

(2010) 07 AHC CK 0295
In the Allahabad High Court
Case No : Writ Petition No. 943 (S/B) of 2009

State of U.P. and another

APPELLANT

Vs

Arvind Kumar Bhatia and another

RESPONDENT

Date of Decision : 07-07-2010

Acts Referred:

Citation : (2010) 07 AHC CK 0295

Hon'ble Judges : Pradeep Kant, J and R.R.Awasthi, J

Final Decision : Dismissed

Judgement

Pradeep Kant, & R.R. Awasthi, JJ.—Heard the learned counsel for the parties.

2. The respondent being aggrieved by an order of punishment of stoppage of three annual increments permanently and withholding of integrity with a censure entry, approached the State Public Services Tribunal under Section 4 of the Act. The matter was contested by the State Government.

3. The Tribunal came to the conclusion that so far the award of stoppage of three annual increments permanently is concerned, that could not be sustained as no enquiry in accordance with law was held before inflicting the said punishment. However, the Tribunal did not interfere with the rest of the punishment with respect to withholding of integrity with a censure entry. The Tribunal found that after submission of the reply to the charge sheet, the delinquent was not afforded adequate opportunity and, therefore, the proceedings are vitiated.

4. Ms. Aruna Misra, learned counsel for the State, assailing the aforesaid order submitted that since after submission of reply to the charge sheet, a date was fixed for personal hearing of the respondent, wherein he stated that he does not want to add anything to the reply already submitted, therefore, it cannot be said that opportunity of hearing was not afforded to the respondent and that the enquiry was not conducted in accordance with law. The argument is that the Tribunal has committed a manifest error in taking a contrary view.

5. This Court had an occasion to consider the aforesaid issue in various cases and had held that after submission of reply to the charge sheet, it would not be sufficient to fix a date, asking the delinquent to say whatever he wants to say and if he says that he does not want to say anything beyond what he has urged in his reply, that would not conclude the disciplinary proceedings.

6. The enquiry begins when a charge sheet is issued. An opportunity is afforded to the delinquent for submitting his reply to the charge sheet. The delinquent is also entitled to seek copies of documents which are sought to be relied upon during the course of enquiry by the department and which may or may not be mentioned in the charge sheet, but normally all the evidence which are supposed to be relied upon are to be provided alongwith the charge sheet and if any such document cannot be provided for any valid reason, an opportunity to make inspection has to be given.

7. After submission of reply to the charge sheet, the enquiry officer has to fix a date, time and place for holding the enquiry and it is essential that the State Government or the Department concerned proves the charge(s) which are levelled against the delinquent. For proving a charge, it is needless to mention that relevant evidence has to be produced, may be documentary as well as oral and, thereafter, opportunity is to be given to the delinquent to rebut the evidence already produced and/or to furnish such evidence, which he or she wants to make. This rebuttal provides an opportunity to the delinquent to produce documentary as well as oral evidence and, of course, to cross-examine the witnesses, which have been produced by the State Government or the Department.

8. It need be reminded to the State Government that when disciplinary proceedings are conducted against a government servant/public servant, he is not to disprove the charge but the department is to prove the charge and the charge cannot be proved unless the enquiry officer finds that the charges levelled stand corroborated or proved by the evidence which is led by the enquiry officer. Even if the delinquent does not participate in the enquiry it would not and cannot mean that the charges stand proved. Further enquiry after the submission of reply can only be dispensed with when in unequivocal terms, the delinquent admits the charge but not simply because he does not deny the charge or he does not submit a reply to the charge sheet. In all such situations, it is obligatory upon the enquiry officer to proceed with the enquiry and to hold whether the charges stand proved or not.

9. We have noticed that in various cases, the enquiry officer after submission of reply to the charge sheet summons the delinquent on a particular date and asks him to say if he wants to say anything further in addition to the reply submitted by him. This is not the requirement of law nor the prescribed procedure.

10. In the case of Govind Lal Srivastava vs. State of U.P. and others, 2005 (23) LCD 495, a Division Bench of this Court, in which one of us (Pradeep Kant, J.)

was a member, while considering the similar issue, has observed as under:

"It is cardinal principal of law that in a domestic enquiry the charges levelled against the delinquent officer have to be proved by the department itself, that too from the material on record and if necessary, by adducing evidence. In doing so, it is obligatory on the enquiry officer to give opportunity to the delinquent officer to controvert, rebut such evidence or to adduce such evidence, which may falsify or belie the case of the department. In nutshell the delinquent officer has a right to demolish the case of the department or prove his innocence, but in no case the delinquent officer is required to disprove the charges before they are put to proof by the enquiry officer through agency of the department."

11. The enquiry conducted by the enquiry officer thus, suffers from manifest error. It cannot be disputed that the punishment awarded is a major punishment, which could only be awarded after holding formal departmental proceedings in accordance with law.

12. The Tribunal has rightly found that the enquiry proceedings were not conducted in accordance with law in so far the award of punishment of stoppage of three annual increments permanently is concerned.

13. We do not find any merit in the writ petition, which is hereby dismissed.