
(2015) 08 AHC CK 0084
In the Allahabad High Court
Case No : Special Appeal No. 538 of 2015

Union of India and Others	Vs	APPELLANT
Ram Nagina Yadav		RESPONDENT

Date of Decision : 10-08-2015

Acts Referred:

Citation : (2015) 7 ADJ 603 : (2015) 113 ALR 660 : (2015) 3 UPLBEC 2235

Hon'ble Judges : D.Y. Chandrachud, C.J.;Yashwant Varma, J

Bench : Division Bench

Advocate : Praveen Kumar Srivastava and A.K. Gaur, for the Appellant; Sanjay Kumar, Advocates for the Respondent

Final Decision : Disposed off

Judgement

1. The Union of India and its officers in the Railway Protection Force are in this special appeal against the judgment of the learned Single Judge dated 29 April 2015 quashing and setting aside the orders of the disciplinary authority dismissing the respondent from service and the orders passed thereafter in appeal and revision. The respondent was posted as a constable in the 2nd Battalion of the Railway Protection Special Force at Gorakhpur and was deployed for the maintenance of law and order at the State Police Station at Pakshi Vihar at Unnao. The allegation is that at about 13:30 hours on 4 November 1990, he was found to be in a state of intoxication. The Assistant Commandant of the 2nd Battalion placed the respondent under suspension on 7 November 1990. On 30 November 1990, a charge sheet was issued to him under Rule 153 of the Railway Protection Force Rules, 19871. On 1 November 1991, the respondent was subjected to the penalty of removal from service against which an appeal and revision were dismissed on 22 May 1992 and 15 March 1993 respectively.

2. The respondent filed two writ petitions in order to challenge the order of removal and the orders passed by the appellate and revisional authorities. The writ petition challenging the order of removal and the appellate and revisional orders was allowed by setting aside the penalty imposed upon the respondent.

The learned Single Judge noted that there were several defects in the inquiry, including the following:

"(i) Neither the report of the Enquiry Officer nor the report of the disciplinary authority established that the respondent was on duty at the time when he was alleged to be found in a state of intoxication;

(ii) In the course of the inquiry report, statements recorded in the preliminary inquiry were relied upon;

(iii) Evidence in the cross examination was not discussed; and

(iv) A copy of the inquiry report was not supplied to the respondent and the same was furnished to him alongwith the punishment order as a result of which he had been deprived of his right of submitting a response thereto."

3. In this view of the matter, the learned Single Judge came to the conclusion that there had been a breach of the principles of natural justice. The learned Single Judge noted that after the Enquiry Officer had been changed, the inquiry should have begun de novo. While allowing the writ petition, the learned Single Judge granted liberty to the authorities to place the respondent under suspension and to conduct the inquiry from the stage of examination of the prosecution witnesses. The question in regard to back wages and other consequential benefits from the date of dismissal to the date of reinstatement was left to be decided by the authorities in accordance with the provisions of the Rules. Reinstatement was granted.

4. After the order of remand was passed by the learned Single Judge, a fresh Enquiry Officer was appointed namely the Assistant Commandant, J.P.L. Srivastava. In paragraphs 17, 18 and 19 of the writ petition, the respondent specifically averred that the Enquiry Officer recorded evidence afresh and his report exonerated the respondent. However, on 4 May 2006, the disciplinary authority changed the Enquiry Officer and appointed another Enquiry Officer, R.B. Sharma on the ground that he had not compared the earlier statements of three witnesses with the statement recorded in the course of the inquiry. The respondent contended that this procedure was illegal and arbitrary. The averments in paragraph 17 of the writ petition were to the following effect.

"That however, an enquiry was proceeded against the petitioner by Assistant Commandant Sri J.P.L. Srivastava. Before the Enquiry Officer statements of all the prosecution witnesses and the petitioner were recorded afresh and after the conclusion of enquiry, petitioner also submitted a brief note on 3.1.2006. After conclusion of the enquiry, Enquiry Officer submitted enquiry report before the respondent No. 3.

It may be mentioned that although the copy of the enquiry report prepared by Assistant Commandant Sri J.P.L. Srivastava was not supplied to petitioner as petitioner has reasons to believe that Enquiry Officer has exonerated the petitioner. However, when the respondents realized that petitioner has been

exonerated in the enquiry report, they wholly arbitrarily and illegally changed the Enquiry Officer and appointed another Enquiry Officer Sri R.B. Sharma vide its order dated 4.5.2006 with direction to conduct de-novo enquiry. A copy which is annexed herewith and is marked as Annexure No. 12 to this writ petition. The reasons for directing de-novo enquiry was mentioned in the order dated 4.5.2006 that earlier Enquiry Officer Sri J.P.L. Srivastava did not compare the statements of Sri M.K. Dixit, R.B. Pandey and Jiut Ram from their earlier statements recorded by the earlier Enquiry Officer nor it gave any reason for difference in their statements."

5. In response to this averment, a counter affidavit which was filed on behalf of the appellants stated that the disciplinary authority, namely the Commanding Officer of the 2nd Battalion found certain discrepancies in the report of the Enquiry Officer, J.P.L. Srivastava and ordered a de novo inquiry. Moreover, in a supplementary affidavit filed by the appellants, it was stated that the Enquiry Officer had, by his report dated 23 February 2006, held that charges levelled against the respondent had not been proved. The disciplinary authority disagreed with the inquiry report and nominated another Enquiry Officer to conduct a de novo inquiry afresh on 4 May 2006.

6. Admittedly, as the record before the Court indicates the disciplinary authority while disagreeing with the report of the Enquiry Officer and before passing its order dated 4 May 2006 did not furnish a notice to show cause to the respondent setting out the reasons on the basis of which the disciplinary authority proposed to differ with the findings of the Enquiry Officer. The position in law is that upon the submission of an inquiry report, it is open to the disciplinary authority either to accept or reject it. If the disciplinary authority proposes to differ with the Enquiry Officer, a notice to show cause has to be issued to the charge sheeted employee placing him on notice of the reasons on the basis of which the disciplinary authority disagrees with the findings of the Enquiry Officer. Evidently, this was not done and there was a breach of the principles of natural justice.

7. In fact, the submission of the learned counsel appearing on behalf of the appellants is that if there was a breach of the principles of natural justice, the appropriate order to pass would have been to direct that the proceedings be conducted from the stage at which the breach had occurred. We find merit in that contention. The order of the disciplinary authority dated 4 May 2006 differing with the report of the Enquiry Officer was passed without complying with the elementary principles of natural justice which require that the respondent be given a notice explaining the reasons for disagreeing and to allow him to respond thereto. The learned Single Judge has in the concluding part of his judgment in para 33 adverted to this aspect. However, we find from the record that the learned Single Judge has thereafter proceeded to inquire into the merits of the allegations. The learned Single Judge has also entered a finding in paragraph 32 that the inquiry report was not supplied to the respondent but the same was furnished to him alongwith the punishment order and that the

respondent did not have any occasion to see the report or to give any reply to the finding before he was punished. This is evidently not with reference to the report of the inquiry which ultimately led to the removal from service. The learned counsel appearing on behalf of the respondent has also fairly accepted that this finding in paragraph 32 of the judgment of the learned Single Judge relates to an earlier stage of the inquiry which was the subject matter of the judgment of a learned Single Judge of this Court dated 4 March 2005.

8. Consequently and for these reasons, we are of the view that once the learned Single Judge had come to the conclusion that a violation of principles of natural justice had occurred during the course of the inquiry, the appropriate course of action would have been to restore the inquiry to the stage at which the violation had occurred so as to enable the disciplinary authority to proceed in accordance with law. As we have noted earlier, the violation of the principles of natural justice occurred when the disciplinary authority passed an order on 4 May 2006 disagreeing with the report of the Enquiry Officer without furnishing to the respondent its reason for disagreement and without allowing to the respondent an opportunity of responding to those reasons.

9. Accordingly, while the order of removal from service and in consequence the order of appellate and revisional authorities would have to be set aside, it would be proper to grant an opportunity to the disciplinary authority to conclude the disciplinary proceedings from the stage at which the violation of the principles of natural justice had occurred.

10. For these reasons, we issue the following directions:

"(i) The order of removal which has been passed against the respondent on 14 August 2007 and 23 February 2007 and the orders of the appellate and revisional authorities are quashed and set aside;

(ii) The disciplinary authority shall proceed to conclude the proceedings from the stage at which the breach of the principles of natural justice had occurred. In view thereof, if the disciplinary authority proposes to disagree with the enquiry report submitted by the Enquiry Officer, J.P.L. Srivastava exonerating the respondent, the disciplinary authority would be at liberty to issue a notice to the respondent indicating its reasons for disagreement by allowing the respondent an opportunity to submit his objections thereto;

(iii) The disciplinary authority shall pass fresh orders in accordance with law no later than within a period of three months from the date of receipt of a certified copy of this order after complying with the principles of natural justice; and

(iv) The issue of back wages and consequential benefits if any, payable to the respondent shall abide by the result of the disciplinary proceedings which shall be concluded within the period stipulated above."

11. The special appeal is, accordingly, disposed of. There shall be no order as to costs.