

(2010) 07 AHC CK 0079

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15499 of 1997

Saudan Singh

APPELLANT

Vs

Union of India(UOI) and others

RESPONDENT

Date of Decision : 29-07-2010

Acts Referred:

Citation : (2010) 127 FLR 201

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : R.K. Pandey, for the Appellant; A. Kumar, for the Respondent

Judgement

Anil Kumar, J.—Matter is taken in revised cause list.

2. None appears on behalf of the respondents.

3. Heard Sri R.K. Pandey, learned Counsel for the petitioner and peruse the record.

4. The facts, in brief, of the present case, as submitted by the learned Counsel for the petitioner are that he was selected as Constable in Railway and Protection Force, posted in Parel Workshop at Bombay Division. While Working and discharging his duties in the said capacity, he fell ill as such an application was submitted before the Inspector Railway Protection Force (Barrik Incharge) on 12.7.1986 requesting therein that he may be sent to Railway Hospital for treatment.

5. Learned Counsel for the petitioner further submits that in view of the said request made by the petitioner, the Barrik Incharge has issued sick memo and sent the petitioner to Railway Hospital, Martunga where the petitioner was admitted by the doctors for necessary treatment.

6. On 18.7.1986 the Railway doctors after giving necessary treatment, had given advice to the petitioner for three months compulsory bed rest and released him from the railway hospital. It was further submitted on behalf of the petitioner

that after release from the railway hospital, he went to his home as per the advice of the doctor for three months bed rest.

7. Thereafter on 4.9.1986 the petitioner received a charge-sheet dated 22.7.1986 (Annexure No. 3) in which the charge of unauthorised absence was levelled on him. After receiving the said charge-sheet, the petitioner submitted an application to the competent authority requesting therein that the necessary documents and material may be supplied to him in order to submit his reply to the charge-sheet but no heed was paid in the matter in question.

8. It is further contended by the learned Counsel for the petitioner that no date time and place has been fixed by the enquiry officer for conducting the enquiry proceedings and he straight way submitted the enquiry report and after receiving the same, the disciplinary authority passed the dismissal order dated 19.11.1986 (Annexure No. 9). Aggrieved by the said order, the petitioner filed an appeal/revision but the same was rejected by opposite party No. 2 Director General Railways Protection Force, Rail Bhawan, New Delhi by means of order dated 1.11.1996 (Annexure No. 12). Hence, the present writ petition has been filed thereby challenging the said order.

9. Learned Counsel for the petitioner while assailing the impugned order submits that the enquiry which has been done against the petitioner was an ex parte enquiry and no opportunity whatsoever has been given to the petitioner during the course of the enquiry proceedings, even the necessary documents and material which were sought by the petitioner in order to submit reply to the charge-sheet was not given to him as such the petitioner was not able to submit his defence. The said action on the part of the enquiry officer and the punishing authority thereby not giving the relevant documents and material which are the basis for issuance of charge-sheet, is an action which is in violation of principles of natural justice. Moreover, as no reasonable opportunity whatsoever has been provided to the petitioner in the entire enquiry proceedings, so the ex parte order of removal and the appellate/revisional order are arbitrary in nature, cannot sustain, liable to be set aside.

10. I have heard the learned Counsel for the petitioner and perused the record.

11. As stated above, none appear on behalf of the respondents to press the present case on their behalf.

12. So far as the factual matrix of the present case is concerned, it is not disputed that the petitioner who was working on the post of Constable in railway protection Force, Bombay has been issued a charge-sheet dated 22.7.1986 in the ground of unauthorised absence and after receiving the same, the petitioner made a request to the enquiry officer/ competent authority to submit the relevant documents in order to submit his reply but the same has not been given to him on the one hand and on the other hand the enquiry officer conducted ex parte enquiry and submit the enquiry report to the punishing authority / opposite party No. 5, who thereafter passed the impugned order of dismissal dated

19.11.1986 and the same was confirmed by the appellate revisional authority.

13. In view of the said fact, the first and foremost question which is to be decided in the present case that in what manner the disciplinary enquiry is to be done further the same is subject-matter of consideration in various judicial pronouncement of this Court as well as Hon"ble Supreme Court.

14. In the case of Gyan Das Sharma Vs. State of U.P. and others, ., this Court has held that:-

"In the present case, undoubtedly, no oral evidence was recorded during the course of inquiry proceedings. It is incumbent on the inquiry officer to record oral evidence to substantiate charges. Documents on record should have been proved by cogent reasons by recording finding of fact on merit by the inquiry officer but the same has not been done. The inquiry has been conducted in utter disregard to principle of natural justice. Since the impugned order has been passed on the basis of the inquiry report which suffers from substantial illegality and violative of principles of natural justice, the order of punishment vitiates. The writ petitioner deserved to be allowed."

15. In the case of Lucknow Kshetriya Gramin Bank and others v. Shri Devendra Kumar Upadhyay 2009 (27) LCD 990., this Court has held as under-

"In case an employee is charged of misconduct and charge sheet is issued, it has to contain precise and specific charges alongwith the evidence which the department wants to rely upon, in proving the charges alongwith the copy of documents should be provided to the delinquent. After asking the reply from delinquent, the enquiry is to proceed where the charges which are to be proved by the department concerned, on the basis of the evidence which the department chooses to produce, oral as well as documentary. The delinquent also has to be provided adequate and reasonable opportunity to lead evidence in rebuttal, maybe oral or documentary or both. It is on the basis of the evidence so led and the material available on record that the inquiry officer has to apply his mind to find out whether the charge levelled against him stands proved or not."

16. In the case of State of Uttaranchal and others v. Kharak Singh 2008 (118) FLR 112 (SC)., Hon"ble the Supreme Court had laid down the following principles as to how the enquiry is to be conducted;--

"(i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.

(ii) If an officer is a witness to any of the incidents which is the subject matter of the enquiry or if the enquiry was initiated on a report of officer, then in all fairness he should not be the enquiry officer. If the position becomes known after the appointment of the enquiry office during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.

(iii) In an enquiry, the employer/ department should take steps first to lead

evidence against the workman/delinquent charged and give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he want to lead any evidence and asked to give any explanation about the led against him.

(iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his view, if any."

17. The Apex Court in the case of State of U.P. and others v. Saroj Kumar Sinha 2010 (124) FLR 857 (SC), has held as under:-

"When the departmental enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service."

18. It is not the responsibility/ obligation of the delinquent at the initial stage of inquiry to name the defence witnesses or express his desire to participate in the inquiry by adducing evidence against the charges levelled against him.

19. If the disciplinary proceedings are initiated against the delinquent public servant, the first and foremost requirement is that the charge-sheet should be framed with specific and precise charges which should be accompanied by the copies of such evidence which are sought to be relied upon, including evidence for proving the charges and also the list of witnesses which the prosecution/ department wants to give to the delinquent to submit his reply to the charge-sheet and he is also to be afforded adequate opportunity to adduce any evidence in rebuttal and indicate as to whether he intends to examine or cross examine the witnesses.

20. This requirement of asking about the desire of the delinquent of examining or cross-examining the witnesses does not mean that in case delinquent denies the charges in the reply but does not make any such request to rebut during course of enquiry, the department would stand absolved from proving the charges on the basis of material and evidence on record.

21. After the service of the charge-sheet and receipt of the notice, the inquiry officer is to fix a date, time and place to hold an enquiry which is to be communicated to the delinquent and on that date the charges are required to be proved by evidence which the department intends to adduce. Such evidence is to be corroborated by oral evidence or documentary as may be admissible under law. Delinquent has to be given opportunity to rebut the evidence both by

examining or cross-examining the witnesses.

22. The delinquent thereafter is also required to have an opportunity to adduce independent evidence to rebut the evidence adduced by the department which may be proved against him. After the evidence part is over, the enquiry office may prepare the report on the basis of the material on record and making assessment of the evidence before him so as to find out whether the charge/charges against the delinquent stand proved or not. Such inquiry report will be furnished to appointing authority who will take further action as per the report.

23. In the instant case, the above said procedure for holding the disciplinary enquiry has not been followed as such the entire enquiry proceedings as well as the order of dismissal passed in pursuance to the same as well as the order of appellate / revisional authority are arbitrary in nature and in violation of principles of natural justice.

24. For the foregoing reasons, the impugned order dated 19.11.1986 passed by opposite party No. 5 Senior Commandant, Railways Protection Force Bombay and the appellate/revisional order dated 1.11.1996 passed by opposite party No. 2 Director General Railways Protection Force, Rail Bhawan, New Delhi are set aside and further the matter is remanded back to the opposite party No. 5/punishing authority to hold the disciplinary enquiry from the date of issuing of charge-sheet. For the said purpose, the petitioner is provided three weeks" time from today, to submit his reply to the charge-sheet dated 22.7.1986 and after receiving the same, the disciplinary proceeding as well as the final order on the basis of the same in the matter in question shall be passed by the punishing authority within a further period of three months thereafter.

25. With the above observations and directions, the writ petition is partly allowed.

26. No order as to costs.