

(2013) 09 AHC CK 0165

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 34441 of 1996

Veer Singh

APPELLANT

Vs

Deputy Registrar Co-Operative Societies

RESPONDENT

Date of Decision : 30-09-2013

Acts Referred:

Citation : (2014) 5 ADJ 223 : (2014) 3 UPLBEC 1976

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Judgement

Sudhir Agarwal, J.—Heard Sri A.B.L. Gaur, learned counsel for the petitioner and Sri Abishek Mishra holding brief of Sri K.N. Mishra learned counsel for the respondent. This writ petition is directed against the order dated 31.7.1996, whereby punishment of dismissal has been given to the petitioner after alleged departmental enquiry conducted against him in the matter of certain charges relating to embezzlement and absence etc.

2. It is contended that no oral enquiry has been held by the Enquiry Officer/ Enquiry Committee and merely for the reasons that the petitioner could not attend proceeding before the committee on the date fixed. Enquiry Committee/ Officer submitted report and thereupon the impugned order of punishment has been passed.

3. Learned counsel for the respondent submitted that disciplinary authority had given opportunity of hearing to the petitioner and therefore, it cannot be said that adequate opportunity of defence was not given.

4. Admittedly, conditions of services of petitioner is governed by U.P. Co-operative Societies Employees Service Regulations, 1975 (for short "the Regulations, 1975"), framed in exercise of power u/s 122A of the U.P. Co-operative Societies Act, 1965 (for short "Act, 1965"). Regulation 85 of.

5. A detailed procedure for disciplinary proceedings is provided in Regulation 85.

It is apposite at this stage to set out Rule, so far as material:

85. Disciplinary proceedings.--(i) The disciplinary proceedings against an employee shall be conducted by the Inquiry Officer (referred to in Clause (iv) below) with due observance of the principles of natural justice for which it shall be necessary-

(a) The employee shall be served with a charge-sheet containing specific charges and mention of evidence in support of each charge and he shall be required to submit explanation in respect of the charges within reasonable time which shall not be less than fifteen days;

(b) Such an employee shall also be given an opportunity to produce at his own cost or to cross-examine witnesses in his defence and shall also be given an opportunity of being heard in person, if he so desires;

(c) If no explanation in respect of charge-sheet is received or the explanation submitted is unsatisfactory, the competent authority may award him appropriate punishment considered necessary.

(ii) xxxx

6. A close look at the gamut of the aforesaid Rule instantly brings out that observance of procedural safe guard is statutory requirement.

7. A long line of decisions have settled that even if the statutes are silent or there are no positive words requiring observance of Natural Justice, yet it would apply unless the statutes specifically provides its exclusion. In the case in hand the rule itself has used the word "Natural Justice".

8. It is vehement contention of learned counsel for the petitioner that as procedure for major penalty was initiated, it was mandatory on the part of respondents authority to hold oral inquiry in the matter, but no such inquiry was conducted, therefore, entire proceedings including punishment order is vitiated.

9. The question that calls for determination is whether oral inquiry is necessary when the employer intends to impose major punishment.

10. I may usefully refer to a discussion on this issue by a recent judgments of the Supreme Court and a series of decisions of this Court. The authorities in abundance are available of this Court.

11. The Supreme Court in the State of U.P. and Others Vs. Saroj Kumar Sinha, , held that:

An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been

observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

When a departmental enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a Government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

12. Similar view was taken in *Roop Singh Negi Vs. Punjab National Bank and Others*,

Indisputably, a departmental proceeding's a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, *inter alia*, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

13. This Court has also taken same view in *Subhash Chandra Sharma Vs. Managing Director, U.P. Co-op. Spg. Mills Federation Ltd., Kanpur* and another,

In our opinion after the petitioner replied to the charge-sheet a date should have been fixed for the enquiry and the petitioner should have been intimated the date, time and place of the enquiry and on that date the oral and documentary evidence against the petitioner should have been led in his presence and he should have been given an opportunity to cross-examine the witnesses against him and also he should have been given an opportunity to produce his own witnesses and evidence. If the petitioner in response to this intimation had failed to appear for the enquiry then an *ex parte* enquiry should have been held but the petitioner's service should have not been terminated without holding an enquiry. In the present case it appears that no regular enquiry was held at all. All that was done that after receipt of the petitioner's reply to the charge-sheet he was given a show-cause notice and thereafter the dismissal order was passed. In our opinion this was not the correct legal procedure and there was violation of the rules of natural justice. Since no date for enquiry was fixed nor any enquiry held in which evidence was led in our opinion the impugned order is clearly violative of natural justice.

In *Meenglas Tea Estate Vs. Its Workmen*, , the Supreme Court observed "It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way to cross-examination as he desires. Then he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character and this requirement must be substantially fulfilled before the result of the enquiry can be accepted.

In *S.C. Girotra Vs. United Commercial Bank (UCO Bank) and Others*, , the Supreme Court set aside a dismissal order which was passed without giving the employee an opportunity of cross-examination. In *State of Uttar Pradesh and Another Vs. Sri C.S. Sharma*, , the Supreme Court held that omission to give opportunity to the officer to produce his witnesses and lead evidence in his defence vitiates the proceedings. The Court also held that in the enquiry witnesses have to be examined in support of the allegations, and opportunity has to be given to the delinquent to cross-examine these witnesses and to lead evidence in his defence. In *The Punjab National Bank Ltd. Vs. Its Workmen*, the Supreme Court held that in such enquiries evidence must be recorded in the presence of the charge-sheeted employee and he must be given an opportunity to rebut the said evidence. The same view was taken in *Associated Cement Co. Ltd. Vs. The Workmen and Another*, and in *The Tata Oil Mills Co., Ltd. Vs. Workmen and Another*, Even if the employee refuses to participate in the enquiry the employer cannot straightaway dismiss him, but he must hold an ex parte enquiry where evidence must be led vide *The Imperial Tobacco Company of India Ltd. Vs. Its Workmen*, *Uma Shankar Yadav Vs. Registrar of Coop. Societies and Others*,

14. The above judgment was followed by a Division Bench in *Subhas Chandra Sharma v. U.P. Co-operative Spinning Mills and others*, 2001 (2) UPLBEC 175, the Court held thus:

In cases where a major punishment proposed to be imposed an oral enquiry is a must, whether: the employee request, for it or not. For this it is necessary to issue a notice to the employee concerned intimating him date, time and place of the enquiry as held by the Division Bench of this Court in *Subhash Chandra Sharma Vs. Managing Director, U.P. Co-op. Spg. Mills Federation Ltd., Kanpur and another*, against which SLP has been dismissed by the Supreme Court on 16-8-2000.

15. One - of us (Justice Sudhir Agarwal) in *Rajesh Prasad Mishra Vs. The Commissioner Jhansi Division and Others*, observed as under after detail analysis:

Now coming to the question, what is the effect of non-holding of oral inquiry, I find that, in a case where the inquiry officer is appointed, oral inquiry is mandatory. The charges are not deemed to be proved suo motu merely on

account of levelling them by means of the charge-sheet unless the same are proved by the department before the inquiry officer and only thereafter it is the turn of delinquent employee to place his defence. Holding oral enquiry is mandatory before imposing a major penalty, as held by Apex Court in 1996 VII AD 821 (SC) as well as by a Division Bench of this Court in Subhash Chandra Sharma Vs. Managing Director, U.P. Co-op. Spg. Mills Federation Ltd., Kanpur and another,

16. The question as to whether non holding of oral inquiry can vitiate the entire proceeding or not has also been considered in detail by a Division Bench of this Court (in which I was also a member) in the case of Salahuddin Ansari v. State of U.P. and others, 2008 (3) ESC 1667 and the Court has clearly held that non holding of oral inquiry is a serious flaw which vitiates the entire disciplinary proceeding including the order of punishment.

17. The Division Bench of this Court in the case of Mahesh Narain Gupta Vs. State of U.P. and Others, , had also occasion to deal with the same issue. It held:

At this stage, we are to observe that in the disciplinary proceedings against a delinquent, the department is just like a plaintiff and initial burden lies on the department to prove the charges which can certainly be proved only by collecting some oral evidence or documentary evidence, in presence and notice charged employee. Even if the department is to rely its own record/document which are already available, then also the enquiry officer by looking into them and by assigning his own reason after analysis, will have to record a finding that those documents are sufficient enough to prove the charges.

In no case, approach of the Enquiry Officer that as no reply has been submitted, the charge will have to be automatically proved can be approved. This will be erroneous. It has been repeatedly said that disciplinary authority has a right to proceed against delinquent employee in ex parte manner but some evidence will have to be collected and justification to sustain the charges will have to be stated in detail. The approach of the enquiry officer of automatic prove of charges on account of non filing of reply is clearly misconceived and erroneous. This is against the principle of natural justice, fair play, fair hearing and, thus, enquiry officer has to be cautioned in this respect.

18. In another case in Dr. Subhash Chandra Gupta Vs. State of U.P., the Division Bench of this Court after survey of law on this issue observed as under:

It is well-settled that when the statute provides to do a thing in a particular manner that thing has to be done in that very manner. We are of the considered opinion that any punishment awarded on the basis of an enquiry not conducted in accordance with the enquiry rules meant for that very purposes is unsustainable in the eye of law. We are further of the view that the procedure prescribed under the inquiry rules for imposing major penalty is mandatory in nature and unless those procedures are followed, any outcome inferred thereon will be of no avail unless the charges are so glaring and unrefutable which does

not require any proof. The view taken by us find support from the judgment of the Apex Court in 1996 VII AD 821 (SC) as well as by a Division Bench of this Court in Subhash Chandra Sharma Vs. Managing Director, U.P. Co-op. Spg. Mills Federation Ltd., Kanpur and another,

19. Similar view has been taken in a recent decision of a Division Bench of this Court (of which I was also a member) in Sohan Lal Vs. U.P. Co-Operative Federation Ltd. and Another,

20. The principle of law emanating from the above judgments are that initial burden is on the department to prove the charges. In case of procedure adopted for inflicting major penalty, the department must prove the charges by oral evidence also.

21. It is trite law that the departmental proceedings are quasi-judicial proceedings. The Inquiry Officer functions as quasi-judicial officer. He is not merely a representative of the department. He, has to act as an independent and impartial officer to find out the truth. The major punishment awarded to an employee visit serious civil consequences and as such the departmental proceedings ought to be in conformity with the principles of natural justice. Even if, an employee prefers not to participate in the enquiry the department has to establish the charges against the employee by adducing oral as well as documentary evidence. In case the charges warrant major punishment then the oral evidence by producing the witnesses is necessary.

22. I may hasten to add that the a above mentioned law is subject to certain exception. When the facts are admitted or no real prejudice has been caused to employee or no other conclusion is possible, in such situation the order shall not be vitiated. Reference may be made to the some of the decision of Supreme Court in K.L. Tripathi Vs. State Bank of India and Others, State Bank of Patiala and others Vs. S.K. Sharma, and Biecco Lawrie Ltd. and Another Vs. State of West Bengal and Another,

23. Adverting to the case in hand, it is not in dispute that the services of petitioner is governed by Regulations 1975. As the procedure laid down in Regulation 85 thereof was not followed inasmuch as no oral inquiry, as prescribed under Regulation 85 was not held, the impugned order cannot sustain and the writ petition deserves to be allowed.

24. In the result, the writ petition is allowed. The impugned orders dated 31.7.1996 (Annexure-10 to the writ petition) is hereby quashed. Petitioner shall get all consequential benefits. However, the respondents shall be at liberty to pass fresh order in accordance with law. No order as to costs.