

(2009) 01 AHC CK 0090
In the Allahabad High Court
Case No : Special Appeal No. 21 of 2009

Jiya Lal

APPELLANT

Vs

U.P.State Food and Essential Commodities Corporation
Ltd.and others

RESPONDENT

Date of Decision : 27-01-2009

Acts Referred:

Citation : (2009) 01 AHC CK 0090

Hon'ble Judges : Pradeep Kant, J and Shabihul Hasnain, J

Final Decision : Allowed

Judgement

Shabihul Hasnain, J.—Heard learned counsel for the parties.

2. The appellant challenges the order passed by the learned Single Judge dated 19.12.2008, by means of which his writ petition challenging the order of his dismissal from service as also the order for recovery of certain amount as arrears of land revenue has been dismissed.

3. Shorn of unnecessary details, the petitioner, an employee of the U.P. State Food and Essential Commodities Corporation Ltd., hereinafter referred to as the Corporation, was subjected to disciplinary proceedings in respect of various charges including the charges of financial irregularities and misappropriation of funds. A chargesheet was issued to the appellant levelling three charges. The appellant was required to furnish his reply to the said chargesheet, but according to the enquiry report, despite several opportunities being granted he did not prefer to file his reply. This fact has been disputed on behalf of the appellant and it is submitted that the appellant had filed his reply though at a late stage which has not been considered by the enquiry officer.

4. The aforesaid issue is not very relevant for the purposes of consideration of this appeal as we find force in the submission of learned counsel for the appellant that the enquiry officer has held the enquiry without associating the appellant with it and without fixing a date, time and place for holding such enquiry. Apart

from this, the enquiry report does not deal with any of the evidence/material, which was found to be sufficient for proving the charges against the appellant.

5. Charges have to be proved on the basis of material on record. The only finding in the enquiry report in respect of all the three charges is that since the appellant did not furnish any reply to the charges, therefore, it would be presumed that he admitted the charges, and with this observation the enquiry officer found the charges proved against the appellant. A show cause notice was issued to the appellant alongwith the enquiry report, to which he furnished his reply but the appointing authority has not looked into the gross procedural irregularity committed by the enquiry officer nor has addressed itself to the issue as to whether actually charges were proved while passing the orders for dismissal of the appellant from service as well as for recovery of certain amount from him as arrears of land revenue.

6. A further plea has been raised by the learned counsel for the appellant that even if any amount was found to be due against the appellant, the same could not have been ordered to be recovered from him as arrears of land revenue and, therefore, this direction of the authority is per se illegal.

7. The learned Single Judge did not address himself on any of the issues as raised or the questions involved but dismissed the writ petition merely by observing that since there was a charge of embezzlement and the appellant was dismissed after suspension and the recovery citation was issued as per law, he did not find any reason to interfere with the impugned orders.

8. When a challenge is made before the Court assailing an order of punishment or to any other order on specified grounds, it obligates the Court to record reasons for accepting or rejecting the pleas raised. Merely because a Government servant or a public servant is charged of a misconduct, may be of embezzlement or financial irregularities or misappropriation of funds and if punishment order is passed after suspending such Government servant or public servant, it does not mean that the action taken is necessarily legal, perfect and just.

9. A mechanism has been provided under the Rules for holding a departmental enquiry against a Government servant or public servant and if there is gross violation of principle of natural justice or violation of statutory rules in holding the enquiry, as we find in the present case, all proceedings on the basis of such enquiry would stand vitiated unless of course the Court reaches the conclusion that no prejudice has been caused to the delinquent by any such lapse.

10. It is no gainsaying that it is the enquiry officer who is obliged to issue notice to the delinquent fixing date, time and place for holding an enquiry. The charges levelled against the delinquent have to be established/proved in the manner in which they should be proved and for that matter, the department is required to lead evidence. Merely nonsubmission of reply to the chargesheet cannot be taken as admission on the part of the delinquent of the charges levelled against him.

Charges still have to be proved on the basis of evidence on record.

11. In the instant case, no such exercise has been done and merely because the appellant did not furnish his reply, as per statement of fact made in the enquiry report, the impugned orders of dismissal from service and recovery of amount have been passed on the basis of such enquiry report; therefore, they cannot be sustained.

12. Accordingly, the appeal is allowed. The impugned orders dated 7.7.2006 and 2.7.2008 as also the order dated 19.12.2008 passed by the learned Single Judge in Writ Petition No.8192 (S/S) of 2008 are hereby quashed.

13. We further direct that the respondent Corporation shall hold an enquiry afresh from the stage of submission of the reply to the chargesheet. In case the appellant has not submitted any reply, or he wishes to file an additional reply, he can do so within a maximum period of fifteen days from the date of presentation of a certified copy before the enquiry officer. The appellant shall cooperate in the enquiry. If the delinquent despite opportunity being given avoids and does not cooperate in the enquiry, it is always open to the enquiry officer to proceed ex parte in the matter and to take the enquiry to its logical end. The appellant shall be reinstated in service but he shall not be paid any arrears of salary from the date of passing of the order till the date of his reinstatement in service. The payment of such arrears of salary shall abide the result of enquiry. It is also open to the respondents to place the appellant under suspension if they so desire under the rules. The enquiry shall be completed within a maximum period of four months, but if any adjournment is sought by the appellant, the said period shall stand excluded from the time prescribed above.