

(2008) 04 AHC CK 0231
In the Allahabad High Court

Pradeep Kumar Saxena

APPELLANT

Vs

Chairman/Managing Director, U.P. Sahkari Gram Vikas Bank
Ltd. and Others

RESPONDENT

Date of Decision : 03-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 3 LLJ 819 : (2008) 2 UPLBEC 107

Hon'ble Judges : U.K. Dhaon, J;Devi Prasad Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

U.K. Dhaon and Devi Prasad Singh, JJ.—The instant petition under Article 226 of the Constitution of India has been preferred against the impugned order of dismissal dated 06.09.1995 passed by the Managing Director,U.P.Sahkari Gram Vikas Bank Ltd., Lucknow(to be hereinafter referred as the Bank) as well as the appellate Order dated 11.2.1997.

2. The brief facts of the case are summarised as under:

The petitioner who was appointed on the post of Kisan Sewak was later on designated as Field Officer. While posted in the Milik Branch (District Rampur) of the Bank, the petitioner was served with a charge sheet dated 20.03.1990 containing as much as six charges relating to financial irregularity and abuse of power. In response to the charge sheet, the petitioner submitted his reply on 27.06.1990. Thereafter letter dated 2.2.1994 was served upon the petitioner informing him that if he wants to make any further representation, he may do so, so that the enquiry may be concluded at an early date. In response to the letter dated 2.2.1994 the petitioner submitted his representation dated 14.2.1994 stating therein that on the basis of the material on record, further action may be taken by the Enquiry Officer. It appears that after receipt of the petitioner's reply dated 14.02.1994, the Enquiry Officer, instead of recording oral evidence and permitting the petitioner to adduce evidence in defence, served a

notice dated 08.06.1994 calling upon the petitioner to appear for personal hearing, in pursuance whereof the petitioner was heard on 18.6.1994. Thereafter, the Enquiry Officer submitted the report, a copy of which has been annexed as Annexure 24 to the writ petition. After submission of the enquiry report, a show cause notice dated 28.01.1995 was served upon the petitioner.

3. According to Sri Ramesh Kumar Srivastava, learned Counsel for the petitioner, after receipt of the show cause notice, the petitioner submitted his representation stating therein that the enquiry proceedings have been held without providing necessary opportunity and supplying all the necessary documents. However, Sri N.N.Jaiswal, the learned Standing Counsel appearing for the respondent-Bank has rebutted this submission.

4. The Disciplinary Authority by the impugned order dated 06.09.1995 dismissed the petitioner from service, a copy of which has been annexed as Annexure-4 to the writ petition. Being aggrieved with the order dated 06.09.1995 passed by the Disciplinary Authority, the petitioner preferred a statutory departmental appeal which was rejected by the impugned order dated 11.02.1997, a copy of which has been annexed as Annexure-2 to the writ petition.

5. Learned Counsel for the petitioner, while assailing the impugned orders, has submitted that the Enquiry Officer submitted the enquiry report without holding regular enquiry necessary under the service rules as well as the law settled by this Court as well as Hon"ble the Supreme Court. He further submitted that the Enquiry Officer submitted the Enquiry Report without recording any oral evidence and also without giving opportunity to the petitioner to adduce evidence in defence. It has been further submitted that as much as seven persons had submitted written statement before the Enquiry Officer informing him that the petitioner is not guilty for any allegations contained in the charge sheet and they also stated that no injustice has been done by the petitioner while working in the Branch in question. He further submitted that since no oral evidence was recorded, the petitioner was not given any opportunity to cross-examine the witnesses and the documents relied upon by the opposite parties were not proved in evidence resulting in violation of principles of natural justice and in consequence thereof the petitioner could not advance his arguments relating to the authenticity of the documents by cross-examining the witnesses.

6. On the other hand, Sri N.N.Jaiswal, learned Counsel for the respondent-Bank, while vehemently defending the action of the opposite parties, has submitted that the petitioner himself was called by the Enquiry Officer for personal hearing and in response to the show cause notice, the petitioner has not submitted any reply and since the petitioner has not submitted reply to the show cause notice, he is not entitled for any leniency from this Court and the impugned orders have been passed with due compliance of principles of natural justice.

7. We have considered the submissions made by the learned Counsel for the parties and gone through the record.

8. A plain reading of the enquiry report indicates that the Enquiry Officer has not fixed any date, time or place to record the oral evidence. The enquiry report further reveals that no effort was made by the department to adduce any oral evidence to substantiate the charges contained in the charge sheet. There is nothing on record which may indicate that the documents relied upon against the petitioner in the enquiry were duly proved by cogent evidence. Further, the enquiry report does not reveal that the Enquiry Officer had given opportunity to the delinquent employee to defend his case.

9. It is settled proposition of law that enquiry means an enquiry, in accordance with law, where allegations contained in the charge sheet should be proved by oral evidence adduced by the department first and thereafter the delinquent employee may get an opportunity to cross-examine witnesses and the Enquiry Officer shall afford an opportunity to the delinquent employee to lead evidence in defence. Only after giving opportunity to lead evidence in defence, the Enquiry Officer may proceed to provide opportunity of personal hearing to the delinquent employee. Mere grant of personal hearing to the delinquent employee shall not amount sufficient compliance of the principles of natural justice. It is also settled proposition of law that in the event the delinquent employee does not co-operate in the enquiry proceedings, then it is incumbent upon the Enquiry Officer to proceed ex-parte directing the Presenting Officer to adduce evidence to substantiate the charges, as laid down in *Radhey Kant Khare v. U.P. Cooperative Sugar Factories Federation Ltd.* reported in 2003(21) LCD 610. Needless to say that the Enquiry Officer while discharging his duty, is a quasi-judicial authority and it shall be incumbent upon him to discharge the duty independently, providing due opportunity to the parties to lead evidence.

10. In view of the above, we are of the view that the Enquiry Officer had not discharged his duty in accordance with law and he had acted in violation of principles of natural justice. Since the impugned orders have been passed relying upon the report of enquiry which was held in utter violation of principles of natural justice, they vitiate. The writ petition deserves to be allowed.

11. The writ petition is allowed. A writ of certiorari is issued quashing the impugned order of dismissal dated 06.09.1995 passed by the Managing Director, U.P. Sahkari Gram Vikas Bank Ltd., Lucknow as well as the appellate Order dated 11.2.1997, contained in Annexure 4 and 2 respectively with all consequential benefits and liberty is given to the respondents to proceed afresh against the petitioner, in accordance with law, from the stage of reply to the charge sheet. However, the payment of consequential benefits shall be subject to the final outcome of fresh enquiry, if any. In case the respondents decide to hold fresh enquiry, in that event they shall conclude the same expeditiously and preferably within four months from today. The costs made easy.