
(2012) 01 AHC CK 0584
In the Allahabad High Court
Case No : Service Bench No. -474 of 2003

Pushpendra Kumar Gupta

APPELLANT

Vs

U.P. Coop. Dairy Federation and Milk Union and Ano.

RESPONDENT

Date of Decision : 13-01-2012

Acts Referred:

Citation : (2012) 01 AHC CK 0584

Hon'ble Judges : Ritu Raj Awasthi, J; Pradeep Kant, J

Bench : Division Bench

Advocate : R.K. Nigam, for the Appellant; Sudeep Kumar, for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner, Sri Rakesh Kumar Nigam as well as learned counsel for the respondents, Sri Sunil Kumar Singh. The petitioner challenges the order of dismissal from service dated 24th of March, 2003 passed by the Chairman, Administrative Committee.

2. The petitioner while working on the post of General Manager of Centralized Service in Dugdh Utpadak Sahkari Sangh, Meerut was suspended on 2nd April, 2002 on the alleged charge that on account of lapses on his part, the PCDF suffered losses. A charge-sheet containing nine charges was submitted on 17th April, 2002. The petitioner demanded certain documents on 30th of April, 2002 but out of 8 documents only 4 documents were provided. The petitioner submitted his reply to the charge-sheet on 21st of June, 2002 and on 23rd of July, 2002, he asked for cross-examination of 11 persons but the Enquiry Officer vide his letter dated 27th of July, 2002 permitted only 5 persons to be cross-examined.

3. The facts on record reveal that the Enquiry Officer adopted a novel method which was not legally permissible to hold the enquiry.

4. He did not fix any date, time and place for the department to prove the

charges or to adduce oral or documentary evidence but straightway called the petitioner on 7/8th of August, 2002 to give defence evidence vide letter dated 23rd July, 2002. The Enquiry Officer required the petitioner to give typed questions with blank space for answer by the witnesses concerned and these witnesses inserted their reply in between the questions at the blank space provided therein. Beyond it, the petitioner was not allowed to cross-examine the witnesses.

5. The petitioner was thereafter given personal hearing on 26-27th of August, 2002.

6. After the personal hearing, the Enquiry Officer visited Meerut where he perused various documents and on the basis of such an ex-parte enquiry, he submitted his enquiry report on 28th of September, 2002.

7. The petitioner was issued show cause notice to submit his reply against the proposed punishment of dismissal from service on 5th of October, 2002, which was replied by him on 6th of November, 2002.

8. The petitioner gave a detailed reply, about 46 pages, where he brought to the fore the gross procedural illegality in holding enquiry, non affording of reasonable opportunity to the petitioner in the enquiry and also the perversity of the findings and ultimately concluding that no loss was occasioned to the institution because of any conduct of the petitioner.

9. The Disciplinary Authority passed the impugned order of dismissal of service on 24th of March, 2003.

10. A perusal of the aforesaid order reveals that she has not addressed at all to the issues involved and to the objections raised by the petitioner and, in fact, such a detailed reply submitted by the petitioner has been completely brushed aside without recording any reason and by a very cryptic order, the dismissal order has been passed.

11. A look at dismissal order would show that the Disciplinary Authority has first quoted the charges then she has mentioned about the show cause notice and lastly she has given the punishment but nowhere the reply to the show cause notice given by the petitioner has been considered nor she has addressed herself to the material available on record for finding out as to whether the charges stand proved or not. She has not addressed herself on the plea of gross procedural irregularity in holding the enquiry, which itself vitiates the enquiry proceedings and also the dismissal order. Simply she has endorsed that the charges have been found proved and therefore, the punishment of dismissal from service has been awarded.

12. Learned counsel for the petitioner has submitted that at the time of joining of the petitioner at the Dugdh Utpadak Sahkari Sangh, Meerut on 10th of September, 2001, it was running in loss of about Rs. 3.00 crores but on account of incessant efforts made by the petitioner, it became in profit of Rs. 2.00 crores

within six months.

13. He has also tried to impress before us that no financial loss had occasioned to the institution because of any conduct of the petitioner but we do not find it necessary to address ourselves on the aforesaid issue, for the reason that the enquiry itself is vitiated and the order impugned cannot be sustained under law, on other grounds also.

14. Once the charge-sheet was issued to the petitioner and the petitioner having submitted his reply, it was incumbent upon the Enquiry Officer to fix date, time and place for adducing evidence by the department, may be oral as well as documentary. The department was under obligation to prove the charges by adducing such oral evidence as may be necessary and to get the documentary evidence corroborated by producing Officers/Officials who were competent to do so. The petitioner was to be given opportunity of being present during the course of leading evidence by the department, where he was at liberty to raise objections against the evidence produced and to cross-examine the witnesses, if any, oral evidence was produced. The documentary evidence could also have been rebutted by saying it to be inadmissible or otherwise.

15. After the department had given its evidence then a date was to be fixed giving opportunity to the petitioner to adduce any evidence in defence as per his desire i.e. oral as well as documentary. After the stage of evidence was over, it was thereafter that date, time and place was to be fixed for personal hearing, on which date the parties would have been heard. The Enquiry Officer thereafter would have submitted his report. But in the instant case, the Enquiry Officer not only did not fix date, time and place for the department to prove the charges by adducing necessary evidence but also straightway called the petitioner/delinquent officer, to adduce the evidence in defence.

16. The petitioner having no way out gave a list of 11 witnesses out of which, the Enquiry Officer denied the cross-examination of six witnesses and permitted only five witnesses. After this, he gave an eyewash in the name of personal hearing in most astonishing manner. After giving the personal hearing to the petitioner, the Enquiry Officer himself went to Meerut for collecting evidence and acted as Presenting Officer.

17. The Enquiry Officer was not supposed to collect the evidence nor was required to get it verified on his own.

18. As a matter of fact, on whatever evidences the department was relying upon they should have been produced by the department itself before the Enquiry Officer and the concerned Officers/Officials ought to have corroborated and verified them. Even otherwise, calling the delinquent to adduce the evidence in his defence without requiring the department to prove the charges by adducing evidence is not the rule of procedure nor is permissible.

19. A delinquent may or may not produce any evidence to disprove the charges

but he cannot be held guilty of any charge, unless it stands substantiated/proved by the department on the basis of material evidence on record. If the charges are not proved by the department there would be no question or occasion by the delinquent to disapprove the charge or to adduce defence in his favour.

20. In the case of State of Uttar Pradesh and Others Vs. Saroj Kumar Sinha; (2010) 2 Supreme Court Cases 772, the Apex Court observed that the Enquiry Officer is in the position of an independent adjudicator and he is not supposed to be a representative of department/disciplinary authority/Government, he must be wholly unbiased and should not act as a prosecutor as well as a judge.

21. The aforesaid facts are not disputed in the counter affidavit; rather it is admitted in paragraph 39. The visit of the Enquiry Officer to the Dugdh Utpadak Sahkari Sangh, Meerut and collecting evidence as well as verification of evidence on his own is admitted in the said paragraph. There is also no denial in the counter affidavit about the fact that the Enquiry Officer did not fix any date, time and place for the department to adduce evidence nor there is any denial to the fact that the petitioner/delinquent officer was straightway called for adducing evidence in his defence.

22. For the reasons aforesaid, the entire enquiry proceedings are vitiated and the order of dismissal passed on the basis of such an enquiry report can also not be sustained and the same is liable to be quashed, which is hereby quashed.

23. Since the learned counsel for the respondents has not been able to show any rule/service regulations which permit the holding or continuance of departmental enquiry after the incumbent has retired on attaining the age of superannuation, no liberty can be given to the department to hold the enquiry afresh. In the instant case, the petitioner, as we are informed, has crossed the age of superannuation in the year 2003 itself. Consequent to the quashing of the dismissal order, the petitioner shall be deemed to be in continuous service till he reached the age of superannuation and shall be given all consequential benefits including that of salary, etc.

The writ petition is allowed.