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(2004) 03 AHC CK 0062

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 43668 of 2002

Krishna Kumar Srivastava — APPELLANT

Vs

Chairman, Uttar Pradesh Handloom Corporation Limited and Managing Director, Uttar Pradesh Handloom Corporation Limited — RESPONDENT

Date of Decision : 31-03-2004

Acts Referred:

Citation : (2004) 5 AWC 4781

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : Rajesh Kumar, Anil Bhushan, B.D. Mandhyan and Satish Mandhyan, for the Appellant; V.K. Birla, for the Respondent

Final Decision : Allowed

Judgement

Sunil Ambwani, J.—Heard Sri B.D. Madhyan assisted by Sri Rajesh Kumar for petitioner and Sri V.K. Birla for U.P. Handloom Corporation Ltd.

2. The petitioner was appointed as Sales man in the Corporation on 17.12.1977. On 1.6.1980, he was promoted as Senior Salesman and was further promoted as Depot Manager on 1.2.1981. He was suspended on 28.6.1999 on the allegations of manipulating documents and embezzlement causing loss to the Corporation, and in failing to carry out the orders of the higher authorities. The allegations relate to the period when he was posted at Ballia as Depot Manager-I in the financial year 1998-99. A charge sheet was served upon him on 17.7.1999. The petitioner submitted his reply on 10.1.2000. During the pendency of the enquiry a supplementary charge-sheet dated 13.12.2000 was served upon the petitioner. In respect of the first charge sheet Sri Javed Nasim, Senior Manager(Accounts) submitted his report dated 22.11.2000. The enquiry in respect of the charge in supplementary charge sheet was conducted by Sri K.C. Gupta, Manager (Accounts). He also submitted .an enquiry report dated 15.9.2001. A second show cause notice dated 26.11 2000 was given to the petitioner to which the

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petitioner to which the petitioner submitted his reply on 20.12.2001. The Managing Director by his order dated 18.5.2000 found that the petitioner was given adequate opportunity to defend himself on all the charges except charge no. 3. The charges in the first charge sheet dated 17,7.1999 were found established against him. The Managing Director dismissed petitioner from service and directed that Rs. 3,30,659.48 be recovered from his bonus, arrears of pay and other dues. He also directed that the suspension period shall not be treated to be spent on duty.

3. The petitioner filed an appeal which was considered in the 123rd meeting of the Board of Directors dated 30.11.2002. The Board resolved to dismiss him. Aggrieved, the petitioner has filed this writ petition challenging both the orders passed by the Managing Director/Disciplinary Authority dated 18.5.2002 and the Appellate Order dated 30.11.2002.

4. Before considering the submission raised by the counsel for petitioner, it would be appropriate to set out the charges leveled against petitioner. In the first charge sheet dated 17.7.199, the first allegation charged the petitioner for his absence on 24.3.1999, from the Sales Centre on an inspection made by Sri A.K. Singh, Incharge Regional Marketing Manager. In the inspection it was found that there was a shortage of Rs. 67,992.72 in the cash sale. The second allegation was with regard-to the embezzlement of Rs. 89,524.30, which was arbitrarily shown as credit sales. The third charge related to manipulation in the documents by showing a .deduction of Rs. 507/- towards the balance in credit sale in the account relating to May, 1998 and the fourth charge related to misappropriation of 10% discount totaling Rs. 29,140.80, which was shown as sale under hawker scheme whereas it was credit sale. The supplementary charge sheet dated 13.12.2000 alleged that on 8.9.1999, the petitioner gave charge of the stocks of textiles at Sales Centre, Ballia to Sri Gajendra Pratap Singh in which a shortage of Textiles worth about 99,227.62 and Rs. 10,052.81, of the non controlled and controlled textiles respectively, was detected. The petitioner was charged with causing loss of these amounts of the Corporation.

5. The petitioner in his reply dated 10.11.2000 denied all the charges. It was stated by him that he was on casual leave from 22.3.1999 to 24.3.1999 for which he had given intimation to his controlling officer on 22.3.1999, and had taken permission from the Incharge Regional Marketing Manager, Gorakhpur on telephone on 19.3.1999, and that after availing the leave, the petitioner reported for joining on 25.3.1999 for which due intimation was given by him. With regard to shortage of cash, the petitioner submitted that the amount was paid towards advance wages to the employees and that this practice was used in almost all show rooms of the Corporation. The employees did not receive their wages from head office in time and thus a common practice was adopted by all show rooms to pay salaries in advance from the sales proceeds of the depot, followed for a long time. Sri A.K. Singh, Incharge was aware of this practice. As soon as the amount was received from the head office, the advance was adjusted and that in

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his case on 31.3.1999 on receipt of advice for salaries, the deficiency was adjusted. The petitioner denied that he shown any fraudulent credit sales. Whatever sale were made by cash, the amount was disclosed in the cash book. In order to increase the sale of slow moving goods, under the policy of corporation, credit sale was encouraged and as soon as amount was received from customers, the amount was credited in the account. With regard to the third charge; the petitioner explained that it was a bonafide error. An amount of Rs. 507/- was shown in the cash book. It was later on adjusted.. In respect of fourth charge relating to fraudulent sales under hawkers scheme for availing 10% discount, the petitioner submitted that these sales were actually made by hawkers. The inspection was made in his absence and thus he could not establish that in fact the sales were made by hawkers for which the records were available. In respect of charge of shortage of stocks, in the supplementary charge sheet, the petitioner replied on 12.3.2001, that the charge relates to the period during which he was under suspension. He was not incharge of the depot from 8.7.1999 when the suspension order was served upon Him. After his suspension he had no control over the employees. Some of the local employees were working against protests made by the petitioner at the depot, and that any irregularity committed by these employees cannot be attributed to the petitioner.

6. Sri B.D. Madhyan, counsel for petitioner submits that the exparte inspection report of Sri A.K. Singh dated 31.3.1.999 was the only document which was taken as evidence in support of the charges in the first charge sheet. No other document was supplied to the petitioner or relied upon in proof of charges. No oral hearing was provided to the petitioner and no opportunity was given to cross-examine the witnesses. In fact no date was fixed for oral hearing. He submits that no opportunity was given to the petitioner to produce his witnesses in defence. Only three charges, out of four were found to be established. In support of the first charge he submits that on the date of inspection the petitioner was on leave after due intimation. As far second charge the amount was paid towards advance of salaries to employees and rent of show room. There was no contradiction from any employee that they did not receive their salaries in advance and there was no finding that the practice of payment of advance was not prevalent in the Corporation. The explanation to charge relating to payment of Rs. 2070/- was accepted by the enquiry officer. The rent of the godown was not sent from the Headquarters. There was no finding that the amount was not paid over as rent of the godown. The enquiry officer found that the third charge was not proved as the shortage of Rs. 507/- was on account of bonafide error in calculation, which was later on corrected on record. No complaints were received from any hawker and that no hawker was examined or produced before the Inquiry Officer. Inspite of the directions of the higher authority Sri A.K. Singh did not contact any hawker. In respect of supplementary charge sheet the counsel submits that during the period relating the charge, the petitioner was under suspension and was attached at Kanpur with the Inquiry Officer, and that the Inquiry Officer himself verified petitioner''s presence at the head office in the

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month of July and August, 1999.

7. The counsel for the petitioner has relied upon. the judgments of this Court, in Subhash Chandra Sharma Vs. Managing Director, U.P. Co-op. Spg. Mils Federation Ltd., Kanpur and another, , in support of the submission that the principles of natural justice were not followed during enquiry proceedings and the judgment in State of U.P. Vs. Shatrughan Lal and Another, , in which the Apex Court held that failure to supply of documents and copies of statement recorded during preliminary enquiry violates the principle of natural justice. In para 6 of this judgment it was held that preliminary inquiry which is conducted invariably on the back of the delinquent employee may, often,, constitutes the whole basis of the charge sheet. Before a person is required to submit his reply to the charge sheet, he must, on a request made by him in that behalf, be supplied the copies of the statement of witnesses recorded during the preliminary enquiry particularly if those witnesses are proposed to be examined at the departmental trial.- The petitioner has also relied upon State Bank of India v. D.C. Agarwal and Ors., AIR 1993 SC 1197 where it was held that imposition of punishment to an employee, on material which was not supplied nor disclosed to him, violates principles of natural justice, and that procedural fairness is as much essence of right and liberty as the substantive law itself. Counsel for petitioner also submits that the order was not passed by the Managing Director as it has been signed by Sri R.K. Ravi, Senior Manager (Inquiry).

8. Sri V.K. Birla, defending the corporation submitted that a number of irregularities were found by the Regional Marketing Manager on his inspection. The charge sheet dated 17.7.1999 was issued to the petitioner along with all evidence against him. The charge gives details of the irregularities and corrupt practice of the petitioner reported by the Regional Marketing Manager. The petitioner was afforded adequate opportunity of hearing. The petitioner participated in the enquiry and that he was given full opportunity to defend himself. The Managing Director himself had passed the orders under his signature as appointing/punishing authority and that a senior Manager Sri R.K. Ravi had signed copies of the order passed by the Managing Director. With regard to the second charge-sheet he submits that the petitioner continued to have charge of the sale Centre and was keeping the keys with him. He had not handed over the charge of the sale after his suspension and was responsible for the shortage of the stock. Sri V.K. Birla relied upon the judgement of Apex Court in Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, ; Union of India (UOI) and Others Vs. Narain Singh, ; High Court of Judicature at The High Court of Judicature at Bombay, Through Its Registrar Vs. Shashikant S.Patil and Another, ; Tara Chand Vyas Vs. Chairman and Disciplinary Authority and Others, , in support of his submission that the High Court should be slow in interfering with the findings of the Inquiry Officer in departmental proceedings. The Office Incharge of financial matters must act with utmost integrity, honesty, devotion and diligence and should do nothing unbecoming of such officer, and that the Court can only interfere when it finds that the

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punishment is shockingly disproportionate.

9. I have considered the respective submissions of the parties and perused the records. The first inquiry report dated 22.11.2000 and the proceedings of the enquiry enclosed as annexure 6 to the writ petition shows that five dates were fixed in the inquiry. On 21.2.2000, the Inquiry Officer directed the petitioner to produce certified copies of the documents enclosed with his reply. On petitioner''s request the Regional marketing Manager, Gorakhpur and the Depot Manager Baljia were directed to issue, certified copies to the petitioner. On 1.11.2000 Sri A.K. Singh, Assistant Marketing Manager appeared but Sri Jagdish Prasad Gupta was not present. The cash book and the imprest of the year 1998-99 was examined and it was found that the salaries from April, 1998 to June, 1998 were accounted upto December, 1998 and that there was a balance of Rs. 58,862.57 in the cash book on 31.12.1998. On 7.11.2000 Sri A.K. Singh was examined. He gave his statement in support of each of the charges. The petitioner requested to cross-examine him on the next dale on which enquiry was fixed for 8.11.2000. The request was accepted. However, on the next date fixed on 8.11.2000 only Sri Jagdish Prasad Gupta Accountant was examined. The Presenting Officer raised certain doubts with regard to documents and accounts produced by the petitioner. The Inquiry Officer recorded that the petitioner asked certain questions from the Presenting Officer and the witnesses who were present. The first question regarding misuse of Rs. 67,99,2727- was answered by the presenting officer to which the petitioner gave a clarification. The presenting officer asked for certain clarification from the petitioner on which a question was put to Sri A.K. Singh regarding his attempt in pursuance of the letter of Chief Marketing Manager, Sri S. Gopala Krishan dated 23.12.1998 for verification of hawker sales. Sri A.K. Singh replied that he tried to contact the hawkers but no hawker was present. The enquiry proceedings concluded the proceedings of the date by giving direction to the delinquent officer to supply certified copies of the documents enclosed along with his reply dated 10.1.1999 and the 5 bills along with letter dated 13.9.1999.

10. On the next date fixed in the enquiry i.e. 16.11.2000, the petitioner submitted documents including the wage register, bills of credit sales to Government Departments, the original numbers of godown rent receipts and the salary of chaukidar, the imprest and details of payment proof from 1994-95 to 1996-97 from the record room of the Headquarters and other documents. On the basis of these documents, the petitioner stated that the accounts have been tallied and that the allegation of embezzlement are incorrect. On 18.11.2000, the next date fixed in the enquiry, the presenting officer examined the petitioner and asked him ten questions with regard to documents produced by him and thereafter the enquiry in respect of first charge sheet was closed.

11. In respect of second charge sheet only two dates were fixed namely 9.8.2001 and 28.8.2001 and on both days, the Enquiry Officer asked question relating to petitioner''s reply to the charge sheet, which were explained by the

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petitioner. He clarified that ho was suspended on 28.6.1999 and that the Headquarter did not ask him to hand over the charge to any employee. The petitioner himself appeared before Sri Javed Nasim, Senior Manager (Accounts) on 16.7.1999 to hand over the charge and that thereafter he was assured by Sri A.K. Mehrotra to appoint an employee for handing over charge. On 30.7.1999, a letter was received through courier from Sri S. Gopal Krishna in respect of the enquiry on the charge and that in pursuance of the letter dated 28,8.1999 the petitioner handed over physical charge to Sri Gajendra Pratap Singh on 1.9.1999 to 7.9.1999. He clarified that the employees did not give any information with regard to shortage of stock. On the next and the last date, the petitioner was again asked four questions to which also he submitted his reply. He submitted that no first information report was lodged with the police and that during the period, the petitioner was visiting Headquarters in connection with enquiry, nine employees in the depot were Incharge of the sales and were maintaining individual accounts of sale. Sri Gajendra Pratap Singh was a senior sales man and that these employees are responsible for any loss which may have been caused to the Corporation.

12. The enquiry proceedings and the report of the Inquiry Officer shows that the author of the report which was the basis of charges, Sri A.K. Singh was not cross-examined. The Inquiry Officer had fixed 8.11,2000 for cross-examination but instead of allowing petitioner to cross examine Sri A.K. Singh, the Inquiry Officer himself asked only one question from Sri A.K. Singh and fixed the matter on 16.1, .2000 and that Sri A.K. Singh did not appear thereafter. There is no substance in the submission of the counsel for respondents that the petitioner was given opportunity to produce evidence in defence. The entire defence of the petitioner was based on the practice prevalent at the depot for making advance payment towards salary from the sale amount in the depot and that the rent of the Godown was actually paid. The petitioner was not allowed to lead evidence on this question and that no finding had been recorded that these amounts were actually not paid over towards the salaries of the employees and rent of the godown.

13. In respect of second charge there were allegation . of misappropriation of Rs. 89,524.30 which included the credit sale of Rs. 49,905.00, whereas the Inquiry Officer was satisfied with the credit sales of Rs. 49732.60 and payment of godown rent from 1993 to 1996 of Rs. 20,700.00 as well as the deposit of Rs. 9,110.30 out of the credit sales from 24.3.1999 to 31.8.1999. He, therefore, wrongly found that the petitioner could not give the details of the. credit sales of Rs. 73,381.40 whereas on his own calculation this amount should have been much less. The third charge was not established and with regard to the fourth charge of the first charge sheet, the Inquiry Officer wrongly observed that the petitioner was given opportunity to examine Sri A.K. Singh and Jagdish Prasad Gupta, Accountant. In fact, the petitioner was not given opportunity to cross examine Sri A.K. Singh and Jagdish Prasad Gupta and that Sri A.K. Singh had admitted that he had not even cared to find out whether the credit sales were

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made through hawkers under the Hawker Scheme. He admitted that he had not cared to find out from the hawkers who had conducted sales. This charge was found proved by the Inquiry Officer only on a discrepancy in the bill book. He found that four bills were issued on the same date on 31.3.1998 and that hawkers sales were made beyond prescribed limit of rupees one lac.

14. In respect of the charge of shortage of stocks in the second charge-sheet I find that the petitioner was under suspension. He had requested the Head Quarter to permit him to hand over the charge and that inspite of his request he was informed only after about two months to hand over the charge to Sri Gajendra Prasad Singh. During this period he was attending the enquiry proceedings and that all the nine employees were working on their own. The Inquiry Officer found the charge established only on the statement of petitioner that he continued with possession of the keys of the depot.

15. From the aforesaid discussion I find that the allegations against the petitioner were founded only upon/surprise inspection made by Sri A.K. Singh Incharge Regional Marketing Manager on 24.3.1999. Instead of verifying the documents submitted in defence, the Inquiry Officer wrongly placed the burden on the petitioner to produce the certified copies. Sri A.K. Singh appeared during the enquiry on two dates and that inspite of request made by petitioner, the Inquiry Officer did not permit petitioner to cross/examine Sri A.K. Singh. The petitioner had taken a defence of payment of advance salary through sale amount of the depot. The Inquiry Officer did not record any finding with regard to this common practice alleged to be prevalent in all the depots. The Inquiry Officer did not record a finding that the godown rent and salary of watchman were actually not paid to the landlord of the godown and the chaukidar. It was admitted by Sri A.K. Singh that inspite of letter from higher authority he did not care to verify the hawkers sale either by calling hawkers or taking any such method for verification which may have been open to him. With regard to second charge sheet I find that the petitioner was under suspension and was attached to Headquarters . He was attending enquiry proceedings and was making request to hand over the charge of depot to any responsible person. The respondents took two months in giving instruction to hand over the charge to Senior Sales Man. The Inquiry Officer did not care to find out whether he was present at the depot during the relevant period and had any effective charge over the depot and directly attributed the shortage of stock to the petitioner only on the ground that he kept the keys of the depot with him. There was no evidence with regard to attributing shortage of stock during this period to the petitioner except the circumstances that the petitioner had keys in his possession.

16. On the aforesaid facts and circumstances, 1 find that the petitioner was not given adequate opportunity to defend himself by cross examining Sri A.K. Singh and no opportunity was given to him to lead his evidence and the charges were not established against him.

17. Counsel for respondent gave an offer that the corporation shall reduce the

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amount to be recovered from the petitioner to the extent that he was able to explain the credit sales utilized and the godown rent. I am not prepared to accept this offer as the inquiry is even otherwise vitiated on account of failure to following principles of natural justice.

18. The writ petition is allowed. The impugned order dated 18.5.2002 passed by the Managing Director, Uttar Pradesh Handloom Corporation Limited, Kanpur and the order dated 30.11.2002 passed by Board of Directors dismissing petitioner''s appeal are set aside. There shall be no order as to costs.

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