
(1999) 12 AHC CK 0107
In the Allahabad High Court
Case No : Writ Petition No. 4515 (S/S) of 1998

Shiv Nayak Pandey

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 09-12-1999

Acts Referred:

Civil Services (Classification, Control and Appeal) Rules — Rule 55
Constitution of India, 1950 — Article 311, 311(2)

Citation : (2000) 2 AWC 1367

Hon'ble Judges : Jagdish Bhalla, J

Bench : Single Bench

Advocate : A.P. Singh, for the Appellant; C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Jagdish Bhalla, J.—By means of this petition, the petitioner has prayed for a writ of certiorari quashing the order of dismissal from service and recovery of Rs. 13,90,526. Further a prayer has also been made to issue a writ in the nature of mandamus commanding the opposite parties to reinstate the petitioner with all benefits of service.

2. The case of the petitioner, stated in brief, is that while being posted as District Youth Welfare and Prantiya Vikas Dal Officer. Bahraich, he was suspended by order dated 28.8.1992 in contemplation of enquiry on the charges of financial irregularities and embezzlement of money. That suspension order was subsequently revoked by the State Government by order dated 1.10.1992. However, the disciplinary enquiry was to continue against the petitioner. Thereafter on 15.6.1993 the opposite parties issued a charge-sheet to the petitioner to which he submitted reply on 12.8.1993. On the basis of the report of the Enquiry Officer, the petitioner was given a show cause notice dated 11.4.1996 along with a copy of the report of the Enquiry Officer against which the petitioner made representation on 27.6.1996. However, the said enquiry report was cancelled vide orders dated 17.7.1997 and a fresh enquiry was

ordered. Thereafter, the Enquiry Officer submitted the enquiry report without holding any enquiry and on the basis of the said report, the petitioner was issued a show cause notice by order dated 26.6.1998. The petitioner submitted his reply to the show cause notice on 15.7.1998 denying all the charges. Thereafter by order dated 21.8.1998, the disciplinary authority passed the impugned order of dismissal from service and recovery of money, as aforesaid.

3. The contention of the petitioner is that the order of dismissal from service and imposing recovery has been passed against him on certain charges framed on the basis of some letters/documents/ notings. reports. It has been submitted that In the disciplinary proceedings, the Enquiry Officer did not record any evidence to establish the charges and in spite of his demand, the persons making the reports were not examined in his presence with opportunity to him to cross-examine the persons who had made the reports. According to him, no enquiry was held in accordance with law and the enquiry was concluded without affording reasonable opportunity to the petitioner to meet the charges and prove his Innocence. The petitioner has also alleged that copies of certain documents were not supplied to him violating the rules of equity and natural justice. On this premise the petitioner assails the Impugned order mainly on the ground that the said order has been passed contrary to the mandatory provisions contained in Rule 55 of CCA Rules and Article 311 of the Constitution of India and, therefore, cannot sustain in the eye of law.

4. The petitioner has further submitted that the charges relate to tenure of his posting at Gorakhpur between 14.6.1985 to 20.6.1989 and that the departmental enquiry is liable to be quashed on the ground of inordinate delay. It has also been contended with respect to certain charges that though the Enquiry Officer rendered the finding to the effect that those charges have not been proved or that thorough enquiry is necessary to prove it, yet the disciplinary authority treated those charges as well proved against the petitioner although no opportunity was given to him while differing with the finding recorded by the Enquiry Officer. The petitioner has also refuted the charge that he did not send bills to Accountant General, Uttar Pradesh and, he slates, on that basis presumption of misappropriation of funds is drawn against him.

5. Counter-affidavit has been filed on behalf of the opposite parties denying the allegations made in the writ petition. In regard to the question of affording opportunity to the petitioner to lead oral evidence and defend the charges levelled against him, the opposite parties have filed a supplementary counter-affidavit dated 18.2.1999 contending therein that the petitioner was afforded several opportunities for personal hearing to lead oral evidence and to submit any document in his defence and the enquiry was held in accordance with law. In its support, the opposite parties have placed on record copy of several letters alleged to have been issued to the petitioner.

6. I have heard Sri A. P. Singh counsel for the petitioner and Sri S. P. Srivastava, standing counsel appearing on behalf of the opposite parties.

7. Sri A. P. Singh, counsel for the petitioner has contended that the Enquiry Officer is to be guided by rules of equity and natural Justice. The Enquiry Officer is bound to record oral evidence especially since such a request was made by the petitioner and the failure of the Enquiry Officer to hold such an oral enquiry has cast serious infirmity in the enquiry and it amounted to failure of a reasonable opportunity to the petitioner. Hence the enquiry report and the impugned order are liable to be quashed being contrary to the provisions of Rule 55 of Civil Services (Classification, Control and Appeal) Rules and Article 311 of the Constitution of India.

8. Sri S. P. Srivastava, on the other hand, has vehemently contended that all reasonable opportunity was given to the delinquent officer and all rules have been followed and complied with. According, to him the findings rendered by the Enquiry Officer and accepted by the Disciplinary Authority, were all based on evidence and, therefore, well founded. He submitted that the petitioner was afforded several opportunities for personal hearing, to lead oral evidence and to submit additional reply or other documents to defend his case but he failed to avail the same and he also did not co-operate in the enquiry which caused delay in completion of the enquiry. It is also contended that in spite of several notices the petitioner did not appear before the Enquiry Officer or produce any material in support of his case and the enquiry was held in accordance with law.

9. In support of his contentions, the petitioner relies upon a decision of the Hon''ble Supreme Court in Kuldeep Singh v. Commissioner of Police and others JT 1998 (8) SC 603. particularly paragraph 32 of the report which reads as under :

"32. Apart from the above, Rule 16 (3) has to be considered in the light of the provisions contained in Article 311(2) of the Constitution to find out whether it purports to provide reasonable opportunity of hearing to the delinquent. Reasonable opportunity contemplated by Article 311(2) means "Hearing" in accordance with the principles of natural justice under which one of the basic requirements is that all the witnesses in the departmental enquiry shall be examined in the presence of the delinquent who shall be given an opportunity to cross-examine them. Where a statement previously made by a witness, either during the course of preliminary enquiry or investigation, is proposed to be brought on record in the departmental proceedings, the law as laid down by this Court is that a copy of that statement should first be supplied to the delinquent who should thereafter be given an opportunity to cross-examine that witness."

10. In the above case, the appellant before the Hon''ble Apex Court had challenged the order of his dismissal after a regular departmental enquiry from service mainly on the ground that the findings recorded by the Enquiry Officer cannot sustain as the enquiry Itself was held in utter violation of the principles of natural justice.

11. Another decision of the Hon''ble Supreme Court relied upon by the petitioner is State of Punjab v. Dewan Chunni Lal 1970 SLR 375. The Hon''ble Supreme

Court while dealing with the matter of dismissal from service of a Sub-Inspector of Police held in paragraph 19 as under :

"19. In our view the High Court arrived at the correct conclusion and on the facts of this case it is impossible to hold that the respondent had been given reasonable opportunity of conducting his defence before the Enquiry Officer. From what we have stated it is clear that if the Enquiry Officer had summoned at least those witnesses who were available and who could have thrown some light on the reports made against the respondent the report might well have been different. We cannot also lose sight of the fact that charges based on the reports for the years 1941 and 1942 should not have been levelled against the respondent."

It has been further held In paragraph 25 of the report as under :

"25. In our opinion, the above observation regarding the limit of the right to cross-examine dissociated from the context in which it was made cannot help the appellant. Although the case is governed by Article 311 as it stood prior to its amendment in 1963 the respondent could not be deprived of an effective right to make representation against the action of dismissal. In our opinion, refusal of the right to examine witnesses who had made general remarks against his character and were available for examination at the inquiry amounted to denial of a reasonable opportunity of showing cause against the action."

12. Further, the petitioner has relied upon the decision of the Hon"ble Supreme Court in Ministry of Finance and another v. S. B. Ramesh 1998 SCD 1046. The matter related to compulsory retirement of the respondent before the Apex Court on the ground of his conduct unbecoming of a Government servant violating the provisions of CCS (Conduct) Rules. While holding that the departmental enquiry conducted In that case was totally unsatisfactory and without observing the minimum required procedure for proving the charge, the Hon"ble Supreme Court observed that the disciplinary authority placed reliance on the statement of a witness without examining the witness in the enquiry and also on several documents collected from somewhere without establishing the authenticity thereof to come to a finding that the respondent has conducted himself in a manner unbecoming of a Government servant.

13. A decision of the Division Bench of this Court in P. N. Srivastava v. State of U. P. and others. 1999 LCD 24, (particularly, paragraph 10) has also been relied upon by the counsel for the petitioner in support of his submission that the right of defence as guaranteed to a Government servant under Article 311 of the Constitution of India is a substantive right which has to be full and complete. Mere opportunity to admit or deny a particular factual allegation amounting to a charge of misconduct alone is not the defence which is envisaged by the Constitution and the rules of the natural Justice. If the delinquent official wants to adduce evidence the disciplinary authority has no alternative but to allow him to adduce evidence.

14. In support of his submission that if an authority had the power to dismiss a Government servant the said power could only be exercised in the manner indicated in the rules, the petitioner has relied upon the decision of the Hon''ble Apex Court in J. N. Ganatra v. Morvi Municipality, Morvi JT 1996 (6) SC 661.

15. Learned counsel for the petitioner, in support of his submission that the disciplinary proceedings were vitiated on account of delay in conducting the same has relied on the decision of the Hon''ble Supreme Court in J.N. Ganatra Vs. Morvi Municipality, Morvi,

16. From a perusal of the record. I find that the Impugned order nowhere mentions if on the application of the petitioner, the Enquiry Officer summoned any witness or examined any witness in his presence. In order to prove the charges which amounts to denial of opportunity to the petitioner to defend himself in the enquiry against the charges. The Impugned order In the present case could only be passed after affording reasonable opportunity to the petitioner as envisaged In Article 311 and after complying with the mandatory provisions contained in Rule 55 of Civil Services (Classification, Control and Appeal) Rules.

17. No other point was pressed before the Court.

18. In the light of what has been discussed above. I am of the opinion that the impugned order suffers from legal infirmities. No evidence was recorded or produced In the presence of the petitioner. He was not afforded opportunity to cross-examine the witnesses, the witnesses named by him were not examined in the enquiry and the opposite parties failed to afford the reasonable opportunity as envisaged in Article 311 of the Constitution of India. The enquiry in the circumstances stands vitiated and the impugned order passed on the basis of such enquiry report is liable to be quashed.

19. In view of what has been Indicated herein above, the writ petition succeeds. A writ In the nature of certiorari is issued quashing the Impugned order of dismissal and Imposing recovery of money passed against the petitioner dated 21.8.1998 contained in Annexure-1 to the writ petition. The opposite parties are directed to hold the enquiry again from the stage of furnishing the copies of the documents to the petitioner and after giving him an opportunity to file an explanation if he so chooses within the specified period conclude the enquiry within a period of four months from the date of production of a certified copy of this order. However, it is clarified that this order will not come in the way of the authorities in keeping the petitioner under suspension during pendency of the enquiry.