
(2005) 02 AHC CK 0274
In the Allahabad High Court
Case No : Writ Petition No. 1650 (SB) of 1994

State of U.P. and Others

APPELLANT

Vs

Lala Ram Chaturvedi and Another

RESPONDENT

Date of Decision : 09-02-2005

Acts Referred:

Citation : (2005) 4 AWC 3508 : (2006) 1 LLJ 659

Hon'ble Judges : Pradeep Kant, J;N.K. Mehrotra, J

Bench : Division Bench

Advocate : Vinod Varma and M.P. Singh, for the Appellant; P.N. Bajpai, Rakesh Yadav, Ashok Kumar Srivastava, V.K. Srivastava and G.S. Srivastava, for the Respondent

Judgement

Pradeep Kant and N.K. Mehrotra, JJ.—The State has filed this writ petition challenging the order passed by the State Public Services Tribunal dated 7.7.1993, by means of which the punishment of dismissal from service inflicted upon respondent No. 1 has been set aside. The respondent No. 1, who was suspended in contemplation of disciplinary proceedings, was served with a charge-sheet to which he submitted the reply and thereafter the order of punishment was passed.

2. Learned Counsel for the State has urged that the charges are serious but the Tribunal has set aside the order of punishment only on technical ground without giving any due weight to the gravity of the charges.

3. The Tribunal has recorded a finding that though the petitioner in his reply while disputing the charges levelled against him had asked for opportunity to cross-examine the witnesses but that prayer was rejected by the enquiry officer on the ground that the respondent has not given names of the witnesses whom he wants to cross-examine. The Tribunal has rightly observed that the statement of the witnesses should have been recorded in proof of the charges in the presence of the respondent and at that very time the respondent should have been asked to cross-examine them. A mere citation of names of the witnesses

and documents in the charge-sheet is not enough. Allowing leading of evidence at the back of the delinquent without giving any opportunity to cross-examine and relying upon the documents, which are not allowed to be controverted by the delinquent, would not meet the ends of justice nor would fulfil the requirement of principles of natural justice.

4. The Tribunal has also recorded a finding that no date, time and place was ever fixed by the enquiry officer calling the respondent to participate in the enquiry. It is needless to mention that such an enquiry is no enquiry in the eyes of law nor the enquiry report based on such enquiry can be sustained nor the punishment order passed on the basis of such an enquiry report can be upheld.

5. We have pointedly put a query to the learned Counsel for the State that whether the respondent was given any opportunity to participate in the enquiry after submission of reply to the charge-sheet to which the learned Counsel candidly replied that this was not done. If the delinquent was not given opportunity to participate in the enquiry and evidence was recorded at his back and he was not afforded any opportunity to cross-examine the witnesses and in fact no date, time and place was fixed for holding the enquiry, there can be hardly any ground for the High Court to interfere with the order passed by the Tribunal.

6. The Tribunal gave opportunity to the State to hold the enquiry afresh, if they were so advised, but it appears that fresh enquiry was also not conducted. Sri Ashok Kumar Srivastava, appearing for the respondent states that no fresh enquiry was held and the respondent was reinstated in service from where he has retired after attaining the age of superannuation on 30.6.1995.

7. The manner in which the departmental enquiry has been conducted in this case and the order of punishment has been passed require us to observe that by holding enquiries in such casual manner and inflicting punishment upon the officer/officials on the basis of such enquiry does not serve any purpose rather it encourages the guilty officers to indulge in malpractice because they are left scot free on technicalities.

8. The procedure for holding the departmental enquiry is well-known and it need not be reiterated in every judgment, which is passed by the High Court. The basic requirement for holding the departmental enquiry is to afford full opportunity to the delinquent, i.e., to issue charge-sheet containing the charges precisely and specifically, providing details of the evidence, oral as well as documentary with copies thereof, if any. In case the delinquent wishes to have some more documents, the relevancy of the same may be tested by the enquiry officer and thereafter such documents, which are found to be relevant for the purpose of enquiry, may be supplied to the delinquent, but in case there are certain documents, either mentioned in the charge-sheet or asked additionally by the delinquent, which have been found relevant by the enquiry officer, copies of which cannot be given, for any valid reason, the delinquent be offered

opportunity to inspect such documents, for which the enquiry officer has to see that free access is available to the delinquent to such records and for the purpose of inspection, he shall also fix a clear date, time and place. After this, reply is to be submitted by the delinquent within a given time and the enquiry officer is to proceed with the enquiry and while doing so, the enquiry officer has to fix date, time and place for holding the enquiry, information of which has to be given to the delinquent to participate therein. When the enquiry proceeds, it is for the department to get the charges proved by adducing evidence first and giving opportunity to the delinquent to cross-examine the witnesses and file/tender evidence in rebuttal, which opportunity, he may or may not avail. It is thereafter that the enquiry officer shall submit his report and on receipt of the enquiry report, the punishing authority has to issue notice to the delinquent along with a copy of the enquiry report asking for the comments of the delinquent and on receipt of the reply to the show cause notice, the appointing authority has to pass the final orders, as may be found appropriate by him. This course has to be adopted in every departmental enquiry.

9. We take judicial notice of the fact that in a number of disciplinary proceedings, the enquiry officer does not take care to provide opportunity to the delinquent for participating in the enquiry. Besides other defects or lacunae which are found in holding the enquiry, the most common and gravest is the fact that after receipt of reply to the charge-sheet, the enquiry officer submits his report on the basis of the said reply without giving any opportunity to the delinquent to participate in the enquiry and more serious is the case of the appointing authority, who is supposed to know the rules of enquiry, to rely upon such enquiry report and inflict the punishment on the delinquent.

10. The appointing authority, may be State or any other authority, must understand that before inflicting the punishment, the delinquent has to be given opportunity to put his case/ defence against the findings of the enquiry officer given in the enquiry report and in case the enquiry officer has suggested any punishment, against such punishment also. The delinquent has a right to challenge the enquiry report on procedural grounds or on substantive grounds, namely, the enquiry can be said to be void, defective, illegal or arbitrary on the ground that sufficient opportunity or reasonable opportunity was not afforded to the delinquent by the enquiry officer or the enquiry is bad on any such technical or legal defect which may include violation of principles of natural justice. The enquiry report can also be challenged by the delinquent on the ground that the charges could not be proved and the material available could not have been relied upon or that it was inadmissible in evidence. There may be various other reasons also for challenging the enquiry report.

11. In these circumstances, the responsibility lies upon the State/ appointing authority/punishing authority to not only see that the charges stand proved or not but also to see that whether the enquiry has been conducted in proper manner by following the principles of natural justice and full opportunity has

been afforded to the delinquent. It is the duty of the appointing authority/punishing authority to be convinced that the enquiry officer has proceeded with the enquiry in accordance with law and in case it has not been done, he should order for a de novo enquiry from the stage where the defect has occurred. It is only thereafter that the appointing authority shall see as to whether the charges stand proved on the basis of the evidence on record or not. The charges whether stand proved or not on the basis of the evidence on record is altogether a different question which has to be considered by the appointing authority apart from the question whether in holding the enquiry, the enquiry officer has proceeded in accordance with law or not. In case the appointing authority fails to consider these questions, he would be lacking in performance of his duties and would be passing an order which obviously when brought under judicial scrutiny may not be upheld.

12. The purpose of holding enquiry and awarding punishment is to pass an order which is effective and which could be implemented. The passing of punishment order in such a sham manner defeats the very purpose of holding enquiry and awarding punishment upon the guilty and encourages indiscipline and inefficiency in administration. It is high time that the Government must consider this aspect of the matter, otherwise holding of enquiry against any delinquent is of no avail and of no use. Apart from this, such orders are usually challenged in Court and the Courts in the circumstances set aside the order of punishment, which burdens the State with large amount of payment to be made without work and the delinquent who is supposed to be punished for his fault or delinquency stands rewarded under the legal protection available to him.

13. Instant case is one of such examples where, according to own case of the State, charges were serious but the manner in which the enquiry has been conducted and punishment has been awarded compelled the Tribunal to interfere and set aside the order. The State, in its wisdom, instead of complying with the directions issued by the Tribunal that fresh enquiry be conducted, has challenged the order in this Court wherein an interim order was passed only to the effect that operation of the Tribunal's order dated 7.7.1993, in so far as it accords the pecuniary benefits to the respondent No. 1 shall remain stayed. We have no reason to believe that the State is not aware of the legal position that where the enquiry is not conducted by following the principles of natural justice, the same cannot be upheld but the State did not take any steps for holding the enquiry afresh and allowed the respondent to join the duties and permitted him to retire after attaining the age of superannuation. Had the enquiry been conducted again, the charges might have been got proved and the monetary burden which is to be faced by the State could have been saved.

14. In view of the findings recorded by the Tribunal, we do not find any illegality in the order and the writ petition has to be dismissed.

15. Before parting, we would like to observe that the State Government would be better advised to issue necessary instructions/directions or G.O., if necessary, to

make such defaults on the part of the enquiry officer, a misconduct rendering him liable for punishment looking to the seriousness of the charge and appointing authorities may also be informed that they would be equally held responsible in case they proceed to pass the order on the basis of such enquiry and it may be treated as "a serious lapse" on their part, also.

16. The writ petition is dismissed.

17. Let a copy of this order be sent to the Chief Secretary, Principal Secretary, Law/Legal Remembrancer, Principal Secretary, Karmik and the Principal Secretary, Finance, Government of U. P., Lucknow.