

(2013) 05 AHC CK 0227

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1055 (S/B) of 2002

Ram Shanker Rai

APPELLANT

Vs

Administrative Committee Cooperative Bank and Another

RESPONDENT

Date of Decision : 15-05-2013

Acts Referred:

Citation : (2013) 05 AHC CK 0227

Hon'ble Judges : Devi Prasad Singh, J and Ashok Pal Singh, J

Final Decision : Allowed

Judgement

Ashok Pal Singh, J.

Instant writ petition has been preferred against the impugned order of punishment awarded in pursuance to the regular departmental enquiry.

A chargesheet dated 27.8.2001 was served on the petitioner containing certain charges, in response to which, the petitioner sought certain documents which he was not provided; rather he was asked to inspect the records. The submission of the petitioner is that due to nonsupply of relevant documents, he could not submit effective reply to the chargesheet. A show cause notice dated 14.2.2002 was served on the petitioner requiring him to submit a reply to it. The petitioner submitted his reply dated 18.4.2002 denying the charges levelled against him. He submitted that the enquiry officer has not held any enquiry. No date, time and place was fixed nor copy of the enquiry report was served. However, instead of considering the petitioner's objection in letter and spirit in view of the law settled by this Court and Hon'ble Supreme Court, the petitioner has been punished by the impugned order of dismissal from service. Feeling aggrieved, present writ petition has been preferred.

In paragraphs 46 and 48 of the writ petition, it has been categorically held that the enquiry officer has not recorded any oral evidence to substantiate the charges. Copy of the relevant documents is not provided. For convenience, paras 46 and 48 of the writ petition are reproduced as under :

"46. that the enquiry officer only on the basis of the charges levelled against the petitioner and mentioning the documents which were the basis of the charges held that the charges are proved as the reply has not been submitted by the petitioner whereas it was obligatory upon the enquiry officer to prove the charges during the course of enquiry by holding enquiry, fixing date for enquiry and calling the department to prove the charge before the enquiry officer and held oral enquiry and follow the regulations framed under rule 7(c) of the U.P. Cooperative Centralised Service Rules.

48. That the enquiry officer neither issued any letter fixing oral enquiry, nor issued any letter to appear before him during the course of enquiry and only letters have been issued to submit reply which were replied to time to time by the petitioner asking time and also asking documents even till last moment the documents asked by the petitioner with respect to charge nos. 1 and 4 have not been supplied and in the compelling circumstances the petitioner submitted reply that too has not been considered by the enquiry officer or by the disciplinary authority which amounts to denial of reasonable opportunity during the course of enquiry."

In response to the aforesaid pleading on record, the respondents have not filed any counter affidavit denying the charges levelled by the petitioner that the enquiry officer has not recorded any evidence and submitted the enquiry report straightway holding the petitioner guilty.

Now, it is well settled principle of law that while holding regular enquiry, it shall always be incumbent on the enquiry officer to record evidence to substantiate the charges and in case the delinquent employee does not cooperate, then the enquiry officer may proceed ex parte. Departmental enquiry means after service of chargesheet, opportunity should be given not only to submit reply to the chargesheet but all relevant documents should be substantiated by oral evidence with opportunity to the delinquent employee to cross-examine the witnesses. Thereafter, opportunity should be given to lead evidence in defence coupled with opportunity of personal hearing. In any case, in the event of noncooperation by the petitioner, evidence should be recorded by ex parte proceeding before submitting enquiry report. Noncompliance of these procedures amounts to violation of principle of natural justice and invalidate the enquiry proceedings vide JT 2010(1)SC 618 State of U.P. and others versus Saroj Kumar Sinha, 1990 LCD 486 Jagdish Prasad Singh versus State of U.P., 1998 LCD 199 Avatar Singh versus State of U.P., 1979 VI. I SCC 60 Town Area Committee, Jalalabad versus Jagdish Prasad, 1980 Vol. 3 SCC 459 Managing Director, U.P. Welfare Housing Corporation versus Vijay Narain Bajpai, 1998(6) SCC 651 State of U.P. versus Shatrughan Lal, 1998 SC 117 Chandrama Tewari versus Union of India and others, 1985 SC 1121 Anil Kumar versus Presiding Officer and others, (2009)2 SCC 570 Roop Singh Negi versus Punjab National Bank and others and (2010)2 SCC 772 State of U.P. and others versus Saroj Kumar Sinha.

In view of above, the writ petition deserves to be and is hereby allowed. A writ of

certiorari is issued quashing the impugned order dated 24.6.2002 (Annexure1) with consequential benefits. Liberty is given to the respondents to proceed afresh from the stage of filing of reply to the chargesheet. In case fresh enquiry is held, it shall be held, expeditiously, say within a period of six months. The consequential benefits shall be subject to final outcome of fresh enquiry, if any.

The writ petition is allowed accordingly. No order as to costs.