(2012) 07 AHC CK 0204

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 33622 of 1990

Mohd.Idris — APPELLANT

Vs

Assistant Commissioner (Executive), Sales Tax, Ghaziabad and Others — RESPONDENT

Date of Decision : 03-07-2012

Acts Referred:

Citation : (2012) 07 AHC CK 0204

Hon'ble Judges : Sudhir Agarwal, J

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard Sri Mohit Kumar, learned Counsel for petitioner and learned Standing Counsel for respondents.

2. The Assistant Commissioner (Executive)/Sales Tax, Ghaziabad passed an order of punishment on 27.10.1990 withholding three increments of petitioner with cumulative effect and a "Censure". He also issued separately a show cause notice dated 31.10.1990 as to why salary of petitioner for the period of suspension be not confined to the amount of subsistence allowance already paid. These two orders have been assailed by petitioner in this writ petition.

3. Petitioner was appointed as Stenographer initially in 1971 and was posted in the Office of Sales Tax Officer, Khurja, District Bulandshahar. He was placed under suspension by order dated 11.10.1988 while posted at Sales Tax Office, Dibai, District Bulandshahar in a contemplated departmental enquiry. The charge sheet dated 24.11.1988 was issued which contained nine charges relating to certain acts and omissions which constitute misconduct while petitioner was posted in the Office of Sales Tax Officer, Dibai, District Bulandshahar. By order dated 21.11.1988 Sri K.S. Pundir, Sales Tax Officer, was appointed as Enquiry Officer.

4. Another charge sheet dated 1.3.1989 was issued to the petitioner in respect to certain acts and omissions of the period when petitioner was posted at Budaun

as Stenographer. This charge sheet contained two charges.

5. A separate supplementary charge sheet was also served upon petitioner on 1.3.1989 containing charge no. 10 in continuance of earlier charge sheet dated 24.11.1988.

6. By letter dated 26.2.1990 petitioner accepted that he has received on 1.12.1988 the documents relied upon in charge sheet dated 11.10.1988 and in respect to charge sheet dated 1.3.1989 along with the charge sheet itself. He however submitted that in respect to the subsequent charge sheet dated 1.3.1989 and the supplementary charge sheet containing charge no. 10 served on him on 1.3.1989, the copy of letter dated 21.11.1988 appointing Enquiry Officer was not supplied. He thus requested for supply of the said letter. He also requested for increase in his subsistence allowance to 3/4 of his salary.

7. He however did not submit any reply, and, instead sent a letter dated 16.8.1990 (Annexure 12 to writ petition) that relied upon documents supplied to him are not valid copies and he should be supplied valid copies. It was not stated in the said letter as to how copies of relied upon documents supplied to him were not valid. Another letter was sent by petitioner requesting for transfer of his disciplinary enquiry outside Ghaziabad region by appointing an Enquiry Officer out of Ghaziabad region.

8. The Enquiry Officer repeatedly requested the petitioner to submit reply to the charges and fixed date for oral enquiry but the petitioner did not submit any reply at all and also failed to appear before Enquiry Officer. It is in these circumstances, the Enquiry Officer completed and concluded inquiry ex parte and submitted report on 24.7.1990 holding all the twelve charges in the aforementioned charge sheets proved against petitioner. Relying the aforesaid report, Disciplinary Authority passed the impugned order of punishment dated 27.10.1990. Since after imposing the aforesaid punishment, petitioner was reinstated by order dated 31.10.1990, in order to take decision with respect to full payment of salary for the period of suspension, a separate show cause notice was issued on 31.10.1990 which is also under challenge.

9. It is contended that no oral enquiry at all has been held against petitioner and, therefore, the impugned order is wholly illegal and liable to be set aside. Reliance is placed on a Division Bench judgment in Subhash Chandra Sharma Vs. Managing Director and another 2000 (1) UPLBEC 541. It is also contended that stoppage of increment with cumulative effect is a major penalty and without oral enquiry, such major punishment could not have been imposed. The petitioner drew support from Apex Court''s decision in Mohinder Singh Vs. State of Punjab and others 1995 Supp. (4) SCC 433.

10. Lastly it is contended on behalf of petitioner that documents relied upon in support of charges were not supplied to him and therefore enquiry is vitiated in law. Further that the time and date etc. of oral enquiry ought to have been conveyed to petitioner which was not done, hence it would also vitiate the entire

enquiry. Here also petitioner drew support from a Division Bench Judgment of this Court in Abdul Hamid Vs. State of U.P. and others 2007 (1) ESC 270.

11. Respondents have filed counter affidavit stating that petitioner''s past service record is very bad inasmuch he was awarded adverse entries in 197071, 197172, 197374; a warning vide order dated 29.7.1974; adverse entry in 197778; Censure by order dated 13.7.1978; adverse entry in 197980; warning by order dated 15.2.1980; and Censure by order dated 9.9.1982. The documents relied in support of charges were supplied to petitioner and Enquiry Officer by letter dated 9.1.1989 directed the petitioner to appear before him. All the documents relied upon in support of charges were ultimately supplied to petitioner on 1.3.1989. The electrostat copies were supplied but the petitioner stressed upon the supply of certified copies. Except of some, certified copies of all other documents were also supplied. The remaining documents (certified copies), he was directed to receive on 7.3.1989 by the Enquiry Officer vide order dated 1.3.1989. The petitioner failed to attend the Office of Enquiry Officer so as to avail opportunity of haring. He was only sending letters and reminders and did not appear before Enquiry Officer at all. He requested for change of Enquiry Officer which was rejected by Joint Commissioner (Administration) on 6.2.1989. Despite opportunity granted he did not avail the same hence respondents had no option but to proceed further and hence no interference is called for.

12. The first issue up for consideration is regarding non supply of relied on documents. Learned counsel for petitioner though stated that relevant documents, relied in support of charges, were not supplied to petitioner but when he was required to point out the documents which were not supplied to him, he miserably failed and could not point out any such document which was relied in support of charges but not supplied to him. In effect, petitioner''s letter dated 26.2.1990 itself show that documents relied in the charge sheet dated 11.10.1988 were made available to him on 1.12.1988. In para 2 of his letter dated 26.2.1990 (Annexure 11 to writ petition) he has said:

English Translation by the Court:

"That copies of evidences enclosed with charge sheet were made available to me by the Enquiry Officer on 1.12.1988."

13. However, he requested again for supply of those very documents which he had already received and it is the second time, the documents were made available on 1.3.1989. From the letter dated 26.2.1990 the only document which the petitioner wanted and claimed to have not been made available is the copy of order whereby Enquiry Officer was authorized to hold enquiry on the subsequent charge sheets dated 1.3.1989. Even this demand of petitioner was wholly unreasonable and unjust for the reason that charge sheet dated 11.10.1988 and 1.3.1989 and supplementary charge sheet containing charge no. 10 dated 1.3.1989 were all issued by Sri K.S. Pundir himself under his signature and there was no reason to doubt his authority. There is nothing to prevent him for issuing

such supplementary or additional charge sheet.

14. Now the petitioner''s next contention is that before imposing major penalty, oral inquiry was not held. This Court admits no exception to the principle since it is well settled that before imposing major penalty, adequate opportunity of defence ought to have been afforded to delinquent employee which includes oral enquiry.

15. However, where despite opportunity, delinquent employee himself failed to attend oral enquiry, position would be different. In the present case, petitioner on a misconceived impression that he should have been given copy of the order whereby the Enquiry Officer was authorized to hold enquiry in respect to charge sheet dated 1.3.1989 refrained himself from attending oral inquiry. I find no justification available to petitioner for not appearing before the Enquiry Officer.

16. The contention that petitioner was never informed of the date of oral enquiry also stands contradicted by Annexure 20 to the writ petition which is Enquiry Officer''s letter dated 15/16.3.1979 directing him to appear on 26.3.1990 along with reply to the charge sheets. The Enquiry Officer also permitted the petitioner to inspect the documents, if any, if he so desire. But it appears that petitioner was adamant not to participate in the enquiry. This is evident from his letter dated 22.3.1990 (Annexure 21 to writ petition) wherein he wrote to the Enquiry Officer that he has sent some letters to higher authorities and the enquiry officer may collect those letters from higher authorities and till the petitioner receive reply, there is no question of submission of any reply to the charge sheet. It is the adamant attitude of petitioner by declining to appear before Enquiry Officer to participate in oral enquiry which led Enquiry Officer to proceed ex parte and submit his report on 24.7.1990. It is thus evident that despite opportunity having been granted petitioner failed to avail the same.

17. The Apex Court in Union of India Vs. B.K. Srivastava AIR 1998 SC 300 has held as under:

"We are, however, of the view that the Tribunal was not right in its approach. It has acted more as a court of appeal which it was not entitled to do so. We have been taken through the enquiry proceedings and we find... The respondent was given opportunity to inspect the record which he did. It cannot be said that as he was not given photocopies of certain documents, he had been prejudiced in the defence of his case. After examining the evidence on record, the enquiry officer came to the conclusion that the charges stood proved against the respondent. It is not that there was no evidence before the enquiry officer."

18. The judgements cited by petitioner apparently have no application to the facts of the present case since here the petitioner himself has to be blamed for not participating in oral enquiry and taking a rigid stand and attitude of defiance by not submitting reply to the charge sheets and failing to participate in oral enquiry. It is not the case of petitioner that he had levelled any allegation of mala fide against Enquiry Officer and therefore sought change of Enquiry Officer.

In any case, even the request of petitioner made for change of Enquiry Officer having been turned down by Joint Commissioner already on 6.2.1989 there was no occasion for petitioner to continue with the said request and not to participate in oral enquiry at all. In fact petitioner did not submit even a reply to the charge sheets denying allegations contained therein. In such circumstances, it cannot be said that enquiry has been conducted by the respondents denying adequate opportunity of defence to petitioner.

19. In view of above, writ petition lacks merit.

20. Dismissed.

21. There shall be no order as to costs.

