
(2002) 04 AHC CK 0138
In the Allahabad High Court
Case No : C.M.W.P. No. 42108 of 2001

Shafat Ullah

APPELLANT

Vs

Commissioner, Varanasi and Others

RESPONDENT

Date of Decision : 08-04-2002

Acts Referred:

Citation : (2002) 2 AWC 1483

Hon'ble Judges : Rakesh Tiwari, J;M. Katju, J

Bench : Division Bench

Advocate : Yogesh Agarwal, for the Appellant; C.K. Parekh, B.N. Singh, A.K. Singh and Niraj Tiwari, for the Respondent

Final Decision : Allowed

Judgement

M. Katju, J.—Heard learned counsel for the petitioner and Sri C.K. Parekh, learned counsel for the respondent.

2. The petitioner has challenged the impugned orders dated 21.9.2001 and 23.1.2001 (Annexures-1 and 2 to the petition).

3. The petitioner was Law Officer in the service of the Nagar Nigam, Varanasi. He was charge-sheeted vide Annexure-5 to the petition and additional charge-sheet vide Annexure-8 to the petition. He gave a reply to the same dated 29.11.1996 and 2.12.1996 vide Annexure-9 to the petition.

4. In paragraph 15, it is stated that thereafter, no enquiry took place and petitioner was never informed any date of the enquiry and no witness was examined in his presence. No documents were produced before the Enquiry Officer in the presence of the appellant and he was not given opportunity to rebut any document against him. Instead, suddenly a letter dated 21.8.1997 was sent by the Enquiry Officer along with his report. Copy of the same is Annexure-10 to the petition. The petitioner gave reply to the show cause notice vide Annexure-C.A.-7 to the counter-affidavit. Thereafter, the impugned order dismissing the petitioner dated 20.10.1997 was passed. Against that order, the

petitioner filed an appeal which was allowed on 31.12.1999 vide Annexure-4 to the petition. In the appellate order, it has been stated that there was violation of Rule 33 of the U. P. Nagar Mahapalika Seva Niyamavali since approval of the U. P. Public Service Commission was not taken. Thereafter the respondents took approval from the Commission, and the impugned order dated 23.1.2001 (Annexure-2 to the petition) was passed. Thereafter the petitioner filed an appeal, which was dismissed, vide Annexure-11 to the petition. Hence this writ petition.

5. In our opinion, this petition can be disposed of on a short point, viz., that the petitioner was not informed of the date, time and place of the enquiry. This fact has been stated in paragraph 15 of the writ petition and has not been denied by the respondents. It has been repeatedly held by this Court in *Subhash Chandra Sharma Vs. Managing Director, U.P. Co-op. Spg. Mills Federation Ltd., Kanpur* and another, ; *Radhey Shyam Pandey v. Chief Secretary, U. P. and Ors.* 2001 (3) AWC 2043 and *K.K. Dutta v. Managing Director. U. P. Coop. Spg. Mills Federation Ltd., Kanpur* and Anr. 2002 (1) UPLBEC 425, that before passing a dismissal order, an enquiry should be held intimating the accused employee of the date, time and place of enquiry.

6. The facts of this case appear to be squarely covered by the above decisions. However, learned counsel for the respondents has relied on Annexure-5 to the petition which is a charge-sheet, and in it is mentioned in the last paragraph that if the petitioner wishes to produce any evidence or if he desires a hearing or cross-examination, he should inform the Enquiry Officer. It was argued by the learned counsel for the respondents that since the petitioner did not inform the Enquiry Officer that he wanted a hearing to produce witnesses, a presumption should be drawn that the petitioner never wanted a hearing nor did he want to examine witnesses or opportunity of cross-examination. We do not agree with this contention. Since the charge was made by the employer against the employee, the burden was on the employer to prove its case by leading evidence to prove the charges. If no one produces evidence, then the charge will fail. It has been held in *The Imperial Tobacco Company of India Ltd. Vs. Its Workmen*, that even if the accused employee withdraws from the enquiry, the enquiry should have been completed and all the evidence should have been taken ex-parte and thereafter it was the duty of the Branch Manager to appraise that evidence and record his conclusion as to what misconduct has been proved and also to decide what punishment should be given.

7. Hence, in our opinion, even if the accused employee does not reply to the letter asking whether he wants to give evidence or wants a hearing, he must be sent a letter informing the date, time and place of the enquiry in which he must be given opportunity to produce his witnesses and cross-examine, the witnesses against him. It is only where the employee specifically writes a letter to the employer that he does not want to lead evidence or does not want to produce witnesses or cross-examine, that these need not be provided. However, even in

such case, the employer must lead its own evidence, otherwise the charge will fail as has been held in the cases of Messrs. Delta Engineering Co. Pvt. Ltd. Meerut v. P. O. Industrial Tribunal v. Meerut and Ors. 1997 AWC (Supp) 428 : 1997 (77) FLR 520 : Airtech Private Ltd. v. State of U. P. and Ors. 1984 (49) FLR 38 and V.K. Raj Industries v. Labour Court 1981 (43) FLR 194.

8. For the reasons given above the writ petition is allowed. The impugned order dated 21.9.2001 and 31.1.2001 (Annexures-1 and 2 to the writ petition) is quashed.

9. However, it is open to the respondent No. 2 to hold an enquiry after giving opportunity of hearing to the petitioner and take appropriate action.