
(2011) 08 AHC CK 0020

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 29914 of 2007

Paras Nath Yadav

APPELLANT

Vs

Nagar Aayukta, Nagar Nigam, Allahabad and Others

RESPONDENT

Date of Decision : 01-08-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 311, 311(2)

Government of India Act, 1935 — Section 240(3)

Uttar Pradesh Nagar Mahapalika Sewa Niyamawali, 1962 — Rule 31

Citation : (2012) 3 ADJ 515

Hon'ble Judges : Krishna Murari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Krishna Murari, J.—Heard Shri Indra Raj Singh, learned counsel for the petitioner and Shri Ajay Srivastava for respondents. Aggrieved by the order dated 21.7.2006 passed by Nagar Ayukta, Nagar Nigam, Allahabad inflicting punishment of reversion to the lowest initial pay-scale and awarding adverse entry as well as order dated 19th February, 2007 passed by Commissioner, Allahabad Division, Allahabad dismissing the appeal, petitioner has filed the present writ petition.

2. Brief facts of the case are that the petitioner was working on the post of Clerk in Nagar Nigam, Allahabad w.e.f. 4.2.1985. On 3.5.2005, he was served with a charge-sheet levelling certain charges in contemplation of a departmental enquiry and was required to submit reply within 15 days. Petitioner submitted his reply dated 11.7.2005 denying the charges levelled" against him. Subsequently, a supplementary charge-sheet dated 24.6.2005 was also served. Petitioner again submitted his reply dated 16.7.2005 denying the said charges. Shri K.D. Singh, Assistant Nagar Ayukta, Nagar Nigam, Allahabad, who was appointed as Enquiry Officer is alleged to have conducted an enquiry and submitted a report dated 9.8.2005 to the effect that charges levelled against the petitioner were found to

be proved. Respondent No. 1, Nagar Ayukta, Nagar Nigam, Allahabad issued a show-cause notice dated 11.8.2005 requiring the petitioner to submit a reply as to why major penalty of dismissal of service may not be inflicted. Petitioner again submitted a reply dated 23.9.2005. After considering the same, respondent No. 1, Nagar Ayukta, Allahabad passed the impugned order dated 21.7.2006 inflicting major penalty of reverting the petitioner back to the lowest pay-scale and recording adverse entry in his service book. Petitioner went up in appeal which has also been dismissed.

3. It has been submitted by the learned counsel for the petitioner that after reply of the charge-sheet submitted by the petitioner, no formal inquiry was held against him, rather straight-away an inquiry report was submitted by the Enquiry Officer holding the petitioner guilty of the charges levelled against him in the disciplinary proceedings. It has further been submitted that after submission of the reply of the charge-sheet by the petitioner, the Enquiry Officer never issued any notice nor fixed any date, time and place for enquiry. He never examined any witness to prove the charges levelled against the petitioner in the charge-sheet, inasmuch as the petitioner was never asked to cross-examine any such witness, if so examined by the Enquiry Officer and the enquiry report submitted by the Enquiry Officer without holding any formal and full fledged enquiry and without adhering to procedure prescribed by the Service Rules, not only amounts to violation of the Rules but is also directly in the teeth of the principles of natural justice. Categorical averments in this regard have been made in paragraph 9 of the writ petition.

4. In reply, learned counsel appearing for the for the respondent making reference to the averments made in the counter-affidavit, has submitted that full opportunity was given to the petitioner to participate in the enquiry.

5. Specific averments made by the petitioner in paragraph 9 of the writ petition that no date, time and place was fixed by the Enquiry Officer for conducting the formal enquiry and no opportunity was given to him to associate with the enquiry and without recording any evidence, ex parte enquiry report has been submitted, have been replied by the contesting respondent in paragraph 7 of the counter-affidavit which reads as under.

That the contents of paragraph No. 9 of the writ petition is not admitted. It is further submitted that the petitioner was given full opportunity of hearing and for his health examination, a Panel of doctors vide office letter No. D.595/Adhi./2005 dated 27.9.2005 of Nagar Nigam was constituted in president ship of Dr. P.K. Singh, Nagar Health Officer, wherein the petitioner was directed to remain present at 10 o'clock in the morning on 30.9.2005 but still the petitioner did not presented himself on the prescribed time and date for his health examination. Thereafter, the petitioner was again given opportunity of hearing vide letter No. 661/Adhi./2005 dated 20th October, 2005 of Prabhari Adhithan to be present on 7.11.2005 at 11 a.m. in the office of Nagar Ayukta but the petitioner again not presented himself before respondent No. 1, i.e., Nagar Ayukta and instead he

requested vide his letter dated 30.10.2005 that he may be reinstated on the post as his wife is suffering by illness.

6. It is striking to note that specific averments made by the petitioner in paragraph 9 of the writ petition that Enquiry Officer did not fix any date, time and place for holding a formal enquiry nor the petitioner was given any opportunity to associate himself with the enquiry, have not at all been denied in the counter-affidavit.

7. The alleged opportunities vide letter dated 27.9.2005 and 20th October, 2005 referred to in the counter-affidavit are obviously after the submission of the enquiry report dated 9.8.2005, and thus, cannot tantamount to an opportunity afforded by the Enquiry Officer to participate in the enquiry proceedings.

8. The services of the petitioner are governed by U.P. Nagar Mahapalika Sewa Niyamawali, 1962. Rule 31 of the said Rules provides the procedure for disciplinary proceedings. It clearly provides that no order (other than the order based on facts which have led to his conviction on a criminal charge) of dismissal, removal or reduction in rank (which includes reduction to a lower post or time scale or to a lower stage in a time scale, shall be passed on any servant of the Mahapalika, unless he has been informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate opportunity of defending himself. The said Rules further provides at that enquiry, such oral evidence will be heard as the inquiring officer considers necessary and the person charged shall be entitled to cross-examine the witness to give evidence in person and to have such witness called as he may wish.

9. From a plain reading of the Rule 31, it is clear that a major penalty cannot be inflicted upon an incumbent, except after an enquiry in which he has been informed of the charges levelled against him and given an adequate opportunity of being heard in respect of such charges. It means that before any such action is taken against a delinquent employee, an enquiry has to be held against him and in such enquiry he has to be informed precisely the charges levelled against him and shall be afforded opportunity of defending himself in relation to those charges. The employee charged is also entitled to cross-examine the witness to give his evidence in person and to have such witness called as he may wish. It is, thus, clear that if the charges levelled in the charge-sheet are not admitted by the delinquent employee, the Enquiry Officer is required to hold enquiry for proving the charges levelled in the charge-sheet. For that purpose, the Enquiry Officer is required to call the witness proposed in the charge-sheet and record their evidence in the presence of the charged employee who would be given opportunity to cross-examine such witnesses. Thereafter, it is incumbent upon the Enquiry Officer to call and record the evidence which the delinquent employee desires to be produced in his defence. In other words, the aforesaid provision makes it clear that where the charges levelled in the charge-sheet are either not admitted or denied by the delinquent employee, it is the bounded duty of the Enquiry Officer to hold enquiry for proving the aforesaid charges by

documentary and oral evidence in presence of the delinquent employee and by asking him to cross-examine the witness, if he so desires and adduce his own oral and documentary evidence in defence.

10. While explaining the import and meaning of Audi-Alteram Partem Rules in domestic/disciplinary enquiry, Hon"ble Apex Court in paragraph 96 of the decision in the case of Union of India and Another Vs. Tulsiram Patel and Others, , has held as under.

96. The rule of natural justice with which we are concerned in these Appeals and Writ Petitions, namely, the audi alteram partem rule, in its fullest amplitude means that a person against whom an order to his prejudice may be passed should be informed of the allegations and charges against him, be given an opportunity of submitting his explanation thereto, have the right to know the evidence, both oral or documentary, by which the matter is proposed to be decided against him, and to inspect the documents which are relied upon for the purpose of being used against him, to have the witnesses who are to give evidence against him examined in his presence and have the right to cross-examine them, and to lead his own evidence, both oral and documentary, in his defence. The process of a fair hearing need not, however, conform to the judicial process in a Court of Law, because judicial adjudication of causes involves a number of technical rules of procedure and evidence which are unnecessary and not required for the purpose of a fair hearing within the meaning of audi alteram partem rule in a quasi-judicial or administrative inquiry. If we look at clause (2) of Article 311 in the light of what is stated above, it will be apparent that clause is merely an express statement of the audi alteram partem rule which is implicitly made part of the guarantee contained in Article 14 as a result of the interpretation placed upon that Article by recent decisions of Apex Court. Clause (2) of Article 311 requires that before a Government servant is dismissed, removed or reduced in rank, an inquiry must be held in which he is informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. The nature of the hearing to be given to a Government servant under clause (2) of Article 311 has been elaborately set out by this Court in Khem Chand Vs. The Union of India (UOI)and Others, , in the passages from the judgment extracted above. Though that case related to the original clause (2) of Article 311, the same applies to the present clause (2) of Article 311 except for the fact that now a Government servant has no right to make any representation against the penalty proposed to be imposed upon him but, as pointed out earlier, in the case of Suresh Koshy George Vs. University of Kerala and Others, , such an opportunity is not the requirement of the principles of natural justice and as held in Associated Cement Companies Ltd. Vs. T.C. Shrivastava and Others, , neither the ordinary law of the land nor industrial law requires such an opportunity to be given. The opportunity of showing cause against the proposed penalty was only the result of the interpretation placed by the Judicial Committee of the Privy Council in AIR 1948 121 (Privy Council) upon Section 240(3) of the Government of India Act, 1935, which was accepted by this

Court in Khem Chand's case. If, therefore, an inquiry held against a Government servant under clause (2) of Article 311 is unfair or biased or has been conducted in such a manner as not to give him a fair or reasonable opportunity to defend himself, undoubtedly, the principles of natural justice would be violated, but in such a case the order of dismissal, removal or reduction in rank would be held to be bad as contravening the express provisions of clause (2) of Article 311 and there will be no scope for having recourse to Article 14 for the purpose of invalidating it.

Again while explaining the content and reach of the principles of natural justice in domestic enquiry in para 27 of the decision rendered in State Bank of Patiala and others Vs. S.K. Sharma, , the Hon"ble Apex Court has held as under :

27. The decisions cited above make one thing clear, viz., principles of natural justice cannot be reduced to any hard and fast formulae. As said in Russell v. Duke of Norfolk, (1949) 1 All ER 109, way back in 1949, these principles cannot be put in a straight-jacket. Their applicability depends upon the context and the facts and circumstances of each case. (See Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others,). The objective is to ensure a fair hearing, a fair deal to the person whose rights are going to be affected. (See A.K. Roy v. Union of India, (1982) 1 SCR 271 : AIR 1982 SC 710 and Swadeshi Cotton Mills Vs. Union of India (UOI), . As pointed out by this Court in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , the dividing line between quasi-judicial function and administrative function (affecting the rights of a party) has become quite thin and almost indistinguishable - a fact also emphasized by House of Lords in C.C.U. v. Civil Services Union (supra) where the principles of natural justice and a fair hearing were treated as synonymous. Whichever the case, it is from the stand point of fair hearing- applying the test of prejudice, as it may be called-that any and every complaint of violation of the rule of audi alteram partem should be examined. Indeed, there may be situations where observance of the requirement of prior notice/hearing may defeat the very proceeding-which may result in grave prejudice to public interest. It is for this reason that the rule of post decisional hearing as a sufficient compliance with natural justice was evolved in some of the case, e.g. Liberty Oil Mills and Others Vs. Union of India (UOI) and Others, . There may also be cases where the public interest or the interests of the security of State or other similar considerations may make it inadvisable to observe the rule of audi alteram partem altogether [as in the case of situations contemplated by clauses (b) and (c) of the proviso to Article 311(2) or to disclose the material on which a particular action is being taken. There may indeed be any number of varying situations which it is not possible for anyone to foresee. In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and enquiries: a distinction ought to be made between violation of the principles of natural justice and alteram partem, as such and violation of a facet of the said principle. In other words, distinction is between "no notice", "no hearing" and "no adequate

hearing" or to put it in different words, "no opportunity" and "no adequate opportunity." To illustrate -take a case where the person is dismissed from service without hearing him altogether [as in *Ridge v. Baldwin*, 1964 AC 40. It would be a case falling under the first category and the order of dismissal would be invalid-or void, if one chooses to use that expression (*Calvin v. Carr*, 1980 AC 574). But where the person is dismissed from service, say, without supplying him a copy of the Enquiry Officer's report (*Managing Director, E.C.I.L. v. B. Karunakar*, 1994 AIR SCW 1050 or without affording him a due opportunity of cross-examining a witness (*K.L. Tripathi*, AIR 1994 SC 273), it would be a case falling in the latter category -violation of a facet of the said rule of natural justice -in which case, the validity of the order has to be tested on the touch stone of prejudice, i.e. whether, at in all, the person concerned did or did not have a fair hearing. It would not be correct -in the light of the above decisions to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approached and test adopted in *B. Karunakar* should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity.)

11. Having regard to the settled legal proposition and in context of the facts of the case where categorical averments made by the petitioner on oath that Enquiry Officer never fixed any date, time and place and without providing opportunity to the petitioner to associate with the enquiry submitted an ex parte report have not at all been denied by the respondents in the counter-affidavit and the enquiry report also does not demonstrate any participation of the petitioner in the proceedings, the only irresistible conclusion is that the Enquiry Officer did not hold any formal enquiry before submitting the report to the disciplinary authority. Such exercise undertaken by the Enquiry Officer is farce and does not satisfy the requirement of the principles of natural justice and the relevant Service Rule 31 of 1962 Rules. The procedure regarding holding of formal enquiry was of fundamental in character. The enquiry was liable to be held in conformity with the procedure prescribed under Rule 31 of 1962 Rules. There being a complete violation of procedure, the case of the petitioner falls under the category of "no opportunity" categorized by the Hon'ble Apex Court in the case of *State Bank of Patiala and others v. S.K. Sharma* (supra). As a result, the disciplinary proceedings against the petitioner and the impugned order imposing penalty are vitiated in law and liable to be quashed.

12. The view taken by me also finds support from the three Division Bench judgments rendered in the cases of *Subhash Chandra Sharma Vs. Managing Director, U.P. Co-op. Spg. Mills Federation Ltd., Kanpur* and another, ;*Girja Shankar Pant v. State of U.P. and others*, 1998(3) ESC 2226 (All) and in *Rajendra Prasad Tripathi Vs. State of U.P. and Others*, , wherein the order of punishment passed by the Disciplinary Authorities awarding major penalty in aforesaid cases on the basis of inquiry report submitted by the Enquiry Officers therein without holding any formal enquiry were quashed holding that such enquiry is vitiated

under law.

13. In view of the aforesaid facts and discussion, the impugned order dated 21.7.2006 passed by respondent No. 1 as well as appellate order dated 19.2.2007 passed by respondent No. 2 are not liable to be sustained and are hereby quashed.

14. Writ petition stands allowed. However, it shall be open to the respondent authorities to take disciplinary proceedings against the petitioner afresh in accordance with law and the relevant rules.