

(2010) 03 UK CK 0003
In the Uttarakhand High Court

The Managing Director, Pey Jal Sansadhan Vikas Evam
Nirman Nigam

APPELLANT

Vs

Jagdish Prasad Sharma and Others

RESPONDENT

Date of Decision : 09-03-2010

Acts Referred:

Citation : (2010) 03 UK CK 0003

Hon'ble Judges : J.S. Khehar, C.J.;Sudhanshu Dhulia, J

Bench : Division Bench

Judgement

1. By an order dated 2 5.08.2006, respondent No. 1 was placed under suspension. Respondent No. 1 approached this Court by filing Writ Petition (S/B) No. 306 of 2006 to assail the order of suspension. This Court disposed of the aforesaid writ petition on 13.10.2006 with a direction to the Managing Director of the Pey Jal Sansadhan Vikas Evam Nirman Nigam, Dehradun to take a final decision on the claim of respondent No. 1 for revoking his suspension. Rather than examining the claim made by respondent No. 1, as against his order of suspension, the inquiry initiated against respondent No. 1 was completed (with the submission of an enquiry report dated 13.11.2006), whereupon respondent No. 1 was reverted to the substantive post of Assistant Engineer. Respondent No. 1 assailed the order of his reversion before the appellate authority. The appeal preferred by him was dismissed on 7.8.2007. Dissatisfied with the order passed by the appellate authority, respondent No. 1 preferred Claim Petition No. 47 of 2006 before the Public Services Tribunal, Uttarakhand at Dehradun. The Public Services Tribunal vide its order dated 2.9.2009 accepted the Claim Petition, and while doing so, the impugned order dated 25.11.2006 passed by the disciplinary authority as well as the appellate order dated 11.7.2008 were set aside.

2. The petitioner i.e., the Managing Director Pey Jal Sansadhan Vikas Evam Nirman Nigam preferred a review petition u/s 17 of the U.P. Public Service Tribunal (Procedure) Rules 1992, before the Public Services Tribunal. The aforesaid review petition was disposed of to the detriment of the claim raised by

the petitioner herein. It is in these circumstances that the instant writ petition has been filed by the Managing Director, Pey Jal Sansadhan Vikas Evam Nirman Nigam, Dehradun so as to assail the order passed by the Public Services Tribunal, Uttarakhand dated 2.9.2009, whereby Claim Petition No. 47 of 2007 preferred by respondent No. 1 had been allowed.

3. In order to adjudicate upon the controversy raised by the petitioner, it is necessary to extract hereunder paragraphs 11 and 13 of the impugned order dated 2.9.2009. The aforesaid paragraphs are accordingly reproduced hereunder:

11. Now reverting to the facts of the present case, it appears that admittedly charge sheet was served upon the petitioner and his reply was obtained on 4.11.2006. The enquiry officer thereafter does not appear to have taken any action in order to fix a date for oral evidence as enjoined upon by the rules in order to prove the charges levelled against the delinquent official. He simply appears to have drawn the conclusions in the light of papers supplied by the department and reply submitted by the petitioner. The delinquent official thus, did not get opportunity to make oral submission before the enquiry officer and to disapprove the charges levelled against him by adducing his oral evidence. Thus, provisions of Rule -7 which provide for procedure of holding enquiry were not followed by the enquiry officer. We, therefore, find sufficient force in the submission of the petitioner that the provisions of Rule 7 of the relevant Discipline & Appeal Rules have been violated in this case.

13. In the present case no material has been brought on record to prove that copy of the report of the enquiry officer was ever supplied to the petitioner and he was afforded opportunity contemplated in Rule 9(4) as well as the directions given in the aforesaid case by the Hon"ble Supreme Court. That being so, the provisions of relevant disciplinary rules as well as mandate of Hon"ble Supreme Court has clearly been violated while passing the impugned punishment. Point No. 2 is decided accordingly.

4. The factual position depicted in the aforesaid paragraphs has not been disputed by the learned Counsel for the petitioner. It has also not been disputed that the procedure for inflicting major punishment provided for in Rules 7, 8 and 9 of the U.P. Government Servant (Discipline & Appeal) Rules, 1999 would apply to the enquiry proceedings initiated against respondent No. 1. The aforesaid rules, which have been extracted in the order passed by the Public Services Tribunal, are also being reproduced hereunder:

7. Before imposing any major penalty on a Government Servant, an inquiry shall be held in the following manner:

xxxx xxxxx xxxx xx (vii) Where the charged Government servant denied the charges the inquiry officer shall proceed to call the witnesses proposed in the charge sheet and record their oral evidence in presence of the charged Government servant who shall be given opportunity to cross examine such witnesses. After recording the aforesaid evidence, the Inquiry Officer shall call

and record the oral evidence which the charged Government servant desired in his written statement to be produced in his defence.

Provided that the Inquiry Officer may for reasons to be recorded in writing refuse to call a witness.

(viii) The Inquiry Officer may summon any witness to give evidence or require any person to produce documents before him in accordance with the provisions of the Uttar Pradesh Departmental Inquiries (Enforcement of Attendance of Witness and Production of Documents) Act 1976.

(ix) The Inquiry Office may ask any question he pleases, at any time of any witness or from person charged with a view to discover the truth or to obtain proper proof of facts relevant to charges.

(x) Where charged Government servant does not appear on the date fixed in the inquiry or at any stage of the proceeding inspite of the service of the notice on him or having knowledge of the date, the Inquiry Officer shall proceed with the inquiry exparte. In such a case the Inquiry Officer shall record the statement of witnesses mentioned in the charge sheet in absence of the charged Government servant.

(xi) The Disciplinary Authority, if it considers it necessary to do so, may, by an order appoint a Government servant or legal practitioner, to be known as "Presenting Officer" to present on its behalf the case in support of the charge.

(xii) The Government servant may take the assistant of any other Government servant to present the case on his behalf but not engage a legal practitioner for the purpose unless the presenting officer appointed by the disciplinary authority is a legal practitioner of the disciplinary authority having regard to the circumstances of the case so permits.

8. When the inquiry is complete, the Inquiry Officer shall submit its inquiry report to the disciplinary authority along with all the records of the inquiry. The Inquiry report shall contain a sufficient record of brief facts, the evidence and statement of the findings on each charge and the reasons thereof. The Inquiry Officer shall not make any recommendation about the penalty.

9. (1) The Disciplinary Authority may, for reasons to be recorded in writing, remit the case for re-enquiry to the same or any other Inquiry Officer under intimation to the charged Government servant. The Inquiry Officer shall thereupon proceed to hold the inquiry from such stage as directed by the Disciplinary authority, according to the provisions of Rule-7,

(2) The Disciplinary Authority shall, if it disagrees with the findings of the Inquiry Officer or any charge, record its own finding thereon for reasons to be recorded.

(3) In case the charges are not proved, the charged Government servant shall be exonerated the Disciplinary authority of the charges and informed him accordingly.

(4) If the Disciplinary Authority, having regard to its findings on all or any of charges is of the opinion that any penalty specified in Rule -3 should be imposed on the charged Government servant, he shall give a copy of the inquiry report and his findings recorded under "sub-rule (2) to the charged Government servant and require him to submit his representation if he so desires, within a reasonable specified time. The Disciplinary Authority shall, having regard to all the relevant records relating to the inquiry and representation of the charged Government servant, if any, and subject to the provisions of Rule 16 of these rules, pass a reasoned order imposing on or more penalties mentioned in Rule-3 of these rules and communicate the same to the charged Government servant.

5. The factual position depicted in paragraph 11 clearly demonstrates that the procedure envisaged in aforesaid Rules was not complied with. Although the proceedings to inflict a major penalty had been initiated by the petitioner against respondent No. 1, yet the factual position depicted hereinabove reveals that the procedure required to be followed in the aforesaid circumstances was not adopted. Additionally it would be pertinent to mention that despite the judgment rendered by the Supreme Court in Union of India and others Vs. Mohd. Ramzan Khan, and Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., , the enquiry report submitted by the Enquiry Officer was not furnished to respondent No. 1 before the punishment of reversion to a lower post was inflicted on him. As such, there can be no dispute that the legal position declared by the Supreme Court on the aforesaid aspect of the matter was clearly not abided by the petitioner, while proceeding against respondent No. 1.

6. In view of the above, we find no infirmity in the impugned order dated 2.9.2009. It is not possible for us to accept the solitary contention advanced by the learned Counsel for the petitioner to the effect that respondent No. 1 was issued a show-cause notice and his reply was received, which should be taken as affording an adequate opportunity to respondent No. 1 before inflicting the punishment of reversion to a lower post on him. As already observed hereinabove, it was imperative for the petitioner to comply with the mandatory provisions of Rules 7 to 9 of the U.P. Government Servant (Discipline & Appeal) Rules 1999, which clearly was not done while proceeding against respondent No. 1.

7. Despite affirming the decision rendered by the Tribunal in the impugned order dated 2.9.2009, we leave it open to the petitioner to continue the proceedings already initiated by the petitioner against respondent No. 1 by following the mandatory provisions of Rules 7 to 9 of the U.P. Government Servant (Discipline & Appeal) Rules 1999, if the petitioner be so advised.

8. Having led the complete evidence required to substantiate the charges against respondent No. 1, it will be open to the petitioner to re-determine (on the basis of the said evidence), whether the order of suspension earlier passed against respondent No. 1 needs to be revived.

9. Disposed of in the aforesaid terms.