

(2013) 11 AHC CK 0130

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 34202 of 2002

Mativar Singh

APPELLANT

Vs

Secretary (Agriculture) and Others

RESPONDENT

Date of Decision : 21-11-2013

Acts Referred:

Citation : (2013) 11 ADJ 398 : (2014) 102 ALR 361

Hon'ble Judges : Rakesh Tiwari, J; Bharat Bhushan, J

Bench : Division Bench

Advocate : B.C. Naik, for the Appellant;

Judgement

Bharat Bhushan, J.—The petitioner Mativar Singh, was punished vide order dated 27.4.2001 pursuant to the departmental enquiry initiated after eleven years, for theft of official vehicle (jeep) allotted to him in his official capacity. Brief facts leading to the present writ petition are that one official vehicle No. UMV 2687 was allotted to the petitioner in his official capacity of Sub-divisional Agriculture Extension Officer, Azamgarh with official driver. Since there was no "Garage" in the campus of office, the driver used to park the said vehicle in front of office. An office clerk namely Sri Bhairo Prasad and a Chowkidar Sri Chandrabali Yadav as well as the jeep driver Bhuneshwar Kant used to reside in office. Keys of the said jeep were kept by the Jeep Driver Bhuneshwar Kant.

2. The petitioner contends that he fell sick during official tour on 23.3.1989, therefore, he went on leave for 24.3.1988 with oral permission of Deputy Director of Agriculture. The said official vehicle was stolen during the night of 24/25-03-1988 when petitioner was neither present in the office nor at his residence situate at Lalganj Bazar, Azamgarh as he had gone out to Varanasi for treatment. But Senior Clerk Bhairo Prasad, Driver of the jeep Bhuneshwar Kant and Chowkidar Chandrabali Yadav were present in the office campus and that the Chowkidar was specifically responsible for guarding the office campus and its properties including stolen vehicle (jeep). A report was lodged at Police Station Lalganj, Azamgarh. As the Investigating Officer failed to decipher the case, the

Circle Officer, Lalganj entrusted the investigation to another police Officer. Even the new Investigating Officer could not succeed in either recovering the said stolen vehicle or tracing the thief. Ultimately, the investigation was closed and the final report was submitted.

3. Department did not initiate any action against the petitioner but his rating of "good" in annual remark by a reporting and reviewing authority was rejected by accepting authority downgrading the petitioner as "bad" officer for the loss of the official vehicle. Petitioner's representation against this drop in rating was rejected by the Government, therefore, he filed the aforesaid claim petition before the State Public Services Tribunal, Lucknow which was allowed on 2.8.2000 directing deletion of the adverse rating from the Character Roll of the petitioner.

4. Suddenly, after eleven years of theft of the said vehicle, a charge-sheet was served upon the petitioner in March, 1999 blaming him for carelessness resulting into the theft of jeep. The petitioner submitted his reply denying any liability for theft of the official vehicle. He also denied that he left the station on 23.3.1988 without prior permission. Similarly, he denied the third allegations that the "Garage" was not constructed due to his carelessness.

5. Enquiry report was later on submitted holding the delinquent employee guilty of all the charges and after issuing a show-cause notice with prior consultation with Uttar Pradesh Public Services Commission the punishment order dated 27.4.2001 detailed above was passed after the retirement of petitioner/delinquent employee on 31.12.2000 directing a deduction of Rs. 64,845/- in single installment from the gratuity of the Government employee/petitioner. But as the petitioner had already received his retiral dues on his retirement, he was asked to deposit the aforesaid amount into the State Treasury.

6. Heard Sri P.C. Nayak, learned counsel for the petitioner and learned Standing Counsel.

7. Learned counsel for the petitioner has assailed the disciplinary proceedings primarily on four counts (i) first being that he was not provided documents as mentioned in the charge-sheet having repeatedly asked for the same; (ii) no oral evidence was adduced, therefore, he could not get opportunity to cross-examine the witnesses and produce his own evidence; and (iii) some other employees were exonerated while he has been asked to pay Rs. 64,845/- after his retirement; (iv) inquiry was initiated after eleven years.

8. Learned counsel for the petitioner has also claimed that he was deliberately singled out for the punishment on account of bias of some departmental officials. It would be appropriate to delineate certain facts in order to appreciate the contentions of the petitioner.

9. Learned counsel for the petitioner has submitted that the relevant documents were not supplied to him before initiation of departmental proceeding vitiating

the entire enquiry.

10. It is submitted by learned counsel for the respondents that there is no provision for permitting any employee to go on casual leave on the basis of oral sanction. In any case the Deputy Director of Agriculture (Extension) has denied that he had given any oral sanction to the petitioner to leave the Head Quarter on 23.3.1988. He has further emphasised that the "Garage" was ordered to be constructed by the agriculture work shop, Azamgarh and same was provided to the Kisaan Beej Bhandar, Azamgarh on 28.1.1988. The petitioner was directed to shift the aforesaid "Garage" in the campus of the office situate at Lalganj but same was not shifted by the petitioner resulting into the theft of vehicle.

11. It is also submitted that proper enquiry was conducted wherein the petitioner was given ample opportunity to defend himself and after considering the evidence available on record, the punishment order was passed. It is also stated that in any case the order of State Public Services Tribunal deleting the adverse remarks from the Character Roll of the petitioner would not affect the outcome of the departmental enquiry.

12. The petitioner in his rejoinder-affidavit has reiterated that proper enquiry was not conducted and he did not get any opportunity to rebut the allegations of the department as the required documents were not provided despite repeated requests and failure to provide the documents has, thus, vitiated the entire enquiry.

13. The High Court on judicial review does not hear appeal from disciplinary decisions pursuant to the disciplinary proceedings but reviews the manner in which the decision is made. It is the duty of the High Court to ensure that delinquent employee receives a fair treatment and enquiry into the charges of misconduct is conducted by observing principles of natural justice and prevailing rules. It can only interfere where inquiring authority lacks jurisdiction to conduct such inquiry or delinquent employee has been dealt with in the manner inconsistent to the fundamental rules or in violation of statutory rules prescribed for conducting the enquiry or where the conclusions are based on perverse interpretation of the evidence or no evidence.

14. The jeep was stolen between the intervening night of 23/24-3.1988 from the office campus when the petitioner had gone for treatment at Varanasi with or without permission of his superior officer but it is apparent that even if the petitioner had not taken leave on particular day, he would have been at his residence located in Lalganj Bazar and theft could have still occurred in the facts and circumstances of the case. Presence of the petitioner in Azamgarh at his residential accommodation would not have made any difference to the actual incident. Yet the petitioner was awarded adverse remark for his carelessness leading to the theft of departmental jeep. This adverse remark was admittedly quashed by the State Public Services Tribunal, Lucknow vide judgment and order dated 2.8.2000 passed in Claim Petition No. 269 of 1993 (Mativar Prasad Singh

v. State of U.P. and others).

15. It is pertinent to point out that till that time no enquiry had been initiated against the petitioner. Subsequent to the aforesaid judgment a charge-sheet was served on petitioner for substantially the same charges with two additional charges on 17.3.1999 after eleven years and just prior to the retirement of petitioner with absolutely no explanation for laches in initiating the proceedings against him. It is this unexplained delay which has prompted the learned counsel for the petitioner to allege that the departmental action was initiated on account of pre-conceived notions and bias. Therefore, for this reason too, it was incumbent upon the disciplinary authority to provide reasonable and satisfactory explanation for this considerable delay.

16. Enquiry was not conducted merely on account of theft of jeep. Two additional charges were also added. Second charge was about his absence on 24.3.1988 from the office. Counsel for the petitioner has submitted that the petitioner took leave from his senior officer in the evening of 23.3.1988 on account of sickness but he actually handed over the leave application on 25.3.1988. This action has prompted the second charge. The third charge relates to the connected allegations. The department alleges that the construction of "Garage" was ordered on 12.6.1986 which was ultimately supplied on 28.1.1988 by Assistant Agriculture Engineer and yet petitioner failed to install that "Garage" at required place resulting into the theft of the jeep. All these charges relate to the conduct of the petitioner prior to 24.3.1988. Therefore, there was no occasion for the department to initiate the enquiry after eleven years. It is pertinent to point out that the petitioner retired on 31.12.2000 before completion of enquiry proceedings.

17. There is no doubt that the delinquent employee is entitled to obtain or to get an opportunity to inspect the documents mentioned in the charge-sheet. If the department seeks to rely on any documents in proof of the charge, the principles of natural justice requires that copies of such documents should be supplied to the employee facing enquiry. It is vital in the interest of fairness to provide copies of the documents to the delinquent employee right at the start of the enquiry itself. In *Committee of Management, Kisan Degree College Vs. Shambhu Saran Pandey and Others*, , Apex Court has held as under:

If the department or the management seeks to rely on any documents in proof of the charge, the principles of natural justice require that such copies of those documents need to be supplied to the delinquent. If the documents are voluminous and cannot be supplied to the delinquent, an opportunity has got to be given to him for inspection of the documents. It would be open to the delinquent to obtain appropriate extracts at his own expense. If that opportunity was not given, it would violate the principles of natural Justice. At the enquiry, if the delinquent seeks to support his defence with reference to any of the documents in the custody of the management or the department, then the documents either may be summoned or copies thereof may be given at his

request and cost of the delinquent.

It is stated in the letter written by the enquiry officer that inspection of documents would be given at the time of final hearing. That obviously is an erroneous procedure followed by the enquiry officer. In the first instance he should be given the opportunity for inspection and thereafter conduct the enquiry and then hear the delinquent at the time of conclusion of his enquiry. In this case that procedure was not adopted. Therefore, the procedure in conducting the enquiry adopted is clearly in violation of the principles of natural justice.

18. The petitioner was served with a charge-sheet dated 17.3.1999 disclosing three charges and all these charges contemplated examination of documentary evidence, therefore, it was incumbent upon the enquiry officer to provide these documents to the delinquent employee or at least provide an opportunity for inspection of these documents. There is no evidence on record that either of these two course were adopted by enquiry officer. On the other hand, petitioner moved an application dated 6.5.1999 requesting enquiry officer to provide him documents at the time of submission of his reply. There is averment in this reply that the petitioner had requested on 12.4.1999 and 1.5.1999 for supply of required documents. It was stated that petitioner/delinquent employee was constrained to file his reply in absence of the required documents. This averment should have had alerted the enquiry officer and he should have supplied the documents even at that stage but there is no evidence on record except bald denial in the counter-affidavit that required documents were supplied to the petitioner during the course of enquiry.

19. Enquiry proceedings are also vitiated on account of failure to record the oral evidence. The enquiry report available on record (Annexure 7 to the writ petition) does not reflect that any oral evidence was recorded. It is true that oral evidence may not be necessary in every enquiry especially when the delinquent employee has admitted the facts or no real prejudice is caused to such employee or no other conclusion is possible. In such situations, enquiry proceeding will not be vitiated but otherwise oral evidence must be recorded. We believe that in the facts and circumstances of the present case oral evidence was necessary. We may refer some decisions of Apex Court as well as this Court on this issue:

20. Apex Court in the State of U.P. and Others Vs. Saroj Kumar Sinha, , held:

An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

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 a 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.

21. Similar view was taken in *Roop Singh Negi Vs. Punjab National Bank and Others*, :

Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, *inter alia*, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

22. This Court has also taken same view in *Subhash Chandra Sharma Vs. Managing Director, U.P. Co-op. Spg. Mills Federation Ltd., Kanpur and another*, :

In our opinion after the petitioner replied to the charge-sheet a date should have been fixed for the enquiry and the petitioner should have been intimated the date, time and place of the enquiry and on that date the oral and documentary evidence against the petitioner should have been led in his presence and he should have been given an opportunity to cross-examine the witnesses against him and also he should have been given an opportunity to produce his own witnesses and evidence. If the petitioner in response to this intimation had failed to appear for the enquiry then an *ex parte* enquiry should have been held but the petitioner's service should have not been terminated without holding an enquiry. In the present case it appears that no regular enquiry was held at all. All that was done that after receipt of the petitioner's reply to the charge-sheet he was given a show-cause notice and thereafter the dismissal order was passed. In our opinion this was not the correct legal procedure and there was violation of the rules of natural justice. Since no date for enquiry was fixed nor any enquiry held in which evidence was led in our opinion the impugned order is clearly violative of natural justice.

23. Similarly the Division Bench of this Court in *Mahesh Narain Gupta Vs. State of U.P. and Others*, had also occasion to deal with the same issue. It held:

At this stage, we are to observe that in the disciplinary proceedings against a

delinquent, the department is just like a plaintiff and initial burden lies on the department to prove the charges which can certainly be proved only by collecting some oral evidence or documentary evidence, in presence and notice charged employee. Even if the department is to rely its own record/document which are already available, then also the enquiry officer by looking into them and by assigning his own reason after analysis, will have to record a finding that those documents are sufficient enough to prove the charges.

In no case, approach of the Enquiry Officer that as no reply has been submitted, the charge will have to be automatically proved can be approved. This will be erroneous. It has been repeatedly said that disciplinary authority has a right to proceed against delinquent employee in ex parte manner but some evidence will have to be collected and justification to sustain the charges will have to be stated in detail. The approach of the enquiry officer of automatic prove of charges on account of non-filing of reply is clearly misconceived and erroneous. This is against the principle of natural justice, fair play, fair hearing and, thus, enquiry officer has to be cautioned in this respect.

24. In another case in *Dr. Subhash Chandra Gupta Vs. State of U.P.*, a Division Bench of this Court, observed as under:

It is well-settled that when the statute provides to do a thing in a particular manner that thing has to be done in that very manner. We are of the considered opinion that any punishment awarded on the basis of an enquiry not conducted in accordance with the enquiry rules meant for that very purposes is unsustainable in the eye of law. We are further of the view that the procedure prescribed under the inquiry rules for imposing major penalty is mandatory in nature and unless those procedures are followed, any outcome inferred thereon will be of no avail unless the charges are so glaring and unrefutable which does not require any proof. The view taken by us finds support from the judgment of the Apex Court in 1996 VII AD 821 (SC), as well as by a Division Bench of this Court in *Subhash Chandra Sharma Vs. Managing Director, U.P. Co-op. Spg. Mills Federation Ltd., Kanpur and another*, .

A Division Bench decision of this Court in the case of *Salahuddin Ansari v. State of U.P. and others*, 2008 (3) ESC 1667, held that non holding of oral inquiry is a serious flaw which can vitiate the order of disciplinary proceeding including the order of punishment has observed as under:

10..... Non holding of oral inquiry in such a case, is a serious matter and goes to the root of the case.

25. Enquiry report does not reflect that any oral evidence was recorded by the Enquiry Officer. This Conclusion is fortified by the contents of the charge-sheet (Annexure 5 to the writ petition) served upon the petitioner. Proposed evidence in support of each charge does not reflect that any oral evidence was even contemplated by the enquiry officer. Each charge was to be proved by documentary evidence. The final enquiry report also does not reflect that any

oral evidence was recorded.

26. We believe that oral evidence was necessary in the present case for the simple reason that documentary evidence is required to be exhibited by proving the same by oral evidence and also for the reason that at least three employees of the department including Chowkidar were present in the office campus at the time of theft of official vehicle. A Chowkidar was present precisely for safety of the departmental properties. None of these employees were produced during course of enquiry. It is apparent that delinquent employee did not get opportunity to cross-examine any witness. Enquiry report does not reflect that author of documentary evidence or keeper of documents and official communication were produced during course of enquiry for cross-examination by delinquent employee.

27. Petitioner has stated that he took leave on 23.3.1988 from his superior officer i.e. Deputy Director Agriculture to visit Varanasi for treatment and he submitted casual leave application for 24.3.1988 on his return on 25.3.1988. Enquiry report says that the concerned Deputy Director Agriculture has not supported this claim of delinquent employee yet said Deputy Director Agriculture was not produced during the course of enquiry. Failure to produce the aforesaid officer also resulted in denial of opportunity to the petitioner to cross-examine such officer in this regard. Enquiry report does not record how and in what manner superior officer denied the grant of consent for casual leave to the delinquent employee.

28. Learned counsel for the petitioner has pointed out that it is usual practice in Government Departments to proceed on Casual Leave without prior permission or on the basis of the oral consent. Casual leaves are meant for this purpose. We also believe that it is usual practise in Government Department all over the Uttar Pradesh to proceed on casual leave for a day or two either without prior permission or on oral consent in personal emergencies. This Court cannot ignore the usual practise prevailing in the Government Departments all over the Uttar Pradesh, especially in the departments in which emergency duties are either absent or rare. In any case failure to record oral testimony of the Deputy Director Agriculture who allegedly granted oral consent to the petitioner to proceed on casual leave has certainly vitiated the enquiry proceedings. It appears that the preliminary enquiry was conducted prior to April, 1994 and during the course of this preliminary enquiry certain statements were recorded and yet witnesses produced during the course of this preliminary enquiry were not offered for cross-examination during the final enquiry vitiating the entire proceedings.

29. The charge-sheet was served on the delinquent employee on 6.4.1999 and written statement was submitted by him on 11.5.1999 but neither the charge-sheet nor the enquiry report discloses that any specific date was fixed by the enquiry officer for adducing the evidence of petitioner/delinquent employee. Counter-affidavit also does not disclose the specific date on which petitioner was

asked to produce his evidence in the enquiry. Principal of natural justice requires that even if delinquent employee has not asked for production of evidence, it is incumbent upon the enquiry officer to record the evidence may be in ex parte manner, if required.

30. It is also true that the charge-sheet was served upon the petitioner asking him to submit his written statement by particular date but once the written statement was submitted apparently no date was fixed for cross-examination of oral evidence of witnesses and production of defence evidence. Enquiry Officer is authorised to record the ex parte evidence in case delinquent employee fails to appear before him/her despite notice of the date fixed. In this case also, it was necessary and expedient to record the statements of the witnesses in support of allegations. But there is no sign that the delinquent employee was given any opportunity to submit oral or documentary evidence in his defence. Enquiry report does not demonstrate that any reasonable opportunity was given to delinquent employee/petitioner to rebut the charge. Apex Court in case of *State of U.P. and Others Vs. Saroj Kumar Sinha*, , has held thus:

The proposition of law that a Government employee facing a department enquiry is entitled to all the relevant statement, documents and other materials to enable him to have a reasonable opportunity to defend himself in the department enquiry against the charges is too well established to need any further reiteration. Nevertheless given the facts of this case we may re-emphasise the law as stated by this Court in the case of *The State of Punjab Vs. Bhagat Ram*, :

6. The State contended that the respondent was not entitled to get copies of statements. The reasoning of the State was that the respondent was given the opportunity to cross-examine the witnesses and during the cross-examination the respondent would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the respondent with the gist of the evidence.

7. The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the Government servant is afforded a reasonable opportunity to defend himself against the charges on which inquiry is held. The Government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the Government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the Government servant. Unless the statements are given to the Government servant he will not be able to have an effective and useful cross-examination.

8. It is unjust and unfair to deny the Government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the Government servant. A synopsis does not

satisfy the requirements of giving the Government servant a reasonable opportunity of showing cause against the action proposed to be taken.

31. For the aforesaid reason we believe that oral enquiry was necessary in the facts and circumstances of the case and the delinquent employee should have been offered opportunity to cross-examine the witnesses. He also should have been allowed to adduce evidence in his defence. It is apparent that petitioner repeatedly asked for some documents but the enquiry officer did not supply the required documents to the petitioner during the course of enquiry. The enquiry officer failed to observe the principles of natural justice. In view of discussion made hereinabove, the writ petition is allowed. The impugned order dated 27.4.2002 (Annexure 9) passed by the respondent No. 1, order dated 15.5.2002 (Annexure 10) and order dated 7.6.2002 (Annexure 11) passed by the respondent Nos. 2 and 3 respectively are liable to be quashed and are accordingly quashed. Respondents are further directed to not realise Rs. 64845/- from the petitioner in pursuance of office memorandum dated 27.4.2002 (Annexure 9 to the writ petition).