(2010) 04 AHC CK 0130

Allahabad High Court

Case No: None

Vinod Kumar Awasthi		APPELLANT
	Vs	
State of U.P. and Others		RESPONDENT

Date of Decision: April 20, 2010

Acts Referred:

- Constitution of India, 1950 - Article 14

Citation: (2010) 04 AHC CK 0130

Hon'ble Judges: S.S. Chauhan, J

Bench: Single Bench

Final Decision: Allowed

Judgement

S.S. Chauhan, J.
The present petition has been filed for quashing the order dated 02.09.2008, contained in Annexure No. 1 to the writ petition, passed by opposite party No. 1.

2. The facts in nutshell are that the petitioner was working on the post of Junior Engineer in the Lucknow Development Authority. On 01.07.2005, opposite party No. 3 on the basis of enquiry against Brahmanand Pandey, Workcharge Supervisor, Sudhir Srivastava and Brijesh Shukla, Assistant Accountants, Pradeep Kesharwani, Upper Group Assistant/ Accounts Clerk, Narendra Bhushan, Financial Controller, Paras Nath, Accounts Officer and Lalit Kishore Mehrotra, Chief Engineer along with the petitioner, held them responsible for making illegal payment to a construction company. A departmental enquiry was initiated against the petitioner by issuing a charge sheet dated 2 1.01.2006, which was served upon the petitioner on 24.01.2006. The petitioner demanded several documents from the enquiry officer in order to enable him to file effective reply to the charge sheet and the petitioner was permitted to inspect the documents on various dates and ultimately certain documents demanded by the petitioner were not found relevant to the subject and hence he was not permitted to inspect. Thereafter the petitioner

submitted reply on 20.07.2006. Considering the reply of the petitioner, the enquiry officer submitted an enquiry report dated 10.10.2006 on the basis of which opposite party No. 1 issued show cause notice, which was served upon the petitioner on 0 1.02.2007, directing him to submit his reply in respect of the findings recorded in the enquiry report. The petitioner submitted reply to the show cause notice on 03.02.2007. Thereafter opposite party No. 1 passed the dismissal order dated 02.09. 2008. Hence this writ petition.

3. Submission of learned Counsel for the petitioner is that no oral enquiry as contemplated under law was held and neither any date, time and place for holding enquiry was fixed nor the petitioner was informed in this regard. He further submits that the petitioner submitted an interim reply to the charge sheet and only on the basis of the interim reply, the enquiry report was submitted, on the basis of which dismissal order has been passed. It has also been submitted by the learned Counsel for the petitioner that in the case of one Tara Chand Pandey, who was Executive Engineer, his dismissal has been set aside on the same ground in Writ Petition No. 1321 (S/B) of 2008. In support of his contention, learned Counsel for the petitioner has placed reliance upon the judgments rendered by this Court in the cases of Kamla Charan Misra v. State of U.P. and Ors. 2009 (27) LCD 130, Radhey Kant Khare v. U.P. Cooperative Sugar Factories Federation Ltd. 2003 (21) LCD 610, Suresh Chandra Srivastava v. State of U.P. and Ors. 2008 (26) LCD 461 and Uma Shanker Yadav v. Registrar, Cooperative Societies, Lucknow and Ors. (CM Writ Petition No. 2391 of 1990 decided on May 11, 1992).

4. Learned Counsel for the opposite parties by filing counter affidavit has submitted that opportunity was given to the petitioner but he could not justify that whether any oral enquiry as contemplated under law was held.

5. I have heard learned Counsel for the parties and gone through the record.

6. The petitioner has specifically stated in paragraph-11 of the writ petition that no date, time and place for holding enquiry was fixed, neither any information was given to the petitioner in this regard. Learned Standing Counsel by filing counter affidavit has not denied the contents of paragraph- 11 of the writ petition but it has been stated that the petitioner is the Junior Engineer of U.P. Development Authority Centralised Services, therefore, the proceedings against him and one another Executive Engineer Shri Tara Chand Pandey have been initiated by the State Government. The petitioner being member of non-centralised services, the enquiry was conducted by the Lucknow Development Authority and in regard to rest of the contents of paragraph under reply, it is said that they are related to opposite party No. 2. This averment of the learned Standing Counsel goes to indicate that no date, time and place was fixed for holding enquiry as required under law and neither the petitioner was informed in this regard. Apart from it, an elaborate statement has been made in paragraph-8 of the counter affidavit wherein it has been stated that the petitioner has demanded certain documents for filing effective reply which were given to him and opportunity was also given to him to inspect the documents on 17.04.2006. Thereafter the petitioner has again demanded certain documents and he

was allowed to inspect the same. The petitioner again demanded certain documents on 01.07.2006 with deliberate intention to delay the proceedings and demanded irrelevant documents which did not find favour with the enquiry officer and those documents were not allowed to be inspected. The petitioner thereafter submitted his interim reply on 20.07.2006 and on the basis of the aforesaid reply, the enquiry report was submitted.

7. Considering the aforesaid averments made in the counter affidavit, it is clear that no date, time and place for holding enquiry was fixed and neither the petitioner was informed anything in this regard. Therefore, the order of dismissal is bad for violation of principles of natural justice and for not allowing the petitioner proper opportunity to defend himself and to adduce evidence.

8. This Court by means of various decisions has settled the law in this regard that it is incumbent upon the enquiry officer to fix date, time and place for holding enquiry and inform the delinquent employee in this regard. In the case of Kamla Charan Misra (supra), this Court has held as under:

18. In view of the settled proposition of law, since the impugned order of punishment does not disclose the material evidence on record and has been passed without assigning reasons, it is violative of principles of natural justice, hence hit by Article 14 of the Constitution of India.

19. The submission of the learned Standing Counsel that it is not necessary to assign reason does not seem to be sustainable in view of the settled provisions of law (supra). At the face of record, from the impugned order, it may not be gathered as to what were the evidence on record which had persuaded the disciplinary authority to pass the impugned order of punishment.

9. In the case of Radhey Kant Khare (supra), this Court has held as under:

7. In a Division bench of this Court in Subhash Chandra Sharma Vs. Managing Director, U.P. Co-op. Spg. Mils Federation Ltd., Kanpur and another, in which one of us (Hon''ble M. Katju, J.) was a member, this law has been laid down. The law is as follows:

8. After a charge sheet is given to the employee an oral enquiry is a must, whether the employee requests for it or not. Hence a notice should be issued to him indicating him the date, time and place of the enquiry. On that date the oral and documentary evidence against the employee should first be led in his presence vide Associated Cement Co. Ltd. Vs. The Workmen and Another, Ordinarily, if the employee is examined first it is illegal vide Anand Joshi v. MSFC 1991 LIC 1666 Bom. , S.D. Sharma Vs. Trade Fair Authority of India and Others, Central Railway Vs. Raghubir Saran, No doubt in certain exceptional cases the employee may be asked to lead evidence first, vide Employers of Firestone Tyre and Rubber Co. Ltd. Vs. Their Workmen, but ordinarily the rule is that first the employer must adduce his evidence. The reason for this principle is that the charge sheeted employee should not only know the charges against him but should also know

the evidence against him so that he can properly reply to the same. Where no witnesses were examined and no exhibit or record is made but straightaway the employee was asked to produce his evidence and documents in support of his case it is illegal vide P.C. Tohomas v. Mutholi Co-operative Society Ltd. 1978 LIC 1428 Ker , and Meenglas Tea Estate Vs. Its Workmen,

10. In Meenglas Tea Estate Vs. Its Workmen, the Supreme Court observed "It is an elementary principle that a person who is required to answer the 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 of 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 if the result of the enquiry can be accepted.

11. In S.C. Girotra Vs. United Commercial Bank (UCO Bank) and Others, the Supreme Court set aside the dismissal order which was passed without giving the employee an opportunity of cross examination. In State of U.P. v. C.S. Sharma AIR 1968 SC 158 the Supreme Court held that omission to give opportunity to an employee to produce his witnesses and lead evidence in his defence vitiates the proceedings. The Court also held that in the enquiry the witnesses have to be examined in support of the allegations and opportunity has to be given to the delinquent to cross examine those 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 presence of the charge sheeted employee and he must be given opportunity to rebut such evidence.

10. In the case of Suresh Chandra Srivastava (supra), this Court has held as under:

10. From the perusal of the judgments relied upon by the petitioner"s counsel (supra), it is evident that according to the law settled by Hon"ble Apex Court, it is always incumbent upon the Enquiry Officer to record oral evidence with liberty to the delinquent employee to cross-examine such witnesses. After the evidence adduced by the Department to prove the charges, it is also necessary that the delinquent employee be given the opportunity to lead evidence in defence. In the case of Radhey Kant Khare (supra) after considering various pronouncements of Hon"ble the Apex Court and this Court, a Division Bench of this Court has held that after charge sheet is given to an employee, oral enquiry is must. It is immaterial whether the employee makes request for it or not. Meaning thereby, whether an employee submits reply to the charge sheet or not, or even if an employee submits reply to the charge sheet, it is always incumbent upon the Enquiry Officer to record oral evidence in the presence of the delinquent employee. In case, the charged employee is not present or does not cooperate with the enquiry proceedings, even then it is necessary for the Enquiry Officer to record the statement of the witnesses orally by proceeding ex parte.

11. In the case of Uma Shanker Yadav (supra), this Court has held as under:

6. The impugned order states that the enquiry report was sent by the Enquiry Officer by his letter dated 16-1-1989 which was received in the office of the Deputy Registrar on 21-1-1989. It is not clear whether this enquiry was a regular enquiry or a preliminary enquiry. Even assuming that it was a regular enquiry, it was necessary that the notice of the enquiry should have been sent to the petitioner. In my opinion, even if the accused employee does not send his reply to the charge- sheet, the Enquiry Officer is not absolved from his duty to send a notice to the accused informing him about the date, time and place of the enquiry. In paragraph 12 of the writ petition there is a clear averment that the petitioner was not informed about any date of holding of the enquiry. In paragraph 13 it is stated that without holding any enquiry, or providing any opportunity of being heard, the petitioner was dismissed.

7. It appears that the respondents were under a misconception about the law that if an accused employee does not reply to the charge-sheet then he need not be given opportunity of hearing in the enquiry. In my opinion, even if it is correct that the petitioner did not submit any reply to the charge-sheet, it was incumbent on the Enquiry Officer to have sent a notice to the petitioner informing him about the date, time and place of the enquiry, so that the petitioner could produce his witnesses, and cross examine the witnesses against him. Since this was not done, the Rules of natural justice have been violated.

12. Learned Counsel for the petitioner has also relied upon a Division Bench judgement of this Court passed in Writ Petition No. 1321 (S/B) of 2008, Tara Chand Pandey v. State of U.P. and Ors. wherein petitioner- Tara Chand Pandey was identically situated and also the same point was involved and the Division Bench proceeded to dispose of the writ petition by quashing the order of dismissal.

13. In view of what has been indicated hereinabove and the findings recorded, the order of dismissal cannot be sustained and is liable to be quashed.

14. Now the question crops up as to what will be the position of the petitioner after setting aside the dismissal order. This contingency has been considered by the Apex Court in the case of N.T.C. (WBAB and O) Ltd. and Another Vs. Anjan K. Saha, The Apex Court has held that where the dismissal order is set aside on technical ground the following procedure is to be adopted:

As a result of the discussion aforesaid, this appeal preferred by the employer is partly allowed. The impugned orders of the High Court to the extent they direct reinstatement in service of the respondent with full monetary dues are set aside. It is directed that in accordance with the legal position explained in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., (in paragraph 31 as quoted above), there would be a formal reinstatement of the employee for the limited purpose of enabling the employer to

proceed with the enquiry from the stage of furnishing him with the copy of the enquiry report. The employer can place him under suspension for completing the enquiry. After conclusion of the enquiry in the manner as directed in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., if the employee is exonerated, the authority shall decide according to law how the intervening period from the date of his dismissal to the date of his reinstatement shall be treated and what consequential benefits should be granted. If on the contrary, the employee is found to be guilty, before taking final decision he should be heard on the proposed penalty in accordance with Clause 14 (4) (C) of the Model Standing Orders on the quantum of punishment.

15. The writ petition is accordingly allowed. The order of dismissal dated 02.09.2008, contained in Annexure No. 1 to the writ petition, is hereby quashed. The opposite parties will be at liberty to proceed afresh against the petitioner from the stage of filing of his reply and hold an enquiry in accordance with law after fixing date, time and place and informing the petitioner in this regard. The petitioner shall be reinstated formally for the purpose of holding enquiry. He shall not be entitled to back wages nor he shall be assigned the work. The enquiry proceedings shall be concluded within a period of four months from the date a certified copy of this order is produced before the authority concerned. The petitioner is directed to cooperate with the enquiry.