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(2012) 05 AHC CK 0258

Allahabad High Court

Case No: Writ Petition No. 819 (S/B) of 2005

Qamrul Islam	APPELLANT
Vs	
State Of U.P. And Others	RESPONDENT

Date of Decision: May 11, 2012

Citation: (2012) 6 ADJ 249

Hon'ble Judges: Rajiv Sharma, J; Devendra Kumar Arora, J

Bench: Division Bench

Advocate: Amitabh Kumar Rai, for the Appellant; R.K. Choudhary, for the Respondent

Final Decision: Allowed

Judgement

1. Heard Sri Amitabh Kumar Rai, learned Counsel for the petitioner and Mr. R.K. Chaudhary, learned Counsel for the Federation.Petitioner has filed the instant writ petition being aggrieved by the impugned dismissal order dated 8.5.2003 passed by the Managing Director and the impugned recovery order dated 24.2.2005 passed by the General Manager.

2. From the material on record, it comes out that on 1.3.1984, the petitioner was appointed as Project Engineer in U.P. Co-operative Processing and Cold Storage Federation Limited and he was promoted as Executive Engineer in the year 1996. When the petitioner was unwell, he informed the higher authorities about his illness. However, when a show-cause notice dated 19.12.2002 was delivered by hand to the petitioner, he came to know that he was suspended on 10.10.2001 itself and a charge-sheet was allegedly sent and an enquiry was conducted by the General Manager behind his back. According to the petitioner, thirteen charges were levelled against him. Further, no date, time and place was communicated by the Enquiry Officer or by the disciplinary authority for recording of any such evidence.

3. On the other hand, Standing Counsel has submitted that the petitioner who was the Executive Engineer of the U.P. Cooperative Processing and Cold Storage Federation

Limited (PACSFED) was suspended vide order 10.10.2001 and disciplinary proceedings were initiated. A charge-sheet was issued to the petitioner vide letter dated 19.7.2002. Several opportunities were given to the petitioner for reply of charge-sheet, but the petitioner was failed to submit the reply of the charge-sheet. The Enquiry Officer sent the letters on 7.8.2002, 23.8.2002, 30.9.2002 and 30.9.2002. In absence of reply, the enquiry Officer concluded the inquiry in accordance with law, after providing proper opportunity to the petitioner and submitted his report to the competent authority on 5.12.2002.

4. In rebuttal, learned counsel for the petitioner submits that when a show-cause notice dated 19.12.2002 was delivered by hand to the petitioner, then he came to know that he was suspended on 10.10.2001. According to him, the show-cause notice was issued to the address of Flat No. 8, 3rd Floor, Nazeer Apartments, 277-Jamia Nagar, Okhla, New Delhi, whereas he is residing at Flat No. 8, 3rd Floor, Nazeer Apartments, 277-Jamia Nagar, Okhla, New Delhi. Therefore, this show-cause notice could be received only as it was personally delivered to him. Further, he submits that the previous letters and orders were not received by the petitioner as they were sent to the wrong address. During the period intervening 19.7.2002 to 19.12.2002, no evidence was led before the Enquiry Officer in support of allegation contained in the charge-sheet nor was any date, time and place was communicated by the Enquiry Officer or by the disciplinary authority for recording of any such evidence. Thus, no charge-sheet was served on the petitioner and the opposite parties did not ensure proper procedure was carried out for service of charge-sheet and due to this, the petitioner did not get any opportunity to reply to the charge-sheet and bring forward his case before the opposite parties.

5. The main thrust of the argument of the learned Counsel for the petitioner is that the disciplinary proceedings and the consequent order are vitiated on account of non observance of the principles of natural justice.

6. In State of Madhya Pradesh v. Chintaman Sadashiva Waishampayan; AIR 1961 SC 1623; State of U.P. Vs. Shatrughan Lal and Another, and State of Uttaranchal and Others Vs. Kharak Singh, , the Apex Court has emphasized that a proper opportunity must be afforded to a Government servant at the stage of the enquiry, after the charge-sheet is supplied to the delinquent as well as at the second stage when punishment is about to be imposed on him. In State of Uttaranchal and others v. Kharak Singh (supra) the Apex Court has enumerated some of the basic principles regarding conducting the departmental inquiries and consequences in the event, if these basic principles are not adhered to, the order is to be quashed. The principles enunciated are reproduced herein:

(a) The inquiries must be conducted bona fide and care must be taken to see that the inquiries do not become, empty formalities.

(b) If an officer is a witness to any of the incident which is the subject-matter of the enquiry or if the enquiry was initiated on the 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.

(C) 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. [emphasis supplied]

7. A Division Bench of this Court in Radhey Kant Khare v. U.P. Cooperative Sugar Factories Federation Ltd., 2003 21 LCD 610, held that 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 so fixed the oral and documentary evidence against the employee should first be led in his presence. Thereafter the employer must adduce his evidence first. 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. The person who is required to answer the charge 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.

8. In State of Uttar Pradesh and Another Vs. Sri C.S. Sharma, , 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.

9. 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 is to be accepted.

10. It would be useful to mention that in Kashinath Dikshita Vs. Union of India (UOI)and Others, , the Hon"ble Supreme Court emphasized that no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies the concerned employee cannot prepare his defence, cross-examine the witnesses and point out the inconsistencies with a view to show that the allegations are incredible. Observance of natural justice and due opportunity have been held to be an essential ingredient in disciplinary proceedings and following these principles, the Apex Court set-aside the order of removal.

11. Fundamental requirement of law is that the doctrine of natural justice should be complied with and has, as a matter of fact, turned out to be an integral part of administrative jurisprudence. It was also held in this case that at an enquiry facts have to be proved and the person proceeded against must have an opportunity to cross-examine witnesses and to give his own version or explanation about the evidence on which he is charged and to lead his defence.

12. In Kashinath Dikshita Vs. Union of India (UOI)and Others, , the Hon''ble Supreme Court emphasized that no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies the concerned employee cannot prepare his defence, cross-examine the witnesses and point out the inconsistencies with a view to show that the allegations are incredible. Observance of natural justice and due opportunity has been held to be an essential ingredient in disciplinary proceedings and following this principle, the Hon''ble Supreme Court set-aside the order of removal of the petitioner Bhupinder Pal Singh.

13. We have given our anxious consideration to the facts and circumstances of the case and have also examined the material on record. After minutely examining the materials on record, we have no hesitation in saying that the inquiry was conducted in utter disregard to the principles of natural justice.Accordingly, the writ petition is allowed and the impugned order of dismissal dated 8.5.2003 and impugned recovery order dated 24.2.2005, contained in Annexure Nos. 1 and 2 to the writ petition, are hereby quashed and the opposite parties are directed to conduct fresh enquiry and pass appropriate orders, in accordance with law. The petitioner shall be reinstated in service, but the backwages will be subject to the outcome of fresh enquiry.