

(2005) 05 AHC CK 0179

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4654 of 2001

Om Shanker Srivastava

APPELLANT

Vs

District Magistrate and Special Land Acquisition Officer

RESPONDENT

Date of Decision : 09-05-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 3, Order 8 Rule 4, Order 8 Rule 5
Penal Code, 1860 (IPC) — Section 120B, 218, 419, 420, 467
Uttar Pradesh Government Servants (Discipline and Appeal) Rules, 1999 — Rule 7

Citation : (2005) 5 AWC 5139 : (2005) 3 ESC 2055

Hon'ble Judges : Sanjay Misra, J

Bench : Single Bench

Advocate : V.D. Chauhan and P.K. Sinha, for the Appellant;

Final Decision : Allowed

Judgement

Sanjay Misra, J.—The petitioner seeks quashing of the order dated 9/10th November 2000 passed by the District Magistrate Juunpur dismissing the petitioner from service. The main grounds upon which the said order has been challenged by the petitioner is that the said order was not proceeded by any proper enquiry proceedings and immediately after submission of the reply to the charge sheet, the enquiry officer without conducting any proper enquiry and in violation of the principles of natural justice has submitted his enquiry reports finding the petitioner guilty of the charges leveled against him. Reply of the petitioner to the show cause notice issued thereafter was also not considered by the respondent No. 1 who has passed the impugned order.

2. The facts of the case are that the petitioner was working as Ahalmad in the office of the Special Land Acquisition Officer Jaunpur. On 19.5.1997 a first information report was lodged against the petitioner by one Mohan Lal Prajapati which was registered as case crime No. 75 of 1999 under Sections 419/420/467/468/471/218/120B of the Indian Penal Code. It was alleged that on the basis of a power of attorney executed by Tilakdhari Prajapati

father of the first informant in favour of Ram Devar Yadav, the petitioner along with Accounts Clerk namely Hari Shanker Yadav disbursed the amount to which the first informant was entitled in favour of said Ram Devar Yadav. The amount being the compensation awarded for the land acquired of Tilakdhari Prajapati. It is stated that on the basis of allegations made in the said first information report, a charge sheet dated 27.3.2000 was issued to the petitioner. The said charge sheet has referred to a preliminary enquiry report. The petitioner submitted his reply on 13.4.2000 and asked for permission to examine the witnesses whose statements were being sought to be relied upon and also asked to be permitted to lead his evidence and for personal hearing. It is alleged by the petitioner that enquiry officer has neither fixed any date nor summoned the petitioner at any date for the enquiry. All of a sudden, the enquiry officer without conducting any enquiry submitted his report dated 3/5/6.2000. Upon the said report, the respondent No. 1 issued show cause notice dated 16.6.2000 to which the petitioner replied on 30/31.8.2000. The respondent No. 1 without considering the reply of the petitioner has proceeded to pass the impugned order of dismissal.

3. A counter affidavit has been filed wherein the averments made by the petitioner to the effect that he was not given any opportunity of hearing has been denied in as much as it has been stated that since the enquiry officer has given reasons for recording his findings, therefore, the principles of natural justice has been complied with. It has further been stated that the documents were made available to the petitioner. On the merits of the charges the case as brought out by the respondents is to the effect that the execution case no, 5 of 1996 pending before the court of the Additional District Judge Jaunpur was in respect to some other persons but the compensation deposited in Execution case No. 6 of 1996 was disbursed to Ram Devar Yadav on the basis of power of attorney executed in his favour by Tilakdhari Prajapati. It is alleged that said Ram Devar Yadav had changed the number from execution case from 5 of 1996 to 6 of 1996 in the phostat copy of the power of attorney. On the basis of the said forgery Ram Devar Yadav submitted an application for withdrawing the compensation. It is alleged that it was permitted to be withdrawn by the office of the Land Acquisition Officer by the petitioner and Hari Shanker Yadav Accounts Clerk. The case of the respondent is that Tilakdhari Prajapati has not executed any power of attorney for execution case No. 6 of 1996. It is stated that the finding of fact recorded by the enquiry officer were duly accepted by the disciplinary authority and therefore, the petitioner is not entitled to any relief what so ever.

4. In the rejoinder affidavit, the petitioner has re-iterated his averments to the effect that no opportunity was afforded to the petitioner for cross examination of the prosecution witnesses or to lead his evidence in defence and opportunity of hearing was not given to him by the enquiry officer. It has been further stated that execution case No. 5 of 1996 was not concerned with said Tilakdhari Prajapati in as much as the said Tilakdhari Prajapati was not even a party in execution case No. 5 of 1996. It is stated that Tilakdhari Prajapati was a party in

the execution case No. 6 of 1996 and the power of attorney executed in favour of Ram Devar Yadav was with respect to the execution case No. 6 of 1996. It is stated that in view of the aforesaid fact, the petitioner could not have been charged and if enquiry officer had given him sufficient opportunity, the petitioner would have proved his innocence on the basis of record itself. It is also stated that this ground was taken by the petitioner in his reply to the show cause notice even then the disciplinary authority without considering the said reply has affirmed the finding of the enquiry officer and has awarded him the punishment of dismissal.

5. It has been stated by the learned counsel for the petitioner that other person namely Hari Shanker Yadav who was also dismissed by the respondent No. 1 filed Civil Misc. Writ Petition No. 2889 of 2001 on the same grounds that the enquiry officer had proceeded with enquiry in violation of the principles of natural justice, has been allowed by this Court on 18.2.2005 and the order of dismissal of Hari Shanker Yadav has been set aside by this Court.

6. The services of the petitioner are governed by U.P. Government Servant (Discipline and Appeal) Rules 1999. Rule 7 provides for the procedure for imposing major penalty. It provides that the charges framed shall be precise and clear and the proposed documentary evidence and the names of the witnesses proposed to prove the same along with oral evidences if any shall be mentioned with the charge sheet. It provides that charged officer shall be required to give a written statement of his defence and to state whether he desires to cross examine any witnesses and whether he desires to produce any evidence in his defence. Further that in case such government servant denies the charges then the enquiry officer shall proceed to call the witnesses proposed and record their oral evidence in presence of such government servant who shall be given opportunity to cross examine such witness where after the charged government servant shall be permitted to record his oral evidence. The proviso of Rule 7 has given the cases where procedure as prescribed in Rule 7 shall not apply.

- i) Where any major penalty is imposed on a person on the ground of conduct which has led to his conviction on a criminal charge or
- ii) Where the disciplinary Authority is satisfied that it is not reasonably practicable to hold an enquiry in the matter provided in the rule
- iii) Where the Governor is satisfied that in the interest of the security of the State, it is not expedient to hold an enquiry in the manner provided in the said rules.

7. The submission made by the learned counsel for the petitioner is that the enquiry is in violation of the principles of natural justice. The impugned order of dismissal therefore, stands vitiated. The entire proceedings was in violation of the procedure provided in the Rule 7 of the aforesaid Rules and that disciplinary authority has also failed to afford any opportunity to the petitioner inspite of his pointing out to the said authority that the enquiry was conducted without

following the procedure as prescribed in Rule 7 and also in complete violation of principles of natural justice. The petitioner has filed his reply to the show cause notice as Annexure, 9 to the writ petition. A perusal of the said reply indicates that the aforesaid grounds were taken by the petitioner before the disciplinary authority in defence. The petitioner had also brought to the notice of the disciplinary authority the fact with regard to the merits of his defence against the charges leveled against him. The impugned order does not indicate that it has taken into consideration the said grounds of defence taken by the petitioner in his reply to the show cause notice. The disciplinary authority has considered the enquiry report and has accepted the same. On the aforesaid this Court finds that the enquiry officer had submitted his report without conducting any enquiry in accordance with procedure prescribed in Rule 7 of the Rules and it was in violation of the principles of natural justice. The disciplinary authority has passed the impugned order awarding major penalty of dismissal without having taken into consideration the reply given by the petitioner to the show cause notice. In the counter affidavit the respondent has made a vague denial that the principles of natural justice were followed . However, the said denial is not sufficiently demonstrated by any evidence. In para 12 of the counter affidavit, it has specifically been stated that enquiry officer has given reasons for his finding and therefore, it is not in violation of principles of natural justice. Such denial is vague and there is no mention as to whether the enquiry officer had given any notice to the petitioner or had fixed various dates for appearance of the petitioner for participating in the enquiry. In the absence of any such details or evidence it cannot be said that the enquiry was conducted in accordance with rules of procedure and in accordance with principles of natural justice, It has nowhere been denied by the respondents that enquiry officer examined the witnesses in presence of the petitioner nor it has been stated that the petitioner was permitted to cross examine said witnesses. It has not been averred that the petitioner was permitted to lead his evidence. Specific case of the petitioner was that by his application dated 3.10.2000 and 9.10.2000 the petitioner has specifically informed the respondent No. 1 that no enquiry had been conducted (the said applications have been filed as Annexure 10 and 11 to the writ petition). In respect of aforesaid specific case set up by the petitioner even the disciplinary authority has not considered the said objection and reply of the petitioner to the show cause notice to the effect that he has not been given opportunity by the enquiry officer. Such plea of the petitioner has been totally ignored by the disciplinary authority.

8. In the case of State of U.P. Vs. Shatrughan Lal and Another, , Hon''ble Supreme Court has held in the following terms :

"Since there was a failure on the part of the appellant in this regard too, the Tribunal was justified in coming to the conclusion that the principles of natural justice were violated and the respondent was not afforded cm effective opportunity of hearing, particularly as the appellant failed to establish that non-supply of the copies of the statement recorded during preliminary enquiry has

not caused any prejudice to the respondent in defending himself."

9. From the facts of the present case it is revealed that the enquiry officer has not permitted/called upon the petitioner to be present in the enquiry nor he has afforded opportunity to the petitioner, to defend himself, as such the said enquiry would be in total violation of the principles of natural justice. Serious charges of financial irregularity were leveled against the petitioner and therefore, without giving him chance to defend himself, the enquiry officer ought not to have concluded the enquiry. It is quite apparent that before punishing the petitioner, he was not afforded a fair opportunity to defend himself. Such proceedings a consequence of which is passing of the dismissal order, could not be done without complying the principles of natural justice and by not following the procedure prescribed under the rules. In quite similar circumstances this Court has in the case of *Radhey Shyam v. Chief Secretary State of U.P. Lucknow and Ors.*, 2001 (2) UPLBEC 1976 made following observation :

"No specific date, time and place of enquiry was fixed. Oral and locumentary evidence against the petitioner should have been adduced 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 witnesses and evidence. A dismissal order is a major punishment having serious consequences and hence should be passed only after complying with the rules of natural justice. Since in the present case no regular and proper enquiry was held nor was substance allowance paid, hence in these, circumstances, it is clear case that the petitioner had not been afforded to fair opportunity much less a reasonable opportunity to defend himself that has resulted in violation of principles of natural justice and fair play"

10. The order VIII of Code of the Civil Procedure provides for written statement, set off and counter claim. Rule 3 provides that the defendant must deal specifically with each allegations of fact of which he does not admit the truth. It requires that a denial is not sufficient. Similarly Rule 4 provides that, such denial should not/be given but the answer must be given on .he point of of substance. Rule 5 states that every allegation in the plaint if not denied specifically by necessary implication, shall be taken to be admitted except in certain circumstances provided therein. On a consideration of the aforesaid rules, Hon"ble supreme Court in the case of *Badat and Co. Vs. East India Trading Co.*, had held that an evasive and vague denial of facts in the written statement may be taken to have been admitted. The said case was with respect to pleadings on the original side of the Bombay High Court and therefore, it was held that same should be strictly constructed. It is true that all the provisions of the CPC are not applicable in the writ proceedings. However, the principle as enshrined in Order VIII Rule 3, 4, and 5 CPC would apply in case the denial of the petitioner"s specific case by the respondent is vague and evasive without any particulars for such denial which were available with the respondents.

11. It is settled law that completion of the enquiry without giving opportunity to

cross examine the witnesses is vitiated as has been held in the decision of Hon"ble Supreme court in S.C. Girotra Vs. United Commercial Bank (UCO Bank) and Others, . It is not the case of the respondents that the present case is covered by any of the exceptions as provided in Rule 7.

12. In view of the aforesaid reasons and from the facts and circumstances of this case, it is held that the enquiry is vitiated for violation of the principles of natural justice and non compliance of the procedure prescribed therefore, the impugned order of dismissal cannot be sustained and is set aside. The respondents will hold fresh enquiry after giving opportunity to the petitioner to lead his evidence to cross examine the witnesses who may be examined by the department and give sufficient opportunity to the petitioner with respect to examination and production of documentary evidence. The authority concerned will follow the procedure prescribed under the rules for such enquiry and shall complete the enquiry as expeditiously as possible preferably within six months from the date a certified copy of this order is produced before him.

13. For the reasons aforesaid, this writ petition stands allowed to the extent indicated above. However, no order is passed as to costs.