Sohan Lal Vs U.P. Co-Operative Federation Ltd. and Another

Court: Allahabad High Court

Date of Decision: Jan. 11, 2013

Acts Referred: Constitution of India, 1950 â€" Article 226
Uttar Pradesh Co-operative Societies Act, 1965 â€" Section 2(a4)

Citation: (2013) 6 ADJ 250 : (2013) 5 ALJ 478 : (2013) 139 FLR 723

Hon'ble Judges: Sudhir Agarwal, J; P.K.S. Baghel, J

Bench: Division Bench

Advocate: Vikram D. Chauhan, for the Appellant; V.C. Tripathi and S.C., for the Respondent

Final Decision: Allowed

Judgement

1. The petitioner has preferred this Writ Petition for issuance of a writ of certiorari to quash the order dated 29th August, 2000, whereby the

respondent No. 2, the Managing Director, U.P. Cooperative Federation Ltd. Lucknow has imposed minor punishment of special adverse entry

and a recovery of Rs. 3,19,984.99. A brief reference to the factual aspects would suffice.

2. The petitioner was initially appointed as Assistant Clerk in the year 1964 in U.P. Co-operative Federation Ltd., (for short ""Federation""). The

federation is registered under the U.P. Co-operative Societies Act, 1965 (for short ""Act, 1965"") and is an apex level society in terms of Section

2(a-4) of the Act. Its area of operation extends to State of U.P. The Federation has its bye-laws and the employees of the Federation are

governed by the Act, 1965 and the rules framed thereunder. The State Government in exercise of power u/s 122-Aof the Act has constituted U.P.

Co-operative Institutional Service Board. The said Service Board has framed the Regulations namely U.P. Cooperative Societies Employees

Service Regulations, 1975 (for short ""the Regulations, 1975"").

3. The petitioner earned his promotion from time to time. He was posted as a District Manager in the P.C.F. Mathura of the Federation from

15.10.1982 to 4.8.1984. The petitioner was subjected to the disciplinary proceedings. The Managing Director of the Federation placed him under

suspension vide order dated 8.8.1984 (placed on the record as Annexure-1). The petitioner preferred a writ petition No. 11340 of 1984 to

challenge suspension order dated 8th August, 1984. In the said writ petition interim order was passed on 12.11.1984 and suspension order of the

petitioner was stayed. The Managing Director appointed an Inquiry Officer on 22nd May, 1985 and a charge-sheet dated 23rd September, 1985

(Annexure-4 to the writ petition) was served on the petitioner. The charge-sheet contained as many as thirteen charges against the petitioner and

most of the charges pertain to his negligence, remissness in wheat procurement, as a consequence whereof Federation had to suffer monetary loss.

The petitioner''s several decision was alleged to infected with bad motives.

4. Relevant would it be to mention that the State Government had entrusted the Federation to purchase wheat from farmers to strengthen its Price

Support Scheme of essential commodities. The Federation was to act as an Agent of the State Government for the purchase of wheat during the

Rabi Crop Season 1984-85. The Federation was required to purchase wheat from different regions at its Regional and District Offices of all the

districts.

5. In view of our proposed order which we are going to pass, we need not give details of the charges and reply submitted by the petitioner.

6. The petitioner submitted reply to the charge-sheet on 15.12.1985. He denied all the charges made in the charge-sheet. The petitioner had

submitted applications (dated 12th August, 1986 and 4th December, 1986) for the change of Inquiry Officer on the ground that the Inquiry Officer

himself was involved in approving proprietor of Transport Firm who was alleged to have misappropriated food-grain of Federation, in respect of

which inquiry was conducted against petitioner. His applications did not find favour from the authority concerned. The Inquiry Officer submitted

report on 10.3.1989 to disciplinary authority, who issued a show-cause notice (Annexure-11 to the writ petition) to petitioner as to why major

penalty mentioned in the show-cause notice should not be inflicted upon him.

7. The petitioner submitted reply to the said show-cause notice on 27.11.1986 wherein took a stand that the findings of Inquiry Officer in his

report are not supported by any evidence and he was not guilty of the charges. He further stated that none of the charge has been established by

documentary evidence much less oral evidence. The Disciplinary Authority was not satisfied with the reply submitted by petitioner and directed a

recovery of Rs. 3,19,984.99 from the pay and other benefits payable to the petitioner for causing pecuniary loss to the Federation and also

awarded special adverse entry.

8. A counter-affidavit has been filed on behalf of the respondent Nos. 1 and 2. The stand taken in the counter-affidavit is that the petitioner had

illegally engaged some transporters at his own level for transportation of wheat and on account of his negligence the Contractor misappropriated

huge quantity of wheat grain. It is also stated that the petitioner was offered full opportunity in the departmental proceedings but he did not

participate in the enquiry and charges against him have been found proved.

9. We have heard Sri V.D. Chauhan, learned counsel for the petitioner Sri V.D. Chauhan and Sri V.C. Tripathi learned counsel for the respondent

Nos. 1 and 2.

10. Learned counsel for the petitioner submitted that charges against him have not been proved as no witness was examined by department and no

date, time and place was fixed by Inquiry Officer. He further urged that from perusal of the enquiry report it is established that the Inquiry Officer

has merely referred the reply of petitioner and has held him guilty. In fact no inquiry at all has been conducted in terms of the provisions of Chapter

VII of the 1975 Regulations which provides the procedure for the disciplinary proceedings and appeal.

11. Sri V.C. Tripathi learned counsel for the respondent 1 and 2 submitted that the petitioner failed to produce any evidence inspite of the fact that

he was given opportunity and as such the Inquiry Officer on the basis of the material on record and after considering the reply submitted by

petitioner had submitted enquiry report to the disciplinary authority. The petitioner was found guilty of serious negligence and as such no

interference is called for under Article 226 of the Constitution.

12. The petitioner''s service is governed by the Regulations, 1975. 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

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

14. 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.

15. 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.

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

17. We 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.

18. 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.

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

Indisputably, a departmental proceeding is 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.

20. This Court has also taken same view in Subhash Chandra Sharma Vs. Managing Director, U.P. Co-op. Spg. Mils 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 and ex parte enquiry

where evidence must be led vide The Imperial Tobacco Company of India Ltd. Vs. Its Workmen, , Uma Shankar v. Registrar, 1992(65) FLR

674 (All).

21. The above judgment was followed by a Division Bench in Subhash Chandra Sharma Vs. U.P. Co-operative Spinning Mills and Others, , 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. Mils Federation Ltd., Kanpur and another, , against which SLP has

been dismissed by the Supreme Court on 16.8.2000.

22. 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. Mils Federation Ltd., Kanpur and another, .

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.

23. 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 nonce 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 hose 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.

24. 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 out come 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. Mils

Federation Ltd., Kanpur and another, .

A Division Bench decision of this Court in the case of Salahuddin Ansari v. State of U.P. and others, 2008(3) ESC 1667, held that non holding of

oral inquiry is a serious flaw which can vitiate the order of disciplinary proceeding including the order of punishment has observed as under:

10..... Non holding of oral inquiry in such a case, is a serious matter and goes to the root of the case.

11. A Division Bench of this Court in Subhash Chandra Sharma Vs. Managing Director, U.P. Co-op. Spg. Mils Federation Ltd., Kanpur and

another, , considering the question as to whether holding of an oral inquiry is necessary or not, held that if no oral inquiry is held, it amounts to

denial of principles of natural justice to the delinquent employee. The aforesaid view was reiterated in Subhash Chandra Sharma Vs. U.P. Co-

operative Spinning Mills and Others, and Laturi Singh v. U.P. Public Service Tribunal and others, Writ Petition No. 12939 of 2001, decided on

6.5.2005.

25. The principal of law emanates 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.

26. From the perusal of the enquiry report it is demonstrably proved that no oral evidence has been led by the department. When a major

punishment is proposed to be passed the department has to prove the charges against the delinquent/employee by examining the witnesses and by

documentary evidence. In the present case no witness was examined by the department neither any officer has been examined to prove the

documents in the proceedings.

27. 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.

28. We 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, .

29. In the present case the stand taken by the respondent are that the petitioner inspite of the opportunity given to him did not participate in the

inquiry. Even if the said statement is assumed to be correct the obligation on the department to prove the charges is not discharged.

30. It was, however, pointed out on behalf of respondents that punishment actually awarded to petitioner is only recovery and censure/special

adverse entry and both being minor punishment, the punishment order ought not be interfered on the ground that no oral inquiry is held since before

imposing a minor punishment oral inquiry is not obligatory.

31. In our view the submission is thoroughly misconceived. From perusal of charge-sheet it cannot be doubted that the charges, if have been

proved, petitioner could have been liable to be awarded a major penalty. The competent authority also proceeded with an intention that charges, if

proved, may result in major penalty and it is for this reason earlier he was suspended and then he appointed an Inquiry Officer. Appointment of

Inquiry Officer for holding oral inquiry shows the intention of the disciplinary authority that the employee may suffer major penalty. In those cases

where oral inquiry is necessary i.e. cases of major penalty, inquiry officer is ordinarily appointed otherwise simply by issuing a charge-sheet and

receiving reply, a minor penalty could have been awarded, which is not the case here.

32. The intention of disciplinary authority is further clear from the fact that petitioner was placed under suspension. Suspension is permissible only

when charges are so serious so as to attract major penalty. Besides, even the show-cause notice issued to petitioner proposed a major penalty.

33. We are clearly of the view that the ultimate result shall not govern the manner of preceding disciplinary proceedings inasmuch as the authorities,

if found no proof of serious charges to justify major penalty, therefore, imposed minor penalty, it would not distract from the fact that proceedings

were initiated for major penalty and despite denying adequate opportunity to delinquent employee, i.e., by not holding oral inquiry, he was able to

show shallowness of charges which satisfy the disciplinary authority that major penalty is not warranted. If adequate opportunity would have been

afforded to delinquent employee, he could have demonstrated that no penalty whatsoever is liable to be inflicted upon him, since, the charges in

entirety, are baseless etc. It is the inception of proceedings which will govern the manner of disciplinary proceedings to be conducted and not the

ultimate result. Therefore, mere fact that lastly only minor penalty could have been inflicted upon petitioner, would not dilute his legal right that

disciplinary inquiry when initiated must have been held in conformity with procedure prescribed, attracting provisions, applicable at the inception of

inquiry.

34. After careful consideration of the facts we are of the view that the disciplinary proceedings are vitiated for the aforestated reasons. The

impugned order dated 29.8.2000 passed by respondent No. 2 herein is liable to be quashed. Accordingly it is quashed.

35. However, the order shall not preclude the disciplinary authority from proceeding afresh in the light the observations made hereinabove and in

accordance with law. With the aforesaid directions/observations and in the manner, as above, this writ petition is allowed. No costs.