

State Of U.P.Throu.Prin.Secy.Kar Evam ... vs Deepak Kumar And Another on 28 November, 2018

Bench: Shabihul Hasnain, Saurabh Lavania

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

A.F.R.

Court No. - 2

Case :- SERVICE BENCH No. - 34093 of 2018

Petitioner :- State Of U.P.Throu.Prin.Secy.Kar Evam Nibandhan Lko.& Anr.

Respondent :- Deepak Kumar And Another

Counsel for Petitioner :- C.S.C.

Counsel for Respondent :- C.S.C.,R.K.Srivastava

Hon'ble Shabihul Hasnain,J.

Hon'ble Saurabh Lavania,J.

Heard learned Standing Counsel for the petitioner Sri Ashutosh Singh and Sri Ramesh Chandra Pandey, learned counsel for the respondent No. 1 and perused the record.

By means of present writ petition, petitioner/State of U.P. has challenged the judgment and order dated 01.11.2017 passed by State Public Services Tribunal, Lucknow in claim petition no. 399 of 2014 (Deepak Kumar Vs. State of U.P. and another).

Facts, in brief, of the present case are that the disciplinary proceedings were initiated against Deepak Kumar, while he was working on the post of Assistant Commissioner, Commercial Tax, Urai, and in the said proceedings the minor punishment was awarded vide order dated 25.02.2014. The relevant portion of the same is quoted as under:-

Jh nhid dqekj ds fo:) fl) nksuksa vkjksiksa ,oa buds xEHkhj nqj k p j .k dks n`f"Vxr j[krs gq, 'kklu }kjk fofu'r n.M ij yksd lsok vk;ksx moizo bykgkckn dh lgefr muds i= la[;k&87@27@,oMholho@lsok&5@2013& 2014] fnukad 12-02-2014 }kjk izkIr gqbZA mDr lgefr ds dze esa Jh nhid dqekj] vflLVsUV dfe'uj ds fuyEcu dks lekIr djrs gq, muds fo:) dk;kZy;&Kki fnukad 25-01-2012 }kjk laLFkr vuq'klfud dk;Zokgh esa fuEufyf[kr n.M nsrs gq, vuq'klfud dk;Zokgh ,rn~}kjk lekIr dh tkrh gSA %& ¼41½ Jh nhid dqekj dks ifjfufUnr fd;k tkrk gSA ¼42½ Jh nhid dqekj dh nks osruo`f) o2 o"kksZa ds fy;s vLFkk;h :i ls jksdh tk;A Aggrieved by the the order dated 25.02.2014, Deepak Kumar/respondent no. 1 filed a claim petition no. 399 of 2014 (Deepak Kumar Vs. State of U.P. and another) before State Public Services Tribunal, Lucknow, challenging the punishment order dated 25.02.2014. The main grounds of challenging the order of punishment dated 25.02.2014 before the Tribunal in Claim Petition were to the effect that:-

(i) Enquiry is in violation of Rule 7 of U.P. Government Servant (Disciplinary and Appeal) Rules, 1999 (in short "Rules of 1999").

(ii) No oral enquiry was conducted.

(iii) No date, time and place was fixed in the enquiry, proceedings for recording the statements.

(iv) During enquiry charges and documents were not proved by examining the witnesses.

After exchange of pleadings between the parties, State Public Services Tribunal, Lucknow by means of order dated 01.11.2017 allowed the claim petition with the findings that in the present case no oral inquiry has been held, as required.

It reveals from the record that against Deepak Kumar/respondent no. 2 an FIR was lodged on 29.09.2010 under Sections 376 and 506 I.P.C. and he was arrested and on account of the same he was suspended and disciplinary proceedings were initiated vide charge-sheet dated 06.02.2012, under Rule 7 of Rules of 1999 and thereafter Enquiry Officer proceeded ex-parte and submitted his report dated 18.09.2012. The enquiry report dated 18.09.2012 was served through show cause notice dated 08.11.2012, to which the respondent No. 1 submitted his reply dated 04.12.2012 and thereafter the Order of punishment was passed by disciplinary authority on 25.02.2014.

Further, from the record it is evident that in criminal case witnesses, including victim, were hostile and as per recital of Order dated 01.11.2017 the respondent no. 1 has been acquitted.

It is an admitted fact that, the Tribunal, while setting aside the impugned punishment order dated 25.02.2014 passed by punishing authority, has placed reliance on the judgment passed by Division Bench of this Court in the case of Radhey Kant Khare Vs. U.P. Co-operative Sugar Factories Federation Ltd. 2003 (21) LCD 610.

The learned counsel for the petitioner while challenging the order dated 01.11.2017 passed by the Tribunal submitted that the respondent did not participated in the enquiry and Enquiry Officer proceeded ex-parte and ultimately minor punishment has been awarded and as such there is no irregularity in the enquiry.

In view of the above, the first question which requires consideration in the case is that "what procedure should be adopted if charge-sheet is given for major punishment and ultimately minor punishment has been awarded".

Answer to the above is no more res-integra and it is settled principle that where the procedure for major penalty is initiated then even if disciplinary authority awards minor punishment they enquiry should be completed by adopting the procedure prescribed for major penalty. (vide: State Bank of India Vs. T.J. Pal 1999 SCC (L & S) 922; Union of India Vs. S.C. Parasar 2006 SCC (L & S) 496 and Kamla Cheran Hair Vs. State of U.P. 2009 (27) L.C.D. 130).

The next question for consideration is that "how enquiry should be conducted by Enquiry Officer if charge-sheet is issued for imposing major penalty".

The answer to the second question is also no more res-integra. It is settled by the catena of judgments that it is the duty of Enquiry Officer to hold "Regular Enquiry". Regular enquiry means that after reply to the charge-sheet the Enquiry Officer must record oral evidence with an opportunity to the delinquent employee to cross-examine the witnesses and thereafter opportunity should be given to the delinquent employee to adduce his evidence in defence. The opportunity of personal hearing should also be given/awarded to the delinquent employee. Even if the charged employee does not participate/co-operate in the enquiry, it shall be incumbent upon the Enquiry Officer to proceed ex-parte by recording oral evidence. For regular enquiry, it is incumbent upon the Enquiry Officer to fix date, time and place for examination and cross-examination of witnesses for the purposes of proving of charges and documents, relied upon and opportunity to delinquent employee should also be given to produce his witness by fixing date, time and place. After completion of enquiry the Enquiry Officer is required to submit its report, stating therein all the relevant facts, evidence and statement of findings on each charge and reasons thereof, and thereafter, prior to imposing any punishment, the copy of the report should be provided to charged officer for the purposes of submission of his reply on the same. The punishment order should be reasoned and speaking and must be passed after considering entire material on record. (vide: Jagdish Prasad Vs. State of U.P. 1990 (8) LCD 486; Avatar Singh Vs. State of U.P. 1998 (16) LCD 199; Town Area Committee, Jalalabad Vs. Jagdish Prasad 1979 Vol. I SCC 60; Managing Director, U.P. Welfare Housing Corporation Vs. Vijay Narain Bajpai 1980 Vol. 3 SCC 459; State of U.P. Vs. Shatrughan Lal 1998 (6) SCC 651; Chandrama Tewari Vs. Union of India and others AIR 1998 SC 117; Anil Kumar Vs. Presiding Officer and others AIR 1985 SC 1121; Radhey Kant Khare Vs. U.P. Co-operative Sugar Factories 2003 (21) LCD 610; Roop Singh Negi Vs. Punjab National Bank and others (2009) 2 SCC 570; M.M. Siddiqui Vs. State of U.P. and others 2015 (33) LCD 836; Moti Ram Vs. State of U.P. and others 2013 (31) LCD 1319; Kaptan Singh Vs. State of U.P. and others 2014 (4) ALJ 440. Rules 7, 8 and 9 of Rules 1999 are also relevant.

From the records the learned Standing Counsel Sri Ashutosh Singh failed to point out that Regular Enquiry was conducted in the present case by the Enquiry Officer and accordingly on this account the Learned Tribunal rightly interfered in the matter and set-aside the order of punishment dated 25.02.2014.

Learned Standing Counsel for the petitioner while challenging the impugned order dated 01.11.2017 passed by State Public Services Tribunal, Lucknow, has also argued that if the Tribunal came to the conclusion that order of punishment had been passed without holding the Regular Enquiry and on this ground, set-aside the Order of punishment then in that event the Tribunal should have remanded the matter to the authority concerned to decide the matter afresh in accordance with law. In support of his arguments, he has placed reliance on the judgments of Hon'ble Supreme Court in the case of Union of India Vs. Y.S. Sandhu reported in (2008) 12 SCC 30 and Chairman LIC of India and others Vs. A. Masilamani, reported in (2013) 6 SCC 530. Accordingly, it is submitted by learned counsel for the petitioner that impugned order dated 10.4.2014 passed by the Tribunal is liable to be set aside.

Learned counsel for the respondent while rebutting the contention as raised by learned counsel for the petitioner, submits that if an order has been passed on technical ground, the authority before whom the said order is under challenge, can see the order on merit and remanding the matter to hold the enquiry afresh depends upon the gravity of charges/delinquency involved, evidence in support of charges and magnitude of misconduct and in the present case the punishment imposed is minor and in criminal case, on which basis the departmental proceedings were initiated, the witnesses became hostile and charged officer has been acquitted and accordingly in the present case remand is not required and order dated 01.11.2017 is not liable to be interfered. Learned counsel for the respondent further submitted that all the cases relied upon by the counsel for the petitioner relates to major punishment and this case relates to minor punishment and as such also the order dated 01.11.2017 of Tribunal is not liable to be interfered.

In this regard he has placed reliance on para nos. 9 and 10 judgment reported in 2013 (32) LCD 30: (2013) 6 SCC 530 (Chairman, LIC of India and others Vs. A. Masilamani) which on reproduction reads as under:-

15.1. When a court/tribunal sets aside the order of punishment imposed in a disciplinary proceeding on technical grounds i.e. non-observance of statutory provisions, or for violation of the principles of natural justice, then whether the superior court, must provide opportunity to the disciplinary authority to take up and complete the proceedings from the point that they stood vitiated; and 15.2. If the answer to Question 1 is that such fresh opportunity should be given, then whether the same may be denied on the ground of delay in initiation, or in conclusion of the said disciplinary proceedings.

"16. It is a settled legal proposition, that once the Court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the Court cannot reinstate the employee. It must remit the concerned case to the disciplinary

authority, for it to conduct the enquiry from the point that it stood vitiated, and conclude the same.

(Vide: Managing Director, ECIL, Hyderabad etc.etc. v. B. Karunakar etc.etc. AIR 1994 SC 1074; Hiran Mayee Bhattacharyya v. Secretary, S.M. School for Girls & Ors., (2002) 10 SCC 293; U.P. State Spinning C. Ltd. v. R.S. Pandey & Anr., (2005) 8 SCC 264; and Union of India v. Y.S. Sandhu, Ex- Inspector AIR 2009 SC 161).

17. The second question involved herein, is also no longer *res integra*. Whether or not the disciplinary authority should be given an opportunity, to complete the enquiry afresh from the point that it stood vitiated, depends upon the gravity of delinquency involved. Thus, the court must examine, the magnitude of misconduct alleged against the delinquent employee. It is in view of this, that courts/tribunals, are not competent to quash the charge-sheet and related disciplinary proceedings, before the same are concluded, on the aforementioned grounds.

18. The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is *de hors* the limitation of judicial review. In the event that, the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by court. The same principle is applicable, in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question, have to be examined, taking into consideration the gravity/magnitude of charges involved therein. The essence of the matter is that the court must take into consideration, all relevant facts and to balance and weigh the same, so as to determine, if it is infact in the interest of clean and honest administration, that the judicial proceedings are allowed to be terminated, only on the ground of delay in their conclusion. (Vide: State of U.P. v. Brahm Datt Sharma & Anr., AIR 1987 SC 943; State of Madhya Pradesh v. Bani Singh & Anr., AIR 1990 SC 1308; Union of India & Anr. v. Ashok Kacker, 1995 Supp (1) SCC 180; Secretary to Government, Prohibition & Excise Department v. L. Srinivasan, (1996) 3 SCC 157; State of Andhra Pradesh v. N. Radhakishan, AIR 1998 SC 1833; M.V. Bijlani v. Union of India & Ors., AIR 2006 SC 3475; Union of India & Anr. v. Kunisetty Satyanarayana, AIR 2007 SC 906; and The Secretary, Ministry of Defence & Ors. v. Prabash Chandra Mirdha, AIR 2012 SC 2250)".

The learned counsel for the respondent no. 1 also placed reliance on the judgment of Division Bench of this Court passed in Writ Petition No. 673 (S/B) of 2015 (State of U.P. Vs. Subodh Ranjan Saxena) on 07.10.2017. In the said case no Regular Enquiry was held and minor punishment was awarded and Tribunal set-aside the Order of punishment and this Court decline to interfere in the Order of Tribunal.

A conjoin reading of above quoted paras of the judgment of the Hon'ble Apex Court, it appears that if an authority/Court set asides the order of punishment on technical ground then the matter should be remanded to the punishing authority and employee should not be reinstated and whether or not the disciplinary authority should be given an opportunity to complete the enquiry afresh depends upon the gravity of delinquency involved and thus, for coming to the conclusion the authority/Court concerned must take into consideration all the relevant aspects and facts of the case including the charges and magnitude of misconduct alleged and examine the same.

In the instant matter, from the perusal of the record the position which borne out is to the effect that:-

- (i) In criminal case, on which basis disciplinary proceedings were initiated, witnesses were became hostile and respondent has been acquitted,
- (ii) In departmental/disciplinary proceedings no Regular Enquiry was held,
- (iii) The department itself reinstated the petitioner and imposed minor punishment and,
- (iv) The Learned Tribunal after narrating relevant facts in order dated 01.11.2017 set-aside the order of punishment dated 25.02.2014, without giving liberty to the department, to hold the enquiry afresh.

Looking into facts and circumstances of the case as well as the punishment which was awarded to Deepak Kumar/ respondent no.1 vide order dated 25.02.2014 passed by punishing authority, we are not inclined to interfere in the matter in question while exercising the power of judicial review under Article 226 of the Constitution of India.

For the foregoing reasons, the writ petition stands dismissed.

(Saurabh Lavania, J.) (Shabihul Hasnain,J.) Order Date:-28.11.2018 Arun/-