
(2008) 04 AHC CK 0114
In the Allahabad High Court

Tahir Hussain Abidi.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 04 AHC CK 0114

Hon'ble Judges : U.K. Dhaon, J;Devi Prasad Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

U.K. Dhaon and Devi Prasad Singh, JJ.—Feeling aggrieved by the impugned order of punishment the petitioner, under Article 226 of the Constitution of India, has approached this Court by assailing the same mainly on the ground that the decision has been taken relying upon the incident of an occurrence which occurred prior to four years from the date of initiation of proceedings.

2. The brief facts of the present case are that the petitioner was appointed as Assistant Engineer in U.P. Public Works Department in the year 1963. Thereafter, he was promoted on the post of Executive Engineer in the year 1978. On 10.11.1981, he was sent on deputation to Rajkiya Nirman Nigam Limited. On 25.9.1995, he was repatriated to his parent department. On 30.6.1996, the petitioner retired from service on attaining the age of superannuation. On 2.4.1996, sanction was obtained from the Governor to initiate departmental proceedings. However, for about four years, nothing was done by the respondents. Two chargesheets dated 3.4.1998 and 19.2.1999 were served upon the petitioner. These two chargesheets were the subject matter of dispute originally in the present writ petition, mainly on the ground that these chargesheets have been issued upon the petitioner after lapse of more than four years from the date of incident. After departmental inquiry, the petitioner was punished by the impugned order dated 15.2.2006, On the basis of the two chargesheets (supra), two inquiry reports dated 8.12.1999 and 10.12.1999 were

submitted. However, the inquiry officer exonerated the petitioner while submitting inquiry report dated 10.12.1999, on the basis of chargesheet dated 19.2.1999.

3. While assailing the impugned order, the learned Counsel for the petitioner Sri V.K. Srivastava submitted that the impugned order has been passed in violation of Regulation 351-A of the Civil Service Regulations. It has also been submitted that the inquiry officer submitted report without holding any oral inquiry. No date, time and place was fixed by the inquiry officer. Accordingly, two fold submissions made by the petitioner's counsel is that the order of punishment has been passed relying upon the occurrence which occurred prior to four years of date of chargesheet hence, it is not sustainable under Regulation 351-A of the Civil Service Regulations.

4. While defending the impugned order, the learned standing counsel proceeded to submit that the petitioner himself had not participated in the inquiry hence the inquiry officer was right in submitting the report on the basis of material on record. It has also been submitted that since the sanction was granted by the Governor on 2.4.1996 before the date of retirement, the State was right in proceeding against the petitioner on the basis of the material on record.

5. We have considered the arguments advanced by the learned Counsel for the parties at length.

6. Undisputedly, the chargesheet dated 3.4.1998 was prepared and served relying upon an audit report of the year 1990-1991. It has not been disputed that the charges levelled against the petitioner are of the year 1988 or prior to it. It has also not been disputed that the chargesheet was served upon the petitioner on 3.4.1998. From the material on record, it is evident that since the occurrence relates to the year 1988 obviously, the chargesheet was served after lapse of more than four years i.e., after lapse of almost 12 years from the date of occurrence.

7. Regulation 351-A of the Civil Services Regulations is reproduced 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 re-employment, 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.

8. A plain reading of Regulation reveals that in case departmental proceeding is not instituted while the officer was on duty either before retirement or during re-employment, then it shall not be instituted. The Regulation further provides that departmental proceeding can be initiated subject to sanction of Governor only in case the event took place not more than four years before the institution of such proceedings. The Regulation at the face of record provide that the disciplinary proceedings or even judicial proceedings if not instituted while the officer was on duty either before retirement or during re-employment, may be instituted only in accordance with Sub-clause (ii) of Clause (a) and not otherwise. The submission of the petitioner's counsel is that the departmental proceedings shall be deemed to have been initiated only after issuance of chargesheet and in judicial proceedings after filing of chargesheet in the court of competent jurisdiction. Even no complaint can be made against an employee if the occurrence took place prior to four years of initiation of proceedings.

A criminal proceeding shall be deemed to have initiated from the date when complaint is made or chargesheet is submitted.

9. Learned Counsel for the petitioner has relied upon the judgments reported in

State of U.P. and Another Vs. Shri Krishna Pandey, State of U.P. and Ors. v. Harihar Bhole Nath (2007) 1 UPLBEC 56 (Paras 11 and 15); Lakhan Lal Ahirwar v. State of U.P. 2007 (25) LCD 1148 (Paras 5 and 6); Coal India Ltd. and Others Vs. Saroj Kumar Mishra, and the judgment and order in W.P. No. 4498 (S/B) of 1992 (Sri S.C. Govil v. State of U.P. and Ors.) Internal pages 11, 12, 13, and 19 of the said judgment.

10. In the case of Sri Krishna Pandey, their Lordships of the Hon"ble Supreme Court while interpreting the provision contained in Regulation 351-A had proceeded to hold as under:

It would thus be seen that proceedings are required to be instituted against a delinquent officer before retirement. There is no specific provision allowing the officer to continue in service nor any order passed to allow him to continue on re-employment till the enquiry is completed, without allowing him to retire from service. Equally, there is no provision that the proceedings be initiated as disciplinary measure and the action initiated earlier would remain unabated after retirement. If Rule 351-A is to be operative in respect of pending proceedings, by necessary implication, prior sanction of the Governor to continue the proceedings against him is required. On the other hand, the rule also would indicate that if the officer caused pecuniary loss or committed embezzlement etc. due to misconduct or negligence or dereliction of duty, then proceedings should also be instituted after retirement against the officer as expeditiously as possible. But the events of misconduct etc. which may have resulted in the loss to the Government or embezzlement, i.e., the cause for the institution of proceedings, should not have taken place more than four years before the date of institution of proceedings. In other words, the departmental proceedings must be instituted before lapse of four years from the date on which the event of misconduct etc. had taken place. Admittedly, in this case the officer had retired on March 31, 1987 and the proceedings were initiated on April 21, 1991. Obviously, the event of embezzlement which caused pecuniary loss to the State took place prior to four years from the date of his retirement. Under these circumstances, the State had disabled itself by their deliberate omissions to take appropriate action against the respondent and allowed the officer to escape from the provisions of Rule 351-A of the Rules. This order does not preclude proceeding with the investigation into the offence and taking action thereon.

11. The judgment in the case of Krishna Pandey (supra), has been affirmed by Hon"ble Supreme Court in the case of Harihar Bhole Nath (supra). In the case of Harihar Bhole Nath (supra), while affirming the aforesaid proposition of law, Hon"ble Supreme Court ruled that the Government may proceed with the disciplinary proceedings or initiating any action in accordance with the Regulation 351-A but only by adhering to limitation provided therein and not otherwise.

12. The proposition of law has been reiterated and followed in the case of Lakhan Lal Ahirwar (supra), Coal India Ltd. (supra) and one unreported judgment and order in W.P. No. 4498 (S/B) of 1992 (Sri S.C. Govil v. State of U.P. and Ors.).

13. In view of the settled proposition of law in the present case, since the disciplinary proceeding was initiated after lapse of more than four years rather, about a decade from the date of the alleged event, the service of chargesheet as well as the consequential action taken by the respondents, vitiates.

14. There is another aspect of the matter. The perusal of the inquiry report indicates that the petitioner is alleged to have not cooperated in the inquiry proceedings. It appears that after service of chargesheet, the petitioner had filed the present writ petition and thereafter not cooperated with the inquiry proceedings. It is settled principle of law that even if a delinquent employee does not cooperate with the inquiry proceeding, it shall always be incumbent upon the inquiry officer to hold ex parte inquiry, record oral evidence and thereafter submit inquiry report with due finding. But in the present case, the procedure has not been followed by the inquiry officer. The inquiry report also reveals that the officers of U.P. Rajkiya Nirman Nigam Ltd., has also not cooperated and not furnished the relevant material on record. In spite of non-cooperation by U.P. Rajkiya Nirman Nigam Ltd., and non-furnishing of relevant documents, the submission of the inquiry report merely on the basis of audit objection, seems to be not correct. An enquiry officer while conducting the enquiry, discharges his or her statutory obligation as a quasi-judicial authority. He or she cannot act as a party to the enquiry proceeding. In the present case, the enquiry officer has failed to discharge his statutory duty.

15. Accordingly, the writ petition is allowed. A writ in the nature of certiorari is issued quashing the impugned orders with consequential benefits. In case, any amount has been recovered from the petitioner's post retiral dues or pension in pursuance of the impugned orders, it shall be refunded to the petitioner forthwith. The respondents shall ensure the payment of the post retiral dues to the petitioner expeditiously, keeping in view the changed circumstances.

16. Costs made easy.