State Of Uttaranchal & Ors vs Kharak Singh on 13 August, 2008

Author: P. Sathasivam

Bench: P. Sathasivam, R.V. Raveendran

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4531 OF 2007

State of Uttaranchal & Ors. .... Appellant (s)

Versus

Kharak Singh .... Respondent(s)

JUDGMENT

P. Sathasivam, J.

1) This appeal is directed against the judgment and order dated 15.5.2006 of the High Court of Uttaranchal at Nainital in Writ Petition No. 606 of 2003 (SS) whereby the writ petition filed by the respondent herein was allowed quashing the orders dated 5.3.1986 passed by the Divisional Forest Officer, Haldwani Forest Division, Dist. Nainital and dated 27.4.1991 passed by the Conservator of Forest, Western Circle, Nainital dismissing the respondent from service.

2) The brief facts are stated as under:

> The respondent herein was a temporary Forest Guard and was posted in Nandhaur Range of Haldwani Forest Division, Nainital. In 1984, when he was incharge of Asani Beat in Nandhor Range of Haldwani Forest Division, illegal felling of 11 Sal trees and 24 Kokat species took place in Asani Beat Nos. 1, 3 and 5 which were allotted to the U.P. Forest Corporation for felling of marked dead, dying and diseased trees. In the diary maintained by the Department, during the months of March and April, 1984, the respondent visited the above compartments regularly and certified that there was no illicit felling of trees in his beat during the period under reporting. On 23.5.1984, sub-Divisional Forest Officer, Nandhaur seized 27 logs of Sal bearing transit hammer mark of Dolpokhra Transit Barrier in Haldwani. Having seen the hammer marks on the seized logs, on 24.5.1984 the SDO directed Range Officer to trace the illicit felling of trees in and around Dolpokhra. On being questioned by the SDO, the respondent could not satisfy the SDO. Having confirmed the involvement of the respondent in the illicit felling of trees, the Division Forest Officer, Haldwani Forest Division by

> letter No. 40/25 dated 1.6.1984, suspended the respondent. On 19.12.1984, the Division Forest Officer served the charge sheet upon the respondent and the respondent gave his reply on 9.4.1985. Thereafter, enquiry was entrusted to Sri P.V. Lohni, who submitted his report on 16.11.1985 to the Divisional Forest Officer, Haldwani. On the basis of the inquiry report, the Divisional Forest Officer vide order dated 6.3.1986 dismissed the respondent herein. Feeling aggrieved, the respondent preferred an appeal before the Conservator of Forest, Western Circle, Nainital, Appellant No.2 herein and the same was dismissed vide order dated 27.4.1981. Questioning the said order, the respondent herein preferred writ petition before the High Court praying for issuing a writ of certiorari.

The High Court vide order dated 15.5.2005 issued a writ of certiorari quashing the orders dated 5.3.1986 passed by the Divisional Forest Officer, Haldwani as well as order dated 27.4.1991 passed by the Conservator of Forest, Western Circle, Nainital. The High Court has directed the appellants to reinstate the respondent in service with all consequential benefits. Aggrieved by the said order, this appeal by special leave has been preferred by the State of Uttaranchal, Conservator of Forest, Western Circle, Nainital and Divisional Forest Officer, Haldwani Forest Division, Nainital.

3) We heard Mr. S.S. Shamshy, learned counsel, for the appellants and Mr. P. Vinay Kumar, learned counsel, for the respondent.

4) Learned counsel appearing for the appellants mainly contended that the High Court committed an error in quashing the order of dismissal of the respondent on the ground that the enquiry was not properly conducted and was not free from bias. On the other hand, according to him, the enquiry was conducted according to rules and the punishment was awarded based on the gravity of charges proved. Per contra, learned counsel for the respondent supported the impugned order of the High Court by pointing out the infirmities in conducting enquiry.

5) Before analyzing the correctness of the above submissions, it is useful to refer various principles laid down by this Court as to how enquiry is to be conducted and which procedures are to be followed.

6) The following observations and principles laid down by this Court in Associated Cement Co. Ltd. vs. The Workmen and Anr. [1964] 3 SCR 652 are relevant:

> "... ... In the present case, the first serious infirmity from which the enquiry suffers proceeds from the fact that the three enquiry officers claimed that they themselves had witnessed the alleged misconduct of Malak Ram. Mr. Kolah contends that if the Manager and the other officers saw Malak Ram committing the act of misconduct, that itself would not disqualify them from holding the domestic enquiry. We are not prepared to accept this argument. If an officer himself sees the misconduct of a workman, it is desirable that the enquiry should be left to be held by some other person who does not claim to be an eye- witness of the impugned incident. As we have repeatedly emphasised, domestic enquiries must be conducted honestly and

bona fide with a view to determine whether the charge framed against a particular employee is proved or not, and so, care must be taken to see that these enquiries do not become empty formalities. If an officer claims that he had himself seen the misconduct alleged against an employee, in fairness steps should be taken to see that the task of holding an enquiry is assigned to some other officer. How the knowledge claimed by the enquiry officer can vitiate the entire proceedings of the enquiry is illustrated by the present enquiry itself. ... .

.... It is necessary to emphasise that in domestic enquiries, the employer should take steps first to lead evidence against the workman charged, give an opportunity to the workman to cross-examine the said evidence and then should the workman be asked whether he wants to give any explanation about the evidence led against him. It seems to us that it is not fair in domestic enquiries against industrial employees that at the very commencement of the enquiry, the employee should be closely cross-examined even before any other evidence is led against him. In dealing with domestic enquiries held in such industrial matters, we cannot overlook the fact that in a large majority of cases, employees are likely to be ignorant, and so, it is necessary not to expose them to the risk of cross-examination in the manner adopted in the present enquiry proceedings.

Therefore, we are satisfied that Mr. Sule is right in contending that the course adopted in the present enquiry proceedings by which Malak Ram was elaborately cross- examined at the outset constitutes another infirmity in this enquiry."

7) In Managing Director, ECIL, Hyderabad and Others vs. B. Karunakar and Others, (1993) 4 SCC 727, it was held:

"Where the enquiry officer is other than the disciplinary authority, the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, enquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. If the disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached.

While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz., before the disciplinary authority takes into consideration the findings in the report, the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and proposes to award penalty on the basis of its conclusions. The first right is the right to prove innocence. The second right is to plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted. It is the second right exercisable at the second stage

which was taken away by the Forty-second Amendment. The second stage consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding upon the penalty. What is dispensed with is the opportunity of making representation on the penalty proposed and not of opportunity of making representation on the report of the enquiry officer. The latter right was always there. But before the Forty-second Amendment of the Constitution, the point of time at which it was to be exercised had stood deferred till the second stage viz., the stage of considering the penalty. Till that time, the conclusions that the disciplinary authority might have arrived at both with regard to the guilt of the employee and the penalty to be imposed were only tentative. All that has happened after the Forty-second Amendment of the Constitution is to advance the point of time at which the representation of the employee against the enquiry officer's report would be considered. Now, the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence in respect of the charges.

Article 311(2) says that the employee shall be given a "reasonable opportunity of being heard in respect of the charges against him". The findings on the charges given by a third person like the enquiry officer, particularly when they are not borne out by the evidence or are arrived at by overlooking the evidence or misconstruing it, could themselves constitute new unwarranted imputations. The proviso to Article 311(2) in effect accepts two successive stages of differing scope. Since the penalty is to be proposed after the inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the enquiry officer being only his delegate appointed to hold the inquiry and to assist him), the employee's reply to the enquiry officer's report and consideration of such reply by the disciplinary authority also constitute an integral part of such inquiry.

Hence, when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.

8) In Radhey Shyam Gupta vs. U.P. State Agro Industries Corporation Ltd. and Another, (1999) 2 SCC 21, it was held:

"34. But in cases where the termination is preceded by an enquiry and evidence is received and findings as to misconduct of a definitive nature are arrived at behind the back of the officer and where on the basis of such a report, the termination order is issued, such an order will be violative of the principles of natural justice inasmuch as

> the purpose of the enquiry is to find out the truth of the allegations with a view to punish him and not merely to gather evidence for a future regular departmental enquiry. In such cases, the termination is to be treated as based or founded upon misconduct and will be punitive. These are obviously not cases where the employer feels that there is a mere cloud against the employee's conduct but are cases where the employer has virtually accepted the definitive and clear findings of the enquiry officer, which are all arrived at behind the back of the employee -- even though such acceptance of findings is not recorded in the order of termination. That is why the misconduct is the foundation and not merely the motive in such cases."

9) In Syndicate Bank and Others vs. Venkatesh Gururao Kurati, (2006) 3 SCC 150, the following conclusion is relevant:

> "18. In our view, non-supply of documents on which the enquiry officer does not rely during the course of enquiry does not create any prejudice to the delinquent. It is only those documents, which are relied upon by the enquiry officer to arrive at his conclusion, the non-supply of which would cause prejudice, being violative of principles of natural justice. Even then, the non-supply of those documents prejudice the case of the delinquent officer must be established by the delinquent officer. It is well-settled law that the doctrine of principles of natural justice are not embodied rules. It cannot be put in a straitjacket formula. It depends upon the facts and circumstances of each case. To sustain the allegation of violation of principles of natural justice, one must establish that prejudice has been caused to him for non-observance of principles of natural justice."

10) In regard to the question whether an enquiry officer can indicate the proposed punishment in his report, this Court, in a series of decisions has pointed out that it is for the punishing/disciplinary authority to impose appropriate punishment and enquiry officer has no role in awarding punishment. It is useful to refer to the decision of this Court in A.N.D'Silva vs. Union of India, (1962) Supp 1 SCR 968 wherein it was held:

> "In the communication addressed by the Enquiry Officer the punishment proposed to be imposed upon the appellant if he was found guilty of the charges could not properly be set out. The question of imposing punishment can only arise after enquiry is made and the report of the Enquiry Officer is received. It is for the punishing authority to propose the punishment and not for the enquiring authority."

11) From the above decisions, the following principles would emerge:

> i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.
>
> ii) If an officer is a witness to any of the incidents which is the subject matter of the enquiry or if the enquiry was initiated on a 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.

iii) 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.

iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any.

12) Now, let us consider the merits of the case on hand and whether the High Court is justified in quashing the orders passed by the disciplinary authority as well as the appellate authority dismissing the respondent from service. In the proceedings Letter No. 1644/8 Haldwani dated December 19, 1984 (Annexure-P1) after furnishing certain factual details, the following charges have been levelled against the delinquent:

"Charge 1: You have concealed the illegal cutting which took place in Asani Block from your higher officials deliberately which caused huge financial loss to the department.

Charge 2: You have not obeyed the orders of your higher officials and you have traveled leaving your working without any reason in arbitrary manner.

Charge 3: You have shown negligence in discharging your duties."

Though a detailed explanation has been submitted controverting the above charges, no enquiry in terms of the above-mentioned principles was ever conducted. On the other hand, one Mr. P.C. Lohani, Dy. Divisional Forest Officer, Nadhor acting as an enquiry officer after putting certain questions and securing answers submitted a report on 16.11.1985. No witnesses were examined. Apparently there was not even a presenting officer. A perusal of the report shows that the enquiry officer himself inspected the areas in the forest and after taking note of certain alleged deficiencies secured some answers from the delinquent by putting some questions. It is clear that the Enquiry Officer himself has acted on the Investigator, Prosecutor and Judge. Such a procedure is opposed to principles of natural justice and has been frowned upon by this Court.

13) Another infirmity in the report of the enquiry officer is that he concluded the enquiry holding that all the charges have been proved and he recommended for dismissal of the delinquent from service. The last paragraph of his report dated 16.11.1985 reads as under:-

> "During the course of above inquiry, such facts have come into light from which it is proved that the employee who has doubtful character and does not obey the order, does not have the right to continue in the government service and it is recommended to dismiss him from the service with immediate effect."

(emphasis supplied) Though there is no specific bar in offering views by the enquiry officer, in the case on hand, the enquiry officer exceeded his limit by saying that the officer has no right to continue in the government service and he has to be dismissed from service with immediate effect. As pointed out above, awarding appropriate punishment is the exclusive jurisdiction of the punishing /disciplinary authority and it depends upon the nature and gravity of the proved charge/charges and other attended circumstances. It is clear from the materials, the officer, who inspected and noted the shortfall of trees, himself conducted the enquiry, arrived at a conclusion holding the charges proved and also strongly recommended severe punishment of dismissal from service. The entire action and the course adopted by the enquiry officer cannot be accepted and is contrary to the well-known principles enunciated by this Court.

14) A reading of the enquiry report also shows that the respondent herein was not furnished with the required documents. The department's witnesses were not examined in his presence. Though the respondent who was the writ petitioner specifically stated so in the affidavit before the High Court in the writ proceedings, those averments were specifically controverted in the reply affidavit filed by the department. Mere denial for the sake of denial is not an answer to the specific allegations made in the affidavit. Likewise, there is no evidence to show that after submission of the report by the enquiry officer to the disciplinary authority, the respondent herein was furnished with the copy of the said report along with all the relied upon documents. When all these infirmities were specifically pleaded and brought to the notice of the appellate authority (i.e. Forest Conservator), he rejected the same but has not pointed the relevant materials from the records of the enquiry officer and disciplinary authority to support his decision. Hence, the appellate authority has also committed an error in dismissing the appeal of the respondent.

15) After taking note of all the infirmities and in the light of the various principles enunciated by this Court, the High Court has rightly interfered and quashed the orders dated 05.03.1986 passed by the Divisional Forest Officer, Haldwani as well as order dated 27.04.1991 passed by the Conservator of Forest, Western Circle, Nainital.

16) In view of the above discussion and conclusion, the appeal fails and the same is dismissed. However, there will be no order as to costs.

.....J. (R.V. Raveendran) .....J. New Delhi; (P. Sathasivam) August 13, 2008.