
(1999) 11 AHC CK 0106
In the Allahabad High Court
Case No : Special Appeal No. 1007 of 1999

Lal Bahadur Singh

APPELLANT

Vs

Engineer-in-Chief (Mechanical), Lucknow and others

RESPONDENT

Date of Decision : 02-11-1999

Acts Referred:

Citation : (2000) 1 AWC 7 : (2000) 85 FLR 919 : (2000) 1 UPLBEC 515

Hon'ble Judges : N.K. Mitra, C.J;S.R. Singh, J

Bench : Division Bench

Advocate : Deo Prakash Singh, for the Appellant; Senior Counsel, for the Respondent

Final Decision : Disposed Of

Judgement

S.R. Singh, J.—This appeal is directed against the judgment and order dated 8.9.1999 thereby dismissing the appellant's writ petition which he had instituted challenging the order dated 28.8.1999 whereby the appellant, a Junior Engineer (Mechanical) in the Irrigation Department, Government of Uttar Pradesh, presently posted in Lift Irrigation Department, Kanpur, has been placed under suspension in contemplation of the disciplinary enquiry in respect of his act or omission amounting to misconduct of the year 1994 while he was posted in Laghu Dal Nahar Khand, Allahabad.

2. We have heard Sri R. N. Singh, Senior Advocate appearing for the appellant and standing counsel representing the respondents and perused the judgment and order under challenge.

3. It appears that the irregularity for which the disciplinary enquiry against the appellant is said to be in contemplation pertains to supply of teak wood which on examination by the Forest Research Institute, a Government of India concern, was found to be "Jamun" wood Instead of leak wood. The wood was supplied by a contractor and the payment was made at the rate applicable to teak wood. This resulted in financial loss to the Government. The order of suspension has been

issued by the Praraukh Abhiyanta (Vantrik) on the basis of the report of "Technical Audit Cell" (T.A.C.) submitted to Government on consideration whereof the Special Secretary, Government of U. P. Sinchai Anubhag 6 by his letter dated August 3, 1999 asked the Pramukh Abhiyanta (Enquiry) (Mechanical), Sinchai Vibhag, Lucknow to initiate disciplinary proceeding in his capacity as appointing authority against the appellant and two other Junior Engineers, namely, V. N, Chaudhary and Syed Saiduddin. It would appear from the letter aforesaid that the decision to suspend the appellant was taken at the level of the Government on consideration of the T.A.C. report and the Principal Engineer of the concerned Department was asked to formally initiate disciplinary proceeding against the appellant.

4. The suspension order was challenged before the learned single Judge, inter alia, on the grounds firstly, that it was based on the dictate of the State Government : secondly, that the alleged incident of misdemeanor took place in the year 1994 and since the petitioner had already been transferred from Allahabad, the disciplinary enquiry could be conducted even without placing the petitioner under suspension ; and thirdly, that the order suffers from non-application of mind to relevant factors. The learned single Judge repelled the contentions raised on behalf of the petitioner and held that :

"The State Government has an innate right to control, supervise and to keep a watch over the activities of the State employees whether he is junior or senior in the hierarchy. A decision was taken at the Government level that in view of the TAC enquiry report, the petitioner along with other delinquent employees be suspended and disciplinary proceedings be initiated against them. It is the that on receipt of the order of the State Government dated 3.8.1999, appropriate authority passed the impugned order of suspension on 28.8.1999. A reading of the impugned order would indicate that the appropriate authority has made an independent appraisal of the allegations against the petitioner. The gravement of the charge against the petitioner is that instead of wooden planks of Shakhoo. Jamun wood was used in connection with the Pathri Pump Nahar and the payment was made at the rate which was applicable for the Shakhoo wood with the result loss was caused to the State exchequer. The allegation as it is, cannot be said to be light or flimsy."

5. In State of Orissa Vs. Bimal Kumar Mohanty, ., the Supreme Court has held that :

"It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should

consider the above aspects and decide whether it is expedient to keep an employee under suspension..... would not be as an administrative routine or an automatic order to suspend an employee."

6. Learned counsel appearing for the appellant reiterating the submissions made before the learned single Judge urged further that the charge on which the appellant has been placed under suspension is general in nature and lacks material particular in that there was nothing to indicate as to what was the role played by the appellant in the supply of the wooden planks which were found to be "Jamun" wood instead of teak wood and further that the competent authority was not justified in placing the appellant under suspension on such a vague charge. He has placed reliance on a Supreme Court decision in *Transport Commissioner, Madras-5 Vs. A. Radha Krishna Moorthy*, . In that case, the respondent therein was served with a charge memo in respect of misappropriation of large amount of Government money in the office of Regional Transport Officer, Madras Central, during the years 1983-84 and 1984-85. The Tamil Nadu Administrative Tribunal allowed the original application and quashed the memo of charges communicated to the respondent therein, inter alia, on the ground that the charges communicated by the statement of particulars in or any other manner. The Supreme Court observed as under:

"A reading of charges would show that they are not specific and clear. They do not point out clearly the precise charge against the respondent, which he was expected to meet. One can understand the charges being accompanied by a statement of particulars or other statement furnishing the particulars of the aforesaid charges but that was not done. The charges are general in nature to the effect that the respondent along with either other official indulged in misappropriation by falsification of accounts. What part account did he falsify or help falsify, which amount did he individually or together with other named persons misappropriate, are not particularised. The charge is a general one. It is significant to notice that respondent has been objecting to the charges on the ground of vagueness from the earliest stage and yet he was not furnished the particulars....."

7. In the present case, the wooden planks were supplied by a contractor under a contract in the finalisation of which, perhaps, the appellant had no hand and it is not suggested even vaguely that the appellant was in any way in connivance with the contractor. In Special Appeal No. 1025 of 1999, *Syed Saiduddin v. State of U. P. and others*, arising out of a similar order passed by the single Judge in a writ petition challenging an identically worded suspension order passed against the co-delinquent Syed Saiduddin, this Court, after considering the facts and circumstances of the case and the materials placed on record, disposed of the special appeal with the direction that the suspension order would remain in abeyance without prejudice to the enquiry to be concluded by the enquiry officer and taken to its logical end by the disciplinary authority within the time schedule prescribed by the learned single Judge. The appellant herein was transferred

from Allahabad before he was placed under suspension. Regard being had to the facts and circumstances of the case, we are inclined to dispose of this appeal as well in terms of directions in which Special Appeal No. 1025 of 1999 has been disposed of by this Bench.

8. Accordingly, the appeal is disposed of with the direction that the order suspending the appellant shall remain in abeyance without prejudice to the enquiry which will be concluded by the enquiry officer and taken to its logical end by the disciplinary enquiry within the time frame indicated in the judgment of the learned single Judge. The judgment of the learned single Judge is modified to this extent.