
(1975) 03 AHC CK 0017

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 8853 of 1971

Jawahar Lal Srivastava

APPELLANT

Vs

Commissioner Allahabad Division and others

RESPONDENT

Date of Decision : 21-03-1975

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Nagar Mahapalika Sewa Niyamawali, 1962 — Rule 31

Citation : (1975) 03 AHC CK 0017

Hon'ble Judges : R.L.Gulati, J

Final Decision : Allowed

Judgement

R.L. Gulati, J.

The petitioner originally joined the Nagar Mahapalika, Allahabad as an approved apprentice. However, with effect from October 12, 1966, he was confirmed as a IInd Grade Clerk. On May 21, 1969, he was appointed as a 1st Grade Clerk to officiate on ad hoc basis.

It appears that on September 7, 1970, a number of clerks working in the Tax Department reported to the Tax Superintendent that the petitioner had made certain interpolation in the assessment and demand registers of the Nagar Mahapalika by cutting the name of one Smt. Devi and putting the name of Sri Mahesh Chand Gupta. The matter was reported to the Administrator of the Nagar Mahapalika. who placed the petitioner under suspension with immediate effect " and appointed the third respondent, the Up Mukhya Nagar Adhikari as the Enquiring Officer. In due course a chargesheet was served upon the petitioner. The charges, as indicated above, were enumerated in the chargesheet and the petitioner was required to submit his explanation by November 18, 1970, and also to indicate whether he desired to be heard in person. The petitioner applied for inspection of the records and also asked for copies of certain documents on the basis of which the charges had been framed. The Tax Superintendent refused to grant him copies, but eventually he was allowed to inspect the records and on

December 22, 1970, he submitted a written reply denying the charges and praying for a personal hearing. The petitioner wrote several letters for the supply of copies and eventually on March 10, 1971 the copies of the report made by the clerks of the Department and the information of the handwriting expert were supplied to him and he was required to submit a reply within ten days. He did not submit any further explanation, but reiterated his demand of a personal hearing. On March 27, 1971, the petitioner was required to appear before the Enquiring Officer, who recorded his statement and the proceedings were closed, it may be mentioned here that no witness on behalf of the prosecution was examined in his presence, nor was any witness examined on behalf of the petitioner in defence. On June 5, 1971 the petitioner was served with a show cause notice by the Mukhya Nagar Adhikari, calling upon him to show cause why he should not be removed from service. A copy of the report of Sri R.C. Vayas, who was the Enquiring Officer, was also sent to him along with the show cause notice. The petitioner submitted a reply to the show cause notice. Eventually the impugned order dismissing the petitioner from service was passed on July 9, 1971 by the second respondent, the Mukhya Nagar Adhikari. The petitioner thereupon preferred an appeal under Rule 36 of the U.P. Nagar Mahapalika Sewa Niyamawali, 1962, before the Commissioner, Allahabad Division, Allahabad, respondent No. 1. The Commissioner dismissed the appeal by his order dated October 5, 1971, without giving to the petitioner any opportunity of being heard. The petitioner is aggrieved and has now approached this Court under Article 226 of the Constitution.

The principal contention is that the enquiry was not conducted in accordance with rule 31 of the U.P. Nagar Mahapalika Seva Niyamawali, inasmuch as no witnesses were examined in presence of the petitioner and he was given no opportunity to cross-examine them. This contention was also specifically raised before the Commissioner.

Relevant portion of rule 31 of the U.P. Nagar Mahapalika Seva Niyamawali may be reproduced:

"31. Procedure for disciplinary proceedings. (i) No order of dismissal, removal or reduction in rank shall be passed on any servant of the Mahapalika unless he has been informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced in the form of a definite charge or charges which shall be communicated to the person charged and which shall be so clear and precise as to give sufficient indication to the charged servant of the facts and circumstances against him. He shall be required within a reasonable time to put in a written statement of his defence and to state whether he desires to be heard in person. If he so desires or if the authority concerned so directs an oral enquiry shall be held in respect of such of the allegations as are not admitted. At that inquiry such oral evidence will be heard as the inquiring officer considers necessary. The person charged shall be entitled

to crossexamine the witnesses, to give evidence of person and to have such witnesses called as he may wish provided that the "officer conducting the inquiry may for sufficient reason to be recorded in writing refuse to call a witness.....

(ii) This rule shall not apply where the person concerned has absconded or where it is for other reasons impracticable to communicate with him. All or any of the provisions of the rule may for sufficient reasons to be recorded in writing be waived, where there is difficulty in observing exactly the requirements of the rule and those requirements can in the opinion of the inquiring officer be waived without injustice to the person charged.

This rule sets out in very clear terms the manner in which an enquiry is to be conducted. To summarise the following steps have to be taken:

(i) The charged servant has to be informed in writing of the grounds on which it is proposed to take action.

(ii) He is to be afforded an adequate opportunity to defence himself.

(iii) The grounds have to be reduced in the form of definite charge or charges.

(iv) He is to be required, within a reasonable time, to put his written statement.

(v) If the charged employee so desires, or the authority concerned so directs, an oral enquiry shall be held in respect of such allegations as are not admitted.

(vi) At the enquiry such oral evidence shall be heard as the Enquiring Officer considers necessary.

(vii) The person charged shall be entitled to crossexamine the witnesses, to give evidence in person and to have such witnesses called as he may wish, provided that the officer conducting the enquiry for reasons to be recorded in writing refuses to call a witness."

Now, it can be safely said that the charge was reduced in writing and a copy thereof was served upon the petitioner. He was also given a reasonable time to put in an explanation. But the petitioner denied the charges and he requested for an oral hearing. It is here that the Enquiring Officer went wrong. He ought to have examined the witnesses in the presence of the petitioner and he should have been allowed an opportunity to crossexamine them. This procedure was not at all followed. What appears to have happened is that certain clerks made a written report against the petitioner alleging interpolation in the official records. Those persons were never examined much less in the presence of the petitioner. Their report was treated to be substantive evidence. Then a report of the handwriting expert was also called for, but the petitioner was never required to give a specimen of his signature, nor was there any proof that the signatures sent to the handwriting expert were admitted signatures of the petitioner. In fact the petitioner in his supplementary affidavit has clearly denied that the signatures sent to the handwriting expert were his. Clearly it was the duty of the Enquiry Officer to hold an oral enquiry in the sense explained above, namely to

examine all the witnesses, who had made a report against the petitioner in presence of the petitioner so that he could crossexamine them. The report of the handwriting expert could also not be taken into consideration, unless the petitioner was asked to give a specimen signature or the signatures sent to him were the admitted signatures of the petitioner. As stated above, the petitioner raised these points specifically before the Commissioner. He has brushed aside these contentions by saying that the petitioner never indicated that he wanted to cross examine any of the witnesses. This approach is wholly erroneous. It was the duty of the Enquiring Officer to examine all the witnesses in his presence and it was then that the petitioner could, if he so liked, crossexamine them. Their written complaint sent to the Tax Superintendent could not be taken as substantive evidence. It is true that the reports of the complainants were supplied to the petitioner after the chargesheet had been served, but that is not a substitute for an oral enquiry contemplated by rule 31. The requirement of an oral enquiry are mandatory unless the Enquiring Officer, for reasons to be recorded in writing, states that it is not practicable to follow the procedure because the petitioner had absconded or for such other reasons. This omission has resulted in miscarriage of justice and the petitioner has been denied a fair trial. As such the report of the Enquiring Officer as also the final order passed by the Mukhya Nagar Adhikari dismissing the petitioner from service cannot be sustained.

In the end the petition succeeds and is allowed. The report of the Enquiring Officer dated May 27, 1971 (Annexure XVI), the order passed by the Mukhya Nagar Adhikari dismissing the petitioner from service dated July 9, 1971 (Annexure XVIII) and the order passed by the Commissioner, Allahabad Division, Allahabad, dismissing the petitioner's appeal dated October 5, 1971 (Annexure XX) are quashed. The respondents are directed to treat the petitioner as still in service and to pay him the emoluments to which he is entitled.

The petitioner is entitled to the costs of this petition.