
(2010) 06 UK CK 0231

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 148 of 2007

Pooran Singh Mehta (since deceased) Through his legal heirs	APPELLANT
Vs	
U.P. Public Services Tribunal and others	RESPONDENT

Date of Decision : 15-06-2010

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2010) 2 UC 979

Hon'ble Judges : J.S. Khehar, C.J.;Sudhanshu Dhulia, J

Bench : Division Bench

Advocate : Rajesh Joshi, for the Appellant; Bindesh Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble J.S. Khehar, C.J.—The Petitioner, namely, Pooran Singh Mehta (since deceased) was inducted into the Forest Department of the State of Uttar Pradesh as a Range Chaukidar in 1960. He was promoted to the post of Forest Guard in 1981. On 26.8.1982, the Petitioner was placed under suspension. Soon thereafter, by an order dated 8.2.1983, he was issued a charge-sheet, where the primary allegations levelled against him were that he got 225 trees, most of them Pine and Saal trees, belonging to the Forest Department cut illegally. The Petitioner responded to the aforesaid charge-sheet by a reply dated 23.2.1983. Without holding any formal departmental inquiry, the Petitioner was terminated from service by an order dated 30.8.1984. Dissatisfied with the order dated 30.8.1984, the Petitioner preferred an Appeal. The Appellate Authority also dismissed the Appeal preferred by the Petitioner on 26.7.1985.

2. The Petitioner then approached the U.P. Public Services Tribunal No. 2, Lucknow by filing a Claim Petition bearing No. 108/II/1986. The aforesaid Claim Petition was, however, dismissed by an order dated 26.6.1991.

3. Dissatisfied with the orders dated 30.8.1984 (order of termination from service), dated 26.7.1985 (order by which the appeal preferred by the Petitioner

was dismissed) and order dated 26.6.1991 (whereby the Claim Petition preferred by the Petitioner was dismissed by the U.P. Public Services Tribunal), the Petitioner filed Writ Petition (S/S) No. 7003 of 1992. On the reorganisation of the composite State of Uttar Pradesh, the aforesaid Writ Petition was transferred to this Court, wherein it is presently numbered as Writ Petition (S/B) No. 148 of 2007.

4. During the course of hearing, Learned Counsel for the Petitioner has vehemently contended, that after the charge sheet dated 8.2.1983 was issued to the Petitioner, a regular departmental enquiry ought to have been conducted against the Petitioner. It is, however, pointed out, that without holding any departmental inquiry, the impugned order dated 30.8.1984 was passed terminating the services of the Petitioner. It is, therefore, submitted that the proceedings held by the Authorities against the Petitioner did not result in affording a reasonable opportunity to the Petitioner to defend himself, nor were they in consonance with the rules of natural justice. It is, therefore, submitted that the impugned order of termination dated 30.8.1984 deserves to be set aside.

5. We have considered the first contention advanced by the Learned Counsel for the Petitioner, as has been noticed in the foregoing paragraph. Insofar as the present issue is concerned, it is necessary to extract herein certain observations recorded by the U.P. Public Services Tribunal from Paragraph 5 of the order dated 26.6.1991, whereby Claim Petition No. 108/II/1986 preferred by the Petitioner before the U.P. Public Services Tribunal was dismissed:

The opposite parties have also filed copy of the reply of the Petitioner to the charge sheet vide the reply dated 23.2.83 and its perusal showed that the Petitioner had admitted his guilt and had requested for apology because he had not been an active party and had earned any benefit as a result of the illegal felling of trees vide para No. 4 of his reply to the charge sheet. In para No. 5 he very clearly mentioned that he did not want to cross examine any witness. He again mentioned in his reply that he had been careless so far as his conduct in this matter was concerned. Earlier he mentioned in his reply that while on duty he had come to know that the trees were being cut but he thought that they were not in his beat. He remained under the impression that some other trees including P.D. trees were being cut. He expressed regret in para No. 1 of his reply to the charge sheet that he had failed to check the illegal felling.

In order to authenticate the veracity of the factual position depicted in the order of the U.P. Public Services Tribunal, extracted hereinabove, we have perused the reply dated 23.2.1983 submitted by the Petitioner to the charge sheet dated 8.2.1983. The factual position depicted in the order passed by the U.P. Public Services Tribunal is fully substantiated from the assertions made by the Petitioner in his reply. For facility of reference an extract of the reply dated 23.2.2008 submitted by the Petitioner to the charge sheet dated 8.2.1983 is also being extracted herein:

It is apparent from the reply submitted by the Petitioner to the charge-sheet dated 8.2.1983, that the Petitioner admitted the allegations levelled against him to the effect that 225 trees, most of them Pine and Saal trees, were cut illegally from forest land. It is also apparent, that the Petitioner categorically asserted in his reply that he did not desire to either cross-examine any witnesses or produce any evidence on his own behalf. Having admitted his guilt in his reply to the charge-sheet dated 8.2.1983, we are satisfied that no regular departmental enquiry was called for. A regular departmental enquiry is only conducted, where charges levelled against a delinquent are not admitted. In such a situation, it is imperative for an employer to arrive at a conclusion based on the finding that the charges stand established and only thereafter, it is open to the employer to inflict a punishment on the delinquent. The aforesaid procedure is, however, wholly uncalled for, when the concerned employee admits the charges levelled against him. Since the Petitioner herein, through his reply dated 23.2.1983 to the charge sheet dated 8.2.1983, had admitted his guilt in respect of the charges levelled against him, we are satisfied that no regular departmental enquiry was necessary. The non-holding of the departmental enquiry against the Petitioner before inflicting punishment of termination from service on him vide order dated 30.8.1984 can, therefore, not be considered to be in violation of any statutory rules or right vested in the Petitioner.

6. The second contention advanced by the Learned Counsel for the Petitioner was, that even though the Inquiry Officer had recommended the reinstatement of the Petitioner and the infliction of the punishment of stoppage of increments, yet in complete disregard to the recommendation made by the Inquiry Officer, the Punishing Authority imposed a punishment of termination from services on the Petitioner vide order dated 30.8.1984. It is submitted, that the Punishing Authority should have abided by the recommendation made by the Inquiry Officer and should have, therefore, ordered the reinstatement of the Petitioner and infliction of the minor punishment suggested by him. It is the vehement contention of the Learned Counsel for the Petitioner, that the infliction of the punishment of termination from service vide order dated 30.8.1984 is not only arbitrary, but also is wholly uncalled for.

7. We have considered the second contention advanced by the Learned Counsel for the Petitioner. The competent authority to inflict a punishment upon an employee is the Appointing/ Punishing Authority. In fact, every civil servant has the aforesaid protection under Article 311 of the Constitution of India. The proposals or recommendations made by the Inquiry Officer, who is neither an Appointing, nor a Punishing Authority of the delinquent, are merely recommendatory in nature and are not binding on the Appointing/ Punishing Authority. The Punishing Authority has to keep in mind the gravity of the allegations levelled against the employee in the charge sheet, and thereupon, inflict a suitable punishment keeping in mind the charges proved against him. Serious charges were levelled against the Petitioner for felling of 225 trees, most of them Pine and Saal trees, from forest land. Government property cannot be

allowed to be squandered in the manner as has been allowed and admitted by the Petitioner. In the facts and circumstances of this case, the Appointing/Punishing Authority in exercise of the discretion vested in him imposed the punishment of termination from service on the Petitioner vide order dated 30.8.1984. We are satisfied, that the Punishing Authority was not bound by the recommendation made to him by the Inquiry Officer. We are also satisfied, that the aforesaid punishment was commensurate to the guilt admitted by the Petitioner himself.

8. The third contention advanced by the Learned Counsel for the Petitioner was, that for the same allegations, as were levelled by the Authorities against the Petitioner in the charge sheet dated 8.2.1983, another employee of the department, namely, Mr. George Wilson holding the post of Forester was also issued a charge sheet. However, on technical grounds the punishment inflicted upon the aforesaid George Wilson was set aside. It is, therefore, the contention of the Learned Counsel for the Petitioner, that for the same reasons as have weighed with the authorities in setting aside the proceedings initiated against a co-worker, the proceedings against the Petitioner should also be set aside.

9. We have given our thoughtful consideration to the third and last contention advanced by the Learned Counsel for the Petitioner. During the course of hearing, Learned Counsel for the Petitioner very fairly acknowledged that the aforesaid George Wilson, Forester had not admitted his guilt in his reply to the charge sheet. Thus viewed, based on the factual position acknowledged by the Learned Counsel for the Petitioner, we are satisfied that the relief which was granted to the aforesaid George Wilson, Forester cannot be extended to the Petitioner on account of the fact that the case of the Petitioner is clearly distinguishable from that of George Wilson, Forester, whereas the Petitioner had admitted his guilt and no regular departmental inquiry was required to be conducted against him. The same did not apply to the aforesaid George Wilson, Forester, who admittedly had not acknowledged his guilt in the reply filed by him to the charge sheet. Thus viewed, it is not possible for us to accept the third contention advanced by the Learned Counsel for the Petitioner.

10. For the reasons recorded hereinabove, we find no merit in the instant Writ Petition and the same is accordingly dismissed.