**(2012) 4 ADJ 518**

**Allahabad High Court (Lucknow Bench)**

**Case No:** Writ Petition No. 523 (S/B) of 2007

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| Radhey Shyam Mishra | | APPELLANT |
| | Vs | |
| State of U.P and Others | | RESPONDENT |

**Date of Decision:** Jan. 10, 2012

**Citation:** (2012) 4 ADJ 518

**Hon'ble Judges:** Rajiv Sharma, J; Pradeep Kant, J

**Bench:** Division Bench

**Advocate:** Anil Tiwari and Amit Jaiswal, for the Appellant; Rakesh Chaudhary, for the Respondent

**Final Decision:** Allowed

**Judgement**

1. Heard Sri Anil Tiwari, Senior Advocate assisted by Sri Amit Jaiswal, learned Counsel for the petitioner and Sri Rakesh Chaudhary, learned Counsel for the respondents. Leaving other details, the facts relevant for the present controversy, are that the petitioner who was working as Project Engineer with the U.P. Co-operative Processing & Cold Storage Federation. faced two enquiries - one of year 2002 and the second of year 2006. In the first enquiry, which was initiated on 9.9.2003, the petitioner was exonerated and he was reinstated in service vide order dated 18.3.2004. The petitioner was again placed under suspension in respect of certain charges regarding construction work of PHC Bilwai, Mahoba on 29.3.2006. Various litigations took place as the petitioner has filed writ petitions and lastly he filed a Writ Petition bearing No. 206 (SB) of 2007 on 21.2.2007 wherein he made a prayer for expediting the enquiry. On this writ petition, on day one, the following order was passed:

"Heard learned counsel for the parties.

The petitioner was suspended in the month of March, 2006 but he was reinstated in December, 2006 in light of orders passed by this Hon"ble Court. It is informed that two inquires are pending against the petitioner, one of year 2002 and the second of year 2006 which are yet to be concluded. Accordingly the petitioner has prayed for expeditious

conclusion of these enquiries.

Sri P.K. Chaudhary appearing for the contesting respondents submits that he has no objection to this innocuous prayer. However, he urged that the petitioner may be directed to cooperate in the enquiry.

Accordingly, let the inquiries be concluded within a period of one month and the petitioner is also directed to cooperate with the same.

With these directions, the writ petition is finally disposed of."

2. Thereafter, the dismissal order was passed on 25.4.2007, on the basis of enquiry report submitted on 28.11.2006. It is this dismissal order, which is under challenge in the present writ petition.

3. The salient features of the case which have been brought before us by the counsel for the petitioner are that (i) the impugned order of dismissal has been passed on the basis of two enquiry reports dated 9.9.2003 and dated 28.11.2006. The Disciplinary Authority could not have taken into consideration the enquiry report dated 9.9.2003 as in that enquiry report the petitioner was exonerated from all the charges and the Managing Director had taken the decision dated 18.3.2004 to reinstate the petitioner and permission to reinstate him in service was sought from the Registrar, U.P. Co-operative Societies, Lucknow, which means that the enquiry report was accepted by the Managing Director vide order dated 18.3.2004. (ii) The Disciplinary Authority has taken all the charges as proved against the petitioner in respect of the enquiry report dated 9.9.2003, without providing opportunity of hearing to the petitioner, before recording a finding of guilt, whereas the petitioner was exonerated "from all the charges by the Enquiry Officer. Similarly, the Disciplinary Authority took charges No. 1, 2(3), 2(8) and 5 to be proved against the petitioner in respect of the enquiry report dated 28.11.2006 without providing opportunity of hearing to the petitioner, before recording a finding of guilt whereas the petitioner was exonerated from charge Nos. 1, 2(3), 2(8) and 5 in enquiry report dated 28.11.2006 by the Enquiry Officer. Submission is that in view of aforementioned facts, the impugned order having been passed in violation of principles of natural justice is bad in law. In support of this submission, the petitioner has relied upon the cases of Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, ; Ranjit Singh Vs. Union of India (UOI) and Others, and R.K. Shukla v. Appellate Authority, Central Bank of India, Lucknow and others, 2007 (5) ALJ 158 (DB)] and (iii) Enquiry report dated 28.11.2006 is ante-dated for the reason that the Enquiry Officer wrote letter dated 29.11.2006 to the petitioner stating therein that as soon as documents are received from Hamirpur, the same will be made available to the petitioner.

4. Before this Court in Writ Petition No. 206 (SB) of 2007, the opposite parties sought for one month time to conclude enquiry proceedings against the petitioner, which is evident from the order dated 21.2.2007. Further, the Enquiry Officer wrote a letter dated

17.3.2007 to the Managing Director to direct Sri Mitlesh Kumar Verma to make the documents available to the Enquiry Officer so that the documents may be given to the petitioner. Aforesaid facts reveal that enquiry was not conducted upto 17.3.2007 and an antedated Enquiry Report dated 28.11.2006 has been relied upon while passing the impugned order of dismissal.

5. The Enquiry Report dated 9.9.2003 could not have been taken into consideration for the reason that the petitioner stood exonerated in the said report and he was directed to be reinstated in service. In case, the Disciplinary Authority was to take a different view than the view taken by the Enquiry Officer, notice should have been given to the petitioner indicating the tentative reasons for differing with the opinion of the Enquiry Officer and thereafter, he could have passed the order contrary to the report so submitted by the Enquiry Officer, but the same having not been done, the order of dismissal stands vitiated on this ground.

6. The next argument of the learned Counsel for the petitioner that the enquiry report dated 28.11.2006 is ante-dated is based on the plea of petitioner that the enquiry ought to have been concluded within one month, as suggested by the Court, which learned Counsel for the Federation himself accepted and for which he had no objection, but the dismissal order has been passed by making the said enquiry report ante-dated as 28.11.2006, as the order on the aforesaid writ petition was passed on 21.2.2007.

7. Sri Rakesh Chaudhary appearing for the Federation placed the original record before us to substantiate his plea that the enquiry report was actually prepared on 28.11.2006 and there was no ante-dating. His submission is that on day one, when the writ petition was disposed of, he was having no instructions as the plea of the petitioner regarding non-conclusion of enquiry was considered by the Court and the Court expressed its view to conclude the enquiry within one month. Learned counsel for the Federation did not have any option except to accept the plea.

8. Be that as it may, there is another aspect of the matter, namely, if the Enquiry Officer had submitted the report on 28.11.2006, there was no occasion for the Enquiry Officer to write a letter on 29.11.2006 to the petitioner, copy of which was endorsed to the Managing Director, that as soon as the documents asked by him were made available, the same would be supplied to him and again on 17.3.2007 to the Managing Director requesting him to direct Sri Mithlesh Kumar Verma to make all the documents available so that the documents may be supplied to the petitioner.

9. It appears that the petitioner''s plea for supply of certain documents for the purpose of giving reply in the enquiry was considered by the Enquiry Officer. The Enquiry Officer wrote a letter on 29.11.2006 and again on 17.3.2007 ensuring that the documents asked for be made available to the petitioner. This means two things; one that the enquiry report was not actually prepared on 28.11.2006 and it was prepared later on and the other that if the report had been prepared, the documents which were relevant in the opinion of the

Enquiry Officer were not supplied before the report was furnished. There could not have been any occasion for the Enquiry Officer to ask the Managing Director to issue directions for supply of documents as asked for by the petitioner, after he had submitted the enquiry report on 28.11.2006. After submission of enquiry report, the Enquiry Officer becomes functus officio nor he was having any authority to get any evidence adduced either on behalf of the petitioner or on behalf of the department. The very conduct of the Enquiry Officer in asking the Managing Director to make certain documents available as per the request of the petitioner, on being satisfied that they are relevant documents, goes to indicate that the Enquiry Report might not have been prepared actually on 28.11.2006.

10. Be that as it may, the fact remains that the documents, which were requested by the petitioner, were not supplied to him by 28.11.2006, and the request was made by the Enquiry Officer after 28.11.2006, i.e. on 29.11.2006 the very next day and thereafter on 17.3.2011. The presumption would be that upto 17.3.2011, the relevant documents were not supplied to the petitioner. Therefore the enquiry report could not have been prepared or could not have been submitted on 28.11.2006. Even assuming that it was not an ante-dated report, the manner in which the enquiry has proceeded is in violation of principles of natural justice, as the relevant documents which ought to have been supplied to the petitioner before submission of Enquiry Report were not supplied to him. Any action taken by the Enquiry Officer after submission of Enquiry Report would not cover up the irregularities committed nor would protect the Enquiry Report.

11. For the aforesaid reasons, we find that the enquiry conducted by the Enquiry Officer in the instant case is not sustainable and consequently the order of punishment also cannot be upheld.

12. We, therefore, set aside the order of dismissal. The petitioner shall be reinstated into service forthwith. He shall be paid salary regularly from the date of reinstatement. The respondents shall hold the enquiry afresh, from the stage of submission of reply to the charge-sheet and for which purpose, if any, documents are asked for, which were mentioned by the Enquiry Officer in his letters dated 29.11.2006 and 17.3.2007, the same shall be supplied to the petitioner within fifteen days from the date he asks for such documents. The petitioner shall ask for the documents within seven days from the date of receipt of a certified copy of this order. In case, there are certain documents, copies of which are not possible to be supplied, necessary arrangements shall be made for inspection of such documents by fixing date, time and place for such inspection by the Enquiry Officer. The Enquiry Officer shall ensure free access of the petitioner to such documents. All these exercise shall be completed within three weeks from the date of receipt of a certified copy of this order. Thereafter, reply shall be submitted by the petitioner within two weeks and the enquiry shall be concluded within three months thereafter, subject to cooperation of the petitioner. In case, the petitioner seeks any adjournment, the period of such adjournment shall be excluded from the time schedule referred to above. We, however, direct that the petitioner shall not be paid salary for the period commencing from the date of dismissal order till the date of reinstatement which

shall abide the outcome of the fresh enquiry conducted against the petitioner. The writ petition is allowed in above terms.