
(1999) 04 AHC CK 0098
In the Allahabad High Court
Case No : C.M.W.P. No. 11737 of 1997

Shailesh Kumar Lal

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 07-04-1999

Acts Referred:

Citation : (1999) 2 AWC 1528 : (1999) 82 FLR 546 : (1999) 3 UPLBEC 116

Hon'ble Judges : V.M. Sahai, J

Bench : Single Bench

Advocate : B.N. Tiwari, for the Appellant; S.C. and S.P. Singh, for the Respondent

Judgement

V. M. Sahai, J.—The petitioner was Lekhpal. He was suspended by Sub-Divisional Magistrate, Sakaldiba. Varanasi on 6.12.1989. He had not participated in the meeting held by the Sub-Divisional Magistrate on 5.12.1989. He was charge-sheeted. The inquiry officer held that the charges were substantiality. Its report was accepted by the Sub-Divisional Magistrate on 30.4.1990 and he dismissed the petitioner from service. The appeal and representation made by the petitioner to Additional District Magistrate and Commissioner, Varanasi Division, Varanasi were dismissed. The correctness of these orders has been challenged in this petition.

2. I have heard Shri B. N. Tiwari, the learned counsel for the petitioner and Shri S. P. Singh. standing counsel appearing for the respondents.

3. The counsel for the petitioner argued that the order of dismissal is liable to be quashed as the inquiry was contrary to the procedure provided in the rules and the order is against principles of natural justice. The learned counsel submitted that the Sub-Divisional Magistrate being the complainant, he could not act as punishing authority. Both the submissions appear to be correct. In Arjun Chaubey Vs. Union of India (UOI) and Others, , the Apex Court has held that when the complainant and punishing authority are same, the order is contrary to

principles of natural justice. It is one of the basic principles of law that one cannot be judge of his own cause. Therefore, the dismissal order which has been affirmed by the respondents cannot be upheld. As regards the second ground, It is not disputed in the counter-affidavit that a copy of the enquiry report was not supplied, therefore the principle laid down in Union of India and others Vs. Mohd. Ramzan Khan, applied. However, since the impugned order are liable to be quashed on the first ground, it is not necessary to say any thing further.

4. The writ petition succeeds and is allowed. The dismissal order passed by respondent No. 4 dated 30.4.1990 (Annexure-3 to the writ petition) and order dated 21.9.1990 passed by respondent No. 3 (Annexure-9 to the writ petition) as well as order dated 18.12.1996 passed by respondent No. 2 (Annexure-11 to the writ petition) are hereby quashed. The respondents shall reinstate the petitioner in service with all consequential benefits of service. within one month from the date of production of certified copy of this judgment.

5. There shall be no order as to costs.