

(2016) 11 AHC CK 0060
In the Allahabad High Court
Case No : Service Bench No. 28207 of 2016

U.P. Power Corporation Ltd.

APPELLANT

Vs

Sanjay Gupta

RESPONDENT

Date of Decision : 29-11-2016

Acts Referred:

Citation : (2017) 1 ADJ 328 : (2017) 1 ESC 395

Hon'ble Judges : Krishna Murari and Raghvendra Kumar, JJ.

Bench : Division Bench

Advocate : Neerav Chitravanshi, Advocate, for the Petitioner; A.K. Srivastava and S.K. Bajpai, Advocates, for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner and Sri Ashish Kumar Srivastava, for the respondent.
2. With the consent of the learned counsel for the parties, the writ petition is being finally disposed of without calling for a counter affidavit.
3. Aggrieved by the order imposing punishment of Censure entry and withholding of one increment with non cumulative effect awarded in disciplinary proceedings, the respondent filed a claim petition before the U. P. Public Services Tribunal.
4. The Tribunal vide impugned order dated 4.7.2016 allowed the claim petition and set aside the punishment order.
5. Learned counsel appearing for the petitioner-Corporation submits that when the Tribunal returned a finding that copy of the enquiry report was not supplied to the respondent and no opportunity to submit an explanation was given, in the circumstances it was incumbent upon the Tribunal to have remanded the matter back to the Disciplinary Authority to be started de novo from that stage. However, a manifest error of law was committed by the Tribunal in allowing the claim petition in to and setting aside the punishment order.

6. In reply, learned counsel appearing for the respondent-employee has tried to justify the impugned order by submitting that the charges were not made out against him and since the copy of the enquiry report was not supplied to him and he was not given an opportunity to submit a reply to the same, the entire proceedings were vitiated and has rightly been set aside by the Tribunal and the impugned order does not call for any interference.

7. We have considered the arguments advanced on behalf of rival parties and perused the record.

8. The law in this connection is well settled by pronouncements of the Hon'ble Apex Court in the case of Managing Director, E.C.I.L. v. B. Karunakar, AIR 1994 SC 1074, Hiran Mayee Bhattacharyya v. Secretary, S. M. School for Girls and others, (2002) 10 SCC 293, U.P. State Spinning Company Ltd v. R. S. Pandey and others, (2005) 8 SCC 264. The Hon'ble Apex Court has held that once the Court set aside the order of punishment on the ground that enquiry was not properly conducted the Court cannot reinstate an employee, but it must remand the matter to the Disciplinary Authority for it to conduct the enquiry from the point it stood vitiated and conclude the same.

9. Learned counsel for the respondent next argued that since there has been considerable delay in initiation of the disciplinary proceedings itself, the proceedings are liable to be quashed on this ground alone and there is no justification to start the proceedings de novo.

10. From the record we find that the charges levelled against the respondent pertains to the year 2002-03 and are in respect of certain irregularities committed by him as a member of the Purchase Committee. Record further reveals that charge sheet for the alleged charges were issued on 6.8.2010. Thus, there has been a delay about 7 years in initiation of the disciplinary proceedings against the respondent.

11. The question whether the delay in initiation or conclusion of the disciplinary proceedings against the delinquent employee can constitute a basis for quashing the proceedings is no longer res integra. Hon'ble Apex Court in the case of State of Madhya Pradesh v. Bani Singh and another, AIR 1990 SC 1308 while considering the issue has held as under :"

"4. The appeal against the order dated 16.12.1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned Counsel. The irregularities which were the subject-matter of the enquiry is said to have taken place between the years 1975-1977.

It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April, 1977 there was doubt about the involvement of the officer in the said

irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal."

12. In the case of *M.V. Bijlani v. Union of India*, AIR 2006 SC 3475, the Hon'ble Supreme Court reiterated the same view by making following observations in paragraph 16 of the reports :

"The Tribunal as also the High Court failed to take into consideration that the disciplinary proceedings were initiated after six years and it continued for seven years and thus initiation of disciplinary proceedings as also continuance thereof after such a long time evidently prejudiced the delinquent officer."

13. In the case of *Secretary, Forest Department & others v. Abdul Rasul Chowdhury*, AIR 2009 SC 2925, the Apex Court while dealing with the issue held that delay in concluding the domestic enquiry is not always fatal and depends upon facts and circumstances of each case. It has further been observed that unexplained protracted delay on the part of the employer may be one of the circumstances in not permitting the employer to continue with the disciplinary proceedings, and at the same time, if delay is satisfactorily explained then the proceedings should be permitted to continue.

14. The twin issues of enquiry proceedings being vitiated due to non supply of enquiry report and delay in initiation and completion of disciplinary proceedings being raised in this case came for consideration before the Hon'ble Supreme Court in the case of *Chairman, L.I.C. of India v. A. Masilamani* 2013 (31) L.C.D. 20 and it has been held as under :

"8. In view of the issues raised by the learned counsel for the parties, the following questions arise for our consideration :

i) When a court/tribunal sets aside the order of punishment imposed in a disciplinary proceeding on technical grounds, i.e., nonobservance of statutory provisions, or for violation of the principles of natural justice, then whether the superior court, must provide opportunity to the disciplinary authority, to take up and complete the proceedings, from the point that they stood vitiated and;

ii) If the answer to question no.1 is, that such fresh opportunity should be given, then whether the same may be denied on the ground of delay in initiation, or in conclusion of the said disciplinary proceedings.

9. It is a settled legal proposition, that once the Court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the Court cannot reinstate the employee. It must remit the concerned case to the disciplinary authority, for it to conduct the enquiry from the point that it stood

vitiated, and conclude the same.

10. The second question involved herein, is also no longer res integra.

Whether or not the disciplinary authority should be given an opportunity, to complete the enquiry afresh from the point that it stood vitiated, depends upon the gravity of delinquency involved. Thus, the court must examine, the magnitude of misconduct alleged against the delinquent employee. It is in view of this, that courts/tribunals, are not competent to quash the charge-sheet and related disciplinary proceedings, before the same are concluded, on the aforementioned grounds.

The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is de hors the limitation of judicial review. In the event that, the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by court. The same principle is applicable, in relation to there being a delay in conclusion of disciplinary proceedings."

15. Thus in so far as first issue raised in this petition as already discussed above, the same stands settled by catena of decisions that in case disciplinary proceedings are found to be vitiated on any technical ground such as nonobservance or violation of any statutory provisions or violation of principles of natural justice, the matter is to be remitted back to the disciplinary authority to conduct the enquiry from the stage it stood vitiated and to bring it to a logical end by concluding the same.

16. With respect to second issue being raised, in accordance with the principles laid down by the Hon'ble Apex Court, the delay in itself alone cannot constitute a ground to quash the disciplinary proceedings. The facts and circumstances of the case needs to be examined considering the gravity and magnitude of the charges levelled, and whether the delay is unexplained and has resulted in causing any prejudice to the delinquent employee.

17. In the light of the above mentioned settled legal propositions, we are of the considered view that impugned order dated 4.7.2016 passed by U. P. Public Services Tribunal (Annexure-1 to the writ petition) is not liable to be sustained and is hereby set aside, and the matter is remitted back to the disciplinary authority to examine the issue whether it is still required to hold a de novo enquiry from the stage it stood vitiated i.e. non supply of the enquiry report or is liable to be dropped on the ground of delay. The disciplinary authority while taking the decision shall bear in mind the gravity of the charges levelled, as also the reasons for delay in initiation of the disciplinary proceedings and prejudice, if any, caused to delinquent employee on account of delay in initiating the disciplinary proceedings.

18. However, in case the Disciplinary Authority takes a view that the facts and circumstances justify a de novo enquiry from the stage it stood vitiated, it may proceed and conclude the same expeditiously.

19. Writ petition stands allowed with the aforesaid observations.