

V.K. Jaiswal Vs. General Manager (Administration) U.P. Sahkari Gram Vikas Bank Ltd. and ors.

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Court : Allahabad

Decided On : May-08-2006

Reported in : 2006(4)AWC3678

Judge : S.N. Srivastava, J.

Appellant : V.K. Jaiswal

Respondent : General Manager (Administration) U.P. Sahkari Gram Vikas Bank Ltd. and ors.

Judgement :

S.N. Srivastava, J.

1. Impugned here are the orders dated 3.11.1998 passed by Managing Director U.P. Sahkari Gram Vikas Bank Ltd. whereby the petitioner was awarded censure entry for not discharging his duties with diligence and further forfeiting the salary for the period of suspension except the subsistence allowance and 23.4.1999 passed by appellate authority whereby the appeal preferred by the petitioner was rejected.

2. From a perusal of the record it would transpire that the petitioner was placed under suspension in contemplation of enquiry by means of order dated 4.10.1997

which was passed in exercise of power under Regulation 85 (vii) of the U. P. Cooperative Societies Employees Regulations, 1975 on the charges that the matter of missing of receipt No. 18 was not reported to the superior authorities and further that the petitioner made use of the cash receipt book quite irregularly to the detriment of the interest of the Bank. Subsequently, charge-sheet was drawn 'vide charge-sheet dated 27.1.1998 and enquiry was embarked upon. In the final analysis, it was found that it was not a case involving major penalty and consequently, while taking decision not to pursue enquiry, penalty of censure entry was inflicted on the petitioner. It would further appear from the record that the petitioner was denied salary for the period of suspension although he was treated on duty for the aforesaid period vide order dated 3.11.1993. It is in this backdrop that the petitioner aggrieved by the impugned orders instituted the present petition.

3. Learned Counsel for the petitioner began submission canvassing that charges contained in the charge-sheet have not been brought home against the petitioner and further that disciplinary authority as well as appellate authority scantily dealt with the charge in the impugned orders and the orders impugned have been passed without assigning any reasons and no finding has been recorded about guilt of the petitioner. It is further canvassed that the order is without application of mind to the reply submitted to the charge-sheet and other materials on record and therefore the same is unsustainable in law. Lastly, it has been canvassed that under the provisions of Regulation 85 (vii) of the U. P. Co-operative Societies Employees Service Regulations, 1975, it is envisaged that the authority could place a person under suspension only when it is a case of removal, dismissal or reduction in rank and this admittedly being not the case the order of suspension was vitiated and the authorities erred in law in refusing to pay salary for the period of suspension. In the counter-affidavit filed by opposite parties, the reply to averments is confined to the statement that the petitioner was given opportunity of hearing and hence the order is liable to be maintained.

4. Before proceeding further, it would be useful to refer to Regulation 85 (1) of the U.P. Co-operative Societies Employees Regulations 1975 which envisages that the disciplinary proceedings against an employee shall be conducted by the Inquiring Officer referred to in clause (iv) with due observance of the principles of

natural justice for which it shall be necessary that (a) The employee shall be served with a charge-sheet containing specific charges and mention of evidence in support of each charge and he shall be required to submit explanation in respect of the charges within reasonable time which shall not be less than fifteen days; (b) Such an employee shall also be given an opportunity to produce at his own cost or to cross examine witnesses in his defence and shall also be given an opportunity of being heard in person If he so desires; (c) If no explanation in respect of charge-sheet is received or the explanation submitted is unsatisfactory, the competent authority may award him appropriate punishment considered necessary. Regulation 84 deals with penalties including censure entry as envisaged in Regulation 84 (a).

5. Now the question that begs consideration in the light of the submissions advanced across the bar is whether the principles of natural Justice were observed in compliance or not. As stated supra, Regulation 85 (i) does prescribe observance of the principles of natural Justice. From a close scrutiny of the Impugned order dated 3.11.1998 by which it was decided not to pursue the enquiry any further, it would transpire that no detailed discussion has been embarked upon and the authority concerned confined himself to saying as under:

Sri Jaiswal Ko Diya Gaye Arop Patra, Tathyasambandhi Inke Prativad, Janch adhikari Ki Akhya Tatha Anya Sangat Abhilekhon Par Samyak Roop Se Bank Prashasan Dwara Vichar Kiya Gaya. Vicharoprant Inke Vtrudh Chal Rahi Anushasntk Karyavahi Ko Nimna Dand Ke Saath Samapt Karne Ka Nirney Ltya Gaya.

It is not discernible from the impugned order that the petitioner was served any show cause notice proposing punishment of censure entry and in the circumstances, there appears to be no-compliance with the provisions of Regulation 85 (i) of the Regulations, 1975 which enjoins due observance of the principles of natural justice. In this connection Article 14 of the Constitution of India may also be referred to which clearly postulates that authority competent to pass orders is required to record reasons, which is one of the principles of natural Justice governing exercise of power by the Administrative Authority. It is well

enunciated in various decisions of the High Court and the Apex Court that the Disciplinary authority has to apply his mind to the record apart from the finding recorded by the enquiry officer before coming to the conclusion whether the charge of misconduct has been proved against the delinquent. In *Rajeshwar Singh v. Union of India* (1990) 1 SLR 24, the Apex Court deprecated the increasing tendency amongst the disciplinary authorities and appellate authorities to accept the findings of Enquiry Officer without applying their independent mind.

6. Coming to the aspect of observance of principles of natural Justice, It is explicit from a perusal of the impugned orders that no show cause notice was issued proposing punishment to, be inflicted on the petitioner. As stated supra, it would crystallize from a perusal of the impugned order that the disciplinary authority took into reckoning the charge sheet, reply of the petitioner to the charge-sheet and the enquiry report and proceeded to award punishment of censure entry without issuing any show cause notice, or serving copy of the enquiry report to enable the delinquent to furnish effective reply. In *State of Assam v. Bimla Kumar Pandit* (1963) 1 Lab LJ 295, the Supreme Court emphasized the need of issuing show cause notice after the enquiry proceedings are over and the importance that is attached to it. The Supreme Court also held that punishing authority must apply his mind to the finding recorded by the enquiry officer and after indicating his acceptance of those findings or such of those findings which he accepts must inform the delinquent officer about his acceptance of those findings as well as the action that he proposes to take and call upon the officer concerned to offer his explanation to the said proposed action. The Supreme Court further observed that at that stage the officer gets a full opportunity of challenging the findings on the basis of which action is proposed to be taken and he can satisfy if possible the authority competent to impose the punishment that no action is called for. In *S.N. Mukherjee v. Union of India* : 1990 CriLJ2148a , the Apex Court laid emphasis in Para 13 of the judgment In the following words:

Keeping in view the expanding horizon of the principles of natural Justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities.

In *State of Haryana v. Ram Pal* 2005 SCC 347, the Apex Court also underlined the need for giving reasons. In para 10 of the decision the Apex Court stated that 'reason is the heart beat of every conclusion and without the same it become lifeless referring to a decision in *Raj Kishore Jha v. State of Bihar*. In para 11. the Apex Court observed as under:

'Even in respect of administrative orders, Lord Denning, M.R. in *Breen v. Amalgamated Engg. Union*, observed: All ER p. 1154h 'The giving of reasons is one of the fundamentals of good administration. In *Alexander Machinery (Dudley) Ltd v. Crabtree*, it was observed; Failure to give reasons amounts to denial of Justice.' Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that If the decision reveals the inscrutable face of the sphinx', it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before the Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary party can know why the decision has gone against him. One of the salutary requirements of natural Justice is spelling out reasons for the order made; in other words, a speaking out. The 'inscrutable face of the sphinx' is ordinarily incongruous with a judicial or quasi judicial performance.

7. In this connection, decision in *Ktehan Lal v. State of Rajasthan* AIR 1966 Raj 55, may also be noticed. In this case, the petitioner was charged for using service stamps in his private correspondence and was also charged for committing breach of discipline. The petitioner was given notice that the Government had proposed to hold enquiry against him under Rule 16 of the Rajasthan Civil Servants (Classification, Control and Appeal) Rules, for imposition of a higher penalty, but thereafter, suddenly, the Government adopted a different procedure and proceeded against him under Rule 17 meant for imposition of lighter penalty without disclosing any reasons for the change and punished the petitioner without giving him any personal hearing or examining any evidence for or against him in

his presence. Quashing the impugned orders, the Court observed:

It is true that for imposing minor penalties, it is open to the disciplinary authority to proceed under Rule 17 instead of Rule 16, but if the disciplinary authority proposes to proceed under Rule 17, that rule requires that the Government servant, must be informed in writing of the proposed action to be taken against him and also of the allegations on which action is proposed to be taken. He should be given an opportunity to make a representation, which he may wish to make. We find that no intimation was given to the petitioner what action the disciplinary authority proposed to take against him and whether it wanted to proceed under Rule 17, for imposing minor penalties, simply because it has proceeded initially under Rule 16, but it is certainly necessary that if it proposes to change the procedure from Rule 16 to Rule 17, clear notice to that effect must be given to the person concerned before proceeding under Rule 17.

As stated supra, no reasons have been recorded for agreeing with the report of the enquiry officer nor any show cause notice appears to have been Issued proposing punishment of censure entry nor petitioner was informed of imposing minor penalty of censure entry and in the circumstances, it can safely be said that principles of natural Justice were not given due consideration and therefore, the impugned orders cannot be sustained.

8. Coming to second aspect, which relates to refusal to pay the salary for the period of suspension except the subsistence allowance. It brooks no dispute that delinquency attributable to the petitioner was not such as to warrant imposition of major penalty and in the circumstances, the disciplinary authority revoked the order of suspension against the petitioner but at the same time refused to pay salary for the period of suspension. In this connection it may be noticed that pre-requisite condition for suspension is that there may be a prima facie case of removal, dismissal or reduction in rank as envisaged in Regulation 85 (vi) (a) which postulates that when the said authority is satisfied that a prima facie case exists which is likely to result in the removal, dismissal or reduction in rank of the employee. In the instant case, the Disciplinary Authority ultimately found that no case was made out entailing major penalties like removal, dismissal or reduction in

rank and accordingly, the petitioner was reinstated treating the period of suspension as on duty. However, the authority concerned declined payment of salary for the period of suspension relying on provisions of Regulation 85 (1) (vii) of the Regulations, 1975. As stated supra, the penalty of censure entry has been inflicted without observing the principles of natural justice, i.e.. without issuing any show cause notice pursuant to enquiry report and without assigning any reasons in the impugned order for agreeing with the enquiry report or for making out a case for imposition of penalty of censure entry and in this perspective, the impugned order has been held to be unsustainable in law. In this view of the matter, the decision of the disciplinary authority refusing to pay salary for the period of suspension cannot be upheld and therefore considering that suspension was revoked, the petitioner would be entitled to full pay and allowances for the period of suspension.

9. Coming to order of appellate authority, it is settled position in law that order rejecting appeal without giving reasons is not sustainable and therefore in normal cases the appellate authority is bound to pass a speaking order. Decision of appeal by non-speaking order is liable to be quashed for non-application of mind. From a perusal of impugned order of appellate authority, it is obvious that the order rejecting appeal is a cryptic order from which it is not discernible that the appellate authority has applied its mind objectively on consideration of various factors as contemplated in Regulation 86 of the Regulation, 1975 and therefore, it also cannot be sustained.

10. In the result, the writ petition succeeds and is allowed. The impugned orders dated 3.11.1998 passed by Disciplinary Authority and also the order dated 23.4.1999 passed by appellate authority are quashed. In consequence, it is ordered that the petitioner shall be entitled to full salary for the period of suspension apart from other consequential benefits, which may accrue to him. In the facts and circumstances, there will be no order as to costs.