

(2009) 07 AHC CK 0035
In the Allahabad High Court

State of U.P. and Others

APPELLANT

Vs

Krishna Nand Upadhyaya and Another

RESPONDENT

Date of Decision : 08-07-2009

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Police Act, 1949 — Section 7

Uttar Pradesh Public Services (Tribunal) Act, 1976 — Section 4

Citation : (2010) 2 AWC 1898

Hon'ble Judges : U.K. Dhaon, J;D.K. Arora, J

Bench : Division Bench

Judgement

U.K. Dhaon and D.K. Arora, JJ.—Heard the learned standing counsel for the petitioners and Sri Chandra Bhushan Pandey, learned Counsel for the respondent No. 1.

2. By means of the present writ petition, the petitioners assailed the judgment and order dated 16.12.1992 (Annexure-1 to the writ petition) passed by the U.P. Public Services Tribunal-V, Lucknow in Claim Petition No. 388/V/1981, Krishna Nand Upadhyaya v. State of U.P. and Anr. The U.P. Public Services Tribunal by means of the impugned judgment while partly allowing the claim petition quashed the dismissal order dated 24.4.1976 with a further direction to the Superintendent of Police, Lakhimpur Kheri to pass specific orders about the pay and other allowances that might be payable to the respondent No. 1/claimant for the period 3.10.1975 to 24.7.1981, a further liberty has been given to take fresh disciplinary proceedings in accordance with law against the respondent No. 1/claimant and pass suitable orders.

3. The brief facts of the case are that the respondent No. 1/claimant was appointed as Paid Apprentice Clerk in district Gonda in the year 1964 and subsequently he was appointed as Clerk in Regular and clear vacancy in Police Wireless in the year 1966. He was transferred from time to time to various places. In the month of July, 1975 he was transferred from Lucknow to

Lakhimpur Kheri as A.S.I. (M) in the office of Superintendent of Police, Lakhimpur Kheri.

4. As per the respondent No. 1/claimant, he fell ill at Gorakhpur and remained on leave for the period 3.10.1975 to 24.7.1981 and his leave applications were sent either by "under postal certificate" or by registered post. When the respondent No. 1/claimant submitted his joining report on 25.7.1981 the office of the Superintendent of Police, Lakhimpur Kheri did not allow to join and perform his duties, the respondent No. 1/claimant feeling aggrieved against non-accepting of his joining report preferred a Claim Petition No. 388/V/1981 before the U.P. Public Services Tribunal, u/s 4 of the U.P. Public Services Tribunal Acts, 1976 with the following prayer:

The Hon"ble Tribunal be pleased to direct the opposite parties to accept the joining report dated 25.7.1981 and pay the salary to the claimant and also regularise the leave period with all the benefits of pay and allowances of the post.

Any other relief which the Hon"ble Tribunal deem fit and proper in the case be awarded in favour of the claimant.

5. During pendency of the claim petition, the claimant was informed about his dismissal from service after initiating proceedings u/s 7 of the Police Act against him and accordingly the claimant amended the claim petition thereby adding paras 14A to 14H specifically mentioning therein that the suspension order and charge-sheet dated 31.10.1975, show cause notice and dismissal order dated 24.4.1976 were never served on him. The opposite parties ought to have made publication in the Newspaper for service but the same was not done. The entire action of the opposite parties is against the principles of natural justice as well as the entire action from the stage of initiation of the proceedings u/s 7 of the Police Act till the alleged order of dismissal is against the provisions of Article 311(2) of the Constitution of India. The respondent No. 1/claimant also amended the prayer in the claim petition and sought quashing of the impugned suspension order and the charge-sheet dated 31.10.1975 and the dismissal order dated 24.4.1976. Respondent No. 1/claimant also prayed for grant of all the benefits of service and allowances of the post.

6. After exchange of the pleadings, the learned U.P. Public Services Tribunal heard the matter and while partly allowing the claim petition, quashed the dismissal order dated 24.4.1976, which was filed alongwith additional written statement by the petitioner/opposite party No. 1 and directed the Superintendent of Police, Lakhimpur Kheri to pass specific orders regarding the pay and other allowances that might be payable to the respondent No. 1/claimant for the period 3.10.1975 to 24.7.1981 and further liberty was given to take fresh disciplinary proceedings against the respondent No. 1/claimant under the provisions of Fundamental Rule 18 and Financial Handbook Volume 11 part 2 to 4..

7. From perusal of the impugned order dated 16.12.1992 it reveals that the learned Tribunal summoned the record with respect to the departmental

proceedings and after going through the record, following observations were made by the learned Tribunal in para 5 of the judgment:

5. On going through the record including the departmental file, it is clear that the petitioner had sent an application for leave on 3.10.1975 while he remained sitting at Home and again gave an application for 2 days C.L. on 6.10.1975 and went away without getting the leave sanctioned. The application dated 6.10.1975 was on the ground of illness of the petitioner's mother. Orders were passed on 4.10.1975 and 6.10.1975 for calling explanation of the petitioner and opening a file. A preliminary enquiry was made by the Circle Officer, Kotwali and on the basis of his report the petitioner was suspended by the opposite party No. 2 on the very day and a charge-sheet was prepared on 1.11.1975, under the signatures of S.P., Lakhimpur Kheri. Thereafter the petitioner's explanation to the order dated 16.10.1975 was received by registered post on 7.11.1975. It is true that the petitioner's reply to the charge-sheet was never received and during the departmental enquiry one witness was examined on 25.11.1975, other three witnesses were examined on 5.12.1975 and after fixing dates for the filing of the written statement of defence, findings were prepared on 30.3.1976 and a show cause notice alongwith a copy of finding was issued and ultimately the dismissal order was passed on 24.4.1976. The petitioner's case is quite clear to the effect as mentioned in para 14B of the petition that the charge-sheet, show-cause notice and the order of dismissal were not served upon him. In para 14A he had averred that the suspension order dated 31.10.1975 was not served. There is nothing on record or in the enquiry file to show with certainty that the aforesaid orders were actually served upon the petitioner. The suspension order dated 31.10.1975 was sent to the petitioner per registered post vide registered letter No. 912 dated 31.10.1975 which is on record of the enquiry file. The original envelope shows that it had been received back unserved. Similarly, the charge-sheet dated 1.11.1975 was sent to the petitioner per registered post vide registered letter No. 599 dated 6.11.1975 and the original envelope is on the record of the enquiry file and shows that even that charge-sheet had been received back unserved. The record suggests that the letter was issued by S.P., Kheri on 17.11.1975 per registered post to the petitioner fixing 25.11.1975 for recording statement of the petitioner and that an acknowledgment receipt dated 22.11.1975 had been received in that connection that acknowledgment receipt is not on record. The order dated 9.12.1975 also appears to have been sent per registered post vide registered letter No. 27 dated 11.12.1975 but that too was received back unserved. As the original envelope is on record. Order dated 4.1.1976 directing the petitioner to file his written statement in defence was again sent to him per registered post vide registered letter No. 171 dated 5.1.1976 that too was received back unserved and the original envelope is on record. The finding alongwith show cause notice appear to have been sent to the petitioner per registered post and that too was received back unserved as the envelope is available on record. In the final dismissal order dated 24.4.1976 a reference had been made to the service of the show cause notice alongwith the

findings on the petitioner by one S.I. Ram Bali Singh of S.I.S. Gorakhpur. Reference to the same has also been made in Annexure-2 to the additional written statement and a photo copy of the report of S.I. Ram Bali Singh dated 6.4.1976 is Annexure-1 to the affidavit of Sri V.P. Gupta dated 25.2.1990. It is to the effect that the findings had been served upon the petitioner personally at his residence and a receipt of the same is attached. That acknowledgment receipt was also missing from the enquiry file and the enquiry into the loss of the same appears to have been made in accordance with the orders of the Tribunal dated 7.2.1990. Annexure-1 to the affidavit of Sri Harish Chandra Singh dated 6.7.1991 is the report in that enquiry suggesting that the petitioner and one Daud Ansari since dead were responsible for the loss of this acknowledgment receipt. The parties had been allowed vide order dated 10.7.1991 to lead secondary evidence with regard to the missing of the documents but since then no secondary evidence has been lead by the opposite parties. S.I. Ram Bali Singh was neither examined during enquiry made by Sri Ram Asrey Singh, Circle Officer, Ghorhare nor his affidavit was filed before the Tribunal to show that he actually went to the petitioner and served the show cause notice alongwith the findings upon the petitioner. The departmental enquiry against the petitioner appears to have been conducted by Sri S.P. Singh, S.P., Kheri who prepared the finding dated 30.3.1976 but his affidavit was not filed before the Tribunal. In these circumstances, the observation in the finding about the delivery of letters dated 17.11.1975 and 25.11.1975 and execution of the acknowledgment receipts by the petitioner in those respect cannot be said to have been proved. Affidavits of Sri Chaman Lal which are not based on his personal knowledge are of no help to the opposite parties to prove that the suspension order, charge-sheet, show cause notice and the dismissal order were actually served upon the petitioner. In these circumstances, there is no reason to disbelieve the averment of the petitioner that the aforesaid orders were never served upon him and he came to know about the dismissal from the C.A./W.S. It is thus evident that the petitioner had been denied opportunity of hearing and defence and dismissal order dated 24.4.1976 is liable to be quashed as violative of Article 311(2) of the Constitution of India but the opposite parties should have allowed to start the departmental enquiry afresh according to law.

8. After going through the record and impugned judgment of the learned Tribunal dated 16.12.1992, prima facie, we are satisfied that the entire proceedings initiated against the respondent No. 1/claimant under the provisions of Section 7 of the Police Act were ex parte without serving any notice and without taking into consideration the fact that the original envelopes were received back, which is evident from the observation of the learned Tribunal in para 5 of the impugned judgment.

9. Considering the submission made by the learned Counsel for the parties and the facts and circumstances of the present case, we are of the view that there is no illegality or infirmity in the impugned judgment and order dated 16.12.1992 passed by the State Public Services Tribunal, Lucknow.

10. Since the respondent No. 1/claimant has not worked from 3.10.1975 and for the first time submitted the joining on 25.7.1981 and the respondent No. 1/claimant has already attained the age of superannuation during the pendency of the instant writ petition, we in the interest of justice, provide that the respondent No. 1/claimant shall be entitled for 25% of the salary for the period 25.7.1981 till he attained the age of superannuation. To the above extent, the judgment and order dated 16.12.1992 passed by the State Public Service Tribunal, Lucknow is modified. The petitioners shall pay all the consequential benefits and retiral benefits to the respondent No. 1/claimant.

11. With the above observations, the writ petition is finally disposed of.