
(2017) 11 AHC CK 0040
In the Allahabad High Court
Case No : 12197 of 2009

Navin Kumar Singhal

APPELLANT

Vs

Union Of India, & Ors.

RESPONDENT

Date of Decision : 17-11-2017

Acts Referred:

Citation : (2017) 11 AHC CK 0040

Hon'ble Judges : Bharati Sapru, Siddharth

Bench : Division Bench

Advocate : Siddharth Khare, Ankush Tandan, Ashok Khare, Kartikey Saran, Rohit Nandan Pandey, Yogendra Nath Shukla, A.B.Saran, J.P.N. Raj, P.N. Rai, Shashi Shekhar Tiwari

Final Decision : Allowed

Judgement

1. Heard Sri Ashok Khare, learned Senior Counsel and Sri Siddharth Khare, learned counsel appearing for the petitioner and Sri Kartikey Saran, learned Counsel for the respondents-Insurance Company.

2. The above noted writ petition has been filed by the petitioner, praying for quashing the dismissal order dated 29.04.2008, passed by the Deputy General Manager, New India Assurance Co. Ltd., Regional Office: Kanpur Nagar, respondent no.3 and Appellate order dated 03.12.2008, passed by the Appellate Authority, General Manager, New India Assurance Co. Ltd., Mumbai, respondent no.4 and direction to the respondents to reinstate the petitioner in service on the post of Administrative Officer (Development) with all benefits of continuity of service including the arrears of service from the date of suspension of the petitioner.

3. The brief facts of the case are that the petitioner, while working as Administrative Officer, was suspended from service by the order dated 27.05.2002 in contemplation of departmental proceedings. A Charge Sheet dated 19.05.2004 was issued to him alleging misconduct of the year, 2001-2002. On

17.06.2004, the petitioner submitted his reply denying the allegations and praying that the documents mentioned in Annexure-C of the Charge Sheet along with upto date copy of C.D.A. Rules,1975 may be provided to him for submitting proper reply to the charges.

4. On 06.04.2005, the petitioner again made an application that the documents prayed by him have not been supplied. The statement of the persons mentioned in Annexure-D and Annexure-A to the charge-sheet have also not been supplied to him. The petitioner made further applications specifically demanding certain documents which are mentioned in paragraph nos.10, 11, 12, 13, 14, 15 and 16 of the writ petition. The Counter Affidavit filed on behalf of the respondent nos. 2 to 4 gives the following reply to the averments made from paragraph no.10 to 16 of the writ petition.

"4. That as per Para 10 it is submitted that it was open to the petitioner to see those papers which he wanted in the office for which he never requested.

5. That paras 11 to 19 are again matter of record."

5. In paragraph nos.42, 43 and 44 of the writ petition, The petitioner stated as follows:

"42.That according to the information of the petitioner none of the original documents were even available with the enquiry officer/ disciplinary authority as the same stood transmitted to Central Bureau of investigation for investigation.

43. That it is further necessary to state that none of such documents were even proved.

44. That it is specifically stated that the petitioner has not been permitted inspection of a single original document. The recital in the brief of the presenting officer that the petitioner had inspected all documents on two occasions is a false and incorrect recital. On neither of the said two occasions even a single original document was shown to the petitioner for inspection."

6. In reply to the above paragraphs, the reply of the respondent nos. 2, 3 and 4 in their Counter Affidavit is as follows:

"12. That in para 42 since CBI was investigating the case the papers required by CBI had to be made available to them.

13. That as for paras 43 to 44 it is submitted that in enquiry proceedings Evidence Act does not apply. The petitioner never prayed for any such inspection and all the papers were available on each date for perusal of parties. The petitioner never made any such request or complaint."

7. From the above reply of the respondents to the averments of the petitioner that he was not given the documents required for submitting his reply to the charge sheet, the respondents have made clear averment in paragraph no.12 of the Counter Affidavit that the CBI Investigation was going on and the record was

made available to the CBI. This proves that during the enquiry, the record was not available before the Enquiry Officer and therefore, it was never shown or copy of the same was never given to the petitioner.

8. The Enquiry Officer submitted his Enquiry Report dated 27.09.2007 to the Disciplinary Authority, who issued a Show Cause Notice to the petitioner to submit his reply to the findings recorded in the Enquiry Report. The petitioner submitted his representation dated 12.11.2007 to the findings recorded by the Enquiry Officer and clearly stated the record of the claims settled by him were not shown to him and therefore, the findings based on the charges, without proper defence are illegal.

9. By the punishment order dated 29.04.2008, the Disciplinary Authority punished petitioner by way of dismissal from service of the Company. He did not considered any of the objection raised by the petitioner to the findings of the Enquiry Officer recorded in his Enquiry Report. He has just narrated the details of the events and has recorded his findings as follows:

"On a careful perusal of Articles of charges framed against Mr. N.K. SINGHAL, the Statement of Imputation of misconduct, the Enquiry report of Mr. Ajay Singh and the representation dated 12.11.2007 submitted by Mr. NK SINGHAL, I find that the arguments put forward by Mr. N.K. Singhal in his representation are not convincing".

10. The petitioner preferred an Appeal dated 21.05.2008 taking specific ground regarding the illegality committed by the Enquiry Officer, while dealing with each and every charge made against the petitioner. He specifically stated that the record of the claims which were alleged to have been illegally settled by him were not shown to him. However, the learned Appellate Authority has just narrated the facts of the case and has recorded the following finding:-

"I have carefully gone through the Charge Sheet, Inquiry Report, representation dated 12.11.2007 of Mr. N.K. Singhal, Office Order and other related documents of the case. On perusal of the Inquiry Report, I observed that management and defense witnesses were examined and cross examined by Presenting Officer and CSO and the allegations of Mr. Singhal in this regard that the witnesses were not allowed to be cross-examined are not correct. Instead, Mr. Singhal did not co-operate during the Inquiry proceedings and remained absent, during various dates of inquiry proceedings. I also observe that inquiry was held as per rules, Mr. Singhal was given adequate opportunity to defend himself, and nowhere the Principles of Natural Justice are violated at any stage of the proceedings. Further, it is proved beyond doubt that Mr. Singhal had fed or generated the wrong information regarding several policies under his ID user in the computer, I have also gone through the contentions raised by Mr. N.K. Singhal in his Appeal and I find that he has more or less reiterated the points, which were raised by him during the Inquiry and in his representation dated 12.11.2007.

Hence on overall consideration of all the facts and circumstances of the case, I

do not find any ground to vary the order of the Disciplinary Authority and further that no new facts have been brought by Mr. N.K. Singhal. Accordingly, I hereby reject the Appeal dated 21.05.2008 of Mr. N.K. Singhal and confirm the order of the Disciplinary Authority."

11. Against the above noted dismissal and Appellate Orders, this writ petition has been preferred by the petitioner.

12. After hearing the Counsel for the parties, it is apparent that the Disciplinary Enquiry against the petitioner was not fair and proper, because at the time of the enquiry proceedings, the investigation by Central Bureau of Investigation was also going on and the documents were made available to them, as admitted by the respondent nos. 2 to 4 in paragraph no.12 of their Counter Affidavit. For this reason, the record sought by the petitioner to submit reply to the Charge Sheet were not made available to him. The enquiry has been conducted without proper opportunity of defence since the documents forming the basis of charges were not supplied to the petitioner and his objection, in this regard, before the Disciplinary Authority and also before the Appellate Authority, have been ignored and not addressed. The Apex Court has held in "Bilaspur Raipur Kshetriya Gramin Vikas Bank Vs. Madan Lal Tandon, (2015) 8 SCC 461" has held that non-supply of documents relied in the charge sheet vitiates the inquiry. It is not the case of unspecific pleadings demanding documents. Specific documents were prayed for by the petitioner. Therefore, the findings of the Enquiry Officer are vitiated. The punishment order is required to be a speaking order expressing concurrence or non-concurrence with the Inquiry Report. Here it is a non-speaking one and, therefore, illegal. The Appellate Order also being cryptic and non-speaking can not be upheld.

13. The Hon'ble Supreme Court in the case of Divisional Forest Officer, Kothagudem & others Vs. Madhusudan Rao, (2008) 3 SCC 469 has held that the Appellate Authority is required to give at least some reasons, after considering the grounds raised therein, so that the delinquent may know the reason for dismissal of his appeal. In the case of Chairman, Disciplinary Authority, Rani Luxmi Bai Kshetriya Gramin Bank Vs. Jagdish Saran Varshneya and others, (2009) 4 SCC 240 it has again been held that where the order of Disciplinary Authority is confirmed by the Appellate Authority, there he is required of giving reasons for the same, so that one can know whether the Appellate Authority has applied his mind while affirming the order of the Disciplinary Authority. In the present case, neither the Disciplinary Authority nor the Appellate Authority appear to have applied their mind to the objection of the petitioner to the Enquiry Report and the Appeal respectively. The respondents have not been able to convince the Court regarding the aforesaid illegalities in the inquiry report, punishment and appellate orders.

14. In view of the above factual and legal position, the impugned dismissal order dated 29.04.2008, passed by the Deputy General Manager, New India Assurance Co. Ltd., Regional Office: Kanpur Nagar, respondent no.3 and Appellate order

dated 03.12.2008, passed by the Appellate Authority, General Manager, New India Assurance Co. Ltd., Mumbai, respondent no.4 are illegal and hereby quashed. The petitioner shall be deemed to be in continuous service and shall be entitled to all consequential benefits and 50 percent of arrears of salary. The respondent No.3 is at liberty to proceed against the petitioner afresh in accordance with law.

15. Since, the fault lies on the part of the respondents, who have conducted illegal enquiry and dismissed the petitioner from service and thereafter he has been compelled to litigate for the last 9 years. Therefore, they are liable to be saddled with costs, on account of their conduct, as per the decision of Hon''ble Supreme Court in the case of "Salem Bar Association (II) Vs. Union of India, (2005) 6 SCC 344 and "Rameshwari Devi and others Vs. Nirmala Devi and others, (2011) 8 SCC 249. Only a conservative cost of Rs.50,000/- is being imposed against them, which will indemnify the petitioner towards the litigation expenses to a certain extent. The costs shall be paid to the petitioner within one month from the date of presentation of the certified copy of this order.

16. It is open for the respondent no.2 to recover the loss caused to the Company, on account of illegal enquiry against the petitioner from the officers responsible for this, after affording them proper opportunity of hearing.

17. The writ petition is allowed with costs indicated above.