

(1996) 11 AHC CK 0105

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 11736 of 1996

Sheo Shankar Singh Yadav

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 28-11-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 1 UPLBEC 462

Hon'ble Judges : R. Dayal, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : Murlidhar Misra, for the Appellant; S. C., for the Respondent

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—The instant writ petition has been filed against the order dated 16-11-1995. Annexure 12 to the writ petition, by which the respondent No. 3 has confirmed the order of the respondent No. 4 dated 22-3-1993, Annexure 4 to the writ petition and two other orders dated 12-4-1998 and 30-11-1993, Annexures 5 and 9 respectively to the writ petition, have also been challenged as being consequential to the order dated 22-3-1993.

2. The factual gamut of the case as revealed by the writ petition is that the petitioner was working as Forest Ranger and when he was posted in Lansdown-Pauri Garwal from 1986 to 1989, there was some complaint of irregularities and a preliminary enquiry was held against the petitioner. Subsequent thereto a regular enquiry was held and a charge-sheet was filed on 21-5-1991 which was duly served upon the petitioner. The enquiry report was submitted by the enquiry officer and the respondent No. 4 accepted the same vide order dated 22-3-1993 by which the petitioner was awarded three punishments, namely one annual increment from his pay scale was stopped with immediate effect, the conduct of the petitioner was ensured and entry to that effect was recorded in his confidential roll and there was a further order to recover an amount of Rs. 37,454.10 paise from the petitioner to compensate the loss suffered by the

department.

3. Being aggrieved and dissatisfied, the petitioner preferred the appeal representation before the respondent No. 3. As the same could not be decided for a long time, petitioner preferred a writ petition No. 44544 of 1993 before this Court, which was disposed of vide order dated 25-8-1995, Annexure 11 to the writ petition, directing the said respondent to decide the same within two months from the date of production of a certified copy of the said order. In pursuance of the order of this Court the respondent No. 3 decided the appeal vide order dated 16-11-1995, Annexure 12 to the writ petition.

4. Being aggrieved and dissatisfied petitioner preferred the instant writ petition before this Court. Counter and rejoinder affidavits have been exchanged and with the consent of the learned counsel for the parties this writ petition is disposed of finally.

5. Heard Sri Murlidhar Mishra, learned counsel for the petitioner and learned standing counsel on behalf of the respondents.

6. The main thrust of the argument of the learned counsel for the petitioner is that the enquiry report was prepared ex parte and petitioner was not given any opportunity of hearing. Thus the entire proceedings are vitiated for non-compliance of the principle of natural justice.

7. The petitioner has not annexed the enquiry report along with the writ petition. The same has been filed by the respondents along with counter-affidavit. We have perused the enquiry report and certain facts are revealed by the said enquiry report, which have not been mentioned by the petitioner in his writ petition. According to the said enquiry report the charge-sheet had been served upon the petitioner on 4-6-1991 by the enquiry officer along with the photo copy of all relevant documents and the petitioner was asked to file the reply to the said report and the said charge-sheet along with the said documents {evidence in writing) had been received by the petitioner on 29-6-1991. The petitioner wrote a letter to the enquiry officer dated 8-7-1991 and again on 10-9-1991 to supply him the certified copy of the coupons and other documents. The enquiry officer sent a registered letter to the petitioner on 16-12-1991 that all these documents alongwith the certified copy of the coupons etc. had already been served upon him alongwith charge-sheet and there was no document which had not been supplied to him- The petitioner was asked to file a reply to the charge-sheet as no further time would be given to him. However vide letter dated 3-3-1992 the petitioner was given the last opportunity to file the reply by 15-5-1992, but no reply was filed by the petitioner. As the petitioner did not co-operate with the enquiry and did not file reply to the charge-sheet, even after the lapse of more than a year, the respondents proceeded with the enquiry ex parte. The enquiry officer examined the entire record, made verification of stocks and recorded the statements of various witnesses and recorded the findings against the petitioner by a well explained and reasoned enquiry report. The

respondent No. 3 accepted the enquiry report after applying his mind as is evident from the contents of the impugned order dated 22-3-1993. The disciplinary authority has specifically mentioned in paragraph 2 of the order that in spite of several opportunities given to the petitioner, he had chosen not file any reply to the charge-sheet and thus the matter was proceeded ex parte.

8. We find no force in the submission of Shri Mishra that the impugned order awarding the punishment was passed without affording any opportunity of hearing to the petitioner, as the record of the case speaks to the contrary.

9. The petitioner had demanded again and again the copy of the documents which had already been supplied to him along with the charge-sheet. There had been a persistent demand by the petitioner of the statements of witnesses recorded in the preliminary enquiry. However, we fail to understand as to how this document was relevant for the petitioner as the preliminary enquiry as held to determine whether prima facie case is there against an employee and it is for the satisfaction of the employer to decide whether disciplinary proceedings should be initiated and it has no relevance so far as the employee is concerned.

10. In a large number of cases viz. Union of India and others Vs. Mohd. Ramzan Khan, ; S. P. Viswanathan (1) v. Union of India and Ors., 1991 (2) SCC 269 ; Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., ; Managing Director, E. C. I. L., Hyderabad v. B. Karunakar (ii) 1994 Suppl. (2) SCC 391 State of U.P. and Another Vs. Abhai Kishore Masta, and B.C. Chaturvedi Vs. Union of India and others, , the Supreme Court held that it is necessary to supply the copy of the enquiry report to be delinquent employee and to give him opportunity to show cause and then pass the appropriate order. However, even in such a case if the employee is not able to satisfy the court as in what manner the case of the employee has been prejudiced by non-supply of the enquiry report the court may quash the punishment even though the same might have been passed in contravention of the principle of natural justice, (vide S.K. Singh Vs. Central Bank of India and Others, .

11. Shri Mishra has vehemently argued that there was very serious allegation of demanding the illegal gratification by the enquiry officer, from the petitioner, when the enquiry officer, was posted as Assistant Conservator of Forest and as the petitioner did not oblige the enquiry officer he was having personal grudge/malice against the petitioner. Shri Mishra further argued that as the enquiry officer has not come forward to reply the same charges, inference is to be drawn against him.

12. This averment has to be considered bearing in mind two other aspects. Firstly, the said enquiry officer has not been impleaded by the petitioner either by name or by designation and it is not permissible to make allegation of mala fide against a person who is not a party vide All India State Bank Officers' Federation and Others Vs. Union of India (UOI) and Others, . Secondly, this allegation had not beer made by the petitioner earlier. We have gone through the

memo of appeal/representation filed before the respondent No. 3 by the petitioner and there is no such allegation against the enquiry officer, we are of the view that the petitioner cannot improve his case and make allegation for the first time in a writ jurisdiction, even if the person against whom the allegation is made is impleaded in a case.

13. In *Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others*, the Apex Court has observed as under:

"A point not raised before the Tribunal or administrative authority may not be allowed to be raised for the first time in writ jurisdiction, more so when the interference in the writ jurisdiction which is equitable and discretionary is not of course a must."

14. Thus, a plea not specifically raised before the competent authority which goes to the root of the question and is based in admitted and uncontroverted facts and does not require any further investigation into a question of fact, the writ court can be justified in entertaining it but if the plea requires investigation of fact this Court may not permit a petitioner to raise such a plea first time in writ jurisdiction as observed by the Constitution Bench of the Supreme Court in *A.S.T. Arunachalam Pillai Vs. Southern Roadways (Private) Ltd.*, .

15. The same view had been taken by the Apex Court in *A.M. Allison Vs. B.L. Sen*, ; *The Cantonment Board, Ambala Vs. Pyarelal*, ; *State of U.P. v. Dr. Anupam Gupta* 1992 SC 932 ; *Bhanwar Lal Vs. T.K.A. Abdul Karim through N.K. Mohd. Mustafa*, and *Rajeswari Amma and another Vs. Joseph and another*, .

16. The writ jurisdiction is not meant for a party who is not at the first available opportunity to protect his interest. If he was he cannot be permitted now to use the writ jurisdiction to own faults and laches,. Moreover, the allegation has first time in writ petition just to scandalise the enquiry officer and prejudice the mind of the court and there seems to be no basis making such baseless allegation.

17. The last submission made by the learned counsel for the petitioner is that the appellate authority has committed the contempt of this Court as this Court vide its order dated 25-8-1995 has the respondent No. 3 to decide the appeal of the petitioner by speaking and reasoned order though the appeal has been disposed of respondent No. 3 by a non-speaking order. of by the

18. We have gone through the order of this Court dated 25-8 There was no direction to the respondent No. 3 to decide the by a speaking order.

19. At this juncture Shri Mishra insisted that even if such direction of this Court, the appellate authority the appeal by a speaking and reasoned order.

20. We are convicted by this argument of the learned counsel as if the appellate authority merely agrees with the order of the disciplinary authority there may not be any reason to give for the agreement. Moreover, it if. futile to enter into this controversy at all in the instant case as Shri Mishra could not point out under

what provisions the statutory appeal had been filed before the respondent No. 3 and whether any appeal under any statute/rule is maintainable against the order of the disciplinary authority as neither the memo of appeal nor the order of the appellate authority mentions any provisions of any statute or rule. Rather the impugned order dated 16-11-1995 refers to the disposal of the representation of the petitioner and not to the appeal.

21. In Karnal Improvement Trust, Karnal Vs. Parkash Wanti (Smt) (Dead) and Another, , the Apex Court has observed that acquiescence does not confer jurisdiction and an erroneous interpretation equally should not be perpetuated and perpetrated defeating of legislative animation,.

22. In A. R. Antuley v. R. S. Naik (1983) 2 SCC 602 ; the Supreme Court has observed as under :

"A decision touching the jurisdiction... . has to be not only consistent with the fundamental rights guaranteed by the Constitution, the same cannot even be inconsistent with substantive provisions of the statutory law ...the criteria of a right to an appeal is an act which requires legislative authority, neither an inferior court nor the superior court nor both combined can create such a right, it being one of limitation and exception of jurisdiction." Attorney General v.. Herman James Sillan. 1964 10 HLC 704 (HL).

22. Similarly, in Sardar Hasan Siddiqui and Others Vs. State Transport Appellate Tribunal, U.P., Lucknow and Others, , this Court has observed as under :

"A Tribunal of limited jurisdiction cannot derive jurisdiction apart from the statute. No approval or consent can confer jurisdiction upon such a Tribunal. No amount of acquiescence weaver or be like can confer jurisdiction if a Tribunal is lacking, the doctrine of nullity will come into operation and any decision taken or given by such a Tribunal wilt be a nullity."

23. Similar view was taken by the Constitution Bench of the Supreme Court in The United Commercial Bank Ltd. Vs. Their Workmen, .

24. A Division Bench of this Court on 19-8-1993 deciding the special appeal No. 480 of 1993 in Udit Narain Kshetriya High School Society, Padrauna District Deoria and Anr. v. District Magistrate, Deoria, observed as under :

"Constitution of adjudicatory Tribunal is a legislative act. It is for the Legislature to a prescribe tribunals for adjudication of disputes of various nature, it is not for the courts to constitute such tribunals. Where no specific tribunal has been prescribed by the Legislature for resolution of a dispute of a particular nature, such dispute may be taken to the ordinary civil court unless the jurisdiction of that court has been barred by a statutory provisions. Our attention has not been drawn 1.0 any law conferring jurisdiction upon either the Deputy Director of Education or Vice Chancellor to decide dispute of the nature involved in the present case. Reference of the said dispute to the said two authorities, in our opinion, was therefore unwarranted. If the learned Single Judge was of the

opinion that the dispute involved in the writ petition could not be conveniently decided in proceedings under Article 226 of the Constitution, he could have relegated the parties to the forum available under the ordinary law. It is not suggested that no other forum was available except the forum of the Court under Article 226 of the Constitution."

25. Similarly, in *Union of India v. Devki Nandan Agarwal*, AIR 1992 SC 96, the Apex Court has observed that the Court cannot usurp legislative function. The Court cannot re write the legislation for the reason that it had no power to legislation. The power to legislate has not been conferred on the Courts.

26. Thus, in view of the above, we are of the considered opinion that if an authority does not possess any appellate power as the statute does not provide for it, directions issuer) by this Court to decide a representation would be nullity and impugned appellate order will be without jurisdiction.

27. Thus, in view of the above the writ petition as devoid of any merit and hence dismissed. However, there shall be no order as to costs.