

(2016) 10 AHC CK 0012

In the Allahabad High Court

Case No : Constitution of India, 1950 - Article 226

Shri Atul Kumar Sinha

APPELLANT

Vs

Board of Directors

RESPONDENT

Date of Decision : 06-10-2016

Acts Referred:

Writ-A No. 44523 of 2002

Citation : (2017) 6 ADJ 261 : (2017) 122 ALR 253

Hon'ble Judges : Sudhir Agarwal and Dr. Kaushal Jayendra Thaker, JJ.

Bench : Division Bench

Advocate : S.D. Singh and Abhay Pratap Singh, Advocates, for the Petitioner;
Samir Sharma, S.C, for the Respondent

Final Decision : Allowed

Judgement

Sudhir Agarwal and Dr. Kaushal Jayendra Thaker, JJ.— Heard Sri S.D. Singh, learned Senior Advocate assisted by Sri Abhay Pratap Singh, learned counsel for petitioner and learned Standing Counsel and perused the record.

2. Writ petition is directed against order dated 8.3.2001 passed by Managing Director, U.P. State Road Transport Corporation, Lucknow (hereinafter referred to as "UPSRTC") imposing punishment of "Censure" and orders dated 27.06.2001 and 01.05.2002 whereby petitioner's appeal and revision have been rejected by Chairman and Board of Directors respectively. He has also challenged order dated 9.4.2001 whereby full salary other than subsistence allowance already paid during suspension period, has been denied to petitioner.

3. Brief facts giving rise to present dispute are as under:

4. Petitioner was appointed as Assistant Law Officer in UPSRTC and posted at Aligarh Region in December 1996 where he worked till 20.01.1999. Alleging that petitioner remained out of station/unauthorisedly absent on certain dates in March and April, 1998 i.e. 12.03.1998, 16.03.1998, 30.03.1998, 31.03.1998, 07.04.1998 to 13.04.1998, 18.04.1998 to 21.04.1998, Regional Manager,

UPSRTC, Azamgarh vide notice dated 21.04.1998 sought to withhold petitioner's salary for the month of April 1998, where against petitioner submitted explanation. Thereafter vide order dated 14.05.1997 salary was released and the aforesaid period was not treated as unauthorised absence.

5. Prior to aforesaid, petitioner had proceeded on sanctioned leave of six days commencing from 16.06.1997 and went to Bombay. Subsequently, he fell ill and could not report for joining at the end of sanctioned leave. He submitted letter dated 21.06.1997 seeking Medical Leave. Subsequently he joined duty on 4.7.1997. The period of absence beyond sanctioned leave was approved as Medical Leave by Zonal Manager, UPSRTC.

6. Respondent-3, Managing Director, UPSRTC-Disciplinary Authority of petitioner suspended him vide order dated 20.1.1999 (annexure 5 to the writ petition), in contemplation of departmental enquiry and thereafter charge sheet dated 6.4.1999 was served upon petitioner containing five charges, substance whereof is as under:-

(a) Charge No.1- Petitioner was instructed vide letter dated 8.10.1997 for not leaving station without prior permission but flouting thereof, he absented on 12.03.1998, 16.03.1998, 30.03.1998, and 31.03.1998, 07.04.1998 to 13.04.1998 and from 18.04.1998 to 21.04.1998. When explanation was sought he again disobeyed instructions of superior authority and did not submit any reply. Hence petitioner has committed misconduct of leaving station without permission, disobeying orders of superior authority and neglected his duties and responsibilities.

(b) Charge No.2 - Petitioner proceeded to Delhi on 7.11.1998 along with record relating to one Pool Badan Singh and did not come back till 19.11.1998. He also summoned Sri R.D. Lal, JC/BC to Delhi, who went on 11.11.1998 and on 13.11.1998 requisite documents were made available to Sri R.K.Kapoor, Lawyer of UPSRTC at Delhi, Immediately after finishing the work, petitioner ought to have returned to Head Quarter but he did not and remained unauthorisedly absent and stayed at Delhi till 19.11.98. He has shown lack of interest in the work of Corporation, remained unauthorisedly absent and availed leave without permission, disobeyed orders of superior authorities and failed to perform duties of office in dignified way.

(c) Charge no.3.- Petitioner did not perform duties and responsibilities of his office when posted at Azamgarh during entire period, he remained posted there, and did not do pairvi of certain cases in Court.

(d) Charge No.4.- While posted as Assistant Law Officer at Azamgarh, in respect of retrenched employees of UPSRTC, and cases pending in the Court, petitioner recommended for compromise without watching interest of UPSRTC and did not show full integrity to its interest. Apparently, for his personal interest, petitioner colluded with litigants and also attempted to cause financial loss to UPSRTC. Some illustrations are given in the charge.

(e) Charge no.5.- The then Regional Manager, Azamgarh vide letter dated 24.6.1997 informed that petitioner did not take interest in the work and remained absent from office for days together and left station without prior permission and that is how, showed dereliction and gross negligence towards duties. He went to Bombay with sanctioned leave for six days but remained absent thereafter for a long time.

7. Documents in support of charge sheet were supplied to petitioner. Vide reply (Annexure 7 to the writ petition) petitioner denied charges and submitted his explanation. Disciplinary Authority appointed an Enquiry Officer for oral enquiry who recorded statement of petitioner. Authors of documents relied upon in support of charges were neither examined to prove charges nor petitioner was given opportunity to cross-examine them since they did not come in witness box.

8. Enquiry Officer submitted report (undated) a copy whereof is annexure 10 to writ petition. He found charges 3 and 4 not proved. In respect to charge-1 he said that it is proved partly only to the extent that petitioner showed laxity in obtaining prior permission. In respect of charge-2 it found that over stay at Delhi was not proved and only laxity shown on the part of petitioner is that he did not inform superior authorities about reason of over stay at Delhi which was in connection with meeting with counsels of UPSRTC at Delhi and Kanpur. With regard to charge-5 also Enquiry Officer held that there is repetition of charge-1 and only this much is proved that petitioner showed laxity in obtaining permission and while returning he used to stay at his home district Barabanki.

9. Disciplinary Authority i.e. respondent-3 did not show any disagreement with the findings and conclusions of Enquiry Officer and issued a show cause notice dated 8.3.2001 to petitioner, furnishing a copy of enquiry report, requiring him to show cause as to why salary beyond subsistence allowance during period of suspension be not denied in view of charges found proved by Enquiry Officer. In the show cause notice Disciplinary Authority also mentioned that Enquiry Officer has found petitioner guilty of charges levelled against him.

10. Petitioner submitted reply to the aforesaid show cause notice. Thereafter Disciplinary Authority vide order dated 8.3.2001 imposed punishment of "Censure" and reinstated him on the post of Assistant Law Officer, directing that period of suspension shall be treated as on duty. Order of punishment was passed by respondent-3 considering enquiry report submitted by Chief Manager(Discipline) i.e. Enquiry Officer and opinion obtained from Legal Remembrancer. With regard to payment of full salary during suspension period, Disciplinary Authority said that decision would be taken separately. Against the order of punishment dated 8.3.2001, petitioner filed an appeal which was rejected by Chairman, UPSRTC vide order dated 27.6.2001 and petitioner's review was also rejected by Board of Directors, UPSRTC.

11. Lastly, Managing Director passed a separate order dated 9.4.2001 holding that petitioner shall not be paid full salary during the period of suspension and it

would confine to subsistence allowance only, which was already paid.

12. Learned counsel for petitioner submitted that various reports relied in support of charges were not proved by authors of such reports. Petitioner was denied opportunity of examining those persons. The documents were inadmissible in evidence being hearsay and even in departmental enquiry could not have been relied upon. This has vitiated entire proceedings, inasmuch as, findings of Enquiry Officer holding some charges partially proved are based on no legal or valid evidence admissible in law. It is submitted that Legal Remembrancer was neither Enquiry Officer nor Disciplinary Authority and there is no provision under which he could have been consulted. His opinion could have been relied or obtained by Disciplinary Authority before imposing punishment. Hence, Disciplinary Authority has acted upon extraneous material not disclosed to petitioner and this also vitiates the entire proceeding.

13. Respondent UPSRTC has filed a counter affidavit sworn by Neelam, Chief General Manager (Administration) stating that petitioner has been found guilty of misconduct after conducting full fledged enquiry and has rightly been imposed punishment. In para 5(e) it is admitted by respondent UPSRTC that after receiving findings of enquiry officer, matter was referred to the then Senior Law Advisor of UPSRTC who was over all in-charge of all legal matters. He submitted his opinion and according to him charge- 3 was also proved and in this regard Senior Law Advisor gave his reasons. Specific reply given by respondents in paragraph 5(e) of counter affidavit reads as under.

"That on receipt of the findings of the inquiry officer, the matter was also referred to the then Senior Law Advisor of the Corporation who was over all incharge of all the legal matters and the Senior Law Advisor submitted his opinion according to which, with regard to charge no.3, relating to consumer case no. 67/98; Kanti Devi v. U.P. State Road Transport Corporation and the execution case no. 10/98 that the petitioners duties as a law officer of the Corporation did not come to an end merely by sending the summons in the aforesaid cases along with a parawise narrative to the Assistant Regional Manager, Ambedkar Nagar Depot, Azamgarh for being sent to the office of the Regional Manager, Gorakhpur. Instead it was a duty of the petitioner to ensure that the documents relating to the aforesaid case were forwarded from the office of the concerned Assistant Regional Manager to Gorakhpur region of the Corporation. The judgment passed by the consumer forum in the above case was also set aside in an appeal, passed by the State Consumer Forum. As such the petitioner did not perform his duties as a Law Officer properly. However, the then Senior Law Advisor with regard to the charge relating to Adjudication case no. 206/97: Yogesh Kumar v. U.P. State Road Transport Corporation, submitted an opinion that the said charge was not proved against the petitioner. However, according to the opinion submitted by the then Senior Law Advisor, the charge relating to not performing the duty of a law officer of a region were proved against the petitioner as he did not do pairvi with regard to consumer forum case no. 67/98: Kanti Devi v. U.P. State Road

Transport Corporation and the related execution case no. 10/98 and in payment of wages cases no. 6/98 Trilok Mani Tripathi v. U.P. State Road Transport Corporation. "

(emphasis added)

14. It is also said that in the light of aforesaid opinion, Appointing Authority carefully examined the matter and passed order of punishment on 8.3.2001. Thereafter petitioner was also served with a show cause dated 8.3.2001 separately to show cause, why his salary beyond subsistence allowance may not be forfeited in view of charges found proved against him. Petitioner submitted reply on 22.3.2001 and thereafter Appointing Authority passed order dated 9.4.2001 forfeiting balance salary for the period of suspension. An objection of alternative remedy before State Public Services Tribunal under Section 4 of U.P. Public Services Tribunal Act, 1976, was also taken and it is pleaded that petitioner be relegated to avail aforesaid remedy.

15. It is further said that recommendation for initiating departmental enquiry was made by Zonal General Manager(East Zone) vide letter dated 28.12.1998. During oral enquiry, Sri R.P. Singh, the then Regional Manager, Azamgarh was examined and he was also cross-examined by petitioner on 12.12.2000. In para 29 it is also said that Senior Law Advisor carefully examined material and submitted opinion that petitioner was guilty with regard to charge-3. Relevant extract of para 29 of counter affidavit reads as under:-

"29...The then Senior Law Advisor of the Corporation carefully examined the material on record and submitted his opinion that the petitioner was guilty with regard to the 3rd charge..."

(emphasis added)

16. From rival submissions, we find following three issues need be examined to find out whether impugned order of punishment, challenged in this writ petition, is valid in law or need be interfered:-

(A) Whether relied upon documents have been rightly relied by Enquiry Officer and Disciplinary Authority and rightly treated to be legally admissible in evidence?

(B) Whether Disciplinary Authority erred in law in obtaining legal opinion from Senior Legal Advisor who opined that charge-3 was also proved though enquiry officer exonerated petitioner from said charge and thereby disciplinary Authority committed manifest error and vitiated enquiry report?

(C) Whether disciplinary authority could have validly obtained opinion of Senior Legal Advisor in Departmental Enquiry?

(D) Whether the petitioner has been punished on the charges not found proved by Enquiry Officer but Disciplinary Authority without communicating any disagreement has differed in respect of charges not found proved by Disciplinary Authority and thereby has vitiated entire proceedings.

17. In support of charges we find following documents were relied on, as mentioned in the charge sheet 6.4.1999.

Charge 1- (i) Zonal General Manager's letter dated 28.12.1998

(ii) Regional Manager, Azamgarh's letter dated 8.10.1997.

Charge 2- (I) Zonal General Manager's letter dated 28.12.1998.

Charge 3- (i) Regional Manager's letter dated 25.5.1998

(ii) Documents relating to cases referred to in charge no. 3

Charge 4- (i) Regional Manager, Azamgarh's letter dated 17.3.1998

(ii) Zonal General Manager's letter dated 28.12.98

Charge 5- (i) Regional Manager, Azamgarh's letter dated 24.6.1997

(ii) Zonal General Manager's letter dated 28.12.1998

18. We find that Enquiry Officer in his report has referred to and relied on Zonal General Manager's letter dated 28.12.1998. It has also mentioned that though various dates for oral enquiry were fixed but only on 12.12.2000 Sri R.P. Singh, the then Regional Manager appeared who was cross examined by petitioner. Thereafter he directed petitioner to appear for his statement, in reply where to petitioner submitted written reply and thereafter enquiry report was submitted. In respect of charge 1, Enquiry Officer specifically found that petitioner though has been frequently leaving Head Quarters but except on few occasions he has always sought permission from competent authority, pre or post. Therefore, only this much allegation is proved that petitioner had shown laxity and negligence in obtaining prior permission. With respect to charge-2, Enquiry Officer has specifically said that over-stay at Delhi was not proved from documents at all. The only laxity found proved on the part of petitioner was that he did not inform Regional Office about current position from Delhi. With respect to charge-.3, he found that in none of the cases referred to therein, laxity on the part of petitioner has been proved. However, he observed that petitioner should have inquired from time to time about pending cases at Gorakhpur so that situation of ex-parte order might not have come. Charge-4 was specifically held unproved. In charge-5, Enquiry Officer found frequent absence of petitioner from Headquarters without prior permission, a repetition of charge-1. Except some laxity, as discussed in charge 1, nothing has been found proved.

19. In show cause notice, Disciplinary Authority did not inform petitioner that any opinion of Senior Legal Advisor was taken in the matter. Further in respect of most of the matters, as we have already said, Enquiry Officer found petitioner not guilty, still respondent-3 in show cause notice dated 8.3.2001 observed that in respect of allegations contained in charge sheet dated 6.4.1999, in departmental enquiry, petitioner was found guilty. Relevant observations made by Disciplinary Authority in the show cause notice reads as under:-

"vkids fo:) vkjksi&i= la[;k&86 jksMh@vkj@99&2 fMLi@th@99] fnukad 06-04-1999 ls vkfn"V vuq"kklfud dk;Zokgh esa tkWapksijkUr vkidks nks"kh ik;k x;k gSA"

"You have been found guilty after disciplinary enquiry in pursuance of charge-sheet No.86 Rodi/R/99-2 Disp/G/99, dated 6.4.99."

20. This observation made by Disciplinary Authority, appears to be in the light of opinion rendered by Senior Legal Advisor, as has been admitted by respondents in counter affidavit and also in the impugned order of punishment. The manner in which Disciplinary Authority has proceeded in the matter after receiving enquiry report is wholly illegal and vitiates entire subsequent proceedings. Apparently there are three serious flaws in the matter namely, (i) Documents relied in support of charges to hold some of charges proved, ignoring the fact that authors of those documents were not examined and hence such documents were inadmissible in evidence (ii) Disciplinary Authority could not have taken and acted upon opinion of a third person since after receiving enquiry report it is only the Disciplinary Authority who is to take its own independent decision but in this case it has relied upon opinion rendered by a third person namely, Senior Legal Advisor and this has resulted in taking into account an extraneous material which vitiates proceedings. (iii) Notice issued to petitioner along with enquiry report makes an observation that charges have been found proved though factually Enquiry Officer found most of the charges not prove. Hence apparently, there was divergence of opinion in respect of findings between enquiry officer and Disciplinary Authority but no such disagreement was communicated to petitioner and Disciplinary Authority also failed to record its own finding on this aspect.

21. There are more flaws which are also serious and vitiate proceedings.

22. Though R.P. Singh, the then Regional Manager, Azamgarh appeared on one date before Enquiry Officer but it does not appear that he was examined in examination-in-Chief by department in support of charges to prove this document relied against petitioner of which Sri R.P. Singh was author. In fact on that date when R.P. Singh appeared, only petitioner was asked to cross-examine him. On certain questions petitioner cross-examined R.P. Singh and thereafter witness was discharged. With regard to other documents relied on in support of charges, particularly, letter dated 28.12.1998 sent to Zonal General Manager, neither author was examined to prove the said document nor petitioner was given any opportunity to cross-examine him and, hence, aforesaid document was inadmissible in evidence. In Bareilly Electricity Supply Company Ltd. v. Workmen and Ors. 1971 (2) SCC 617, Court held that something, which is not a legal evidence can not be acted upon unless it is admitted in departmental proceedings by the person competent to speak about it and is subjected to cross-examination. The relevant observations are as under:

"But the application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no material

can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used." (para 14)

23. In taking the aforesaid view, Court relied on its earlier decision in *Union of India v. Sardar Bahadur*, 1972 (4) SCC 618.

24. Next flaw which is very serious also, is that disciplinary Authority did not apply its mind independently on enquiry report and other material collected in oral enquiry. On the contrary, entire matter was forwarded to Senior Legal Advisor of UPSRTC who was neither an Enquiry Officer nor Disciplinary Authority in the matter. We have not been apprised of any rule which authorised Disciplinary Authority to obtain legal opinion in a departmental enquiry, after receiving enquiry report. Senior Regional Manager proceeded beyond his authority by holding charge 3 and other charges proved though the same were found not proved by Enquiry Officer. Disciplinary Authority also acted wholly illegally, in a mechanical manner, holding that all the charges levelled against petitioner in charge sheet dated 6.4.1999 have been found proved though it was not correct in the light of findings recorded by Enquiry Officer as we have discussed above. We have no manner of doubt that Disciplinary Authority was not bound to accept finding(s) of Enquiry Officer and could have recorded his own independent findings, disagreeing with finding(s) of Enquiry Officer but in such contingency, Disciplinary Authority had to record his disagreement and findings to hold charges proved and thereafter communicate the same to delinquent employee and give an opportunity to submit his defence in respect of disagreement and otherwise findings of Disciplinary Authority and only thereafter, an order of punishment could have been passed but this procedure has not been followed.

25. It was held by a three Judge Bench of Court in *Punjab National Bank & others v. Kunj Behari Misra* AIR 1998 SC 2713 that non compliance of the above would vitiate the proceedings. This has been followed consistently *Yoginath D. Bagde v. State of Maharashtra & another*, AIR 1999 SC 3734; *SBI & others v. Arvind K. Shukla*, JT 2001 (4) SC 415; *State Bank of India & others v. K.P. Narayanan Kutty*, 2003 (2) SCC 449; and *Ranjit Singh v. Union of India and others*, 2006(4) SCC 153.

26. Lastly, we also find that Disciplinary Authority committed manifest illegality in referring the matter to Senior Legal Advisor for obtaining his opinion and thereafter mechanically acting thereupon. Senior Legal Advisor had no role in the matter. In any case, it was not open to Disciplinary Authority to act mechanically on the opinion rendered by Senior Legal Advisor, instead of taking an independent decision in the matter. Moreover, opinion of Senior Legal Advisor not only amounts to an extraneous matter but even otherwise, Disciplinary Authority, if intended to rely on the said opinion, must have communicated the same to petitioner since it was a material adverse to his interest, sought to be relied by Disciplinary Authority and without disclosing the same to petitioner, and giving

him opportunity to submit his reply, could not have been relied.

27. A Constitution Bench in *Managing Director, ECIL v. B. Karunakar Etc.*, 1993 (4) SCC 727= AIR 1994 SC 1074 has held, even an Enquiry Report which contains findings against delinquent employee, is a material adverse to delinquent employee and before acting thereupon, Disciplinary Authority must give an opportunity to submit his reply to such report. Law laid down therein is that no material which is adverse to a delinquent employee can be relied upon by disciplinary authority unless the same has been disclosed to delinquent employee and he is given opportunity to submit his defence. That having not been done by disclosing opinion of Senior Legal Advisor, this also vitiates entire proceedings and renders impugned orders patently illegal.

28. In view of above discussion, we have no hesitation in holding impugned orders patently illegal and liable to be set aside.

29. In the result, writ petition is allowed. Impugned orders dated 8.3.2001, 27.6.2001, 1.5.2002 and 9.4.2001 are hereby set aside. Petitioner shall be entitled to all consequential benefits. However, this judgment shall not preclude competent Disciplinary Authority from passing a fresh order after proceeding from the stage of receipt of enquiry report, by proceeding further in accordance with law.