

2016 SCC OnLine All 2343

In the High Court of Allahabad

(BEFORE NARAYAN SHUKLA AND ANANT KUMAR, JJ.)

State of U.P. Throu. The Prin. Secy. Deptt. of Forest
Lko. & Ors. Petitioners

v.

Vinay Krishna Mishra and Another Respondents
Service Bench No. - 714 of 2014
Decided on August 3, 2016

Counsel for Petitioner:- C.S.C.

Counsel for Respondent:- Ved Prakash, Sharad Pathak

ORDER

1. Heard Mr. Sanjay Bhasin, learned Additional Chief Standing Counsel for the petitioners as well as Mr. Sharad Pathak, learned counsel for the first respondent.

2. The petitioners have assailed the judgment and order dated 31.12.2013 passed by the State Public Service Tribunal, Lucknow in claim petition no. 486 of 2007.

3. Learned Additional Chief Standing Counsel, Mr. Bhasin, has submitted that the learned Tribunal has held that the charge levelled against the first respondent is vague and general in nature and the proceeding is in violation of the express observation contained in Rule-7 (vii) of the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999. He has also held that the inquiry into the matter is faulty, grossly illegal and irregular.

4. Mr. Bhasin has further submitted that after recording submissions of both the parties, learned Tribunal, without discussing the matter further, has concluded that the disciplinary proceeding had not been conducted and no effort had been made to prove the charge, further the Tribunal, without discussing the fault committed by the Inquiry Officer during the inquiry, has arrived at conclusion that the procedure was not followed and none of the documents were provided, if it was so he should have remitted the matter to the disciplinary authority for conducting inquiry afresh in accordance with rule. The learned Tribunal has set aside the order impugned outrightly without giving opportunity to the disciplinary authority to cure the alleged defect committed in the inquiry.

5. In view of the aforesaid submissions, we have examined the order passed by the learned Tribunal. In a departmental inquiry the first

respondent was subjected for inquiry on certain charges, which were ultimately not found proved in the inquiry as was reported through the inquiry report dated 30.12.2004 submitted by the Regional Director/Forest Conservator, Social Forestry, Bundelkhand Circle, Jhansi. The disciplinary authority having been disagreeing with the inquiry report issued a fresh show cause notice to the first respondent on 24.02.2005 by recording his dissatisfaction with the inquiry report on certain points.

6. We have perused the same and found that certainly the disciplinary authority had recorded his disagreement but that was not supported with the reasons. Thus, it appears that he had re-written that very particular charge and invited reply of the first respondent over there. The first respondent had submitted reply on 14.03.2005. He had again explained his alleged conduct of involvement in the illegal mining as well as uploading of 128 trucks with sands. The first respondent being posted as Wild Life Warden, was working in supervisory capacity to supervise the works of the subordinate officers. According to the disciplinary authority, lapses on his part in his supervisory work was found proved, therefore, he was held guilty for commission of illegal mining. The first respondent had made his best efforts to explain his conduct in supervising the mining works in the forest area as well as monitoring the subordinate officers, who were deployed therefor. Ultimately the disciplinary authority had arrived at conclusion that the first respondent was found guilty for the charge levelled against him, therefore, the disciplinary authority awarded him punishment of withholding two annual increments temporarily for two years.

7. The learned counsel for the first respondent has invited attention of this Court towards the inquiry report in which the first respondent's explanation was considered in detail and it was found being based on documentary evidences. His efforts to monitor the illegal mining was found satisfactory. The same explanation has been submitted by the first respondent again before the disciplinary authority, but the conclusion of the disciplinary authority shows that he had not considered those explanations rather he has given a finding outrightly holding guilty the first respondent for his misconduct.

8. Regard being had to be aforesaid submissions, we have found that the disagreement shown by the disciplinary authority with the inquiry report submitted by the inquiry officer was not supported with the reasons. Further in discussing the charge levelled against the first respondent at his level, the disciplinary authority had failed to discuss the explanation submitted by the first respondent in detail, whereas those were found satisfactory by the inquiry officer for the first inning of mining.

9. All these lapses on part of the disciplinary authority were pointed

out before the learned Tribunal, who had examined the matter, though to some extent the discussions made by the learned Tribunal in the order impugned appears to be hasty as the conclusion recorded by the Tribunal is also not supported with the reasons, but when we proceeded to discuss the case on merit afresh after considering the charges as well as explanations of the first respondent, we found that the disciplinary authority has failed to appreciate the first respondent's explanation in right perspective in reference of *S.P. Malhotra v. Punjab National Bank*; (2013) 7 SCC 251 in which the Supreme Court considered its earlier decision rendered in the case of *Punjab National Bank v. Kunj Behari Misra*; (1998) 7 SCC 84. In this case the Hon'ble Supreme Court held that whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. Relevant paragraph is quoted below:

“19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the inquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

10. In view of the charges levelled against the first respondent at the level of disciplinary authority, we have examined the explanations submitted by the first respondent and found that those were satisfactory in nature. The Disciplinary Authority was under obligation to take note of the inquiry report submitted earlier but he failed to do so. Therefore, we are of the view that there was no reason for the disciplinary authority to impose penalty upon the first respondent in the matter. Since the learned Tribunal has set-aside the order of punishment, we, in view of the discussions made above, are of the view that the order passed by the Tribunal is not required interference of this Court.