

(2006) 5 AWC 4507

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 71261 of 2005

Brijesh Kumar Tripathi

APPELLANT

Vs

State of U.P. and
Others

RESPONDENT

Date of Decision: Nov. 21, 2005

Acts Referred:

- Uttar Pradesh Government Servants (Discipline and Appeal) Rules, 1999 - Rule 11, 16, 3, 3(2), 7

Citation: (2006) 5 AWC 4507

Hon'ble Judges: Arun Tandon, J

Bench: Single Bench

Advocate: Shesh Kumar and Ashok Gupta, for the Appellant;

Final Decision: Allowed

Judgement

Arun Tandon, J.

Heard Sri Shesh Kumar, Advocate on behalf of the petitioner and learned Standing Counsel on behalf of the respondents.

2. The petitioner, Brijesh Kumar Tripathi, who is employed as collection amin in District Banda, was served with a charge-sheet dated 15th July, 2005. The charge-sheet contained two charges and the Tehsildar (Judicial), Banda was appointed as the Enquiry Officer. The petitioner submitted a reply to the said charge-sheet vide his letter dated 11th August, 2004 and denied the allegations made against him in the said charge-sheet. Thereafter the Tehsildar submitted enquiry report to the District Magistrate, Banda vide order dated 9th June, 2005. On the basis of the enquiry report so submitted by the Tehsildar, a show-cause notice has-been issued by the District Magistrate, Banda dated 22nd June, 2005, calling upon the petitioner to show-cause as to why orders for punishment may not be passed against the petitioner.

3. From the records it is not clear as to whether the petitioner has submitted any reply to the show-cause notice dated 22nd June, 2005 or not. However, the District Magistrate has proceeded to pass an order dated 25th September, 2005, whereby the petitioner has been reverted to the initial of the pay-scale admissible to the post of collection amin and an adverse entry has also been directed to be recorded. It is against this order of the District Magistrate dated 25th September, 2005 that the present writ petition has been filed. The said order has been challenged basically on the ground that the procedure prescribed for holding disciplinary proceedings for imposition of major penalty under Rules 7, 8 and 9 of the U.P. Government Servant (Discipline and Appeal) Rules, 1999 has not been followed and therefore, the impugned order of punishment cannot be legally sustained. In that regard reliance has been placed upon Paragraph No. 15 of the writ petition.

4. Learned Standing Counsel on the other hand submits that the petitioner has efficacious statutory alternative remedy by way of appeal under Rule 11 of the U.P. Government Servant (Discipline and Appeal) Rules, 1999 and thereof this Court may not interfere in the present writ proceedings and the petitioner may be relegated to his statutory alternative remedy.

5. I have heard learned counsel for the parties and have gone through the records of the present writ petition.

6. So far as the preliminary objection raised by the learned Standing Counsel is concerned, normally this Court would insist upon the petitioner to avail his statutory alternative remedy. It is also settled law that availability of statutory alternative remedy is not an absolute bar in entertainment of a writ petition. (Reference, [Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others](#),).

7. In the facts of the present case, where the impugned order is alleged to have been passed in manifest violation of principles of natural justice as well as statutory rules which regulate the procedure prescribed for imposition of major penalty, the Court is of the opinion the allegations as to whether there has been a manifest violation of rules regulating the procedure prescribed for conducting an enquiry in respect of imposition of penalty or not, be examined to decide the question as to whether the petitioner should be delegated to his alternative remedy or not.

8. In order to examine the issue as to whether the procedure prescribed under the Rules for holding departmental enquiry in respect of imposition of major penalty have been followed or not, it is necessary to reproduce Rules 7,8 and 9 of the U.P. Government Servant (Discipline and Appeal) Rules, 1999, which read as follows:

7. Procedure for imposing major penalties. -Before imposing any major penalty on a Government Servant, an inquiry shall be held in the following manner:

(i) The Disciplinary Authority may himself inquire into the charges or appoint an Authority subordinate to him as Inquiry Officer to inquire into the charges.

(ii)...

(iii)...

(iv)...

(v)...

(vi)...

(vii) Where the charged Government servant denies the charges the inquiry officer shall proceed to call the witnesses proposed in the charge-sheet and record their oral evidence in presence of the charged Government servant who shall be given opportunity to cross examine such witnesses. After recording the aforesaid evidence, the Inquiry Officer shall call and record the oral evidence which the charged Government servant desired in his written statement to be produced in his defence:

Provided that the Inquiry Officer may for reasons to be recorded in writing refuse to call a witness.

(viii) The Inquiry Officer may summon any witness to give evidence or require any person to produce documents before him in accordance with the provisions of the Uttar Pradesh Departmental Inquiries (Enforcement of Attendance of Witness and Production of Documents) Act, 1976.

(ix) The Inquiry Officer may ask any question he pleases, at any time of any witness or from person charged with a view, to discover the truth or to obtain proper proof of facts relevant to charges.

(x) Where the charged Government servant does not appear on the date fixed in the inquiry or at any stage of the proceeding in spite of the service of the notice on him or having knowledge of the date, the Inquiry Officer shall proceed with the inquiry ex parte. In such a case, the Inquiry Officer shall record the statement of witnesses mentioned in the charge-sheet in absence of the charged Government servant,

(xi) ...

(xii) ...

8. Submission of inquiry report. When the inquiry is complete, the Inquiry Officer shall submit its inquiry report to the Disciplinary Authority along with all the record of the inquiry. The Inquiry Report shall contain a sufficient record of brief facts, the evidence and statement of the findings on each charge and the reasons thereof. The Inquiry Officer

shall not make any recommendation about the penalty.

9. Action on Inquiry Report.- (1) The Disciplinary Authority may, for reasons to be recorded in writing, remit the case for re-inquiry to the same or any other Inquiry Officer under intimation to the charged Government servant. The Inquiry Officer shall thereupon proceed to hold the inquiry from such stage as directed by the Disciplinary Authority, according to the provisions of Rule 7.

(2) ...

(3) ...

(4) If the Disciplinary Authority, having regard to its findings on all or any of charges is of the opinion that any penalty specified in Rule 3 should be imposed on the charged Government servant, he shall give a copy of the inquiry report and his findings recorded under Sub-rule (2) to the charged Government servant and require him to submit his representation if he so desires, within a reasonable specified time. The Disciplinary Authority shall, having regard to all the relevant records relating to the inquiry and representation of the charged Government servant, if any and subject to the provisions of Rule 16 of these rules, pass a reasoned speaking order imposing one or more penalties mentioned in Rule 3 of these rules and communicate the same to the charged Government servant.

9. From the aforesaid rules, it is apparently clear that if the charged employee denies the charges levelled against him, the Inquiry Officer appointed by the Disciplinary Authority, shall proceed to call the witnesses proposed in the charge-sheet and record their oral evidence in presence of the charged employee and shall give an opportunity to the charged employee to cross-examine such witnesses. After recording the aforesaid evidence, the Inquiry Officer shall call and record the oral evidence, which the charged employee desired in his written statement to be produced in support of his case. Rule-7 further contemplates that the Inquiry officer may examine any witness to give evidence or require any person to produce documents before him in accordance with the U.P. Government Servant (Discipline and Appeal) Rules, 1999. The procedure as detailed in the aforesaid Rules is in conformity with the requirement of principles of natural justice and is therefore, necessary to be adhered to in letter and in spirit.

10. The Hon'ble Supreme Court of India in the case of [Ministry of Finance and Another Vs. S.B. Ramesh](#), has held that even in ex-parte disciplinary proceedings, wherein the employee is not participating in the departmental inquiry, it is necessary for the Inquiry Officer to fix a date for recording evidence in support of the charges and intimation of the date so fixed must be communicated to the employee concerned so that the employee concerned may cross examine the witnesses. It has further been clarified that no documents can be received in evidence unless proved by some competent person, who has come-forward in evidence, un-proved documents cannot be relied upon for bringing

home the charges against the said employee.

11. From the enquiry report dated 9th June, 2005, which has been enclosed as Annexure-3 to the writ petition, it is apparently clear that the Inquiry Officer after recording a finding that a charge-sheet and the reply has been submitted thereto has proceeded to record his conclusion in respect of individual charges on the basis of record which was available before him. The Inquiry Report is completely silent about a date having been fixed to record oral evidence or the document which has been relied upon for bringing home charges against the petitioner being proved as per the law applicable. In paragraph No. 15 of the writ petition it has been specifically submitted as follows:

15. That it is well settled law that during enquiry proceeding the principle of natural justice must be followed i.e. the documents relied upon, provided to the charge employee, opportunity to adduce the evidence be provided, statement of witnesses for establishing the charges be recorded and opportunity to cross examine the witnesses be provided, whereas in the present case no such procedure has been followed. The petitioner has not been given opportunity to adduce the evidence and cross examined the witnesses has been provided to the petitioner and no witnesses has been examined by the enquiry officer in support of the charges if any levelled against the petitioner, thus the entire enquiry proceedings are violated and against the principle of natural justice and consequential impugned order is liable to be quashed by this Hon^{ble} Court.

12. Since the averments made in Paragraph-15 of the writ petition are collaborated from facts recorded in the enquiry report, which was brought on record, this Court is satisfied that the procedure prescribed under Rule-7 of the U.P. Government Servant (Discipline and Appeal) Rules, 1999, has not been followed by the Inquiry Officer. Further the enquiry is not in accordance with law laid down by the Hon^{ble} Supreme Court in the Case of Ministry of Finance and another (Supra). In such circumstances the enquiry being, itself in violation of statutory rules could not form the basis for issuance of the show-cause notice as contemplated by U.P. Government Servant (Discipline and Appeal) Rules, 1999. As a result whereof the consequential order of punishment passed by the District Magistrate is also rendered illegal and in violation of principles of natural justice.

13. Since this Court has come to the conclusion that the impugned order has been passed in manifest violation of statutory rules and in violation of principles of natural justice as have been stated by the Hon^{ble} Supreme Court in the case of Ministry of Finance and another (Supra), it would not be fair to insist upon the petitioner to avail the statutory alternative remedy.

14. In view of the aforesaid findings, the writ petition is allowed. The order passed by the District Magistrate, Banda (respondent No. 2) dated 25th September, 2005 is hereby quashed. The enquiry report submitted by the Inquiry Officer is also rendered illegal. The Inquiry Officer, namely, Tehsildar (Judicial) is directed to proceed with the enquiry afresh from the stage it has gone wrong in light of the Rules applicable. The aforesaid enquiry

may be completed within three months from the date a certified copy of this order is filed before the District Magistrate (respondent no. 2). The District Magistrate on receipt of the enquiry report shall take final decision in accordance with law, within a period of two months thereafter.