
(2005) 11 AHC CK 0228

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 37075 of 1991

Ram Prasad Yadav

APPELLANT

Vs

Uttar Pradesh State Sugar Corporation

RESPONDENT

Date of Decision : 18-11-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 379, 406

Citation : (2006) 5 AWC 5237 : (2006) 1 UPLBEC 813

Hon'ble Judges : Sanjay Misra, J

Bench : Single Bench

Advocate : Upendra Mishra, Suraj Narain and Surya Narayan, for the Appellant;
V.S. Singh, R.D. Khare, B.S. Singh and R.K. Srivastava and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Misra, J.—Heard Sri Suraj Narain, learned Counsel appearing on behalf of the petitioner.

2. List has been revised. None appears on behalf of the respondents.

3. By means of this writ petition the petitioner has challenged the order of termination dated 13/14.11.1991 passed by respondent no.2 (Annexure-15 to the writ petition). It has also been prayed that the petitioner may be paid arrears of his salary.

4. The case of the petitioner is that he was working as seasonal employee under the respondent Corporation and was subsequently appointed on regular basis as a Switch Board Attendant in March 1989. The petitioner was awarded punishment and was suspended against which he filed a writ petition no. 21881 of 1989 wherein an order dated 6.8.1991 had been passed in favour of the petitioner. However, it was left open to the respondents to initiate disciplinary enquiry against the petitioner after serving a charge sheet upon him and such

disciplinary enquiry was to be completed within three months. It is contended by the petitioner that after the aforesaid order, the petitioner received letters as contained in Annexures 8, 9, 10 and 11 to the writ petition from the respondent No. 2 wherein it was informed that his explanation to the charge sheet has been found unsatisfactory and, therefore, an Enquiry Officer was appointed and a date was fixed for the petitioner to appear in the said enquiry and place his defence. It is the contention of the petitioner that he went to the office of respondent No. 2 to submit his reply but he was asked by the Stenographer of respondent No. 2 to send his reply by registered post. The petitioner alleges that he received several other letters from the Enquiry Officer and has sent his reply to the same. It is contended that the notices published on 1.11.1991 and 2.11.1991 in daily news paper Dainik Jagaran was not seen by the petitioner and, therefore, he could not participate in the enquiry, as such the entire enquiry proceedings were held *ex parte* behind his back.

5. In the supplementary affidavit filed by the petitioner it is contended that for the same incident an FIR dated 8.6.1989 u/s 379 IPC was lodged against the petitioner who went to trial before the Chief Judicial Magistrate, Gorakhpur in case No. 2460 of 1990 u/s 379 IPC and by the judgment and order dated 18.4.1994 the petitioner has been acquitted. A copy of the said judgment has been filed as annexure-3 to the supplementary affidavit.

6. Learned Counsel for the petitioner contends that in view of the fact that he has been acquitted in the criminal case, therefore, the finding of the disciplinary enquiry stands nullified and the order of dismissal is liable to be set aside. It is also submitted that the order of dismissal has been passed without application of mind and the punishment awarded to him is disproportionate to the charge leveled and proved against the petitioner. Learned Counsel for the petitioner has placed reliance on a decision of this Court in the case of *Ram Surat Ram v. General Manager, Feeder Balancing Dairy, Ram Nagar and Ors.* reported in (2002)1 UPLBEC 802 and has contended that when the same witnesses are examined in the departmental proceedings as also in the criminal case with respect to the same occurrence then if a judicial finding is recorded by the criminal court acquitting the petitioner the finding of the disciplinary proceedings would stand nullified. In the aforesaid case, this Court has placed reliance upon a decision of Hon'ble Supreme Court in the case of *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd.* reported in 1999 (2) ESC 1009 and held that the witnesses who had appeared before the Enquiry Officer were the same who deposed before the criminal court and the criminal court found the charge u/s 406 IPC to be not established and, therefore, this Court on the facts of that case concluded that the entire foundation of punishment in disciplinary enquiry was taken away with the finding recorded by the Magistrate.

7. Learned Counsel for the petitioner has placed reliance upon a decision of this Court in the case of *Gurucharan Singh Vs. National Thermal Power Corporation Ltd. and Others*, and has contended that when there is violation of principles of

natural justice during disciplinary proceedings the same would be liable to be set aside and remedy under Article 226 of the Constitution of India would not be barred.

8. Having heard the learned Counsel for the petitioner and perused the record it transpires that several notices were sent to the petitioner by the Enquiry Officer by registered post as well as copies of the same were sent to him under postal certificate. The averments in the writ petition as contained in paragraph Nos. 18, 20 and 22 indicate that the petitioner had received the said letters requiring him to participate in the enquiry proceedings. It is disclosed from the impugned order that a notice was also published on two consecutive dates in the daily news paper Dainik Jagaran requiring the petitioner to appear before the Enquiry Officer but the petitioner has failed to participate in the enquiry. Consequently on the aforesaid facts as brought on record by the petitioner it can not be said that he was not afforded opportunity to defend himself before the Enquiry Officer. Upon these facts it cannot be said that there is violation of principles of natural justice in as much the petitioner himself has not appeared before the Enquiry Officer inspite of several dates being fixed for the same and information of the dates fixed given to the petitioner by registered post and publication in the news paper.

9. A perusal of the impugned order as contained in annexure-15 to the writ petition indicates that the enquiry report dated 8.11.1991 was submitted before the disciplinary authority and the charge of theft was found to have been proved before the Enquiry Officer. While concurring with the findings of the Enquiry Officer the disciplinary authority has recorded that the theft was being committed by the petitioner in preplanned way and the said charge would therefore, be even graver and that there is total loss of confidence on the petitioner by the employer. The order of termination passed by the respondent No. 2 has given the reason for concurring with the report of the Enquiry Officer.

10. It is settled law that when the disciplinary authority concurs with the findings of the Enquiry Officer it would not be necessary to give detailed reasons for passing the order of punishment. In the case of *National Fertiliser v. P.K. Khanna* reported in AIR 2005 SCW 4333 the Hon'ble Supreme Court has held in paragraph 11 as quoted below-

11. The respondent's reliance on the decision in *M.D., ECIL v. B. Karunakar* is misplaced. That decision relates to the right of a delinquent officer to a copy of the enquiry officer's report. In the course of the judgment, the court had no doubt said that the report of the enquiry officer is required to be furnished to the employee to make proper representation to the disciplinary authority before such authority arrives at its own finding with regard to the guilt or otherwise of the employee and the punishment, if any, to be awarded to him. By using the phrase "its own finding" what is meant is an independent decision of the disciplinary authority. It does not require the disciplinary authority to record separate reasons from those given by the enquiry officer. The concurrence of the disciplinary authority with the reasoning and conclusion of the enquiry officer

means that the disciplinary authority had adopted the conclusion and the basis of the conclusion as its own. It is not necessary for the disciplinary authority to restate the reasoning.

10. In view of the aforesaid the contention of the learned Counsel for the petitioner that the impugned order of termination suffers from non-application of mind by the respondent No. 2 cannot be accepted.

11. The contention of the petitioner is that since he has been acquitted by the criminal court with relation to the same occurrence, therefore, the findings of the disciplinary proceeding would stand nullified and hence after such decision by the criminal court the order of dismissal has to be set aside. A copy of the charge sheet has been filed by the petitioner as annexure-1 to the supplementary affidavit. A perusal of the said charge sheet indicates that security guards namely Sita Ram Singh, Bukhari Rai, Ram Naresh Singh, Bans Bahadur and Nar Bahadur had made complaint dated 9.6.1989 with respect to the incident which had occurred at night between 10 p.m. and 2 a.m. on 8.6.1989 wherein it was alleged that the petitioner had been caught red handed with the items of theft. In the charge sheet the said complainants /security guards have been made as witnesses. It is the case of the petitioner that the same evidence/ witnesses who have been named in the charge sheet were examined by the criminal court in the criminal trial and the petitioner was given the benefit of doubt and acquitted by the criminal court. A copy of the judgment of the trial court has also been brought on record. A perusal of paragraph 5 of the judgment indicates that the only security guard namely Bans Bahadur was produced by the prosecution. This witness has deposed that at the time the petitioner was leaving the premises, no objectionable material was found upon him. The criminal court , therefore, concluded that the said evidence was enough to indicate that the petitioner was not found in possession of stolen items. Since no other evidence was filed nor any other witness produced before the criminal court it was held that the prosecution has failed to prove its case beyond doubt. It will be seen from the above that all the witnesses cited in the charge sheet were not produced before the criminal court and, therefore, this is not a case where the same evidence was considered in the disciplinary proceeding as well as by the criminal court. The witnesses who have been cited and considered before the Enquiry Officer are not those who have been produced by the prosecution before the criminal court except one witness namely Bans Bahadur. Consequently, the reliance placed by the petitioner on the decision of this Court in the case of Ram Surat Ram (supra) would not be applicable in the present case in as much as in the present case all the witnesses in the disciplinary proceedings were not called before the criminal court and as such the finding of the Enquiry Officer was based upon such other witnesses as were not produced before the criminal court. Since the evidence in both the proceedings were not the same it is apparent that there was bound to be a difference in the approach of the Enquiry Officer and that of criminal court. The two proceedings are entirely different operating in different fields having different objectives. In the enquiry proceedings strict rules of evidence and

procedure are not applicable and penalty can be imposed on a finding recorded on the basis of preponderance of probability. In view of aforesaid facts of this case it is seen that in the disciplinary proceeding the doctrine of proof beyond doubt cannot be applied in as much as such proceedings are not a criminal trial. The standard of proof governing a disciplinary enquiry and a criminal trial are different. In the present case as already seen above the evidence before the two forums was not the same and, therefore, the acquittal of the petitioner in the criminal trial could not, on the facts and circumstances of the present case, nullify the findings of the disciplinary proceedings.

12. The impugned order indicates that the termination of service of the petitioner was also on the ground of loss of confidence. Such a ground is stigmatic and the petitioner was required to be given opportunity to defend himself before the Enquiry Officer. Such an opportunity was given to the petitioner as borne out from the record of the writ petition and it was the petitioner who did not avail of the said opportunity.

13. The Hon^{ble} Supreme Court in the case of *Ajit Kumar Nag v. G.M. IOC Ltd.* reported in AIR 2005 SCW 4986 has held in paragraph 43 as quoted below:

43. We are aware of the normal rule that a person must have a fair trial and a fair appeal and he cannot be asked to be satisfied with an unfair trial and a fair appeal. We are also conscious of the general principle that pre-decisional hearing is better and should always be preferred to post-decisional hearing. We are further aware that it has been stated that apart from Laws of Men, Laws of God also observe the rule of *audi alteram partem*. It has been stated that the first hearing in human history was given in the Garden of Eden. God did not pass sentence upon Adam and Eve before giving an opportunity to show cause as to why they had eaten forbidden fruit. (See *R.V. University of Cambridge, 1723*)¹ Str 557. But we are also aware that principles of natural justice are not rigid or immutable and hence they cannot be imprisoned in a straight-jacket. They must yield to and change with exigencies of situations. They must be confined within their limits and cannot be allowed to run wild. It has been stated : "To do a great right after all, it is permissible sometimes to do a little wrong." (Per Mukharji, C.J. in *Charan Lal Sahu Vs. Union of India*, While interpreting legal provisions, a court of law cannot be unmindful of hard realities of life. In our opinion, the approach of the court in dealing with such cases should be pragmatic rather than pedantic, realistic rather than doctrinaire, functional rather than formal and practical rather than "precedential".

14. Learned Counsel for the petitioner has also contended that the punishment of dismissal is disproportionate to the charge leveled and found proved against him. It is settled law that the disciplinary authority plays a preliminary role while considering the quantum of punishment and the courts play a secondary role while reviewing such order of punishment. It is to be seen as to whether relevant factors have been taken note of and whether irrelevant factors have been considered while passing the order of punishment. On a perusal of the impugned

order it is found that the disciplinary authority has taken into account the relevant factors while deciding the quantum of punishment. In the present case the charges have been proved against the petitioner in the disciplinary proceeding and the disciplinary authority has concluded that it is a serious charge in as much as the theft was done in pre-planned way. Therefore, there was loss of confidence upon the petitioner. Such being the conclusion of the disciplinary authority, the punishment of dismissal cannot be said to be excessive or disproportionate to the charges found proved against the petitioner.

15. For the aforesaid reasons, this writ petition has no force and is accordingly dismissed.