
(2003) 02 AHC CK 0061
In the Allahabad High Court
Case No : C.M.W.P. No. 45214 of 2002

Sobaran Singh Yadav

APPELLANT

Vs

Regional Administrative Committee, Agra Mandal and Others

RESPONDENT

Date of Decision : 26-02-2003

Acts Referred:

Citation : (2003) 3 AWC 1867

Hon'ble Judges : Prakash Krishna, J;M. Katju, J

Bench : Division Bench

Advocate : Yogesh Agarwal, for the Appellant; H.R. Misra and K.N. Misra, for the Respondent

Final Decision : Disposed Of

Judgement

M. Katju, J.—Heard learned counsel for the parties.

2. The petitioner is challenging the impugned order dated 10th July, 2002 passed by the Member-Secretary, Regional Administrative Committee, along with the resolution dated 4.6.2002 and the order dated 24.7.2000 passed by the Member-Secretary, District Administrative Committee and the resolution dated 22.7.2000.

3. The petitioner was appointed as Secretary of a Co-operative Society in 1982. He was suspended on 22.8.1998, vide Annexure-3 to the writ petition. He challenged the suspension order by means of Writ Petition No. 51528 of 1999, which was disposed of by this Court with a direction that the inquiry be concluded within two months, Vide Annexure-4 to the writ petition.

4. It is alleged in para 6 of the writ petition that despite the order of this Court on 8.12.1999, no charge-sheet has been given to the petitioner and hence, he filed another Writ Petition No. 26056 of 2000 in which order dated 25th May, 2000, was passed directing the authority concerned to decide the petitioner's representation vide Annexure-5 to the writ petition. A true copy of the representation has been annexed as Annexure-6 to the writ petition.

5. It is alleged in para V of the writ petition that the petitioner was not Informed of any time, place and date of inquiry. Neither copy of the charge-sheet was served on him nor opportunity of cross-examination was given to him and no witness appeared before the Inquiry Officer and no material was produced before him. Hence, the dismissal order dated 24.7.2000, Annexure-2 to the writ petition is alleged to be illegal. The petitioner has alleged in para 10 of the writ petition that the observations in the order dated 24.7.2000 that the petitioner was served with the charge-sheet was baseless and he was not supplied any material in this connection. He has also sent a letter dated 30.12.1999 in this connection vide Annexure-7 to the writ petition. It is alleged that Maharaj Ardaman Singh, Chairman of District Administrative Committee, Agra, is hostile to the petitioner, as the petitioner had opposed his candidate in the election of Pradhan.

6. Aggrieved against the dismissal order dated 24.7.2000 the petitioner filed an appeal before the Regional Administrative Committee, vide Annexure-8 to the writ petition. It is alleged in para 22 of the writ petition that the petitioner was served with a copy of the charge-sheet after filing of the appeal. Copy of charge-sheet dated 26.3.2002 is Annexure-10 to the writ petition. It is further alleged that the appellate authority cannot convert itself into the original authority. A true copy of the charge-sheet is Annexure-10 to the writ petition. The petitioner submitted his reply to the charge-sheet but the Regional Administrative Committee did not inform the petitioner about the date, time and place of inquiry. The said letter dated 28.7.2002 was sent to the petitioner by the Regional Administrative Committee, in response to which the petitioner appeared before the Committee. Ultimately, the Committee dismissed the petitioner's appeal vide order dated 10th July, 2002, filed as Annexure-1 to the writ petition. It is alleged that this order is based on no material and without giving him opportunity of hearing.

7. A counter-affidavit has been filed by the respondent and in para 6 of the counter-affidavit, it has been stated that the petitioner was served with a copy of the charge-sheet by registered post on 20.8.1999. The registered letter has not been returned undelivered. A true copy of the postal receipt and news item informing about this charge-sheet dated 13.2.2000 is Annexure-C.A. 1 to the affidavit. It is alleged that the charge-sheet was duly sent to the petitioner by registered post and also published as a news item in a newspaper. However, the petitioner did not submit any reply to the charge-sheet. In compliance of the order of this Court, the petitioner's representation dated 3.2.2000 was decided and the decision was communicated to him by letter of the Member-Secretary dated 18th January, 2000, annexed as Annexure-C.A. 2 to the affidavit. It is alleged in para 9 of the counter-affidavit that the petitioner did not reply to the charge-sheet nor attended the inquiry proceeding, and, as such, the Enquiry Officer and the disciplinary authority had no option but to complete the proceedings. It is reiterated that a meeting of the Committee was held on 22.7.2000, but the petitioner did not participate in the said inquiry proceeding and did not submit reply to the charge-sheet. In para 10 of the counter-affidavit,

it is alleged that the petitioner was afforded another opportunity of hearing, which he did not avail of. The Enquiry Officer then submitted his report finding the petitioner guilty and on that report the impugned order of dismissal was passed. In paragraph 14 of the counter-affidavit, the allegation of mala fide against Sri Ardaman Singh has been denied.

8. It is no doubt true that the impugned dismissal order is punitive in nature because the petitioner has been working as Secretary of the Cooperative Society since 1982 and the impugned order is based on the charges against the petitioner. However, there is a dispute as to whether the principles of natural justice have been complied with. The petitioner alleges that they have not complied with, but the respondents have denied this.

9. In our opinion, taking into the consideration the very serious allegations against the petitioner as mentioned in Annexure-1 to the writ petition, which contains as many as thirty charges, most of them relating to embezzlement, misappropriation and financial irregularities to the tune of Rs. 14,91,000 and odd, we are of the view that instead of deciding the controversy as to whether the petitioner was afforded opportunity of hearing or not, the Enquiry Officer, appointed by the District Administrative Committee should hold a post-decisional inquiry against the petitioner into the charges referred to in the charge-sheet, Annexure-10 to the writ petition and thereafter give a finding as to whether the petitioner is guilty of the charges or not. For this purpose, the Enquiry Officer appointed by the District Administrative Committee, Agra should fix a date, time and place of the inquiry and inform the petitioner about it. Copy of the materials sought to be relied upon by the District Administrative Committee should be supplied to the petitioner so that he may have opportunity to rebut the same. If any such material is with the appellate authority, then the authority will supply copies of those materials to the District Administrative Committee and the petitioner forthwith. If the material is very bulky the petitioner may be permitted to inspect those documents. This inquiry should be concluded expeditiously and the Enquiry Officer should submit a report thereafter to the disciplinary authority and then the disciplinary authority should pass appropriate orders in connection with the inquiry.

10. No doubt in State of U.P. Vs. Vijay Kumar Tripathi, and Another, the Supreme Court observed that ordinarily there should be prior opportunity, but in that very decision, the Court also observed that it is open to the competent authority in a given case to give a post-decisional hearing. In the special circumstances of this case and considering the fact that there are serious charges against the petitioner of large scale financial irregularities and there is serious dispute about the fact as to whether inquiry was held in connection with these charges or not, we are of the opinion that the ends of justice would be met by ordering such post-decisional enquiry without setting aside the termination order at this stage. The inquiry should be held and final decision should be taken thereon preferably within a period of three months of production of a copy of this order before the

District Administrative Committee.

11. The writ petition is disposed of as above.