
(2012) 07 AHC CK 0177

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 21356 of 2000

Ramesh Chandra Malviya

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-07-2012

Acts Referred:

Citation : (2012) 07 AHC CK 0177

Hon'ble Judges : Rajes Kumar, J

Final Decision : Dismissed

Judgement

Rajes Kumar, J.

By means of the present writ petition, the petitioner is challenging the order dated 23.3.2000 passed by the Superintending Engineer, Electricity Transmission Circle, U.P. Power Corporation Limited, Allahabad whereby the petitioner has been dismissed from service and a direction has been issued for the recovery of Rs.186.603 lacs.

The brief facts of the case are that the petitioner was the storekeeper at Sahupuri Godown, district Varanasi. when Sri Daya Shankar HM along with Sri R.S. Upadhyaya RPC and Sri C.P. Gupta, Assistant Storekeeper went to the Godown Sahupuri for the purposes of the delivery of tower parts to River Crossing Tower Kanpur, the tower parts of river crossing weighing 64 M.T. valuing Rs.19.50 lacs were found missing. The first information report was lodged on 23.6.1997 in this regard. Further on a physical verification during the period 3.7.1997 to 30.9.1997, the goods valuing Rs.1,49,62,868/- were found missing and further goods T. & D. valuing Rs. 7,23,799/- were also found missing and some of the goods were found in excess than mentioned in the record. On these irregularities, the petitioner was suspended and the inquiry proceeding has been initiated. Sri R.P. Singh, Superintending Engineer has been appointed as the inquiry officer. The petitioner has been given chargesheet dated 11.12.1997 in respect of the aforesaid irregularities. The petitioner filed reply to the chargesheet. On a consideration of the charges and the reply of the petitioner,

the inquiry report dated 22.9.1999 has been submitted and the petitioner was found guilty. On inspection, 68.96 M.T. river crossing tower valuing Rs.19.50 lacs were found missing and further on physical verification goods valuing Rs. 1,49,62,868/ were also found missing. On a receipt of the inquiry report, a show cause notice dated 18.12.1999 was issued. The petitioner filed reply to the said show cause notice. The Superintending Engineer on the basis of the inquiry report has dismissed the petitioner from service and also ordered for the recovery of the amount in respect of which the petitioner was found guilty. The order of dismissal is being challenged.

Heard Sri Abhishek Tripathi, learned counsel appearing on behalf of the petitioner and Sri Sandeep Kumar Srivastava, learned counsel appearing on behalf of the respondents.

Learned counsel for the petitioner challenged the impugned order mainly on two grounds, firstly, that the copy of the inquiry report has not been provided to the petitioner, secondly, the impugned order suffers from malafide. He further submitted that the impugned order is biased inasmuch as Sri K.P. Tripathi, Superintending Engineer, who has passed the impugned order, was the Executive Engineer, during the period when the petitioner was storekeeper at Sahupuri Godown, Varanasi and the petitioner alleged that on the invoice Sri K.P. Tripathi has pressurised him to sign. He submitted that the inquiry report ought to have been provided. In support of the contention he relied upon the Constitution Bench decisions of the Apex Court in the case of Managing Director, ECIL, Hyderabad and others vs. B. Karunakar and others, reported in (1993) 4 SCC 727 and Ratan Lal Sharma vs. Managing Committee, Dr. Hari Ram (CoEducation) Higher Secondary School and others, reported in (1993) 4 SCC 10.

Learned counsel for the respondents submitted that the petitioner had a statutory alternative remedy by way of filing of appeal before the next higher authority under Rule 2 of U.P. State Electricity Board (Officers and Servants) (Conditions of Service) Regulations, 1975 read with U.P. Disciplinary and Appeal Rules, 1999, which the petitioner has not availed. He submitted that the charges framed against the petitioner have been established and proved from the record itself. The petitioner has himself signed the invoice no. Nil of 2011 dated 15.3.1995, and acknowledged the receipt of 68.96 M.T. Tower parts sent by Sri D.S. Seth, Assistant Storekeeper Nayak, Vidyut Preshan Tantupath Nirman UpIkai, Allahabad. The plea of the petitioner that the said goods have not been received at Sahupuri Godown, Varanasi and the signature on the invoice has been forcefully obtained by Sri K.P. Tripathi, the then Executive Engineer, Varanasi, has not been accepted by the enquiry officer inasmuch as it was not substantiated. The shortage of other goods worth Rs. Rs.1,49,62,868/ and Rs.7,23,799/ are proved from the record itself for which no proper explanation has been furnished. The inquiry officer submitted that on consideration of the entire facts and circumstances he has found the charges levelled against the petitioner stand proved. He submitted that the charges against the petitioner for

the financial irregularity and misappropriation of the goods are proved and for such charges the services of the petitioner have rightly been terminated. The findings recorded by the inquiry officer are finding of fact, based on the materials on record and the dismissal of the petitioner from service on the basis of the inquiry report, by the impugned order, is wholly justified. He submitted that the petitioner is not able to make out any case of malafide and bias.

I have considered the rival submissions.

The Apex Court in the case of Managing Director, ECIL, Hyderabad and others vs. B. Karunakar and others (supra) has held that the inquiry report must be provided to the charged person. However, the Apex Court held that in a case where the report of the inquiry officer is not furnished to the employee it has to be seen that what prejudice has been caused to the employee on account of nonfurnishing of inquiry report. In case if the Court comes to the conclusion that the nonsupply of report would have made no difference to the ultimate findings and the punishment given, the Court should not interfere with the order of the punishment. Though it is the allegation of the petitioner that the inquiry report has not been furnished to him but it is not the case that the same could not be procured by him. He is also not able to make out a case that any prejudice has been caused to him on account of nonfurnishing of the inquiry report. In the present case, the petitioner has been given opportunity by the inquiry officer and also by the disciplinary officer while awarding the punishment. The petitioner had got fullest opportunity to file the reply and to meet the allegations. Therefore, mere nonfurnishing of the inquiry report no prejudice is caused to the petitioner.

I have perused the inquiry report. The inquiry officer has dealt with the charges and the reply of the petitioner. The charges against the petitioner are fully proved from the record itself. The present is the case of a high level embezzlement on the part of the petitioner where the goods for more than crores of rupees have been misappropriated causing substantial loss to the respondents. The shortage of goods at the time of inspection is fully proved from the record. In the facts and circumstances, I am of the view that the findings of the inquiry officer are based on the material on record which cannot be said to be perverse and arbitrary. On the basis of the inquiry report, the punishment awarded is wholly justified. The Apex Court in the case of Kumaon Mandal Vikas Nigam Ltd. vs. Girja Shankar Pant and others, reported in (2001) 1 SCC 182 has held that the factual findings given in departmental enquiry should not be subject to judicial review except when based on no evidence or are totally perverse or legally untenable.

In the result, the writ petition fails and is dismissed.