

Saroj Kumar Vs. Commissioner, Lucknow Division and ors.

Saroj Kumar Vs. Commissioner, Lucknow Division and ors.

SooperKanoon Citation : sooperkanoon.com/486549

Court : Allahabad

Decided On : Aug-29-2003

Reported in : 2004(2)AWC1007

Judge : Jagdish Bhalla and ;P.K. Chatterji, JJ.

Appeal No. : Writ Petition No. 4356 of 1983

Appellant : Saroj Kumar

Respondent : Commissioner, Lucknow Division and ors.

Advocate for Def. : C.S.C.

Advocate for Pet/Ap. : B.C. Saksena, ;P.K. Srivastava, ;A. Mathur and ;S. Bhatnagar, Advs.

Disposition : Petition dismissed

Judgement :

Jagdish Bhalla, J.

1. This writ petition is directed against the judgment dated 21.2.1983 passed by the U. P. Public Services Tribunal by which claim petition of the petitioner against the order of dismissal has been rejected by the Tribunal.

2. In short the facts of the case are that the petitioner, who was working as Amin in Tehsil Biswan, was suspended by an order dated 22.12.1994 in contemplation of inquiry. According to the petitioner an inquiry was held without letting the petitioner know the date of inquiry. Not only this, the Inquiry Officer did not inform the petitioner the place of enquiry and the date fixed by the Inquiry Officer. Thereafter on the basis of the inquiry report show cause notice was issued to the petitioner. According to the petitioner since the charges/departmental inquiry was similar to the charges pending in the criminal court of law the petitioner informed that he is helpless to disclose his stand before the final decision of the Court concerned because it may affect the proceedings of the Court of law. However, the authority concerned passed the order of dismissal against the petitioner.

3. As stated above the main contention of the petitioner is that the Inquiry Officer has failed to inform any date of inquiry and also had not furnished him the relevant document so requested by him. Further no opportunity was given to the petitioner even to inspect the records and therefore, the finding recorded by the Tribunal is legally untenable in this regard. Tribunal has further failed to appreciate that out of four charges, three charges pertains to the criminal trial wherein he was finally acquitted. The learned Tribunal has mis-appreciated the pleadings of the petitioner and the judgment is without jurisdiction and without any reason. Conclusion arrived at by the Tribunal that the petitioner was not interested in submitting his reply is perfectly erroneous. Further it has been contended on behalf of the petitioner that even if the petitioner had not filed reply it was the duty of the Inquiry Officer to inquire into the matter and then to record his finding instead the Inquiry Officer had not inquired into the matter as is required under law.

4. Learned counsel for the petitioner in support of the pendency of the criminal case relied upon *Sohan Singh v. Union of India and Anr.*, AIR 1984 SC 498, wherein it was held that if the order of acquittal had been pronounced before the date of the order of discharge of the incumbent, the authority concerned would have allowed the application for extension of term of service of the appellant. If extension had been allowed as in the normal course it would have been granted if the order of acquittal was there at the relevant time and further the incumbent be compensated for the period he was out of job due to pendency of the criminal

case. Learned counsel for the petitioner has also relied upon *Cap. M. Paul Anthony v. Bharat Gold Mines Ltd. and Anr.*, 1999 (2) AWC 1579 (SC) : 1999 (1) LBESR 969 (SC), wherein it has been held that if the evidence in criminal case and departmental case are common with no variance, the findings of inquiry proceedings cannot be allowed to stand, the dismissal order was set aside. Although there is no allegation of bias, however, the learned counsel for the petitioner relied upon *Kumaon Mandal Vikas Nigam Ltd. v. Girija Shanker Pant and Ors.*, 2001 (1) AWC 83 (SC) : 2000 AIR SCW 3826, wherein it has been held that the language used in the show cause notice from charge-sheet clearly shows that the Managing Director has mindset even at the stage of framing charges and has also commented upon test of bias in the following manner ;

'The Court of appeal judgment in *Locabail. (2000 QB 451)* (supra) though apparently as noticed above sounded a different note but in fact, in more occasions than one in the judgment itself, it has been clarified that conceptually the issue of bias ought to be decided on the facts and circumstances of the individual case a slight shift undoubtedly from the original thinking pertaining to the concept of bias to the effect that a mere apprehension of bias could otherwise be sufficient.'

5. Last case relied upon by the counsel for the petitioner is *Mohd. Abbas v. Settlement Officer, Consolidation and Anr.*, 2000 (1) LBESR 530, wherein it was provided that the Inquiry Officer failed to fix a date, time and place of holding inquiry which amounts to not affording opportunity of hearing. Accordingly it was held that the order of dismissal is bad in law.

6. In light of the above observation it has been submitted by the learned counsel for the petitioner that the findings recorded by the Tribunal are perverse and the impugned judgment suffers from infirmity and therefore, the same is liable to be quashed.

7. Learned. Tribunal had considered all the contentions raised by the petitioner before the Tribunal and found that the petitioner in spite of the opportunity afforded failed to submit any written statement and also had not participated in the inquiry and further found that out of four charges only one charge was in respect of the

criminal case, therefore, charge Nos. 1, 3 and 4 were inquired by the Inquiry Officer. Petitioner has even failed to reply to the show cause and made an attempt to get away from the reply by informing that he cannot disclose anything before the final decision of the Court of law.

8. We have examined the record and are of the opinion that there is nothing on record on the basis of which the petitioner could substantiate that he had demanded the documents and the authority concerned has failed to furnish the same. Merely making an allegation in the writ petition would not suffice. Not only this, the petitioner could have applied for inspection of the record but nothing emerges out from the record that petitioner ever made an application to inspect the record. The Tribunal has recorded a finding in this regard after satisfying itself that nothing was available on record and as such, it is incorrect to allege that finding recorded by the Tribunal is erroneous or is not based on correct appreciation of evidence.

9. We may add that all the questions raised by the petitioner before the Tribunal have been considered by the Tribunal and the conclusions arrived at by the learned Tribunal are based on correct appreciation of the materials on record. With regard to the allegation of the petitioner that there no notice was issued to him with regard to the inquiry is belied by the findings recorded by the Tribunal that authorities even attempted to serve notice upon the petitioner about the date fixed through the Tehsil concerned and attempt was also made to effect service on him at his residence but petitioner always avoided to receive notice.

10. In view of what has been discussed above, we find no infirmity or illegality in the judgment and order dated 21.2.1983 passed by the U.P. Public Service Tribunal and the writ petition is liable to be dismissed.

11. Accordingly the writ petition is dismissed.