(2013) 03 AHC CK 0019

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2360 (S/S) of 2000

Ram Sajiwan APPELLANT

Vs

U.P. Cooperative Institutional Service and Others RESPONDENT

Date of Decision : 07-03-2013

Acts Referred:

Citation : (2014) 2 ALJ 739 : (2013) 2 UPLBEC 1022

Hon'ble Judges : Devendra Kumar Upadhyaya, J

Bench : Single Bench

Advocate : J.P. Singh, Sri M.G. Tripathi and Sri R.K. Verma, for the Appellant; H.G.S. Parihar and C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Devendra Kumar Upadhyaya, J.—Heard Sri M.G. Tripathi, learned Counsel for the petitioner and Sri Diwakar Singh, holding brief of Sri H.G.S. Parihar, learned Counsel appearing for opposite parties No. 2 and 3 i.e. Committee of Management, District Cooperative Bank Ltd., Raebareli and Secretary/General Manager, District Cooperative Bank, Raebareli respectively. The petitioner by means of instant writ petition has assailed validity of punishment order dated 7/8.11.1997, passed by the Secretary/General Manager, District Cooperative Bank Ltd., Raebareli, whereby punishment of stoppage of yearly increment for the remainder period of his service has been inflicted. The petitioner has also challenged the order dated 29.1.2000, contained in Annexure No. 1 to the writ petition, whereby an appeal filed by the petitioner challenging the punishment order of stoppage of annual increment has been dismissed.

2. The facts of the case, as culled from the pleadings brought on record by the respective parties, are that a complaint dated 18.10.1995 was made by the General Manager of Dugdha Utpadan Sahkari Samiti, Tripula, District Raebareli in respect of an incident wherein it was reported that payment of a cheque bearing No. 36751, dated 22.12.1994 for a sum of Rs. 8700/- was made to some other person by committing forgery by the employees of District Cooperative Bank,

Branch-Deeh, District Raebareli. According to the said complaint, a cheque was issued by Dugdha Utpadan Sahkari Samiti, Kachnawan, District Raebareli in favour of Sri Ram Das Maurya whereas payment was made to Sri Ram Bahadur Maurya. The said complaint was made to the Secretary/General Manager, District Cooperative Bank Ltd., Raebareli and it appears that when no action was taken, a reminder was also sent on 29.12.1995 by the General Manager of Dugdha Utapadak Sahkari Samiti Ltd., Tripula, Raebareli. Thereafter another complaint was made on 2.11.1995 by Sri Ram Gopal and Ram Das Maurya, the President and the Secretary respectively of Dugdh Utpadak Sahkari Samiti, Kachnawan, District Raebareli.

3. On the aforesaid complaint, contemplating certain action against the alleged involvement of the employees/officers of the Bank, a show cause notice was issued to the petitioner on 4.1.1996 requiring therein that petitioner should submit his reply within three days. The said show cause notice required the petitioner to submit his reply on the allegations pertaining to the same transaction which was the subject-matter of the complaints aforementioned.

4. A perusal of charge-sheet reveals that it has been stated in the said charge-sheet that from Account No. 32, the amount has been misappropriated on 8.7.1995 by fraudulently using cheque bearing No. 3651, dated 22.12.1994 and further that the cheque in question was issued by the society concerned for making payment to one Sri Ram Das Maurya, however, the same was not encashed on the date of its presentation on account of deficiency of balance and was kept in the branch office of the Bank and it has subsequently been used for misappropriating the amount by way of overwriting etc. The show cause notice also stated that the entry of the aforesaid cheque in the account was made by the petitioner and petitioner ought to have objected to it as on the cutting and overwriting over the cheque, the signature of the authorized signatory was not available. The show cause notice further states that since the petitioner did not object, it makes his integrity doubtful.

5. Petitioner submitted reply to the aforesaid show cause notice on 13.1.1996 denying the allegations and clearly stating therein that in the payment of cheque in question no bank employee was involved and further that cheque has all along been with Sri Ram Das Maurya and it is Ram Das Maurya who got the cheque encashed by sending someone else to the Bank.

6. However, no decision was taken by the disciplinary authority on the aforesaid reply submitted by the petitioner to this show cause notice dated 4.1.1996 and subsequently vide an order dated 25.9.1997, Senior Manager of the Bank, Sri S.N. Lal was appointed as Enquiry Officer. The Enquiry Officer thereafter does not appear to have held any enquiry whatsoever of any kind; rather he submitted his report to the punishing authority on 6.10.1997. It is further noticeable that even copy of the said enquiry report was not provided to the petitioner requiring him to submit his objection/reply to the findings recorded by the Enquiry Officer.

7. The question which arises for consideration in the instant case is as to whether keeping in view the facts and circumstances of the instant case, the procedure prescribed under the relevant rules/regulations for holding full fledged departmental enquiry ought to have been adopted by the opposite parties before passing the impugned order or not. Further, as to whether, in case the opposite parties were obliged to follow the full fledged procedure meant for the departmental proceedings, was it followed or not in the instant case.

8. Admittedly, the disciplinary matters of the petitioner are governed by U.P. Co-operative Employees Service Regulations, 1975 (hereinafter referred to as ''Regulations, 1975'').

Regulation 84 of the aforesaid Regulations prescribes the following penalties:

a. censure,

b. withholding of increment,

c. fine on an employee of Category IV (peon, chaukidar etc.)

d. recovery from pay or security deposit to compensate in whole or in part for any pecuniary loss caused to the co-operative society by the employee''s conduct,

e. reduction in rank or grade held substantively by the employee,

f. removal from service, or

g. dismissal from service.

9. According to the scheme of the aforesaid Regulations relating to penalties, disciplinary proceedings and appeal, penalty of censor can be imposed even without giving show cause notice whereas penalty of withholding of increment, fine or recovery from pay can be passed only after issuing show cause notice and calling for a reply from the delinquent employee and in respect of punishment for removal from service, reduction in rank or grade and dismissal from service under the provisions of Regulations 1975, disciplinary proceedings as envisaged and provided for under Regulation 85 is to be followed, which provides serving of charge-sheet to the employee concerned containing specific charges, requiring the delinquent to submit explanation in respect of the charges and giving him an opportunity to produce evidence and cross-examine the witnesses in his defence and also giving opportunity of being heard in person. The scheme of Regulation 85 clearly envisages holding of full fledged departmental enquiry wherein principles of natural justice and other accepted norms of disciplinary proceedings ought to be followed. However, Regulation 85 will come into play only in case either of the major penalties i.e. reduction in rank, removal from service or dismissal from service are contemplated to be awarded to the delinquent. In the instant case neither of the major penalties has been inflicted upon the petitioner.

10. Instant case has a very striking feature inasmuch as though a show cause notice was issued initially calling for reply from the petitioner but subsequently

an Enquiry Officer was appointed to hold the enquiry into the allegations relating to the alleged forged withdrawal of money from Branch-Deeh of the Bank. True, petitioner has been inflicted only with the minor penalty in the end and issuance of show cause notice calling for his reply would have sufficed to meet the requirement of holding enquiry in case of minor penalty, however, question which needs consideration, as observed above, is that since after receiving reply to the show cause notice, disciplinary authority did not pass order of penalty inflicting minor penalty, rather decided to appoint an Enquiry Officer to hold an enquiry into the allegations, therefore, as to whether the procedure as prescribed under Regulation 85 i.e. procedure for full fledged enquiry was legally required to be followed by the opposite parties or not.

11. It would have been appropriate and without any legal flaw, had the punishing authority taken a decision on the basis of reply submitted by the petitioner to the show cause notice and passed an order of minor penalty but since no such decision on receiving the reply of the petitioner was taken by the disciplinary authority; rather the disciplinary authority took a decision otherwise, that is, to hold an enquiry by way of appointing an Enquiry Officer, as such, it was incumbent upon the opposite parties to have held the disciplinary proceedings strictly in accordance with the procedure prescribed under Regulation 85 for award of major penalty, irrespective of the fact that finally the punishment may or may not have been a minor penalty.

12. The aforesaid proposition assumes significance keeping in view the fact that the very basis of passing the impugned order of punishment dated 7/8.11.1997 is the enquiry report submitted by the Enquiry Officer which ultimately was conducted without associating the petitioner with the same resulting in breach of principles of natural justice.

13. It is strange to note that though the punishing authority in the instant case has passed the punishment order on the enquiry report submitted by the enquiry officer-Sri S.N. Lal, but during the course of enquiry conducted by him, petitioner was not associated with the said enquiry in any manner. The enquiry officer never issued any charge-sheet to the petitioner nor did he call for any explanation or reply from the petitioner. Petitioner also did not receive any intimation regarding date, time and place etc. for holding the enquiry. The aforesaid facts cannot be disputed as the enquiry report itself nowhere makes a mention that in the enquiry petitioner was ever associated in any manner.

14. As observed above, the punishment of stoppage of increment is minor penalty as described under Regulation 84 of Regulations, 1975 and such a minor penalty could be inflicted on the delinquent employee by the disciplinary authority only after calling for an explanation or issuing a show cause notice to him. In the instant case, the basis of the impugned order of minor penalty of stoppage of increment is not the reply submitted by the petitioner. In fact the reply submitted by the petitioner to the show cause notice has not even been taken into consideration at all. What all is discussed by the disciplinary authority

while passing the order dated 7/8.11.1997 is the report of the Enquiry Officer wherein petitioner was never associated and further that the petitioner was never even confronted with the enquiry report which is the basis of the impugned punishment order.

15. Needless to say that although the Enquiry Officer can obtain all information from all channels and sources but under law it is obligatory on his part not to act on any such information unless the person against whom such information or material is being used, is supplied with such information or material. Non-supply of document which forms basis of decision by the disciplinary authority explicitly amounts to denial of appropriate reasonable opportunity to the delinquent employee. A document, in case forms part of the enquiry and is considered by the disciplinary authority while passing the order of punishment then any omission to supply such document to the delinquent employee amounts to flagrant violation of principles of natural justice.

16. Admittedly, in the instant case the vary basis of passing the impugned punishment order dated 7/8.11.1997 is the report submitted by the Enquiry Officer-Sri S.N. Lal which admittedly, was never provided to the petitioner and petitioner was not even associated with the said enquiry, as such, procedure adopted by the opposite parties in the instant case do not conform to the principles of natural justice and other settled norms of the departmental proceedings.

17. In the peculiar facts and circumstances of the instant case, keeping in view the fact that the very basis of passing of the impugned order of punishment is the enquiry report submitted by the Enquiry Officer, a copy of which was never provided to the petitioner, the Court comes to the irresistible conclusion that the procedure followed by the opposite parties before passing the impugned order of punishment is absolutely unlawful and against the settled norms and procedure and also against the Regulation 85 of the Regulations 1975.

18. For the discussions made and reasons given above, the writ petition deserves to be allowed.

19. Accordingly, the writ petition is allowed and the impugned order of punishment dated 7/8.11.1997 is hereby quashed. The order dated 29.1.2000, rejecting the appeal of the petitioner is also quashed. It is directed further that pay of the petitioner by adding all the past annual increments shall be re-fixed within a period of one month from the date a certified copy of this judgment and order is produced before the authority concerned and payment thereof including the arrears shall be made within next three months thereafter.

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