

(2005) 04 AHC CK 0236
In the Allahabad High Court
Case No : Writ Petition No. 9564 (S/S) of 1993

Raj Bahadur Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-04-2005

Acts Referred:

Citation : (2005) 4 AWC 3884

Hon'ble Judges : Rakesh Sharma, J

Bench : Single Bench

Advocate : D.P. Dwivedi and A.K. Tewari, for the Appellant; Mohd. Abid Ali and B.N. Misra, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Sharma, J.—Heard Sri A.K. Tiwari, learned Counsel for the petitioner and the learned Chief Standing Counsel appearing for the opposite party No. 1. Sri B. N. Misra has put in appearance on behalf of opposite parties No. 2 and 3.

2. The petitioner has assailed an order of dismissal passed on 6.11.1993 by the Managing Director of U.P. State Food and Essential Commodities Corporation Ltd., Lucknow. At the relevant time, the petitioner was posted as Salesman in the Corporation Godown at Sultanpur. The decision to hold departmental inquiry was taken against the petitioner and he was put under suspension on 26.10.1991 and a charge-sheet was issued against him on the said date. The charge-sheet dated 26.10.1991, containing six charges was issued against the petitioner. According to learned Counsel for the petitioner, this charge-sheet was never served on him. The petitioner was not kept associated with the inquiry, No documents were supplied to the petitioner which were referred and cited in the charge-sheet. The petitioner was also not informed about the date, place and time of the hearing.

3. The subject matter in accusation against the petitioner was that he committed irregularities while discharging duties as Salesman, did not hand over the charge of the office and stock. The petitioner had caused pecuniary loss to the

Corporation by his acts. In support of most of the charges, the District Manager, Faizabad's report dated 8.8.1991, letters sent by the said authority, District Manager, Varanasi, were mentioned in the charge-sheet. The learned Counsel for the petitioner has raised grievance that these reports, documents on the basis of which the charges were levelled against the petitioner were not supplied to him during the departmental trial. The alleged inquiry proceeded ex-parte and Inquiry Officer's report dated 8.10.1992, was submitted against the petitioner. All the charges were found proved against the petitioner. A show cause notice was issued against the petitioner on 11.3.1993. On receiving the show cause notice the petitioner reacted and reiterated his demand for providing him copies of the relevant documents, reports etc. to enable him to meet the charges and put forth his version. According to learned Counsel, a representation was submitted by the petitioner on 30.4.1993. It has been categorically submitted by the petitioner that he was required the documents, reports and Manager's letters and other material to enable him to meet the charges effectively. The petitioner was not provided with these documents and with a predetermined mind and pre-judging the issues, the order of dismissal dated 6.11.1993, was passed against the petitioner, which has been impugned in the present writ petition.

4. The petitioner has laid much stress on the point that even if he did not submit a reply to the charge-sheet he ought to have been kept associated with the inquiry by the appropriate-authority. No date, place and time of the inquiry was informed to him. The petitioner was ready to co-operate with the Inquiry Officer but he was not allowed to take part in the inquiry. It was imperative upon the Inquiry Officer to intimate the delinquent employee regarding date, place and various other steps and information to be taken up in furtherance of the departmental trial. There is absence of this fair procedure in the inquiry. The petitioner has relied on the following judgments in support of his submissions.

(1) Shafat Ullah Vs. Commissioner, Varanasi and Others,

(2) Radhey Kant Khare Vs. U.P. Co-operative Sugar Factories Federation Ltd.,

(3) Avadhesh Kwnar Rastogi v. State of U.P. and Ors. 2004 (22) LCD 1

(4) Ambika Prasad Srivastava Vs. State Public Services Tribunal and Others,

5. Sri B.N. Misra, learned Counsel for the respondents has resisted the writ petition, denied the allegations levelled against the Inquiry Officer and punishing authority. Sri Misra has placed the record relating to departmental inquiry and tried to demonstrate before the Court that the petitioner has been deliberately avoiding to take part in the inquiry. The petitioner has not replied to the charge-sheet within the stipulated period, extended period and under these compelling circumstances a notice was published in the newspapers calling upon the petitioner to submit his reply to the charge-sheet. Despite publication in the newspapers the petitioner did not submit his reply and the Inquiry Officer had to proceed with the inquiry. The record relating to departmental inquiry was placed which shows that after giving final, last opportunity to the petitioner to submit

his reply to the charge-sheet the Inquiry Officer produced two witnesses, namely Sri Dilip Kumar and Nand Lal Yadav who were examined by the Inquiry Officer on 14.8.1992 and 28.9.1992.

6. However, according to learned Counsel for the respondents, since the petitioner was not extending cooperation there was no requirement to intimate the petitioner regarding each and every date of inquiry as he has remained non-cooperative throughout the inquiry. Sri Misra has tried to defend the action of the Inquiry Officer on several grounds that this is a case in which the publication had been inserted in the newspapers calling upon the delinquent employee to submit a reply to the charge-sheet. Due to these reasons, the inquiry had to be concluded ex parte and the Inquiry Officer recorded his findings and submitted the same to the punishing authority. A show cause notice was issued to the petitioner to enable him to submit his reply. After considering the version of the petitioner, the punishing authority has passed a detailed, reasoned and speaking order on 13.6.1993. According to Sri B. N. Misra, learned Counsel for the respondents, the order is a well-considered, reasoned and speaking order and there is no illegality in the order.

7. I have considered the arguments of the learned Counsel for the parties and perused the record.

8. In the present case, it is evident from the record that after issuance of the charge-sheet the petitioner did not submit his reply to the charge-sheet. It is further clear from the record that the petitioner was not made available the documents cited in the charge-sheet. The District Manager's report and various letters have been cited in support of the charges, indicated in the charge-sheet. These letters could have been made available to the petitioner or he should have been at least provided an opportunity of inspecting the same. The record reveals that petitioner was not afforded opportunity to inspect the documents or record.

9. It is correct that the petitioner did not submit his reply to the charge-sheet, the Inquiry Officer was to proceed with the inquiry in the absence of the reply to the charge-sheet. As rule provides, the Inquiry Officer should have fixed dates for departmental trial. The record relating to departmental inquiry does not indicate as to how the delinquent employee was informed about the date, place and time of the departmental inquiry. He was not informed about the progress of the trial and various dates fixed by the Inquiry Officer. The record further reveals that Sri Dilip Kumar was examined as witness of the employer on 14.8.1992. The petitioner could have intimated about this date to enable him to cross-examine Sri Dilip Kumar in the same manner Sri Nand Lal Yadav was examined on 28.9.1992 but the petitioner was not intimated of the date fixed for examination of the said witness. No further date of personal or oral hearing was fixed by the Inquiry Officer. The relevant rule provides for submission of the reply to the charge-sheet. The Inquiry Officer should have proceeded with the inquiry by fixing the date by examining that the charges are based on oral documents and could have been supplied to the delinquent or he could have allowed inspection

of the documents or record. If the documents were bulky or there may be other administrative difficulties in not providing the copies of the documents, in the present case the petitioner would have been allowed to inspect the same.

10. The following portion of the judgment in *Shafat Ullah Vs. Commissioner, Varanasi and Others*, is squarely covered in the case of the petitioner.

In our opinion this petition can be disposed of on a short point viz. that the petitioner was not informed of the date, time and place of the inquiry. This fact has been stated in paragraph 15 of the writ petition and has not been denied by the respondents. It has been repeatedly held by this Court in *Subhas Chand Sharma v. Managing Director, U.P. Co-op. Spg. Mills Federation Ltd., Kanpur and Ors.* 2001 (3) AWC 2043 and *K.K. Dutta v. Managing Director U.P. Co-op. Spg. Mills Federation Ltd., Kanpur and Anr.* 2002 (1) UPLBEC 425, that before passing a dismissal order an inquiry should be held intimating the accused employee of the date, time and place of the inquiry.

The facts of this case appear to be squarely covered by the above decisions. However, learned Counsel for the respondents has relied on Annexure-5 to the petition which is a charge-sheet, and in it, it is mentioned in the last paragraph that if the petitioner wishes to produce any evidence or if he desires a hearing or cross-examination he should inform the Inquiry Officer. It was argued by the learned Counsel for the respondents that since the petitioner did not inform the Inquiry Officer that he wanted a hearing or to produce witnesses a presumption should be drawn that the petitioner never wanted a hearing nor did he want to examine witnesses or opportunity of cross-examination. We do not agree with this contention. Since the charge was made by the employer against the employee the burden was on the employer to prove its case by leading evidence to prove the charges. If no one, produces evidence then the charge will fail. It has been held in *The Imperial Tobacco Company of India Ltd. Vs. Its Workmen*, , that even if the accused employee withdraws from the enquiry the enquiry should have been completed and all the evidence should have been taken ex parte and thereafter it was the duty of the Branch Manager to appraise that evidence and record his conclusion as to what misconduct has been proved and also to decide what punishment should be given.

Hence, in opinion even if the accused employee does not reply to the letter asking whether he wants to give evidence or wants a hearing he must be sent a letter informing the date, time and place of the enquiry in which he must be given opportunity to produce his witnesses and cross-examine the witnesses against him. It is only where the employee specifically writes a letter to the employer that he does not want to lead evidence or does not want to produce witnesses or cross examine that these need not be provided. However, even in such case the Employer must lead its own evidence otherwise the charge will fail as has been held in the cases of *Messrs. Delta Engineering Co. Put. Ltd. Meerut v. P.O. Industrial Tribunal V. Meerut and Ors.* 1997 AWC 428 : 1997 (77) FLR 520 : *Airtech Private Ltd. v. State of U.P. and Ors.* 1984 (49) FLR 38 and *V.K. Raj*

Industries v. Labour Court. 1981 (43) FLR 194.

11. Similar views have been expressed by this Court in other Division Bench decisions as placed by the learned Counsel for the petitioner in support of his submissions.

12. In view of above, it is amply clear that no opportunity was afforded to the petitioner to participate in the inquiry and he was not informed about the date, place and time of holding the departmental inquiry nor he was supplied with the documents demanded by him. The petitioner's reply to the show cause notice or representation submitted by him was not dealt with. The punishing authority ought to have considered the submissions made by the petitioner and drawn his conclusion accordingly. It appears from the impugned order that the action has been taken with a pre-determined mind and pre-judging the issues. The entire proceedings are vitiated for violation of principles of natural justice in not affording the opportunity of hearing to the petitioner.

13. The writ petition is allowed. A writ of certiorari is issued quashing the impugned order dated 25.10.1991, passed by the Managing Director as contained in Annexure-3 and the order dated 6.11.1993, passed by the Managing Director as contained in Annexure-1 of the writ petition. The consequences shall follow.

14. However, it shall be open for the opposite parties to proceed again in accordance with law if they deem fit in the circumstances of the case.