

Yar Mohammad Vs. Commissioner, Devi Pattan Mandal and ors.

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Court : Allahabad

Decided On : Feb-14-2003

Reported in : 2003(2)AWC1657; [2003(97)FLR674]

Judge : U.K. Dhaon, J.

Acts : Government Servant Discipline Rules, 1999

Appeal No. : Writ Petition No. 3170 (SS) of 2001

Appellant : Yar Mohammad

Respondent : Commissioner, Devi Pattan Mandal and ors.

Advocate for Def. : S.B. Pandey, A.C.S.C.

Advocate for Pet/Ap. : B.M. Sahai, Adv.

Disposition : Writ petition dismissed

Judgement :

U.K. Dhaon, J.

1. Heard Sri B.M. Sahai, the learned counsel for the petitioner and Sri S.B. Pandey, the learned Additional Chief Standing Counsel who has put in appearance on behalf of the opposite parties.

2. The petitioner has approached this Court against the order dated 6.6.2001 passed by the Deputy Collector by which the petitioner was removed from service,

3. The brief facts of the case are that by the order dated 18.1.2001, the petitioner was placed under suspension and thereafter the charge-sheet dated 27.3.2001 was issued to the petitioner and the petitioner was directed to submit his reply to the charge-sheet but no reply was submitted by the petitioner and thereafter the Enquiry Officer submitted his report on 18.5.2001 and on the basis of the enquiry report dated 18.5.2001, a show cause notice dated 19.5.2001 was issued to the petitioner and thereafter by the impugned order dated 6.6.2001, the petitioner was removed from service. The learned counsel for the petitioner submits that the charge-sheet was issued to the petitioner on 27.3.2001 and thereafter the petitioner moved an application on 16.5.2001 before the Enquiry Officer for supplying the relevant documents in order to submit the reply but the required documents were not supplied to the petitioner and the Enquiry Officer, without proving the charges, has submitted the enquiry report dated 18.5.2001 and on the basis of the said report, the impugned order of removal was passed. He further submits that no opportunity was afforded by the Enquiry Officer to the petitioner to submit his reply and the charges were not proved by the department. He further submits that in a hurriedly manner, the enquiry was conducted by the Enquiry Officer and Impugned removal order was passed which is in violation of the principles of natural justice. The learned counsel for the petitioner has relied upon a decision of Hon'ble the Supreme Court in case of Sawai Singh v. State of Rajasthan, (1986) 3 SCC 454.

4. The Additional Chief Standing Counsel appearing on behalf of the opposite parties submits that there were serious charges against the petitioner on the basis of which the charge-sheet was issued on 27.3.2001 and as the petitioner could not submit his reply within the time specified, the Enquiry Officer submitted his report on the basis of which a show cause notice was issued to the petitioner and thereafter the impugned removal order was passed.

5. I have considered the arguments of the learned counsel for the parties and gone through the record.

6. The petitioner was transferred by the order dated 20.9.2001 from one circle to another and thereafter on the representation made by the petitioner, the transfer order was stayed by the Commissioner, Devi Pattan Mandal, Gonda, by the order dated 20.1.2001. The petitioner was thereafter placed under suspension by the order 18.1.2001 and the charge sheet dated 27.3.2001 was issued levelling nine charges against the petitioner. From the documents it is evident that on 16.5.2001, the petitioner made a request to the Enquiry Officer for supplying the relevant documents but instead of supplying the copies or giving reply to the application moved by the petitioner, the Enquiry Officer submitted the report on 18.5.2001 and on the basis of which a show cause notice was issued to the petitioner and thereafter removal order was passed. The enquiry report dated 18.5.2001 a copy of which has been filed by the learned standing counsel along with the counter-affidavit reveals that no witnesses were examined to prove the charges which were levelled against the petitioner and on the basis of the material which was available, the Enquiry Officer has submitted the enquiry report. The enquiry was conducted by the Enquiry Officer in clear disregard to the mandatory provisions of the Government Servant Discipline Rules, 1999, and the impugned removal order was passed by the authorities in a hurriedly manner which is in violation of the principles of natural justice. The Hon'ble Supreme Court in case of Sawai Singh has stated in para 17 follows as under :

'The application of those principles of natural Justice must always be in conformity with the scheme of the Act and the subject-matter of the case. It is not possible to lay down any rigid rules as to which principle of natural justice is to be applied. There is no such thing as technical natural justice. The requirements of natural justice depend upon the facts and circumstances of the case, the nature of the enquiry, the rules under which the Tribunal is acting, the subject-matter to be dealt with and so on. Concept of fair play in action which is the basis of natural Justice must depend upon the particular lies between the parties. (See K.L. Tripathi v. State Bank of India) Rules and practices are constantly developing to ensure fairness in the making of decision which affect people in their daily lives and livelihood. Without such fairness democratic Governments cannot exist. Beyond all rules and procedures that is the sine qua non.'

7. The action of the Enquiry Officer cannot be appreciated by this Court. The impugned order of removal was passed in clear violation of the principles of natural justice. It is legally not sustainable.

8. In the result, the writ petition succeeds and a writ in the nature of certiorari is issued quashing the order dated 6.6.2001 passed by the Deputy Collector, Mankapur, Gonda, a copy of which has been annexed as Annexure-8 to the writ petition. A writ in the nature of mandamus is issued directing the opposite parties to reinstate the petitioner in service with all consequential benefits. It will be open for the opposite parties to initiate the disciplinary proceedings against the petitioner, in accordance with law from the stage of the charge-sheet.

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