
(1999) 09 AHC CK 0062
In the Allahabad High Court
Case No : C.M.W.P. No. 33291 of 1996

Subhash Chandra Sharma

APPELLANT

Vs

Managing Director, U.P. Co-op. Spg. Mills Federation Ltd.,
Kanpur and another

RESPONDENT

Date of Decision : 07-09-1999

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (1999) 4 AWC 3227 : (1999) AWC 3227 : (2000) 1 LLJ 990 : (2000) 1 UPLBEC 541

Hon'ble Judges : M. Katju, J;D.R. Chaudhary, J

Bench : Division Bench

Advocate : Ajit Kumar and Mohit Kumar, for the Appellant; Rakesh Tewari and Vinod Misra, for the Respondent

Judgement

H. Katju and D. R. Chaudhary, JJ.—This writ petition has been filed against the impugned order dated 22/ 23.8.96 (Annexure-1 to the petition) by which the petitioner has been dismissed from the service of the respondents. We have heard learned counsels for the parties.

2. The petitioner was an employee of the U. P. Cooperative Spinning Mills Federation Ltd. which is a Government Company. The petitioner was charge-sheeted vide charge-sheet dated 8/10.5.96 and supplementary charge-sheet dated 20.5.96 (Annexures-3 and 4 to the petition). The petitioner denied the charges and sent a reply dated 1.8.96. Thereafter, it is alleged in paragraph 5 of the petition that without fixing any date (or the enquiry and for leading evidence, respondent No. 2. who was appointed as the Enquiry Officer, sent an enquiry report dated 12.8.96 holding that charges 1 to 4 against the petitioner are proved. Copy of the letter dated 12.8.96 is Annexure-6 to the petition. Copy of enquiry report of the same date is Annexure-7 to the petition,

3. In paragraph 6 of the petition, it is alleged that against the show cause notice dated 19.8.96. the petitioner sent a reply vide. Annexure-8 to the petition.

Thereafter the impugned order dated 22/23.8.96 was passed dismissing the petitioner from service. It is alleged in paragraph 12 of the petition that the respondent Federation is an instrumentality of State within the meaning of Article 12 of the Consitution of India.

4. Several points have been raised in the petition but this petition deserves to be allowed on one ground alone, and it is not necessary to go into the other grounds. In paragraph 5 of the petition it has been stated that no enquiry was held nor any date for holding the enquiry was intimated to the petitioner nor was any evidence led in the said enquiry. The reply to paragraph 5 of the petition is contained in paragraph 5 of the counter-affidavit. There is no denial in paragraph 5 of the counter-affidavit to the allegation in paragraph 5 of the writ petition that no date for enquiry was fixed nor any evidence led in the said enquiry. All that has been said in paragraph 5 of the counter-affidavit is that in the charge-sheet fifteen days time was given to the petitioner to submit his reply, and thus the date in the enquiry was fixed. In our opinion, this does not mean that the date for the enquiry was fixed. The charge-sheet is Annexure-3 to the writ petition and a perusal of the same shows that no date was fixed for the enquiry in the same nor was any date fixed in the supplementary charge-sheet. Thus, the allegation in paragraph 5 of the writ petition that neither the date for the enquiry was fixed nor evidence led in the same stands unrebutted. In paragraph 5 of the counter-affidavit, it has been alleged that petitioner had asked for some documents but he was only allowed to see the documents. We are of the opinion this again does not mean that any date for the enquiry was fixed nor was any oral evidence led in the enquiry. In fact it has been admitted in paragraph 5 of the petition that no oral evidence was produced by the management.

5. In our opinion, after the petitioner replied to the charge-sheet a date should have been fixed for the enquiry and the petitioner should have been intimated the date, time and place of the enquiry and on that date the oral and documentary evidence against the petitioner should have been led in his presence and he should have been given an opportunity to cross-examine the witnesses against him and also he should have been given an opportunity to produce his own witnesses and evidence. If the petitioner in response to this intimation had failed to appear for the enquiry, then an ex parte enquiry should have been held but the petitioner's service should have not been terminated without holding an enquiry. In the present case, it appears that no regular enquiry was held at all. All that was done that after receipt of the petitioner's reply to the charge-sheet, he was given a show cause notice and thereafter the dismissal order was passed. In our opinion, this was not the correct legal procedure and there was violation of the rules of natural justice. Since no date for enquiry was fixed nor any enquiry held in which evidence was led in our opinion, the Impugned order is clearly violative of natural justice.

6. In *Meenglas Tea Estate Vs. Its Workmen*, the Supreme Court observed : "It is an elementary principle that a person who is required to answer a charge must

know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross-examination as he desires. Then he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character and its requirement must be substantially fulfilled before the result of the enquiry can be accepted."

7. In *S.C. Girotra Vs. United Commercial Bank (UCO Bank) and Others*, the Supreme Court set aside a dismissal order which was passed without giving the employee an opportunity of cross-examination. In *State of Uttar Pradesh and Another Vs. Sri C.S. Sharma*, the Supreme Court held that omission to give opportunity to the Officer to produce his witnesses and lead evidence in his defence vitiates the proceedings. The Court also held that in the enquiry witnesses have to be examined in support of the allegations, and opportunity has to be given to the delinquent to cross-examine these witnesses and to lead evidence in his defence. In *The Punjab National Bank Ltd. Vs. Its Workmen*, (vide para 66), the Supreme Court held that in such enquiries evidence must be recorded in the presence of the charge-sheeted employee and he must be given an opportunity to rebut the said evidence. The same view was taken in *Associated Cement Co. Ltd. Vs. The Workmen and Another*, and in *Tata Oil Mills Co. Ltd. v. Their Workmen*. 1963 II LLJ 78.

8. Even if the employee refuses to participate in the enquiry, the employer cannot straightaway dismiss him, but he must hold an ex parte enquiry where evidence must be led vide *The Imperial Tobacco Company of India Ltd. Vs. Its Workmen*, , *Uma Shanker v. Registrar*. 1992 (651) FLR 674

9. A dismissal order has serious consequences and should be passed only after complying with the rules of natural justice. Since in the present case, no enquiry was held at all and no evidence led in the presence of the petitioner nor was he given opportunity to cross-examine the witnesses against him or lead his own evidence the impugned dismissal order is illegal. In the circumstances, the writ petition is allowed. The impugned order dated 22/23.8.96 is quashed. However, it is open to the respondents to hold an enquiry and pass a fresh order.