
(2010) 03 AHC CK 0096
In the Allahabad High Court

Vidya Prasad Rao

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 16-03-2010

Acts Referred:

Citation : (2010) 03 AHC CK 0096

Hon'ble Judges : Uma Nath Singh, J;Devendra Kumar Arora, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This writ petition arises out of a judgment dated 14.08.1987 passed by U.P. Public Services Tribunal in Claim Petition No. 581 (F)/III/79 dismissing the claim petition as being devoid of merits.

2. It appears that the petitioner was working as Assistant Agriculture Inspector in the department of Agriculture and was Incharge of the Seed Store, Surajpur, Azamgarh. He had also worked at Seed Store Majhgawan, Gorakhpur in July 1971 where he continued as Incharge of Store till 1974. In 1974, he was transferred from Gorakhpur to Balia and was asked to handover the charge to his successor one Shri Srinivas Dixit. However, the transfer order was later cancelled by the Director, Agriculture, in the month of February, 1975. The petitioner was subsequently transferred from Gorakhpur to Azamgarh where he joined in August, 1976. On 04.01.1977, when he was working as Incharge of Seed Store Surajpur, was directed to handover the charge to one Shri Ram Bali Rai, Incharge Seed Store, Chaudhary Ghat and was also asked to report to District Head-quarter to which he was attached. Thereafter, District Agriculture Officer vide order dated 04.05.1977 placed the petitioner under suspension. The District Agriculture Officer was appointed as Inquiry Officer and was asked to submit his report within two months. He framed in total 9 charges against the petitioner vide charge sheet dated 06.12.1977. The petitioner was asked to give his written statement which he submitted on 28.09.1977. During the month of June, 1977, there was an audit of the accounts of Seed Store, Surajpur. It appears that the

audit report was in the nature of preliminary report regarding irregularities. On the basis of written statement given by the petitioner the District Agriculture Officer held enquiry, examined certain witnesses and thereafter recommended the punishment of dismissal from service. The Disciplinary Authority being Director, Agriculture, accepted the inquiry report and dismissed the petitioner from service.

3. We have heard learned Counsel for parties and perused the record.

4. The main submission of learned Counsel on behalf of the petitioner is that the procedure adopted during the course of inquiry is totally defective and it is a drastic deviation from the established procedure generally adopted in departmental inquiries. Learned Counsel referred to examination of witnesses which are in the form of question and answer. A reference was also made to a Supreme Court judgment reported in State of Uttaranchal and Others Vs. Kharak Singh, The Apex Court while examining various judgments and rival submissions has elucidated the conclusion in Para 11 of the judgment (supra) which on reproduction reads as under:

11. From the above decisions, the following principles would emerge:

I) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.

II) If an officer is a witness to any of the incidents which is the subject matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the Enquiry Officer. If the said position becomes known after the appointment of the Enquiry Officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.

III) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged, give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.

IV) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any." On the other hand, learned State Counsel submitted that the petitioner was given opportunity to cross examine the witnesses but he declined to do so.

5. On a careful consideration of the aforesaid submissions, we find that in terms of the judgment of Supreme Court, as above, an inquiry is not to be mere formality and any deviation from the established procedure that may cause prejudice to the interest of the petitioner would render the inquiry totally defective. In the instant case, instead of recording examination in chief of witnesses and leaving the cross-examination to the delinquent employee/

petitioner, the Inquiry Officer himself completed the examination of witnesses in question-answer form. Thus, the petitioner could not get opportunity to cross-examine witnesses. That apart, the Inquiry Officer himself recommended the punishment that would go to show an element of bias in the mind of Inquiry Officer who gave the recommendations only in order to ensure that the delinquent employee instead of being dealt with dispassionately and impartially in awarding the sentence was punished severely by the Disciplinary Authority in the manner as recommended by him. Thus, the inquiry report as well as Tribunal's judgment cannot endure in the wake of established principles as set out in the judgment of Supreme Court (supra). At this stage, learned State Counsel submitted that the State may be given liberty to initiate fresh inquiry. As the punishment order was passed way back in 1978 and since the petitioner has undergone a series of harassments on account of the departmental inquiry, we are not inclined to grant such liberty which may amount to further harassment of the petitioner.

6. Writ petition is, thus, allowed. Resultantly inquiry report, order of dismissal and recovery, all three, are hereby quashed and the impugned judgment and order dated 14.08.1987 is set-aside.