
(2008) 07 AHC CK 0158

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No.22020 of 1989

R.P. Srivastava

APPELLANT

Vs

Pradeshik Cooperative Dairy Federation and others

RESPONDENT

Date of Decision : 03-07-2008

Acts Referred:

Citation : (2008) 07 AHC CK 0158

Hon'ble Judges : Dilip Gupta, J

Final Decision : Dismissed

Judgement

Dilip Gupta, J.

The petitioner who had been appointed as a Refrigeration Mechanic cum Operator in the Pradeshik Cooperative Dairy Federation (hereinafter referred to as the "Federation") which is a Cooperative Society registered under the provisions of Uttar Pradesh Cooperative Societies Act, 1965 and posted at the Infant Milk Food Factory, Moradabad has sought the quashing of the order dated 1st November, 1989 passed by the Managing Director of the Federation as well as the consequential order dated 4th November, 1989 passed by the General Manager of Allahabad Dugdha Utpadak Sahkari Samiti, Allahabad, by which he has been dismissed from service.

The records of the writ petition indicate that while the petitioner was working at the aforesaid Milk Factory at Moradabad a charge sheet dated 20th June, 1984 containing one charge was served upon the petitioner mentioning therein that in the cash memo dated 3rd March, 1983 pertaining to the purchases made by him from Shanti Swarup Raj Kumar, Katra Anaj, Moradabad he had made interpolations by changing Rs.51.30 to Rs.61.30 and claimed the said higher amount and thereby embezzled Rs.10/. The petitioner submitted a reply to the charge sheet mentioning therein that he had not made the purchases on 3rd March, 1983 and nor had he made any interpolations in the cash memo. He further stated that he had written "paid by me" on the instructions of his Superior Officer. The Enquiry Officer submitted a report dated 3rd June, 1985

and after a period of about 4 years a show cause notice was issued to the petitioner on 28.9.1989 requiring the petitioner to show cause why he should not be dismissed from service. Upon receipt of the aforesaid show cause notice, the petitioner sent a reply dated 16th October, 1989 mentioning therein that not only the charges levelled against the petitioner were incorrect, but the documents were also not supplied to him and nor was oral evidence led before the Enquiry Officer. The petitioner also sent a letter dated 17th October, 1989 for supplying a copy of the Enquiry Report. However, without giving any reply to the petitioner, the Managing Director passed an order on 1st November, 1989 by which the petitioner was dismissed from service.

This Court while entertaining this petition also granted an interim order on 23rd November, 1989 that the orders dated 1st November, 1989 and 4th November, 1989 shall remain stayed.

Sri R.M. Saggi, learned counsel for the petitioner has submitted that apart from giving a copy of the charge sheet, no enquiry whatsoever was held by the respondents before dismissing the petitioner from service and in fact even a copy of the enquiry report was not supplied to the petitioner alongwith the show cause notice dated 28.9.1989. He has further submitted that the punishment of dismissal from service on the ground of embezzlement of Rs.10/ was highly disproportionate.

Sri G.D. Mishra, learned counsel appearing for the respondents has, however, submitted that it was not necessary to supply a copy of the charge sheet upon the petitioner along with the show cause notice as the punishment was imposed upon the petitioner prior to the decision of the Supreme Court in *Union of India & Ors. Vs. Mohd. Ramzan Khan*, reported in AIR 1991 SC 471. He further submitted that the Enquiry Officer had held a proper enquiry and thereafter the punishment was imposed upon the petitioner and that the punishment was not disproportionate to the charges as the petitioner was involved in embezzlement.

I have carefully considered to the submissions advanced by the learned counsel for the parties.

The first contention that has been advanced on behalf of R.M. Saggi, learned counsel for the petitioner is that principles of natural justice had been violated as a copy of the enquiry report was not served upon the petitioner and in support of this contention he has placed reliance upon the decision of the Supreme Court in *Union of India & Ors. Vs. Mohd. Ramzan Khan*, reported in AIR 1991 SC 471 and *R.K. Vashisht Vs. Union of India and others*, 1993 Supp (1) SCC 431.

The Supreme Court in the case of *Mohd. Ramzan Khan* (supra) held that the supply of a copy of the Enquiry Report along with the recommendations, if any, in the matter of proposed punishment to be inflicted would be within the rules of the natural justice and the delinquent would, therefore, be entitled to a supply of the copy thereof. The aforesaid decision of the Supreme Court was considered subsequently by the Supreme Court in the case of *Managing Director, ECIL*

Hyderabad, etc., etc. Vs. B. Karunakar etc., etc. reported in AIR 1994 SC 1074 and in case of Oriental Insurance Company Ltd. Vs. S. Balakrishnan, reported in AIR 2001 SC 400.

In ECIL (supra) the Constitution Bench of the Supreme Court explained the earlier decision in Mohd. Ramzan Khan (supra) and the relevant observations are as follows:

"However, it has to be noticed that although it is in Mohd. Ramzan Khan's case (supra) that this Court for the first time accepted and laid down the law that the delinquent employee is entitled to the copy of the report before the disciplinary authority takes its decision on the charges levelled against him.

.....

It has, therefore, to be accepted that at least till this Court took the view in question in Mohd. Ramzan Khan's case (supra), the law on the subject was in a flux.

.....

It will, therefore, have to be held that notwithstanding the decision of the Central Administrative Tribunal in H.G. Patel's case (supra) and of the Gujarat High Court in Premnath K. Sharma's case (supra) and of the other courts and tribunals, the law was in an unsettled condition till at least 20th November, 1990 on which day the Mohd. Ramzan Khan's case was decided. Since the said decision made the law expressly prospective in operation the law laid down there will apply only to those orders of punishment which are passed by the disciplinary authority after 20th November, 1990. This is so, notwithstanding the ultimate relief which was granted there which, as pointed out earlier was per incuriam. No order of punishment passed before that date would be challengeable on the ground that there was a failure to furnish the inquiry report to the delinquent employee. The proceedings pending in courts/tribunals in respect of orders of punishment passed prior to 20th November, 1990 will have to be decided according to the law that prevailed prior to the said date and not according to the law laid down in Mohd. Ramzan Khan's case (supra).

The need to make the law laid down in Mohd. Ramzan Khan's case (supra) prospective in operation requires no emphasis. As pointed out above, in view of the unsettled position of the law on the subject, the authorities/managements all over the country had proceeded on the basis that there was no need to furnish a copy of the report of the Inquiry Officer to the delinquent employee, and innumerable employees have been punished without giving them the copies of the reports. In some of the cases, the orders of punishment have long since become final while other cases are pending in courts at different stages. In many of the cases, the misconduct has been grave and in others the denial on the part of the management to furnish the report would ultimately prove to be no more than a technical mistake. To reopen all the disciplinary proceedings now would

result in grave prejudice to administration which will far outweigh the benefit to the employees concerned. Both administrative reality and public interests do not, therefore, require that the orders of punishment passed prior to the decision in Mohd. Ramzan Khan's case (supra) without furnishing the report of the Inquiry Officer should be disturbed and the disciplinary proceedings which gave rise to the said orders should be reopened on that account. Hence we hold as above."(Emphasis supplied)

In Oriental Insurance Co. Ltd. (supra) the Supreme Court observed as follows :

"The question, however, still remains to be considered is whether the High Court was justified in interfering with an order of punishment passed by the disciplinary authority merely on the ground that nonsupply of enquiry report has vitiated the entire proceedings. It had not been brought to the notice of the learned Judges of the Court that the judgment of this Court in Managing Director, ECIL, Hyderabad Vs. B. Karunakar, (1993) 3 SCC 727: (1994 AIR SCW 1050: AIR 1994 SC 1074: 1994 Lab IC 762) which is a Constitution Bench decision of the Court, and which clarifies the entire position. Without being aware of the correctness of law, the High Court appears to have interfered with an order of dismissal passed in a disciplinary proceedings in grave charges like the one with which we are concerned in the present case. Applying the principles indicated by this Court in ECIL case to the facts of the present case, we cannot conceive any prejudice, which is said to have been caused to the delinquent, and, therefore, nonsupply of the enquiry report could not have been held to have vitiated the entire proceedings. In the aforesaid premises, we set aside the impugned order passed by the learned single Judge of the High Court as well as the judgment of the Division Bench of the High Court, and hold that the writ petition filed by the respondent stands dismissed."

In P.D. Agrawal Vs. State Bank of India and others 2006 AIR SCW 2504 the Supreme Court observed as follows:

"However, the contention of Mr. Rao that only because a copy of the enquiry report was not furnished to the Appellant by the Disciplinary Authority, there has been a violation of the mandatory provisions of the regulations, cannot also be accepted for the reasons stated hereinafter.

The order of punishment of removal against the Appellant was passed against the Appellant on 22nd July, 1990. The decision of this Court in Mohd. Ramzan Khan (supra), as noticed hereinbefore, was decided on 20th November, 1990 wherein the law laid down by this Court, while holding that a delinquent officer cannot be called upon to make a representation on the quantum of punishment without furnishing a copy of the enquiry report, was expressly given a prospective effect. It was, therefore, not at all necessary for the Disciplinary Authority, keeping in view the law as it then stood, to furnish a copy of the enquiry report to the Appellant."

In the present case, learned counsel for the petitioner has not placed any

Regulation which provides for a copy of the Enquiry Report to be served upon the delinquent employee. The case of Mohd. Ramzan Khan and R.K. Vashisht relied upon by the learned counsel for the petitioner were considered by the Constitution Bench of the Supreme Court in ECIL (supra) and it was held that the law laid down will apply to only those orders of punishment which were passed by the Disciplinary Authority after 20th November, 1990. In the present case the order for removal from the service was passed by the Disciplinary Authority on 1st November, 1989. Thus the first contention of the learned counsel for the petitioner cannot be accepted.

The other contention advanced by learned counsel for the petitioner now needs to be examined. It is not in dispute that in the present case only a charge sheet was served upon the petitioner to which the petitioner submitted a detailed reply. The Enquiry Officer did not fix any date for enquiry and neither was any evidence led and nor was any opportunity given to the petitioner to cross-examine the witnesses. The Enquiry Officer considered the reply submitted by the petitioner and the enquiry report indicates that the Enquiry Officer also personally visited the firm which had issued the cash memo and perused the carbon copy of the cash memo and concluded that some interpolations had been made in the original cash memo. However, the petitioner was not confronted with the duplicate copy of the cash memo. There is nothing on the record to indicate whether the corrections were made in the cash memo by the petitioner or by the firm which issued the cash memo and only an inference has been drawn by the Enquiry Officer that the petitioner was responsible for the interpolations made in the cash memo.

This Court in Gajendra Vs. Administrator U.P. Cooperative Processing and Cold Storage Federation Ltd. and others reported in 1991 SCD 544 set aside the order of dismissal from service of the petitioner on the ground that the petitioner had not been afforded reasonable opportunity to show cause against the charges, no oral Enquiry was conducted to substantiate the charges and the petitioner was not given any opportunity to cross-examine the witness and produce evidence in his defence.

A Division Bench of this Court in Subhash Chandra Sharma Vs. Managing Director & Anr, 2000 (1) ESC 65 also observed that after service of the chargesheet evidence has to be led and opportunity has to be given to the employee to cross-examine the witness. The relevant observations are as follows:

"In our opinion after the petitioner replied to the chargesheet a date should have been fixed for the enquiry and the petitioner should have been intimated the date, time and place of the enquiry and on that date the oral and documentary evidence against the petitioner should have been led in his presence and he should have been given an opportunity to cross-examine the witnesses against him and also he should have been given an opportunity to produce his own witnesses and evidence. If the petitioner in response to this intimation had failed to appear for the enquiry then an ex-parte enquiry should have been held but the

petitioner's service should have not been terminated without holding an enquiry. In the present case it appears that no regular enquiry was held at all. All that was done that after receipt of the petitioner's reply to the chargesheet he was given a showcause notice and thereafter the dismissal order was passed. In our opinion this was not the correct legal procedure and there was violation of the rules of natural justice. Since no date for enquiry was fixed nor any enquiry held in which evidence was led in our opinion the impugned order is clearly violative of natural justice.

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A dismissal order has serious consequences and should be passed only after complying with the rules of natural justice. Since in the present case no enquiry was held at all and no evidence led in the presence of the petitioner nor was he given opportunity to cross-examine the witnesses against him or lead his own evidence the impugned dismissal order is illegal....."

The aforesaid decision in the case of Subhash Chandra Sharma (supra) has been confirmed by the Supreme Court in SLP (Civil) No.13792 of 2000 decided on 16th August, 2000.

In *Hulashi Ram Sagar v. State of U.P. and others* reported in 2002 ESC 497, a Division Bench of this Court also set aside the order of punishment on the ground that it had been passed only after obtaining the reply to the charges, without holding any regular enquiry.

In the present case also no evidence was led and nor were the witnesses examined and only on the basis of the reply filed by the petitioner, the punishment of dismissal has been imposed upon him. This apart, as noticed above, the petitioner was not even confronted with the duplicate copy of the cash memo which had been referred to in the enquiry report.

In view of the aforesaid, the order of punishment cannot be sustained as it has been passed in breach of principles of natural justice. It is, therefore, not necessary to examine the contentions advanced by the learned counsel for the petitioner that the punishment imposed upon the petitioner is disproportionate to the charges levelled against him.

In normal circumstances the matter should be remanded for a fresh enquiry in accordance with law, but in the present case the charge relates to the year 1989 and under the interim order passed by this Court on 23rd November, 1989, the petitioner is continuing in service. Thus, it would not be appropriate to order for holding a fresh enquiry.

The orders dated 1st November, 1989 and 4th November, 1989 are accordingly, quashed. The writ petition, therefore, succeeds and is allowed to the extent indicated above. There shall be no orders as to costs.