
(2009) 02 AHC CK 0154
In the Allahabad High Court

Ram Prakash Shukla

APPELLANT

Vs

U.P. State Sugar Corporation Ltd. and Others

RESPONDENT

Date of Decision : 26-02-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 3 AWC 2132

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

Bench : Division Bench

Final Decision : Allowed

Judgement

S. Rafat Alam and Sudhir Agarwal, JJ.—We have heard learned Counsel for the petitioner and Shri R. K. Srivastava, learned Counsel for the Sugar Corporation.

2. After conducting departmental inquiry the punishment of dismissal was imposed upon the petitioner vide order dated 2.9.1999 passed by the Managing Director, U. P. Sugar Corporation, Lucknow (hereinafter referred to as disciplinary authority) and the appeal of the petitioner against the said dismissal order has been rejected by the order dated 11.4.2000. Aggrieved thereto the present writ petition has been filed under Article 226 of the Constitution of India.

3. The facts, in brief, giving rise to the present dispute are as under:

The U.P. State Sugar Corporation Ltd. (hereinafter referred to as the Corporation) is incorporated under the provisions of the U.P. State Sugar Corporation Undertaking (Acquisition) Act, 1971 (hereinafter referred to as Act) and is registered as the Government Company under the Companies Act, 1956. In the year 1982 the corporation made recruitment on the post of Chief Engineer in one of its unit wherein the petitioner was successful and was appointed on probation on 13.10.1982. He was confirmed on the said post vide order dated 18.7.1987, w.e.f. 6.11.1983. In the year 1998 the petitioner was posted as Chief Engineer at Mohiddinpur Unit, district Meerut where he took charge on 14.12.1996. He was placed under suspension on 30.6.1998 in contemplation of a disciplinary inquiry.

A charge-sheet was issued to him on 18.9.1998, copy of which is on record as Annexure-4 to the writ petition, which contains five charges in respect to functioning of the petitioner at Mohiddinpur. Reply was submitted on 8.10.1998 denying the charges. No oral inquiry was conducted by the Inquiry Officer and on the contrary he sought clarification from the petitioner on certain aspects contained in petitioner's reply and required the petitioner to clarify the same vide letter dated 22/23.4.1999. The petitioner thereafter was attached with the Headquarter of the corporation vide order dated 29.7.1999. Aggrieved whereunto the petitioner filed Civil Misc. Writ Petition No. 1317(S/B) of 1999 before the Lucknow Bench of this Court which was disposed of vide judgment dated 16.8.1999, copy whereof is on record as Annexure-10 to the writ petition. It appears that in the meantime the Inquiry Officer submitted his report on 3.7.1999 holding charges No. 1, 2, 3 and 5 as proved and charge No. 4 as not proved. Copy of the inquiry report was served upon the petitioner by respondent No. 2 alongwith his letter dated 3.7.1999 directing the petitioner to submit his comments within 15 days. The petitioner submitted his reply to inquiry report vide letter dated 11.8.1999, copy whereof is annexed as Annexure-12 to the writ petition.

Besides above enquiry the petitioner was also served with another charge-sheet dated 6.10.1998 (Annexure-14 to the writ petition) in respect to certain allegations of period when he had worked as Chief Engineer at Meerut Unit in 1996. The petitioner submitted his reply on 20.10.1998 and thereafter without holding any oral enquiry, a report dated 26.4.1999 was submitted by the Inquiry Officer Sri R. P. Srivastava, Chief Manager (Purchase) (Annexure-16 to the writ petition) along his covering letter dated 19.8.1999 to respondent No. 2. The petitioner was asked to submit his reply to the said inquiry report also which was given to him vide letter dated 23.8.1999. The respondent No. 2 considering both the aforesaid inquiry reports passed the order of dismissal on 2.9.1999 (Annexure-2 to the writ petition). Challenging the dismissal order, the petitioner again approached this Court by means of Civil Misc. Writ Petition No. 1062/1999 which was disposed of by the order dated 21.12.1999 on the ground of alternative remedy of appeal and the petitioner was given liberty to the remedy of appeal. Thereafter his appeal has been rejected by the Board of Directors in its meeting dated 6.3.2000 and the said decision has been communicated to the petitioner vide letter dated 11.4.2000 (Annexure-21 to the writ petition).

4. Learned Counsel for the petitioner though has challenged the impugned orders on various grounds but ultimately has confined his submissions in respect to the finding on charge Nos. 3 and 5 and second charge-sheet (Annexure-14) and the ultimate decision taken pursuance thereof. He submitted that so far as charges No. 1 and 2 are concerned, which have been found proved against the petitioner, they were of technical nature, i.e., violation of process of allotment of supply contract, though petitioner has justified his decision that due to emergent circumstances he had to take immediate steps, which was in the interest of unit; but in respect to charges No. 3 and 5, he categorically submitted that findings of

Inquiry Officer in respect to said charges as also the approach of the disciplinary authority as well as appellate authority is wholly illegal, perverse and contrary to the material on record. The charge levelled against the petitioner in fact has not been proved but still he has been held guilty of charge Nos. 3 and 5 also. Therefore, the decision of the disciplinary authority based on the aforesaid finding is also illegal and liable to be set-aside. He further contended that so far as second inquiry is concerned pursuant to the charge-sheet dated 6.10.1998 (Annexure-14 to the writ petition), it is evident that no oral inquiry was ever conducted by the respondents and yet the findings of the said inquiry have been taken into account for imposing a major penalty upon the petitioner which is absolutely illegal and liable to be set-aside.

5. Per contra, Sri R. P. Srivastava learned Counsel for the corporation relying upon the inquiry report as well as the order of the disciplinary authority contended that there is no error apparent on the face of record and therefore no interference is called for and the writ petition is liable to be dismissed.

6. We have perused the record and heard the learned Counsels for the parties at length.

7. We first of all propose to consider the submission of the learned Counsel for the petitioner in respect of charges No. 3 and 5 of the charge-sheet dated 18.9.1998 (Annexure-4 to the writ petition).

8. Charge No. 3, in brief, alleges that the petitioner was posted at Mohiddinpur Unit when purchase order No. 2713, dated 14.11.1996 was issued for the purchase of industrial lubricants of different kinds from M/s. Indian Oil Corporation. Copy of the said purchase order sent to M/s. Shahni Lubricants, Delhi with the instruction that it may arrange supply of the requisite lubricants from the Delhi Depot of Indian Oil Corporation and submit bills for payment. According to the sale and purchase policy of the Corporation, the oil and grease was to be purchased from the companies of the Government of India only. Before issuance of the aforesaid purchase order competitive rates from other reputed suppliers namely, M/s. Tide Water Oil Company, Bharat Petroleum Company, M/s. Hindustan Petroleum etc. were not obtained. M/s. Shahni Lubricants, Delhi was neither an authorized dealer of the Indian Oil Corporation nor it was authorized to supply the requisite product to the Sugar Mill by the Indian Oil Corporation. Making arrangement of supply of lubricant of Indian Oil Corporation through an unauthorized company and to direct it to submit bill was in flagrant violation of the sale and purchase policy of the corporation amounting to serious financial irregularities. The lubricants for Rs. 8,19,199 were purchased through M/s. Shahni Lubricants, Delhi. On one hand, the lubricants purchased in the year 1996-97 for Mohiddinpur unit from unauthorized dealer, being substandard in quality, resulted in heavy wear and tear in apparatus and machine and on the other hand it also caused excessive expenses to the unit for repair etc. and thereby has resulted in heavy loss to the unit. It is said that for the purposes of repair Rs. 11 crores and more were spent. Violating the corporation circular No.

CPM/SSC/3306, dated 16.11.1991 and purchasing lubricants from M/s. Shahni Lubricants, Delhi, an unauthorized firm, and to make payment after obtaining bill from it, the sale and purchase policy has been violated, which is financial irregularity and has caused excessive loss to the corporation. The petitioner has further alleged to have informed in the statement dated 4.3.1998 that M/s. Shahni Lubricants, Delhi was dealer of Indian Oil Corporation, though it was not so and, therefore, the petitioner was guilty of serious misconduct of dereliction of duty.

9. From the report of the inquiry officer it is evident that he has accepted the explanation of the petitioner that the charge No. 3 pertains to a period when he was not posted at Mohiddinpur unit inasmuch as he has taken charge at Mohiddinpur on 14.12.1996 while the purchase order was issued on 14.11.1996. From the charge-sheet also it is evident that on 19.11.1996 after receiving supplies from M/s. Shahni Lubricants, Delhi the payment of Rs. 9 crores was made through a voucher, which is a documentary evidence in the list of relied upon documents. Similarly, another voucher is also before the posting of the petitioner in the said unit. Further, the petitioner replied that before his joining at Mohiddinpur unit about 20 drums lubricants already purchased, was returned by him and he got the money refunded. This fact has been found correct by the Inquiry Officer as is evident from the following finding on page 109 of the paper book:

Jh "kqDyk dk Li"Vhdj.k mfpr izrhr gksrk gS D;ksfd es0 lkguh yqczhdsUV dEiuh ls yqczhdsUV dEiuh ls yqczhdsUV dh vkiwfrZ IEcU/kh vkns" k mudh rSukrh ds iwoZ tkjh fd;k x;k Fkk A muds }kjk 20 M?e yqczhdsUV] tks fd es0 lkguh yqczhZdsUV dEiuh }kjk vkiwfrZ fd;s x;s Fks rFk vPNh xq.koRrk ds ugh Fks dks okil djok fn;k x;k A

10. The Inquiry Officer has also found it correct that from the date the petitioner was posted in the said unit, the lubricants supplied by M/s. Shahni Lubricants, Delhi had not been used and it was obtained from M/s. Tide Water Oil Company, as is evident from the following finding recorded by the Inquiry Officer at page 109 of the paper book:

Jh "kqDyk dk ;g dFku lgh gS fd es0 lkguh yqczhdsUV }kjk vkiwfrZr yqczhdsUV fnukad 16-12-1996 ls fey ij iz;qDr ugh fd;k Fkk vkSj es0 VkbM okVj vk;y dEiuh ls rsy izkIr dj fey ij iz;qDr fd;k x;k A

11. That being so, the entire charge levelled against the petitioner, in our view, was liable to be recorded as unproved but, strangely thereafter the Inquiry Officer has proceeded further and said that in respect to other units also, where the aforesaid lubricants of substandard was used. The matter ought to have been examined and, therefore, he is guilty of supervisory laxity. The Inquiry Officer on one hand even while recording the aforesaid has observed that in the absence of evidence it is not possible to verify the same but yet he has held that the petitioner ought to have got the aforesaid verification. In our view, the charge

found to be proved by the Inquiry Officer is beyond charge No. 3 levelled against the petitioner. Once the Inquiry Officer found entire charge No. 3 levelled against the petitioner unproved after accepting the explanation given by the petitioner, it was not open to the Inquiry Officer to proceed further and give his own finding in respect to some aspect of the matter, which was not the charge levelled against him. This aspect have not been considered by the disciplinary authority as well as appellate authority, yet they have proceeded on the assumption that charge No. 3 is found partly proved. In our view, the approach of the disciplinary authority in respect to this matter is also clearly erroneous and it is clear that he has also failed to apply its mind to this aspect of the matter.

12. Now, coming to charge No. 5, the Inquiry Officer has found that the allegations against the petitioner are that he took charge as Chief Engineer at Mohiddinpur unit on 15.12.1996. In the year 1996-97 despite spending Rs. 136.50 lacs more than the prescribed budget for Mohiddinpur unit, the work in the unit was much less due to lack of suitable repair of the plant in off season and lack of proper maintenance in the crushing season. Thus, it resulted in short of desired result and also caused financial loss of Rs. 5.1 crores to the unit, which also shows lack of technical competence, negligence and non-consideration of interest on the part of the petitioner, which is a serious misconduct.

13. The Inquiry Officer in its report while dealing with charge No. 5 found that the petitioner remained posted at Mohiddinpur unit only for a period of three and half months, i.e., from 5.12.1996 to 31.3.1997 during which period Rs. 34 lacs was spent on the stores material etc. He has not found that the petitioner spent amount more than the prescribed budget. Further, though the charge that the petitioner is guilty of technical incompetence, irresponsible attitude and failed to take steps in the interest of the unit but what the Inquiry Officer found proved in his conclusion is that the petitioner is guilty of lack of supervisory control as he could not pay due attention to the preventive maintenance of the machine during crushing season. The charge of supervisory unit on the part of the petitioner is not contained in charge No. 5 and, therefore, what the Inquiry Officer again has found proved against the petitioner was not a charge levelled against him. In our view, the finding of the Inquiry Officer to this extent goes beyond the charge and, therefore, could not have been the basis for imposing punishment upon the petitioner.

14. The disciplinary authority as well as appellate authority also failed to consider this aspect of the matter. It is not that they have taken a view different from the Inquiry Officer. Hence, it cannot be said that charge Nos. 3 and 5 are validly found proved by the Inquiry Officer as levelled in the charge-sheet. A finding in respect to some aspect of the matter, which was not a charge levelled upon the petitioner, the findings otherwise cannot be made basis to impose punishment upon him.

15. Now coming to the second charge-sheet dated 6.10.1998 (Annexure-14 to the writ petition), we find that the same was replied by the petitioner on

20.10.1998. Admittedly, no oral inquiry has been conducted against the petitioner in the said charge-sheet. In para 23 of the writ petition the petitioner has clearly asserted that no inquiry was conducted pursuant to charge-sheet dated 6.10.1998 as is reproduced as under:

23. That it is pertinent to mention here that in respect to charge-sheet dated 6.10.1998 the Inquiry Officer did not hold any inquiry proceeding and the petitioner was not even allowed to participate in the said proceeding. The Inquiry Officer on his presumption that the charges were proved against the petitioner stated that charge of cleaning of molasses tanks stood proved.

16. Respondents have replied in para 2 of the counter affidavit by denying allegation, contained in para 23 of the writ petition, but the later part of the reply makes it very clear that only inquiry, which is said to have been made against the petitioner is that charge-sheet was issued, his reply was received and thereafter the Inquiry report was submitted. Para 21 of the counter affidavit showing the aforesaid is hereby reproduced as under:

21. That, the contents of paragraph No. 23 of the writ petition are false and are denied. It is absolutely false to say that the Inquiry Officer did not hold any enquiry or that the petitioner was not allowed to participate in the enquiry proceedings. It is also wrong to say that the Inquiry Officer found the charges proved on the presumption. The correct fact is that the Inquiry Officer as per law gave the charge-sheet alongwith all relevant records to the petitioner, which was duly replied to by the petitioner and after considering to all the evidence on record, the Inquiry Officer have his report which is perfectly just and legal and suffers from no infirmity in law.

17. It is well established that in the case of imposition of major penalty unless the charges are accepted or admitted by the delinquent employee, it is incumbent upon the authority concerned to hold oral inquiry. In the absence of any oral inquiry the proceeding cannot be relied upon for imposing major penalty. In Subhash Chandra Sharma Vs. Managing Director, U.P. Co-op. Spg. Mills Federation Ltd., Kanpur and another, a Division Bench of this Court considering the question as to whether holding of an oral inquiry is necessary or not, held that if no oral inquiry is held, it amounts to denial of principles of natural justice to the delinquent employee. The aforesaid view was reiterated in Subhash Chandra Sharma v. U.P. Co-operative Spinning Mills and Ors. 2001 (2) UPLBEC 1475 and Laturi Singh v. U.P. Public Service Tribunal and Ors. Writ Petition No 12939 of 2001, decided on 6th May, 2005 : 2005 (5) AWC 5135.

18. An oral enquiry would be necessary even if the delinquent employee has failed to submit reply to the charge-sheet. In 1996 VII AD 821 (SC) the Hon"ble Apex Court held that, even if, the employee has failed to submit reply to the charge-sheet, it would not absolve the Inquiry Officer from proceeding with the oral inquiry and submit report as to whether 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 .

19. Same view has been taken by a Division Bench of this Court in which one of us (Hon'ble Sudhir Agarwal, J.) was member in Salahuddin Ansari v. State of U.P. and Ors. 2008 (3) ESC 1667 and Gourish Charan Srivastava v. State Public Services Tribunal, U.P. and Ors. Civil Misc. Writ Petition No. 656 S/B of 1995, decided on 11.7.2007.

20. We are, therefore, clearly of the view that the absence of any oral inquiry vitiated the subsequent proceeding and the said proceeding could not have been relied upon for the purposes of considering as to whether the petitioner must be visited with major penalty or not.

21. Besides, in respect to charge Nos. 1 and 2 also, which have been found proved and the learned Counsel for the petitioner could not show any procedural error in decision making process and the findings in respect to charge Nos. 1 and 2 are correct but it has also not been denied that the petitioner took steps in the emergent situation where the unit was lying closed in crushing season and immediate steps were necessary to make it functional at the earliest so as to avoid further losses. It is admitted by the respondent that after the petitioner joined at Mohiddinpur unit on 14.12.1996, an effort was made to make the said unit functional and it actually started function very soon thereafter. That being so, it was incumbent upon the disciplinary authority to consider the over all circumstances in which the petitioner took urgent steps instead of going through a long process of sale and purchase, which would have caused more loss to the unit.

22. In the fact and circumstances we find that the punishment of dismissal imposed upon the petitioner is also arbitrary and based on erroneous consideration, namely. charge Nos. 3 and 5 and charge-sheet dated 6.10.1998 (Annexure-14 to the writ petition) as also by not considering the relevant facts that is the circumstances in which the petitioner took steps and thereby technically violated the procedural aspect of the matter.

23. In the result the writ petition deserves to succeed. The impugned orders dated 2.9.1999 and 11.4.2000 are hereby quashed. The disciplinary authority is hereby directed to reconsider the matter taking into account only charge Nos. 1 and 2, which have been found proved by the Inquiry Officer but simultaneously also consider the circumstances in which steps were taken by the petitioner violating the sale and purchase procedure of the corporation. The disciplinary proceeding in so far as the finding recorded in respect to charge Nos. 3 and 5, being beyond the allegations contained in charge-sheet, are hereby quashed. Similarly, the disciplinary proceeding pursuant to the charge-sheet dated 6.10.1998 (Annexure-14 to the writ petition) are also quashed, being in violation of principles of natural justice. The matter is remitted back to the disciplinary authority to pass a fresh order in the light of the observations made above and in accordance with law expeditiously but not later than three months from the date

of production of a certified copy of this order before the said authority. It is made clear that during the period the petitioner remained out of employment pursuant to the impugned order of punishment, the question of arrears of his salary, if any shall be taken by the disciplinary authority in the light of and pursuant to the final order, which would be passed consequent upon the direction contained in this judgment. No costs.