

(2017) 12 AHC CK 0032
In the Allahabad High Court
Case No : 18729 of 2016

State Of U.P Thru.Prin.Secy. Public Work?Deptt.Lko.& 2 Ors Vs Bhoop Narayan Rai & Anr

Date of Decision : 13-12-2017

Acts Referred:

Civil Services Regulations, 1920, Regulation 351-A -
Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999, Rule 7, Rule 3

Citation : (2017) 12 AHC CK 0032

Hon'ble Judges : Anil Kumar, Daya Shankar Tripathi

Bench : Division Bench

Advocate : Ajai Kumar Tiwari, Dharendra Kumar Srivastav, Piyush Chandra Agarwal

Final Decision : Dismissed

Judgement

1. Heard Sri Nitin Mathur, learned State Counsel for the petitioners and Sri D.K. Srivastava, learned counsel for the respondent no. 1.
2. By means of the present writ petition, the petitioners have challenged the order dated 15.03.2016 passed by State Public Services Tribunal, Indira Bhawan, Lucknow (hereinafter referred to as the "Tribunal") in Claim Petition No. 681 of 2015 (Bhoop Narayan Rai Vs. State of U.P. and others).
3. Facts of the present case, in brief, are to the effect that respondent no. 1 Bhoop Narayan Rai while posted as Junior Engineer (Civil), PWD, Siddharth Nagar was served a charge sheet dated 05.04.2004 containing two charges in respect to the incident which took place on 18.07.1995 for delivery of 200 matric ton of packed Bitumen from Mathura Refinery to M/s J.P. and Company, as per contract entered between the parties dated 25.07.1995 to 24.10.1995.
4. After receiving the charge sheet, the respondent no. 1 submitted his reply on 22.04.2004 denying the charges which were mentioned therein.
5. Thereafter as per the procedure provided under Rule 7 of the Uttar Pradesh

Government Servants (Discipline and Appeal) Rules, 1999 (hereinafter referred to as the "Rules 1999") the Enquiry Officer conducted the enquiry proceeding and submitted enquiry report to the Punishing Authority on 12.02.2007. A show cause notice was issued to respondent no. 1 on 05.04.2007, to which he submitted his reply on 07.05.2007.

6. In the meantime, the respondent no. 1 Bhoop Narayan Rai retired from services after attaining age of superannuation on 30.09.2008.

7. After the retirement of respondent no. 1, an order dated 30.07.2014 was passed to proceed against him in view of Regulation 351-A of Civil Services Regulation (hereinafter referred to as the "CSR").

8. By an order dated 04.03.2015, Principal Secretary, Public Works Department, U.P. Civil Secretariat, Lucknow has awarded following punishments to the respondent no. 1:- "i. Deduction of 5% from the respondent no. 1's pension permanently and

ii. Recovery of Rs. 3,74,003.00 from the respondent no. 1"

9. Order dated 04.03.2015 has been challenged by the respondent no. 1 Bhoop Narayan Rai by filing Claim Petition No. 681 of 2015.

10. By an order dated 15.03.2016, the Tribunal has allowed the claim petition and set aside the punishment order dated 04.03.2015, with a direction that recovery, if any, made from the respondent no. 1 shall be refunded to him within three months from the date a certified copy of the said order is furnished to the opposite parties and in case of delay, the respondent no. 1 will get interest @ 8% per annum on unpaid amount.

11. Sri Nitin Mathur, learned State Counsel while challenging the impugned order submits that in the present case the Tribunal has given the following findings while allowing the claim petition. Relevant portion of the same reads as under:- "No doubt, the enquiry officer has drawn his own presumption and has pronounced the petitioner guilty without fully explaining the defence taken by him. Hence we are convinced that the findings recorded by the Enquiry Officer and relied upon by the disciplinary authority are perverse and no decision making authority would have recorded the finding on these two charges in the manner it has been recorded by the Enquiry Officer. Besides, there is a huge delay in commencing and concluding the enquiry."

12. Sri Nitin Mathur, learned State Counsel submits that once the Tribunal has found that there is a defect/violation of principles of natural justice during the course of disciplinary enquiry, then in that circumstances, the Tribunal should not have quashed the order of punishment in toto, rather it should have quashed the punishment order with liberty to the petitioners to hold fresh enquiry from the stage where the irregularity/violation of principles of natural justice has been committed.

13. In support of his argument, Sri Nitin Mathur, learned State Counsel has placed reliance on the judgment given by Hon''ble Apex Court in the case of Chairman Life Insurance Corporation of India and others Vs. A. Masilamani, 2013 (6) SCC 530.

14. So the impugned order passed by the Tribunal is liable to be set aside and the matter may be remanded back to Punishing Authority with direction to proceed with the enquiry from the stage where the irregularity/violation of principles of natural justice has been committed and after conducting the same, it shall pass the punishment order in accordance with rules.

15. Argument advanced by Sri D.K. Srivastava, learned counsel for the respondent no. 1 while supporting the order passed by the Tribunal are summarized as under: (a) Although in the present case, the Tribunal has found that there is a defective enquiry proceedings, but in addition to the said fact the Tribunal has also given a finding that we are convinced that the finding recorded by the Enquiry Officer and relied upon by the Disciplinary Authority are perverse and no decision making authority would have recorded the finding on the charges in the manner it has been recorded by the Enquiry Officer.

16. As such keeping in view the said fact and the law as laid down by Hon''ble Apex Court in the case of Anant R. Kulkarni Vs. Y.P. Education Society and others, (2013) 6 SCC 515, the order passed by the Tribunal is also on merit. So the Tribunal was justified in allowing the claim petition filed by the respondent no. 1, quashing the punishment order and not remanding the matter back to Punishing Authority to get the enquiry conducted from the stage where the irregularity/violation of principles of natural justice has been committed. (b) Respondent no. 1 was in service while the charge sheet was issued to him for imposing major punishment and enquiry was initiated against him as per Rules 1999 and the same was conducted. But no final order was passed, in the meantime the respondent no. 1 retired from service after attaining age of superannuation on 30.09.2008. In these circumstances, the action on the part of petitioners/Officer respondents thereby proceeding to invoke the provisions of Regulation 351-A of CSR and pass the punishment order dated 04.03.2015 is without jurisdiction and contrary to law as laid down by Hon''ble Apex Court in the case of State of U.P. and others Vs. R.C. Misra, (2007) 9 SCC 698.

(c) After issuing of show cause notice to the respondent no. 1 by the Punishing Authority as per Rules 1999 to which respondent no. 1 submitted his reply in the year 2007, the respondent no. 1 retired from services in the year 2008, after about 15 months from the date of submitting reply, thereafter the post retiral dues have already been paid to him, so the order passed by the Tribunal thereby setting aside the punishment order dated 04.03.2015 is perfectly valid and there is no need to send the matter to the Punishing Authority as per Rules 1999 for conducting a fresh enquiry from the stage where the irregularity/violation of principles of natural justice or defective enquiry was committed by Enquiry Officer and giving liberty to the Punishing Authority to pass a fresh order as per

Rules 1999.

17. In support of said argument, Sri D.K. Srivastava, learned counsel for the respondent no. 1 has placed reliance on the judgment given by a Division Bench of this Court in the case of Ambika Prasad Srivastava Vs. State Public Services Tribunal, Lucknow and others, 2004 (22) LCD 770.

18. Accordingly, it is submitted by Sri D.K. Srivastava that the writ petition filed by the petitioners is liable to be dismissed.

19. We have heard learned counsel for the parties and gone through the record.

20. It is a settled proposition of law that if any punishment order is set aside by a Court or Tribunal on the ground that there is violation of principles of natural justice while conducting the enquiry proceedings or there is a defect therein, then in that circumstances, the punishment order so passed is liable to be set aside and the matter may be remanded back to Punishing Authority to conduct a fresh enquiry from the stage where there is violation of principles of natural justice or defect in conducting enquiry, as per Rules which governs the field as held by Hon'ble Apex Court in the case of Chairman Life Insurance Corporation of India and others Vs. A. Masilamani (supra).

21. In the instant matter while the respondent no. 1 was in service the enquiry proceedings were initiated against him under Rule 7 of the Rules 1999 for awarding major punishment mentioned therein, and before awarding of punishment, he retired from service after attaining age of superannuation on 30.09.2008 and all the retiral dues have been paid to him.

22. Thereafter, by an order dated 30.07.2014 passed by Competent Authority, a decision was taken to proceed against respondent no. 1 under Regulation 351-A of CSR and punishment order dated 04.03.2015 was passed by the Principal Secretary, Public Works Department, U.P. Lucknow, imposing following punishment:- "i. Deduction of 5% from the respondent no. 1's pension permanently and

ii. Recovery of Rs. 3,74003.00 from the respondent no. 1"

23. So the question to be considered is that as to whether the action on the part of the petitioners/Officer respondents to initiate enquiry proceedings against the respondent no. 1 by an order dated 30.07.2014 under Regulation 351-A of CSR, is a correct exercise or not?

24. Answer to the said question taken place in the judgment passed in the case of State of U.P. and others Vs. R.C. Misra (supra) wherein Hon'ble Apex Court has held as under:- "7. Regulations 351A and 470 of Civil Service Regulations read as under :-

"351-A. The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any

pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct, or to have caused pecuniary loss to Government by misconduct or negligence, during his service, including service rendered on re-employment after retirement:

Provided that

(a) Such departmental proceedings, if not instituted while the officer was on duty either before retirement or during reemployment -

i) shall not be instituted save with the sanction of the Governor.

ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

iii) shall be conducted by such authority and in such place or places as the Governor may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made.

(b) Judicial proceedings, if not instituted while the officer was on duty either before retirement or during reemployment, shall have been instituted in accordance with Sub-clause(ii) of Clause (a); and

(c) The Public Service Commission, UP shall be consulted before final orders are passed.

Provided further that if the order passed by the Governor relates to a case dealt with under the Uttar Pradesh Disciplinary Proceedings (Administrative Tribunal) Rules, 1947, it shall not be necessary to consult Public Service Commission.)

Explanation - For the purpose of this article -

(a) departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him or, if the officer has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to have been instituted:

(i) in the case of criminal proceedings, on the date on which complaint is made, or a charge-sheet is submitted, to a criminal court; and

(ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made to a Civil Court.

470. (a) The full pension admissible under the Rules is not to be given as a matter of course, or unless the service rendered has been really approved (See Appendix 9) (b) If the service has not been thoroughly satisfactory the authority sanctioning the pension should make such reduction in the amount as it thinks proper: Provided that in cases where the authority sanctioning pension is other than the appointing authority, no order regarding reduction in the amount of pension shall be made without the approval of the appointing authority. Note: -

For the purpose of this Article "appointing authority" shall mean the authority which is competent to make substantive appointment to the post or service from which the officer concerned retires."

8. The substantive part of Regulation 351A confers the power upon the Government of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct, or to have caused pecuniary loss to Government by misconduct or negligence, during his service, including service rendered on re-employment after retirement. 9. There is a proviso appended to the Regulation which circumscribes the power conferred by the substantive part of the Regulation. Clause (a) of the proviso with which we are concerned here uses the expression - if not instituted while the officer was on duty either before retirement or during re-employment. Clause (a) of the proviso will, therefore, get attracted only when the departmental proceedings are instituted against the officer after his retirement or when he is not in reemployment.

If the departmental proceedings are instituted before an officer has attained the age of superannuation and before his retirement, proviso (a) can have no application. In order to remove any doubt regarding the date of institution of enquiry or the judicial proceedings an Explanation has been appended after the proviso. According to Explanation (a), departmental proceedings shall be deemed to have been instituted (i) when the charges framed against the officer are issued to him, or (ii) if the officer has been placed under suspension from an earlier date, on such date. By incorporating the explanation, the rule framing authority has notionally fixed two dates as the date on which the departmental proceedings shall be deemed to have been instituted against an officer.

10. A combined reading of the proviso and the explanation would show that there is no fetter or limitation of any kind for instituting departmental proceedings against an officer if he has not attained the age of superannuation and has not retired from service.

If an officer is either placed under suspension or charges are issued to him prior to his attaining the age of superannuation, the departmental proceedings so instituted can validly continue even after he has attained the age of superannuation and has retired and the limitations imposed by sub- clause (i) or sub-clause (ii) of clause (a) of proviso to Regulation 351A will not apply. It is only where an officer is not placed under suspension or charges are not issued to him while he is in service and departmental proceedings are instituted against him under Regulation 351A after he has attained the age of superannuation and has retired from service and is not under re-employment that the limitations imposed by sub-clauses (i) and (ii) of proviso (a) shall come into play."

25. Thus, the action on the part of Principal Secretary, Public Works Department,

U.P. Lucknow thereby passing the order of punishment dated 04.03.2015 against the respondent no. 1 by invoking the provision as provided under Regulation 351-A of CSR is without jurisdiction and contrary to law. However the said factual aspect of the case has not been considered by the Tribunal while passing the impugned order under challenge to this writ petition.

26. So far as the argument advanced by Sri Nitin Mathur, learned counsel for the petitioners that if the Tribunal has found that there is defect in the enquiry proceedings, then in that circumstances it should have set aside the punishment order dated 04.03.2015 and the matter should have been remanded to the Punishing Authority to conduct a fresh enquiry from the stage where there is violation of principles of natural justice or defect appeared in the enquiry, is concerned, no doubt it is settled principles of law, but in present as the respondent no. 1 has already retired from service and all the post retiral dues have been paid to him. In that circumstances, if on the said proposition of law the matter is remanded back to the Punishing Authority to get the enquiry conducted as per Rule 7 of the Rules 1999 from the stage where there is violation of principles of natural justice in the enquiry proceedings, the Punishing Authority can impose the penalties as provided under Rule 3 of the Rules 1999, which reads as under:- "3. Penalties. -

The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed upon the Government servants : Minor Penalties :

- (i) Censure;
- (ii) Withholding of increments for a specified period;
- (iii) Stoppage at an efficiency bar;
- (iv) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders;
- (v) Fine in case of persons holding Group "D" posts; Provided that the amount of such fine shall in no case exceed twenty-five percent of the month's pay in which fine is imposed.

Major Penalties :

- (i) Withholding of increments with cumulative effect;
- (ii) Reduction to a lower post or grade or time scale or to a lower stage in a time scale;
- (iii) Removal from the service which does not disqualify from future employment;
- (iv) Dismissal from the service which disqualifies from future employment."

27. As stated hereinabove, the respondent no. 1 has already retired from service after attaining age of superannuation on 30.09.2008, and all post retiral dues have been paid to him, so in view of the said facts and provisions of the Rules,

the Punishing Authority cannot impose any penalty as provided in Rule 3 of the Rules 1999, after conducting fresh enquiry proceedings by the Enquiry Officer and on the basis of the report received from him, so we do not find any good ground or reasons to accept the argument advanced by learned counsel for the petitioners in the matter in question, as the same should be a futile exercise.

28. For the foregoing reasons, we do not find any good ground or reasons to interfere in the impugned order passed by the Tribunal under challenge in present case.

29. In the result, the writ petition lacks merit and it is dismissed.