
(2008) 07 AHC CK 0086
In the Allahabad High Court

The Union of India (UOI)

APPELLANT

Vs

Abdul Qayum

RESPONDENT

Date of Decision : 02-07-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (2009) 1 AWC 305

Hon'ble Judges : Poonam Srivastav, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Poonam Srivastav, J.—Heard Sri K.C. Sinha, learned Counsel for the defendant-appellant, Union of India and Sri A.K. Sachan Advocate for the plaintiff-respondent.

2. The suit was instituted claiming relief of declaration to the effect that the order of removal of the plaintiff from services w.e.f. 29.11.1971 passed by the Disciplinary Authority is null and void. The ground of challenge as detailed in the plaint was that the show cause notice issued to the plaintiff did not disclose the charges, without any application of mind and analysis of the enquiry report. The order of removal is also illegal, excessive and non consideration of the plaintiff's representation in reply to the show cause notice, also proposed punishment is not commensurate to the act of delinquency.

3. The facts of the case are that the plaintiff-respondent was appointed as Tailor "C" in the Clothing Factory, Kanpur, a unit of Ordinance Parachute Factory, Kanpur on 22.7.1963. A general notice was issued inviting options to join at the Small Arms Factory, Kanpur. The plaintiff applied for the same and was posted as Machinist "C" in the Small Arms Factory, Kanpur w.e.f. 26.12.1966. The plaint allegation is that some times in the last week of April, 1970, while posted as Machinist "C" in M.A.J. Section of the Small Arms Factory, Kanpur the plaintiff learnt through reliable source that a gang of undesirable and unsocial men were

operating in the precincts of the factory and were involved in pilferage of Government property such as copper, brass and other costly items like silver etc. An automatic carbine gun manufactured in the factory was also stealthily removed from the factory premises with the connivance of the gate staff and other factory staff. The plaintiff informed the S.A.F. Authority only with a view to safeguard the national interest. A report was also given by the plaintiff to the L.I.U. Office MacRobertganj, Kanpur. The plaintiff was asked to give further information with a clear assurance by Sub Inspector of Police (D.I.S.) in the L.I.U. Office, Kanpur that no harm will be caused. He gave a detailed information to the Superintendent of Police, L.I.U. Office. It is also stated in the plaint that the plaintiff had absolutely no personal interest. The plaintiff submits that he was completely disillusioned and all his efforts resulted in his victimization. However, the carbine gun stolen from the factory was recovered from the possession of the gang of thieves and dacoits and certain employees of the factory were also arrested. The plaintiff was issued a commendatory certificate on 4.9.1970 for his aforesaid deeds but certain other employees of the Parachute factory, who had an axe to grind, with the help of the superior authorities, got him transferred. It is also stated in the plaint that the plaintiff was suspended as he was taken into custody by the police but subsequently the suspension was revoked w.e.f. 30.11.1970.

4. Simultaneously a transfer order was also passed transferring him to Ammunition Factory, Kirkee in public interest and he was directed to join his duty on or before 11.12.1970. However, before he could join services, earlier order was revoked. Another order was passed on 30.11.1970 by the General Manager entitling the plaintiff to get complete salary and allowances during the period of suspension from 4.5.1970 to 29.11.1970 and that the plaintiff will be treated on duty for all purposes. The order also stated that having been permanently transferred to Ammunition Factory, Kirkee, his name would be struck off from the roll of the Small Arms Factory, Kanpur w.e.f. 30.11.1970 forenoon. The plaintiff was surprised by transfer order to a distant place in the State of Maharashtra. A telegram was sent to the "Munitions Calcutta" and copies to the General Manager S.A.F., Kanpur and Ammunition Factory, Kirkee.

5. A representation was also submitted on 13.12.1970 to the Deputy Inspector General of Police (Operation Area), Agra Range, Agra. The plaintiff was served with a copy of the factory order No. 1088 dated 28.8.1971 issued under the authority of order dated 24.11.1970 passed by the General Manager, S.A.F., Kanpur transferring him to Ordinance Parachute Factory, Kanpur and directing him to report on 30.8.1971 forenoon and also granting him extraordinary leave without pay from 30.11.1970 to 28.8.1971. The plaintiff reported on the said date but the work which was given to him was of making Kaj Buttan which was not the work of Machinist "C", as it related to the engineering department where he was previously posted. This was objected by the plaintiff and he met the General Manager personally to handover a letter of request dated 30.8.1971 to provide him work relating to the engineering department or else may be

transferred to any other establishment at Kanpur. All the effort was rendered futile and finally the plaintiff served a legal notice u/s 80 C.P.C. on the defendant stating his grievances. Thereafter the plaintiff was served with a charge sheet on 19.2.1972 and an inquiry was instituted against him under Rule 14 of the C.C.S. (C.C. & A.) Rules 1965 for alleged willful unauthorized absence from duty w.e.f. 30.8.1971 without any intimation.

6. The plaintiff was finally removed from services by the Disciplinary Authority by means of an order dated 21.11.1972 on the basis of inquiry report and the show cause notice dated 3.10.1972 stating therein that the General Manager agreed with the inquiry report and proposes the punishment of removal from service w.e.f. 29.11.1971 forenoon on the ground of his unauthorized absence. A reply was submitted by the plaintiff. The objection on behalf of the plaintiff-respondent was that he was not given the show cause notice mentioning any specific charges and reasons for arriving at a conclusion and awarding extreme punishment of removal from service retrospectively. On receipt of the representation a short and cryptic order of removal was passed removing him w.e.f. 29.11.1971. The instant suit was instituted on a number of grounds as mentioned in the plaint.

7. The suit was decreed in favour of the plaintiff vide judgment and decree dated 28.10.1974 by III Additional Munsif, Kanpur. A declaration was made that the removal order No. CF-1591/Con/1 dated 21.11.72 passed by the General Manager, Parachute Factory, Kanpur imposing penalty of removal from service of the plaintiff w.e.f. 29.11.1971 is illegal and without any valid ground and the plaintiff be treated in continuous service with full benefits accruing to his post. This judgment was challenged in Civil Appeal No. 80 of 1975-Union of India v. Abdul Qayum. The appeal was remanded to the lower court for recording definite finding as to which rules have been violated in the inquiry and the order under challenge passed by the defendant is in contravention of what specific Rules. After the remand, the suit was dismissed vide judgment and decree dated 19.5.1980. A Civil Appeal No. 64 of 1981 was instituted by the plaintiff which was allowed. The judgment and decree of the trial court was set aside and a declaration was made that the order dated 21.11.1972 passed by the defendant-appellant is void and the plaintiff should be considered as continuing in service. The suit was decreed by the lower appellate court on 30.4.1982.

8. The Union of India preferred the instant second appeal which was admitted on 17.3.1983 but no substantial question of law was framed. Counsel for the appellant has framed two substantial questions of law in the memo of appeal but he has submitted that he proposes to assail the judgment on the substantial question No. 1 which is as follows:

(i) Whether the disciplinary authority while issuing the show cause notice is obliged to deal with each charges when he has already stated in the show cause notice after giving a careful thought that he agree with the findings of the Enquiry Officer ?

9. In support of the aforesaid substantial question of law, learned Counsel for Union of India has placed reliance on a decision of the Apex Court in the case of National Fertilizers Ltd. and Anr. v. P.K. Khanna 2005 (4) ESC 529 paragraphs 9 and 12 which are as under:

9. Apart from misreading the Enquiry Officer's report, the High Court also misapplied the law. The various decisions referred to in the impugned judgment make it clear that the disciplinary authority is required to give reasons only when disciplinary authority does not agree with finding of the Enquiry Officer. In this case, the disciplinary authority had concurred with the findings of the Enquiry Officer wholly. In Visakhapatnam Port Trust and Another Vs. M/s. Ram Bahadur Thakur Pvt. Ltd., etc., the disciplinary authority, after quoting the content of the charge-sheet, the deposition of witnesses as recorded by the Enquiry Officer, the finding of the Enquiry Officer and the explanation submitted by the employee, passed an order which, in all material respects, is similar to the order passed by the disciplinary authority in this case. Learned Counsel appearing on behalf of the respondent sought to draw a distinction on the basis that the disciplinary authority had, in Ram Kumar's case itself, quoted the details of the material. The mere quoting of what transpired would not amount to the giving of any reasons. The reasons were in the penultimate paragraph which we have said virtually used the same language as the impugned order in the present case. This Court dismissed the challenge to the order of punishment in the following words:

In view of the contents of the impugned order, it is difficult to say that the punishing authority had not applied his mind to the case before terminating the services of the appellant. The punishing authority has placed reliance upon the report of the Enquiry Officer which means that he has not only agreed with the findings of the Enquiry Officer, but also has accepted the reasons given by him for the findings. In our opinion, when the punishing authority agrees with the findings of the Enquiry Officer and accepts the reasons given by him in support of such findings, it is not necessary for the punishing authority to again discuss evidence and come to the same findings as that of the Enquiry Officer and give the same reasons for the findings. We are unable to accept the contention made on behalf of the appellant that the impugned order of termination is vitiated as it is a non-speaking order and does not contain any reason. When by the impugned order the punishing authority has accepted the findings of the Enquiry Officer and the reasons given by him the question of non-compliance with the principles of natural justice does not arise. It is also incorrect to say that the impugned order is not a speaking order.

12. The respondent's reliance on the decision in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., is misplaced. That decision relates to the right of a delinquent officer to a copy of the Enquiry Officer's report. In the course of the judgment, the Court had no doubt said that the report of the Enquiry Officer is required to be furnished to the employee to make proper representation to the disciplinary authority before such authority arrives at its

own finding with regard to the guilt or otherwise of the employee and the punishment, if any, to be awarded to him. By using the phrase "its own finding", what is meant is an independent decision of the disciplinary authority. It does not require the disciplinary authority to record separate reasons from those given by the Enquiry Officer. The concurrence of the disciplinary authority with the reasoning and conclusion of the Enquiry Officer means that the disciplinary authority has adopted the conclusion and the basis of the conclusion as its own. It is not necessary to restate the reasoning.

10. On the basis of aforesaid findings, the submission is that since the disciplinary authority concurred with the inquiry report, there was no necessity to give reasons. The emphasis is that since the inquiry report was given along with show cause notice, it can not be said that there was no application of mind and, therefore, the judgment of the lower appellate court suffers from a substantial error and liable to be set at naught.

11. Learned Counsel for the plaintiff-respondent disputed each and every argument of the counsel for the appellant and submits that in the event, the disciplinary authority was of the view that the proposed punishment is adequate and there was nothing further to be done, there was no necessity to issue the show cause notice. Learned Counsel has also placed, from the lower court record, the reply to the show cause notice wherein certain explanations as well as objections to the proposed punishment being not commensurate with the act of delinquency was given in detail. Besides, background in which the plaintiff was not permitted to join and it was not a case whether he had deliberately absented himself from duty, was liable to be taken into consideration. The fact that the order challenged and sought to be declared as void for non application of mind was short and cryptic one and not in accordance with C.C.S. (C.C. & A.) Rules 1965. The lower appellate court decreed the suit and gave a declaration after taking into consideration the various decisions of this Court. Learned Counsel for the plaintiff-respondent has also placed reliance on the decision of the Apex Court in the case of State of Mysore Vs. K. Manche Gowda, . In this case a Constitution Bench held that it is incumbent upon the authority to give the government servant at the second stage reasonable opportunity to show cause against the proposed punishment. The point is not whether his explanation would be acceptable but whether he has been given an opportunity to give his explanation. Similar view was followed in another case of the Apex Court, The State of Punjab and Others Vs. Bakhtawar Singh and Others, , wherein it was held that the order of removal should be speaking order. An order not disclosing that authority had applied his mind to the material on record and not indicating what charges were established, the order is definitely arbitrary and can not be upheld.

12. I have given careful consideration to the arguments of the respective counsels and gone through the entire record of the lower appellate court and judgment placed before me. The lower appellate court has recorded a finding

that the inquiry report reveals that the inquiry officer did not go in all the questions and background and previous history of the entire episode which led to transfer of the employee and since these issues were wanting in the inquiry report, it was incumbent upon the disciplinary authority to consider the contention raised by the plaintiff in his representation to the show cause notice, with a view to determine whether absence on his part could be said to be "unauthorized". The order passed by the General Manager in a single sentence dated 21.11.1972 does not even remotely suggest that there was any application of mind. The lower appellate court has given a categorical finding after going critically through the inquiry report and the one sentence order of removal of the plaintiff-respondent while making a declaration that the order of removal is null and void.

13. In view of what has been stated above, the submission of the learned Standing Counsel for the Union of India that the impugned judgment and decree suffers from substantial error as the show cause notice accompanied the inquiry report and it need not be very detailed one is not acceptable. Assuming the argument of the learned Counsel to be correct, even then since the show cause notice was issued to which the plaintiff had given a representation including the objection relating to the quantum of punishment, disciplinary authority was liable to record his reasonings before passing the impugned order which related to a back date. In case the contention of the counsel for the Union of India is accepted that the expression by the disciplinary authority that "he agrees with the inquiry report", is sufficient, then the entire exercise of issuing show cause notice and asking for reply and then the final order is a futile exercise. The rules applicable in the case of the plaintiff provide that after completion of the inquiry, the delinquent employee has to be informed about the conclusions and the proposed punishment and thereafter when a representation is made, the disciplinary authority is liable to take an independent view.

14. The order which has been declared void by the lower appellate court does not suffer from any substantial error of law and in fact no order in the eyes of law. It is evident that there is no application of mind, therefore, I am of the view that the substantial question of law raised in this second appeal is without any merit and does not call for any interference.

15. The declaration to the effect that the order of removal w.e.f. 29.11.1971 as void, is absolutely legal, valid and in accordance with principles laid down by the Apex Court as well as this High Court. However, I feel that since the plaintiff has been awarded all the benefits, though admittedly he has not worked for that period, he is entitled to half salary only along with other benefits and allowances from the date of his removal i.e. 29.11.1971 till the date of his retirement and also entitled to the post retirement benefits on the last drawn salary. The appeal is accordingly dismissed. There shall be no order as to costs.