
(2008) 11 AHC CK 0025
In the Allahabad High Court

Radhey Shaym Mishra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-11-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2)

Citation : (2009) 2 AWC 1666

Hon'ble Judges : Sudhir Agarwal, J;S. Rafat Alam, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S. Rafat Alam and Sudhir Agarwal, JJ.—Aggrieved by the order dated 22.12.88 whereby the petitioner was dismissed from service and dated 10.10.1989 whereby his appeal was rejected, he preferred claim petition u/s 4 of the U.P. Public Services Tribunal Act (hereinafter referred to as the Act) before the U.P. Public Services Tribunal (hereinafter referred to as the Tribunal) vide Reference No. 156/III/1990 which was dismissed by the Tribunal vide judgment dated 28th July, 1997 hence the petitioner has come up to this Court under Article 226 of the Constitution of India by means of the present writ petition challenging the aforesaid orders as well as the judgment of the Tribunal.

2. Brief facts giving rise to the present dispute are that the petitioner was appointed as Gram Sewak on 26.3.1968. By order dated 27th February, 1981, he was placed under suspension, whereafter charge-sheet was issued on 22nd June, 1981 requiring him to submit his reply. Block Development Officer Asodhar was appointed Inquiry Officer. The petitioner did not submit any reply despite of time granted on various occasions. A notice was published in the daily newspaper "Amrit Prabhat" on 21st October, 1987 directing him to appear in the office of Block Development Officer and obtain copy of the charge-sheet as well as other documents relied by him and submit his reply but he did not avail the same. Again on 21st March, 1988 charge-sheet and documentary evidences were sent by registered post directing the petitioner to submit reply, but he failed. On 26th

September, 1988, he was again directed to submit reply but still he defied the order and on the contrary demanded certain documents. Ultimately on 22nd December, 1988, order of dismissal was passed by the District Development Officer holding charges proved against the petitioner whereagainst he filed appeal on 22nd September, 1988 before the District Magistrate which was also rejected by the appellate authority.

3. Learned Counsel for the petitioner submitted that even assuming everything what is alleged by the respondents that the petitioner did not cooperate with the enquiry proceedings yet it was incumbent upon the respondents to hold oral enquiry. In the present case neither any oral enquiry was held nor anybody proved charges against the petitioner before the Enquiry Officer and even the inquiry report was not submitted and yet the petitioner has been punished by the disciplinary authority directly on his own without having any disciplinary proceedings conducted against him, therefore, the entire proceedings are in utter violation of principles of natural justice and Article 311 (2) of the Constitution of India.

4. Learned standing counsel on the contrary however, submitted that the proceedings were conducted in accordance with law and therefore, no interference is called for.

5. Having gone through the record and considering rival submissions we find that the appointing authority of the petitioner was Additional District Magistrate (Planning)/District Planning Officer, Fatehpur. The order dated 26th March, 1968, a copy whereof has been placed on record as Annexure-1 to the writ petition shows that the same was issued by the Commissioner Agricultural Production and Rural Development, U.P. communicating his approval for appointment of certain candidates whose list was enclosed thereto for appointment on the post of Gram Sewak. Para 4 provides that the appointment letter shall be issued by the Additional District Magistrate (Planning)/District Planning Officer. The District Development Officer, Fatehpur on 27.2.1981 placed the petitioner under suspension and appointed Block Development Officer Asodhar as Inquiry Officer. The petitioner made complaint about non-receipt of charge-sheet. The press note dated 21st October, 1987, a copy whereof has been placed on record as Annexure-8 to the writ petition shows that notice was published by the District Development Officer, Fatehpur directing the petitioner to collect charge-sheet and evidence from the Block Development Officer, Asodhar, Fatehpur and submit his reply within 15 days to the Enquiry Officer failing which it would be deemed that he does not intend to give any reply and all the charges are acceptable to him and the matter shall be proceeded ex parte. The petitioner claimed that he went to Vikas Khand Adhikari Asodhar, Fatehpur but could not get copy of the charge-sheet and other documents whereafter made representations to the Commissioner Agricultural Production and Rural Development and District Development Officer, Fatehpur. It appears that on 5th February, 1988 a show cause notice was issued to the petitioner as to why his services be not

terminated and Rs. 10,984 be recovered from him and he was required to submit his reply. The said show cause notice was issued by District Development Officer, Fatehpur. The petitioner again complained with regard to non-receipt of charge-sheet and also non-payment of subsistence allowance vide representation, copy whereof is filed as Annexure- 16 to the writ petition. Annexure-21 is a copy of the letter dated 21st March, 1988, issued by the District Development Officer, Fatehpur stating that a copy of the charge-sheet dated 22.6.81 as well as documents relied in support of the charges are being sent and the petitioner after receiving the same may submit his reply within fifteen days failing which it would be deemed that he does not propose to say anything and ex parte order shall be passed. The said letter is again by the District Development Officer, Fatehpur and a copy thereof was endorsed to the Block Development Officer, Asodhar, Fatehpur with direction to obtain reply from the petitioner and complete enquiry proceedings within fifteen days. Thereafter it appears that on 22.12.1988 the District Development Officer, Fatehpur passed the impugned order of dismissal and for recovery of Rs. 10,684 from the petitioner, whereagainst he submitted his appeal to the District Magistrate, Fatehpur who rejected the same vide order dated 24.10.89. From the perusal of the punishment order of the District Development Officer, Fatehpur, we do not find any reference to the enquiry report of the Block Development Officer, Asodhar, Fatehpur who was appointed as Enquiry Officer. On the contrary, the impugned order shows that the disciplinary authority passed the same assuming that since the petitioner did not submit his reply therefore, he has nothing to say in his defence and the disciplinary authority deemed it sufficient compliance of the procedure enabling him to pass punishment order.

6. The petitioner objected to the correctness of the disciplinary proceedings on the ground that no enquiry was held at all and this issue appears to have been raised before the Tribunal also but on this aspect the Tribunal has observed that since the charge-sheet was issued by the competent authority and the petitioner failed to submit his reply, the proceedings were conducted ex parte. the charges against him were duly proved during the course of enquiry thereafter, show cause notice was issued and he was punished. This finding has been assailed by the petitioner as perverse inasmuch as he has submitted that neither any enquiry was conducted nor any finding was recorded with respect to the proof of charges and the respondents have acted illegally.

7. Since the petitioner specifically disputed about holding of any oral enquiry and challenged the finding of the Tribunal, the respondents were directed to produce record of the enquiry for perusal of the Court vide our order dated 16.11.08 pursuant where to Sri Rajani Kant Tiwari, learned standing counsel, produced record before this Court and also made a statement fairly that having gone through the record he himself did not find that any oral enquiry was conducted against the petitioner and in fact even enquiry report was not on record. He stated that from the record it appears that after the letter dated 26.9.1988 since the petitioner did not submit any reply, the disciplinary authority, i.e., District

Development Officer straightaway proceeded to pass the impugned order of dismissal treating the charges proved. We have also perused the record and find it correct. It is very strange that disciplinary authority namely District Development Officer, Fatehpur appointed Block Development Officer Asodhar, Fatehpur as Enquiry Officer. Even if it is assumed that the petitioner did not co-operate with the oral enquiry, yet the law requires that Enquiry Officer, in such circumstances, may proceed ex parte. The charges have to be proved by the department before the Inquiry Officer, and thereafter the Enquiry Officer is under an obligation to submit his report recording his own findings as to whether the charges are proved against the petitioner or not. Only after receiving such enquiry report the disciplinary authority can proceed to pass appropriate orders in accordance with law. The situation may have been different if the disciplinary authority himself would have been holding inquiry. It is not a case where disciplinary authority himself was conducting enquiry and when delinquent employee failed to submit his reply or co-operate in the oral enquiry, he could have passed composite order meeting the requirement of enquiry report as well as the punishment order. On the contrary in the present case the disciplinary authority had appointed an Enquiry Officer who was supposed to conduct oral enquiry and submit his report. Admittedly upto 26.9.1988 the respondents were at the stage of issuing charge-sheet to the petitioner and requiring him to submit his reply. On and after 26.9.1988, there is nothing on record to show that even an ex-parte enquiry was conducted by the Enquiry Officer where charges were found proved against the petitioner and on such enquiry report disciplinary authority has proceeded. No such record is available and it appears that the said procedure was not at all followed. The findings recorded by the Tribunal that an ex parte oral enquiry was conducted and when the charges were proved against the petitioner only then he was issued show cause notice and thus the punishment is clearly perverse. In fact show cause notice was issued on 5.2.1988, i.e., much before the issuance of the letter dated 21st March, 1988 and 26.9.88 whereby the respondents again sent copy of the charge-sheet and documents to the petitioner requiring him to submit his reply hence the earlier show cause notice dated 5.2.88 becomes meaningless and could not have been acted upon.

8. Holding of oral enquiry is an integral part of disciplinary proceedings. Where disciplinary authority in his discretion appointed an Enquiry Officer, and the delinquent employee has not admitted charges levelled against him, non-submission of reply to the charge-sheet by itself would not amount to proof of the charges and on the contrary the department is under an obligation to prove the charges before the Enquiry Officer, may be ex parte while the delinquent employee is not cooperating. In case of non-reply of charge-sheet but if he failed to do so the charges cannot be deemed to stand proved. Considering the importance of oral enquiry, the Apex Court in the 1996 VII AD 821 (SC) held that even if the employee has failed to submit reply to the charge-sheet, it would not absolve the Enquiry Officer from proceeding with the oral enquiry and submit

report as to whether the charge is proved or not. After recording of evidence, he will find out whether the charge is proved or not and submit report to the disciplinary authority.

9. Even this Court in Special Appeal No. 533 of 2004, Chandra Pal Singh v. Managing Director decided on 12.10.06 has taken the similar view.

10. The aforesaid exposition of law makes it clear that the delinquent employee has a right to defend himself at different stages. When the charge-sheet is served upon him, he has right" to submit his reply and in case he does not submit reply, that itself would not amount to admission of guilt or that the charge stand proved. If the allegations are serious and may result in major penalty, the disciplinary authority may appoint Enquiry Officer. Such Enquiry Officer, thereafter would have to fix a date for oral evidence. At this stage the delinquent employee has a right to participate in the oral enquiry, examine witnesses, if produced by the department, and after the evidence of the department is completed, the delinquent employee may produce evidence in his defence. During the course of oral enquiry, the delinquent employee has right to participate at every stage and date and if there is any failure in participation on one or more occasions, the Enquiry Officer cannot deny him participation from the subsequent stage. The delinquent employee can participate at subsequent other stage. The Enquiry Officer, after completion of oral enquiry, will submit its report after discussing the entire material and if any charge is proved, the disciplinary authority shall supply a copy of the enquiry report to the delinquent employee and he would again have a right to submit reply to the enquiry report.

11. In view of above discussions we are constrained to observe that the learned Tribunal has completely failed to consider the matter with correct perspective and gone to the extent of recording a finding which is perverse and is not supported either by the material on record or even from the pleadings. The writ petition is accordingly allowed. The impugned judgment of the Tribunal dated 28.7.97 as well as dismissal order dated 22.12.88 are hereby quashed. However, the respondents are at liberty to proceed afresh against the petitioner in accordance with law and pass a fresh order. In case they decide so, so far as payment of arrears of salary and other consequential benefits are concerned, the same would depend on the result of departmental proceedings if any initiated afresh in accordance with law as directed above or as per statutory rules applicable in this regard and the authority shall pass appropriate order accordingly. Till further order is passed by the authority concerned with respect to the arrears of salary, the respondents in the meantime shall pay at least subsistence allowance to the petitioner in accordance with rules. No order as to costs.