delinquent employee does not cooperate, it shall always be incumbent on the inquiry officer to record oral evidence to substantiate the charges. If the enquiry is not done in the manner as stated herein above then in that circumstances the enquiry conducted is in utter disregard to the principles of natural justice and the impugned order passed on the basis of enquiry report, suffers from substantial illegality and violative of principles of natural justice and the order of punishment vitiates.

6. In the case of State of U.P. v. Shatrughan Lal and another, (1986) 6 SCC 651 the Supreme Court observed that it is not sufficient to say that the petitioner was allowed to inspect but a date has to be fixed for inspection which should be duly communicated to the delinquent and access to the record should be permitted. In the absence of any such evidence it cannot be said that reasonable opportunity was given to the delinquent. It is also settled that in case the delinquent is not supplied the copies of the relevant documents and he is not allowed to inspect the documents he would not be in a position to give any effective reply to the charges levelled against him which deprives him of his legal and fundamental right to put his defence effectively. Holding of an enquiry in such circumstances, would be in gross violation of the principle of natural justice.

7. Further the Division Bench of this Court in the case of Lucknow Kshetriya Cramin Bank and others v. Shri Devendra Kumar Upadhyay, 2009 (27) LCD 990. has held that :--

In case an employee is charged of misconduct and charge-sheet is issued, it is to contain precise and specific charges along with the evidence which the department wants to rely upon, in proving the charge and the charges along with the copy of document should be provided to the delinquent. After asking the reply from the delinquent, the enquiry is to proceed where he charges are to be proved by the department concerned, on the basis of the evidence which the department chooses to produce, oral as well as documentary. The delinquent also

has to be provided, adequate and reasonable opportunity to lead evidence in rebuttal, may be oral or documentary or both. It is on the basis of evidence so led and the material available on record that the Inquiry Officer has to apply his mind to find out whether the charge levelled against him stands proved or not.

8. In the case of Saroj Kumar Sinha (Supra) Hon"ble Supreme Court has held as under:--

Where the charged Government servant does not appear on the date fixed in the inquiry or at any stage of the proceeding in spite of the service of the notice on him or having knowledge of the date, the inquiry officer shall proceed with the inquiry ex parte. In such a case the inquiry office shall record the statement of witnesses mentioned in the charge-sheet in absence of the charged Government servant.

Apart from the above, by virtue of Article 31(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate the punishment being imposed on the employee.

When a departmental enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with the closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a Government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal / removal from service.

9. Needless to mention herein that in the case of Canara Bank and Others Vs. Shri Debasis Das and Others, Hon"ble Supreme Court has held that whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left open that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated.

10. Further, needless to mention herein that Hon"ble Supreme Court in the " case of NTC (WBAB&O) Ltd. v. Anjan K. Saha, 2004 (103) FLR 110 (SC) after taking into consideration the judgment of Constitutional Bench in the case of Managing Director, ECIL v. B. Karunakar, 1993 (67) FLR 1230 (SC) has held as under:--

The language of clause 14(4)(c) of the Model Standing Orders is not mandatory. In any case, non-compliance therewith cannot be held to be more vitiating factor than non-supply of enquiry report. If the Constitution Bench of the Supreme Court in cases of non-supply of enquiry report directs the procedure to be adopted by allowing the employers to restart the enquiry from the stage of

supply of enquiry report without reinstating the employee, why such a course should not be directed to be adopted where the other grievance of the employee is denial of opportunity to show cause against proposed penalty? When the Court can direct a fresh enquiry from the stage of supply of enquiry report the next step in the enquiry of giving opportunity against the proposed penalty can also be directed to be taken. After the fresh enquiry is over from the stage of supply of enquiry report, the employee can be granted opportunity against proposed penalty in terms of clause 14(4)(c) of the Model Standing Orders. Consequential order, if any passed, shall abide the final result of the proceedings. As held in the case of B. Karunakar, 1993 (67) FLR 1230 (SC) if the employee is cleared of the charges and is reinstated, the disciplinary authority would be at liberty to decide according to law how it will treat the period from the date of dismissal till the period of reinstatement and the consequential benefits.

11. In view of the said facts the position which emerge out is to the effect that even when the order is set aside on technical ground that the inquiry proceedings are not in accordance with principles of natural justice, then the matter is to be remanded back to the competent authority to decide afresh where irregularities have been committed in holding the inquiry.

12. In the present case as stated herein above, petitioner was placed under suspension in the matter in question on 25.4.1990 thereafter petitioner has submitted his reply on 3.5.1990 and 15.5.1990 to the inquiry officer in the matter in question and on 21.7.1990/3.8.1990 the inquiry officer submitted the inquiry report and subsequently thereafter the petitioner retired from service on 31.1.1991 and after two years of his retirement the impugned order dated 17.3.1993 has been passed without issuing any show-cause notice to the petitioner by the punishing authority/ opposite party No. 1.

13. During the pendency of writ petition, petitioner Sri Ramesh Chandra Srivastava died, so in the interest of justice, I do not feel appropriate to remand the matter to the authority concerned at this stage. For the foregoing reasons, the impugned order dated 16.9.1988 (Annexure No. 1) passed by opposite party No. 2/ District Judge, Faizabad. is set aside and the matter is remanded back to the competent authority / opposite party No. 2 to proceed afresh from the stage of issuing of charge-sheet in accordance with law. It is further provided that the disciplinary proceedings shall be completed expeditiously, preferably within a period of four months from the date a certified copy of this, order is produced before it.

With the above observations, writ petition is allowed.