
(2012) 04 UK CK 0064
In the Uttarakhand High Court
Case No : Writ Petition No. 12 of 2008 (S/S)

Umesh Chandra

APPELLANT

Vs

Registrar, Co-operative Societies, Uttarakhand and Others

RESPONDENT

Date of Decision : 17-04-2012

Acts Referred:

Constitution of India, 1950 — Article 14
Uttar Pradesh Co-operative Societies Employees Service Regulations, 1975 —
Regulation 85

Citation : (2013) 2 UC 1022

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Manoj Tiwari, assisted by Mr. Alok Mehra, for the Appellant; N.S. Pundir, Brief Holder for the State-respondent no. 1 and Mr. Kailash Tiwari, Advocate for the respondent nos. 2, 3 and 4, for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Tarun Agarwala, J.—The petitioner while serving as an Assistant Accountant in a Co-operative Bank was suspended by an order of 4th of May, 2006. Subsequently, a charge sheet dated 21/24.7.2006 was issued levelling five charges. The petitioner was required to submit a reply, which he did, denying the charges. The disciplinary authority found that the explanation submitted was not satisfactory and accordingly appointed an Enquiry Officer to conduct an enquiry. The petitioner, accordingly, appeared before the Enquiry Officer and submitted his reply denying the charges. In paragraphs 10, 11, 12, 13 and 14, the petitioner contended that the Enquiry Officer proceeded with the enquiry in his own fashion, without involving the petitioner, and submitted an ex-parte report. No personal hearing was given to the petitioner at any stage of the enquiry nor any witness was examined nor any opportunity was given to cross-examine the witness nor any opportunity was given to rebut the documents examined by the Enquiry Officer. It was contended that the entire procedure adopted by the Enquiry Officer was against Regulation 85 of The U.P. Cooperative Societies

Employees Service Regulation, 1975 (hereinafter referred to as the Regulations). It was also alleged that the enquiry report was submitted and the petitioner was not given an opportunity to show cause against the enquiry nor any copy of the enquiry report was submitted. The disciplinary authority, after considering the enquiry report, issued an order of penalty withholding one increment and treating the period of suspension as not spent on duty and further holding that the petitioner would not be entitled for any salary during the suspension period other than the subsistence allowance which he had received. The petitioner, being aggrieved, filed a departmental appeal, which was partly allowed to the extent that the period of suspension would be treated as one on duty. The petitioner has thereafter filed the present writ petition. The counter affidavit of the respondents reveals the sordid details of the stand taken by the respondents. In paragraph 13 of the counter affidavit, it has been stated that the petitioner never approached the Enquiry Officer for providing an opportunity of personal hearing and that the enquiry report was provided to the petitioner pursuant to the information sought by him under the Right to Information Act.

2. Upon hearing Sri Manoj Tiwari, Senior Advocate assisted by Sri Alok Mehra, the learned counsel for the petitioner and Sri Kailash Tiwari, the learned counsel for the respondent nos. 2, 3 and 4, it is apparently clear that the entire procedure adopted by the respondents was per se against the principles of natural justice and in violation of the procedure provided in Regulation 85 of the Regulations.

3. The law is well settled that the principles of natural justice, as embodied in Article 14 of the Constitution, is required to be applied and made available to a delinquent servant or officer, as the case may be, at every stage of the proceedings. When a charge sheet is served upon the delinquent officer and the delinquent officer in response submits a reply denying the charges, it becomes incumbent upon the Enquiry Officer to give notice to the delinquent officer about the date, time and place of enquiry, so that the delinquent officer could produce his witness and can cross-examine the witness produced against him. This procedure was not adopted by the Enquiry Officer.

4. The Supreme Court in case of Uma Shankar Yadav vs. The Registrar of Co-operative Societies & Ors. reported in 1992 (65) FLR 675 has gone to the extent of holding that even if the employee does not reply to the charge sheet, it was still incumbent upon the enquiry officer to give notice to the employee about the date, time and place of enquiry, so that he could produce his witness and cross-examine the witnesses produced against him, failing which the rules of natural justice would be violated.

5. In Subhash Chandra Sharma vs. Managing Director & Anr. reported in 2000 (1) UPLBEC 541 it was held that even if the petitioner fails to present himself before the enquiry officer, even then the enquiry officer is required to conduct an ex parte enquiry.

6. Similarly, in 1996 VII AD 821 (SC) , the Supreme Court held that even where the employee does not file a reply, nonetheless, the enquiry officer is not absolved from his duty to hold an ex parte enquiry to find out whether the charge has been proved or not.

7. In *The Imperial Tobacco Company of India Ltd. Vs. Its Workmen*, it was held that even where the ex parte proceedings are going on against the employee, the enquiry is required to be completed and evidence is required to be taken.

8. In the light of the aforesaid, the stand taken by the respondents, as disclosed in paragraph 13 of the counter affidavit, gives a clear indication of the mindset of the respondents in violating the principles of natural justice. The fact that the respondents have alleged that the petitioner never approached the Enquiry Officer, for being given an opportunity of hearing, is indicative of the violation being done by the respondents with regard to adhering the principles of natural justice. Once the petitioner has submitted his reply, it was the duty of the Enquiry Officer to intimate the date, time and place of enquiry to enable the petitioner to be present and defend himself, cross-examine the witnesses, if any, of the department and produce his own witnesses in his defence. The Court finds from the perusal of the enquiry report that an ex parte enquiry was conducted by the Enquiry Officer without involving the petitioner. So much so, the disciplinary authority also considered the enquiry report without supplying a copy of the same to the petitioner. Non supply of the enquiry report is again violation of the principles of the natural justice, as held by the Supreme Court in the case of *Union of India and others Vs. Mohd. Ramzan Khan*, , wherein the Supreme Court held that it is incumbent upon the disciplinary authority to supply a copy of the enquiry report before awarding the punishment.

9. In the light of the irregularities committed by the respondents, the Court is of the opinion that the impugned order cannot be sustained. The Court further finds that upon a perusal of the charge sheet the suspension order was grossly disproportionate to the gravity of the charges. The suspension order should only be issued when a major penalty is to be imposed. In the present case, the Court finds that the charges were not such, which warranted suspension of the petitioner. In the light of the aforesaid, the suspension order as well as the impugned order, imposing penalty, cannot be sustained and are quashed. The writ petition is allowed. The petitioner would be entitled for the arrears of his salary during the suspension period. It would be open to the authorities to pursue the disciplinary proceedings afresh in accordance with law and in light of the observations made above.