
(1991) 08 AHC CK 0041
In the Allahabad High Court
Case No : Writ Petition No. 3323 of 1988

Sarfaraz Ali

APPELLANT

Vs

U.P.State Road Transport Corporation and others

RESPONDENT

Date of Decision : 06-08-1991

Acts Referred:

Constitution of India, 1950 — Article 141

Citation : (1991) 08 AHC CK 0041

Hon'ble Judges : S.Saghir Ahmad, J

Final Decision : Allowed

Judgement

S. Saghir Ahmad, J.—This writ petition is directed against the order dated 241287 by which the petitioner, who was working as Conductor in the establishment known as U.P. State Road Transport Corporation, has been removed from service.

2. The petitioner was appointed on the post of Conductor in the erstwhile U.P. Government Roadways in the year 1963,

3. The U. P. State Road Transport Corporation (hereinafter referred to as, the Corporation) was constituted some time in 1972 in place of the U.P. Government Roadways and the petitioner like a large number of other employees was sent on deputation and came to be ultimately posted at Kaiserbagh Depot, Lucknow as Conductor in the City Bus Service.

4. On 21.10.78 a charge sheet (annexure2) was issued to the petitioner to which a reply (annexure3) was sent where after a regular departmental enquiry was held by Sri M. C. Sonkar, the then Assistant Regional Manager, Kaiserbagh Depot, Lucknow. Sri Sonkar issued a notice dated 11.1.1985 requiring the petitioner to show cause why he may not be removed from service. The petitioner submitted his reply pleading therein that he was not guilty and was not liable to be removed from service.

5. While the above matter was pending, another charge sheet was issued to the

petitioner on 13.4.87 to which a reply (annexure7) was submitted by the petitioner on 9.6.87. Thereafter no further enquiry was held and by the impugned order dated 24.12.87 contained in annexure8 the petitioner has been removed from service.

6. The order of removal has been challenged on a number of grounds including the ground relating to the nonsupply of the copy of the enquiry report in relation to the charge sheet dated 13.4.87.

7. The opposite parties, who have filed a counter affidavit in this case, do not dispute the factual position that copy of the enquiry report in relation to the charge sheet dated 13.4.87 has not been supplied to the petitioner. But they maintain that nonsupply of the findings of the enquiry officer would not vitiate the order.

8. Sri S. K. Kalia, appearing on behalf of the opposite parties, has also placed before me the original record relating to the enquiry proceedings which too indicates that copy of the enquiry report was not supplied to the petitioner.

9. The other questions raised in this petition need not be considered, as I feel that the petition can be disposed of finally merely on the question relating to the nonsupply of the findings of the enquiry officer to the petitioner during the course of the disciplinary proceedings which has ultimately been decided against him and he, as a consequence thereof, has been removed from service.

10. On the question whether the nonsupply of the findings recorded by an enquiry officer in the disciplinary proceedings conducted against an employee, Would vitiate the ultimate order of punishment (provided the punishment inflicted upon the employee is a major punishment) or that the nonsupply Would have no effect on the disciplinary proceedings and the punishment will still be upheld, there has been a divergent judicial opinion which has been finally settled by the

Supreme Court in Union of India and others vs. Mohd. Ramzan Khan, JT 1990 (4) S C 456: [1991 (9) L C D 241] in which the Supreme Court has held as under:

¶13. Several pronouncements of this Court dealing with Art, 311 (2) of the Constitution have laid down the test of natural justice in the matter of meeting the charges. This Court on one occasion has stated that two phases of the inquiry contemplated under Article 311 (2) prior to the 42nd amendment were judicial. That perhaps was a little stretching the position. Even if it does not become a judicial proceeding there can be no dispute that it is a quasijudicial one, There is a charge and a denial followed by an inquiry at Which evidence is led and assessment of the material before conclusion is reached. These do make the matter quasijudicial and attract the principles of natural justice. As this Court rightly pointed out in the Gujarat case, the disciplinary authority is very often influenced by the conclusions of the Inquiry Officer and even by the recommendations relating to the nature of punishment to be inflicted. With the

FortySecond Amendment, the delinquent officer is not associated with the disciplinary inquiry beyond the recording of evidence and the submissions made on the basis of the material to assist the Inquiry Officer to come to his conclusions. In case his conclusions are kept away from the delinquent officer and the Officer submits his conclusion's with Inquiry of Without recommendation as to punishment, the delinquent is precluded from knowing the contents thereof although such material is used against him by the disciplinary authority. The report is an adverse material if the Inquiry Officer records a finding of guilt and proposes a punishment so far as the delinquent is concerned. In a quasi-judicial matter, if the delinquent is being deprived of knowledge of the material against him though the same is made available to the punishing authority in the matter of reaching his conclusion, rules of natural justice would be affected. Prof. Wade has pointed out:

“The concept of natural justice has existed for many centuries and it has crystallised into two rules that no man should be judge in his own cause; and that no man should suffer without first being given a fair hearing. They (the Courts) have been developing and extending the principles of natural justice so as to build up a kind of code of fair administrative procedure to be obeyed by authorities of all kinds. They have done this once again, by assuming that Parliament always intends powers to be exercised fairly.”

(Administrative Law)

14, This Court in *Mazharul Islam Hashmi vs. State of U P*. 4 Aw. (1979) 4 SCC 53 pointed out;

“Every person must know what he is to meet and he must have opportunity of meeting that case. The legislature, however, can exclude operation of these principles expressly or implicitly. But in the absence of any such exclusion, the principle of natural justice will have to be proved.”

15. Deletion of the second opportunity from the scheme of Art. 311 (2) of the Constitution has nothing to do with providing of a copy of the report to the delinquent in the matter of making his representation. Even though the second stage of inquiry in Art. 311 (2) has been abolished by amendment, the "delinquent is still entitled to represent against the conclusion of the Inquiry Officer holding that the charges or some of the charges are established and holding the delinquent guilty of such charges. For doing away with the effect of the inquiry report or to meet the recommendations of the Inquiry Officer in the matter of imposition of punishment, furnishing a copy of the report becomes necessary and to have the proceeding completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure. While by law application of natural justice could be totally ruled out or truncated, nothing has been done here which could be taken as keeping natural justice out of the proceedings and the series of pronouncements of this Court making rules of natural justice applicable to such an enquiry are not affected by the 42nd

amendment. We, therefore, come to the conclusion that supply of a copy of the inquiry report alongwith recommendations, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof. The FortySecond Amendment has not brought about any change in this position.?

11. A perusal of the findings of the Supreme Court extracted above show that the question under consideration stands decided conclusively by their Lordships of the Supreme Court who have recorded a categorical finding that a delinquent employee would be entitled to get a copy of the findings recorded by the enquiry officer and if the copy of the findings have not been supplied to him, the ultimate order of punishment inflicted upon him would be vitiated.

12. In the instant case, there is no dispute between the parties that a copy of the findings recorded by the enquiry officer in relation to the charge sheet issued to the petitioner on 13487 was not furnished to him.

13. Applying the principles laid down by their Lordships of the Supreme Court in Union of India and others v. Mohd. Ramzan Khan's case (supra), the impugned order by which the petitioner has been removed from service cannot be sustained.

14. Sri Kalia, appearing on behalf of the Corporation, has drawn my attention to para 17 of the report which reads as under:

¶17. There have been several decisions in different High Courts which, following the FortySecond Amendment, have taken the view that it is no longer necessary to furnish a copy of the enquiry report to delinquent officers. Even on some occasions this Court has taken that view. Since we have reached a different conclusion the judgments in the different High Courts taking the contrary view must be taken to be no longer laying down good law. We have not been shown any decision of a coordinate or a larger Bench of this Court taking this view. Therefore, the conclusion to the contrary reached by any twojudge Bench in this Court will also no longer be taken to be laying down good law, but this shall have prospective application and no punishment imposed shall be open to challenge on this ground.?

15. On the basis of the above observation of the Supreme Court it is contended by Sri S.K.Kalia that since the petitioner was dismissed from service on 241287 while the judgment in Mohd. Ramzan Khan's case (supra) was rendered by the

Supreme Court on 201190 the ground relating to the nonsupply of copy of enquiry findings cannot be looked into, as the judgment of the Supreme Court is prospective in nature and, therefore, it would not be applicable to the order of dismissal passed prior to the date of the aforesaid judgment. I do not agree.

16. Para17 of the judgment referred to above cannot be read in isolation. It is to be read in the background of the facts of the case set out in the earlier part of the judgment as also the background in which the law that nonsupply of the copy

of the enquiry report would vitiate the order of punishment was laid down by the Supreme Court.

17. There was a conflict of opinion prevailing amongst various High Courts on the question whether or not the nonsupply of the copy of the enquiry report would render the ultimate order of punishment void and inoperative. Even the Supreme Court expressed the view that nonsupply of the enquiry findings would not vitiate the order of punishment. In Ramzan Khan's case (supra) the Supreme Court resolved the controversy and laid down in positive terms that nonsupply of the findings recorded by the enquiry officer to the employee against whom disciplinary proceedings were held would vitiate the order of punishment. By making its judgment prospective the Supreme Court only intended to say that all other cases in which the view was expressed that nonsupply of enquiry findings would not vitiate the order of punishment would not again be open to scrutiny.

18. The law declared by the Supreme Court is binding on all the courts including the High Courts. The cases in the subordinate courts including the High Courts are to be decided in accordance with the law laid down by the Supreme Court. The Courts have no option except to obediently follow the law laid down by the highest court of the land.

19. If, therefore, the Supreme Court said that its judgment in Ramzan Khan's case (supra) will be prospective in operation and not retrospective, it did not mean to say that all pending cases would continue to be decided in accordance with the old law which has been found by it to be not correctly laid down. As observed earlier, all that the Supreme Court meant to say was that all other cases in which the orders of punishment have been upheld, notwithstanding the point raised that the copy of the enquiry report had not been supplied to the employee, would not be open to a fresh judicial scrutiny in view of the law laid down in Ramzan Khan's case.

20. In para 18 of the report the Supreme Court observed as under:

“We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter.”

21. The writ petition has come before me for decision after the decision of the Supreme Court. Admittedly, a copy of the enquiry report had not been furnished to the petitioner. In view of this infirmity, the impugned order cannot be sustained, as the case is fully covered by the law laid down by their Lordships of the Supreme Court in Ramzan Khan's case (supra).

22. The writ petition is consequently allowed and the impugned order dated 241287 contained in annexure8 removing the petitioner from service is hereby quashed. The petitioner shall be reinstated on the post from which he was removed and shall be paid his full salary for the whole of the period for which he was kept out of the office.

23. There will be no order as to costs.

(Petition allowed)