
(2013) 03 AHC CK 0026
In the Allahabad High Court
Case No : C.M.W.P. No. 3840 of 2008

Mohammad Imran

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-03-2013

Acts Referred:

Citation : (2013) 6 AWC 6483

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : Sharad Madhyan, I.M. Khan, Ranjeet Saxena and M.A. Siddiqui, for the Appellant; J.P. Pandey, Pankaj Kumar Shukla and Nipendra Mishra, for the Respondent

Final Decision : Disposed Of

Judgement

B. Amit Sthalekar, J.—By means of this writ petition, the petitioner is challenging the order dated 1.12.2007 by which he has been dismissed from service. The petitioner was posted at the relevant point of time at 33/11 KV Sub-Station, Kailashpur Saharanpur. Thereafter he was promoted to the post of Junior Meter Testor and transferred to the Vidyut Parikshanshala-II, Saharanpur. On 20.8.2007 one Zubair Khan who was running a atta chakki was found involved in theft of electricity and an F.I.R. was lodged at the police station Gagalabri District Saharanpur under Sections 147, 148, 332, 353 and 307, I.P.C. The police submitted a charge-sheet on 29.8.2007. Thereafter, second charge-sheet was also issued on 25.10.2007 and a case was registered against the petitioner and some other persons. Special Session Trial No. 775 of 2007 was initiated against the petitioner and others. In the meantime a charge-sheet was issued to the petitioner on 30.10.2007 and the petitioner was required to submit his reply within 15 days. The charge-sheet alongwith the preliminary enquiry report was sent to the petitioner on 31.10.2007 by registered post. Thereafter, the order dated 1.12.2007 was passed by which the petitioner was dismissed from service.

2. I have heard Shri Ranjeet Saxena, learned counsel for the petitioner, Shri

Nipendra Mishra, learned counsel for the respondent Nos. 2 and 3 and the learned standing counsel representing respondent No. 1.

3. In paragraph 19 of the writ petition there is a categorical averment by the petitioner that no charge-sheet or notice or opportunity was given to the petitioner and his services have been terminated by the impugned order dated 1.12.2007.

4. A counter-affidavit has been filed on behalf of respondent Nos. 2, 3 and 4 and in paragraph 21 thereof it is stated that an enquiry was held and thereafter a charge-sheet was issued to the petitioner on 30.10.2007. The petitioner was required to submit his reply to the charge-sheet within 15 days. It was further provided that in case the reply is not submitted within 15 days ex parte proceedings would be held against the petitioner. A copy of the charge-sheet alongwith enquiry report was sent to the petitioner on 31.10.2007 by registered post. When the petitioner did not submit his reply by 20.11.2007 an advertisement is stated to have been published in the news paper Amar Ujala and Dainik Jagran on 24.11.2007 and the petitioner was granted one week's time to submit his reply to the charge-sheet. It is further stated that when the petitioner did not submit his reply within one week, the respondents had no option but to proceed ex parte and thereafter the impugned order was passed on 1.12.2007 dismissing the petitioner from service.

5. From a perusal of the documents on record and the averments made in paragraph 19 of the writ petition, it will be noticed that the charge-sheet was issued on 30.10.2007 giving him 15 days time to submit his reply. The said charge-sheet was dispatched by registered post. When no reply was submitted by the petitioner by 20.11.2007 an advertisement was published in the news papers on 24.11.2007. This advertisement has been filed as Annexure-3 to the writ petition and a perusal of the same also demonstrates that in this advertisement also one week's time was granted to the petitioner to submit his reply. The period of one week calculated from 24.11.2007 would expire on 1.12.2007. The impugned order dismissing the petitioner from service is dated 1.12.2007 itself. Thus counting 7 days from 24.11.2007, the petitioner could have submitted his reply, if at all towards the end of the day on 1.12.2007 and, therefore, it is rather surprising as to how the order of dismissal was passed on 1.12.2007 itself, assuming therein that the petitioner did not submit any reply.

6. Be that as it may, even if the petitioner had not responded to the news paper publication filed as Annexure-3 to the writ petition, the impugned order does not indicate that any enquiry proceedings was held against the petitioner to bring home the charges against him. It was upon the respondents to hold an enquiry against the petitioner as a duty was cast upon the respondents to prove the charges against the petitioner and merely because the petitioner did not submit any reply it could not have been assumed that the charges stood admitted by the petitioner in the absence of any admission in that regard.

7. Admittedly no enquiry proceedings were held after the issue of charge-sheet to the petitioner and without proving the charges against him, the impugned order dismissing him from service had been passed on 1.12.2007.

8. Shri Ranjeet Saxena then submitted that in the criminal proceedings initiated against the petitioner he had been acquitted of the charges. A copy of the judgment of the trial court dated 31.10.2009 has been filed alongwith the supplementary counter-affidavit dated 17.3.2011 and a perusal of the same shows that the petitioner has been acquitted of the charges giving him benefit of doubt. Mere acquittal by a criminal court does not take away the powers of the disciplinary authority to initiate disciplinary proceedings against the petitioner. The law in this regard has been settled by the Supreme Court in no uncertain terms.

9. The Supreme Court in the case Senior Superintendent of Post Offices, Pathanamthitta and Others Vs. A. Gopalan, , has held in paragraphs 4 and 6 as follows:

4. It appears that the respondent was prosecuted in a criminal court in respect of the offences under Sections 407, 467 and 477A, I.P.C. disclosed in the first charge regarding the withdrawal of Rs. 8,000 by him. In the said criminal proceedings the respondent; was acquitted by the Judicial Magistrate, First Class by the judgment dated 31.8.1987 on the view that benefit of doubt must be given to the respondent and that the offence has not been established beyond reasonable doubt. The said judgment of acquittal was affirmed in appeal by the High Court.

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6. We have heard Shri V.C. Mahajan, the learned senior counsel appearing for the appellants and Shri K.M.K. Nair, the learned counsel appearing for the respondent. Shri Nair has submitted that since the respondent has been acquitted by the criminal court on the charge of withdrawal of Rs. 8,000 the Tribunal was right in holding that the finding regarding the first charge could not be sustained. Shri Nair has placed reliance on the decision of this Court in Nelson Motts v. Union of India. The said decision does not led support to the said submission of Shri Nair. In that case the Court has rejected the contention that disciplinary proceedings could not be continued in the face of the acquittal in the criminal case and has held that the nature and scope of the criminal case are very different from those of a departmental disciplinary proceedings and an order of acquittal, therefore, cannot conclude the departmental proceedings. This is so because in a criminal case the charge has to be proved by the standard of proof beyond reasonable doubt while in departmental proceedings the standard of proof for proving the charge is preponderance of probabilities. The Tribunal was, therefore, in error in holding that in view of the acquittal of the respondent by the criminal court on the charge relating to withdrawal of Rs. 8,000 the finding on the first charge in the departmental proceeding cannot be upheld and must be

set aside. The Tribunal was also not right in taking the view that even though the second charge of misappropriation of the sums of Rs. 379 and Rs. 799 realized as customs duty was established, the punishment of compulsory retirement that was imposed on the respondent could not be sustained. Having regard to the fact that the second charge related to misappropriation of funds for which the punishment of compulsory retirement could be imposed the Tribunal, in exercise of its jurisdiction, could not direct the appellate authority to review the penalty imposed on the respondent.

In *Suresh Pathrella Vs. Oriental Bank of Commerce*, , the Supreme Court has held in paragraph 11 as follows:

11. In our view, the findings recorded by the learned single Judge are fallacious. This Court has taken the view consistently that acquittal in a criminal case would be no bar for drawing up a disciplinary proceeding against the delinquent officer. It is well-settled principle of law that the yardstick and standard of proof in a criminal case is different from the disciplinary proceeding. While the standard of proof in a criminal case is a proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities.

In *Employers Management West Bokaro Colliery of TISCO Ltd. Vs. Concerned Workman, Ram Pravesh Singh*, , it has held in paragraph 20 as follows:

20. The Tribunal has set aside the report of the enquiry officer and the order of dismissal passed by the punishing authority by observing that the charges against the respondent were not proved beyond reasonable doubt. It has repeatedly been held by this Court that the acquittal in a criminal case would not operate as a bar for drawing up of a disciplinary proceeding against a delinquent. It is well-settled principle of law that yardstick and standard of proof in a criminal case is different from the one in disciplinary proceedings. While the standard of proof in a criminal case is proof beyond all reasonable doubt, the standard of proof in a departmental proceeding is preponderance of probabilities.

10. It is thus settled that mere acquittal of criminal charges is no bar to holding of departmental proceedings against the delinquent employee.

11. In the circumstances it is established that the petitioner was not given adequate opportunity to submit his reply to the charge-sheet before the impugned order dismissing him from service was passed. The impugned order dated 1.12.2007, therefore, cannot survive and is accordingly quashed.

12. However the respondents will be at liberty to proceed with the enquiry against the petitioner. However, since it is the case of the respondents that the petitioner is avoiding the charge-sheet and even the suspension order, therefore, with the consent of the parties it is directed that the petitioner shall appear before the enquiry officer on 8.4.2013. The enquiry officer shall provide the petitioner the copy of the charge-sheet giving him 7 days time to reply to the charge-sheet and it is only thereafter that the enquiry officer shall proceed with

the enquiry proceedings. It is expected that the enquiry proceedings shall be taken to its logical end within a period of two months and the petitioner will cooperate with the enquiry and will not seek any unnecessary adjournments. With the aforesaid observations, this writ petition is disposed of.