
(1999) 05 AHC CK 0051
In the Allahabad High Court
Case No : C.M.W.P. No. 12833 of 1999

Rotas Kumar and others

APPELLANT

Vs

Cane Commissioner and others

RESPONDENT

Date of Decision : 12-05-1999

Acts Referred:

Citation : (1999) 3 AWC 2004 : (1999) 82 FLR 715 : (1999) 2 UPLBEC 1139

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : N.L. Pandey, for the Appellant; S.C. and P.M.N. Singh, for the Respondent

Judgement

D. K. Seth, J.—The petitioner has challenged the order dated 9th October, 1998 contained in Annexure-10 to the writ petition by which the petitioner was categorised "B" in terms of Regulation 21 of the U. P. Cane Co-operative Service Regulation, 1975 on the ground that the petitioner was categorised pursuant to an allegation related to the crushing season 1995-96. Mr. N. L. Pandey, learned counsel for the petitioner contends that no categorisation could be made in 1998 on the basis of allegation related to a period of 1995-96. He has, therefore, challenged the order relating to the finding of guilt as against him. He relied on Regulation 27 of the said Regulation in support of his contention.

2. Mr. P. M. N. Singh, learned counsel for the respondent, on the other hand, contends that categorisation can be done under Regulation 21 even irrespective of any disciplinary proceeding. The disciplinary proceeding may lapse on account of expiry of time as provided in Regulation 27 which prescribes that the disciplinary proceeding is to be completed by the end of the crushing season and if not. In that event it would be deemed to have been automatically dropped but that will not preclude the respondent authority to proceed under Regulation 21. It may affect the enquiry but not the categorisation.

3. I have heard both the counsel at length.

4. Regulation 21 prescribes as follows :

At the end of each crushing season, the Secretary of the Cane Union shall classify the entire seasonal staff into "A" and "B" categories on the basis of their work and worth during the season. Such persons with unquestionable integrity who have discharged their duties efficiently during the crushing season shall be placed in "A" category and the rest in category "B", he will be Informed of the same together with the grounds for his categorisation and an opportunity shall be given to him to explain the charges and deficiencies against him. These proceedings shall be of summary nature and shall be conducted by the Secretary of the Union concerned.

The Secretary shall put up the category-wise lists of the seasonal staff before the Committee of Management of the Union for approval. In case of the list of category "B" staff, he shall also put up the charges, explanation of the employees concerned and his findings thereon for the consideration of the Committee of Management. If in any case the Committee disagrees with the findings of the Secretary it may in that case alter the category from "B" to "A". Thereafter, the original lists including the alterations if any. ordered by the Committee of Management shall be declared final and pasted on the notice board of the Union duly signed by the Chairman of the meeting and the Secretary.

5. Whereas Regulation 27 prescribes as follows for disciplinary proceeding :

In the event of a complaint against any member of the seasonal staff the Secretary of the Union shall make a preliminary enquiry and if he is satisfied that a prima facie case is established against the person concerned, he shall intimate the same to him in the form of charges and call for his explanation to be submitted within a specified time. The Secretary of the Union shall examine the explanation, documents and connected records and submit his final report along with definite recommendations to the Committee of Management of the Union for passing final order in the case. In case the explanation is not received within the specified time the Secretary shall submit his final report to the Committee of Management on the basis of material already on the file. These proceedings shall be of a summary nature and the Secretary should not take more than a month to complete the same. The Committee of Management should also arrange to dispose of the case within one month of the final report from the Secretary, in case of default on the part of Secretary of Cane Union or the Committee of Management in not completing the disciplinary proceeding against a seasonal staff by the end of crushing season, the same shall be deemed to have been automatically dropped.

The procedure narrated in Regulation No. 27 shall not apply where the person concerned has absconded or is continuously absent from duty for a week or where for other reasons it is impracticable to communicate with him. In such cases, the Secretary shall submit his final report to the Committee of Management stating the reasons for not following the procedure laid down in

Regulation No. 27 together with his views and recommendation based on records available for passing final orders in the case.

6. Thus, it appears that the disciplinary proceeding is to be concluded by the end of the crushing season. Unless such proceeding is concluded, the same should be deemed to have been dropped. No punishment can be awarded pursuant to such disciplinary proceeding against the delinquent. Even if the disciplinary proceeding may not be relied upon, still then categorisation can be made under Regulation 21. Regulation 21 and Regulation 27 are independent of each other. The categorisation can be done even without disciplinary proceeding. The field of operation of Regulation 21 is completely different from the field of operation of Regulation 27. Regulation 27 relates to a disciplinary proceeding. Regulation 21 on the other hand relates to categorisation. The scope and ambit of the two fields are altogether different and has no nexus with each other.

7. Even if, by reason of the technical lapses, the proceeding is dropped, still then it cannot be said that there was no proceeding against a person. Regulation 21 prescribes that at the end of the crushing season, the employees are to be categorised, namely, "A" and "B" respectively. Those who had discharged their duties efficiently with unquestionable integrity would be placed in category "A" while the rest in category "B". It is not only the unquestionable integrity but also efficient discharge of duties is the criteria for placing a person in category "A". It is not necessary that a person is to be categorised subject to a disciplinary proceeding. The very Initiation of the disciplinary proceeding may be a factor for determining efficiency. Even if the proceeding is dropped, still then the same may hinder the efficiency. Therefore, categorisation being independent of Regulation 27 cannot be interfered with, even though, the disciplinary proceeding might fall. Categorisation under Regulation 21 is an independent process which have no nexus with the disciplinary proceeding. It is only the question relevant for placing a person in category "A" which is to be taken into consideration. The same can be done without resorting to Regulation 27.

8. Regulation 21 prescribes that such categorisation is to be made by the Secretary of the Cane Union in respect of Seasonal Staff at the end of each crushing season on the basis of their work and worth during the season. It again provides that persons with unquestionable integrity who had discharged their duties efficiently during the crushing season shall be placed in category "A" and the rest in category "B". The reference to the crushing season has been coined with the phrase "during the season" in the first sentence while referring to the phrase "at the end of the each crushing season". Thus, phrase "during the season" relates to the crushing season at the end of which categorisation is being made. Such categorisation is to be made at the end of each season. Once categorisation is made at the end of one season on the basis of the work during such crushing season at the end whereof categorisation is being made. The work during such season is already evaluated and a person is placed in a particular category. The said question neither can be reopened nor can be repeated in

succession while categorising at the end of the next crushing season for which the categorisation is being made at the end of the previous crushing season. While categorising at the end of the subsequent crushing season after the categorisation at the end of the previous crushing season, it is not open to take into account the facts or material for categorisation related to the previous crushing season, it is only the materials related to the crushing season at the end whereof the categorisation is made is relevant. The above interpretation is supported by the second sentence of Regulation 21 which again uses the phrase "during the crushing season." The second sentence follows the first sentence and is related to each other and the reference to the crushing season in the second sentence cannot be read out of the context and independent of the first sentence. It necessarily refers to crushing season at the end whereof the classification is being made for the crushing season following. Thus, the integrity and efficient discharge of duties related to a period/crushing season, preceding crushing season at the end whereof the classification is being made, cannot, on the same analogy be relevant for Regulation 21. If it is accepted, in that event, it would not have been mentioned that such categorisation is to be made at the end of the each crushing season. The expression "each crushing season" specifies that each crushing season is an independent unit of period relevant for consideration for classification of categorisation. The very use of the expression "each" before the phrase "crushing season" indicates that each crushing season is to be treated as separate and independent unit of time for such consideration. While categorising after the end of the crushing season, it has to take into consideration the work, worth, integrity and efficiency during such crushing season being the unit of time at the end of which categorisation is being made. The consideration cannot travel to a material related to a unit/crushing season beyond the unit/crushing season at the end of which the categorisation is being made. In that event, the expression "each" would have no meaning. It is only the materials related to the crushing season at the end of which categorisation is being made is relevant for the purpose of consideration as prescribed in Regulation 21. One or more crushing season preceding the crushing season at the end of which the categorisation is made cannot be included within the scope and ambit of Regulation 21 in view of the specific expression used.

9. Here in this case, such ground has been intimated by reason of Annexure-10 to the writ petition. At the same time, Regulation 21 provides for giving an opportunity to explain the charges and deficiencies against him. The stipulation of time provided in Regulation 27 cannot be imported while considering the question of categorisation under Regulation 21. Regulation 21 further provides that when a person is placed in a particular category, it is the duty of the Secretary to inform such persons about the categorisation. While informing the fact of categorisation to such persons Regulation 21 makes it incumbent on the Secretary to inform such persons the grounds for such categorisation. It also requires the Secretary to give an opportunity to such persons to explain the charges and deficiencies which are the grounds for such categorisation. However,

it has been provided that such procedures of giving opportunity would be summary in nature and be conducted by the Secretary of the Union. Thus, the information of categorisation and intimation of the grounds or charges or deficiencies would follow the categorisation. It is not necessary that such opportunity is to be given before categorisation. The summary proceeding is to be conducted after deficiencies and charges forming the ground for categorisation are intimated to such persons. Regulation 21 has its own limitation of time as has been observed earlier with regard to unit of season independent of Regulation 27. Since Regulation 21 is independent of Regulation 27 and is complete in itself, therefore, we are required to fall back on the expression used in Regulation 21 for its import and impact, scope and ambit. But, however, an opportunity to explain the charges and deficiencies are to be given to the petitioner. In case such opportunity is not given after passing the order contained in Annexure-10, in that event, the respondent may follow the stage after communication of Annexure-10 for categorisation affording opportunity to the petitioner to explain the charges and deficiencies for categorisation of the petitioner in category "B", as observed above.

10. In such circumstances, the respondents are directed to give an opportunity to the petitioner communicating the reasons for classifying the position in category "B", by affording an opportunity to the petitioner to explain in terms of Regulation 21 provided such opportunity has not already been given to the petitioner.

11. The writ petition is thus disposed of. However, there will be no order as to costs.

12. The impugned order shall be subject to the decision in terms of this order. The transaction shall be completed within a period of two months.