

Nagar Palika, Natar

Vs

U. P. Public Services Tribunal, Lucknow and Others

Civil Appeal No. 4747 of 1989

(Sujata V. Manohar, D. P. Wadhwa JJ)

04.11.1997

ORDER

1. The second respondent was at the material time holding the post of Tax Inspector in the notified area of Nagar Palika, Natar. On 26-5-1973, the Chairman of the Nagar Palika found Respondent 2 sleeping during office hours. The Chairman asked the second respondent and others to submit an explanation as to why they were sleeping during duty hours. The second respondent instead of giving the explanation filed a criminal report against the Chairman at the local police station. The second respondent was suspended from service and was served with a charge-sheet containing nine serious charges. In the charge-sheet, it was stated that Respondent 2 should submit his explanation within 15 days and also that if the second respondent wanted to examine certain witnesses, names of such witnesses should also be mentioned in the explanation. Despite repeated reminders, Respondent 2 did not submit any explanation. Ultimately a letter dated 6-10-1977/11-10-1977 was sent by registered post to the second respondent directing him to submit his explanation to the charge-sheet dated 23-7-1974. Instead of submitting any explanation, Respondent 2 sent a letter in which he demanded copies of 65 documents. On 9-11-1977, the appellant again served a registered notice to Respondent 2 of submitting his explanation after inspecting the relevant record. But the second respondent did not inspect the relevant record and did not submit his explanation. Several subsequent notices were also sent to the second respondent. Ultimately since the second respondent did not submit any explanation, an order was passed dismissing the second respondent from service on 21-1-1978. In the meanwhile, the second respondent had filed two suits challenging the orders of suspension which were later transferred to the Uttar Pradesh Public Services Tribunal.

2. The Tribunal vide its order dated 28-11-1980 dismissed both the suits of the second respondent on the ground that the second respondent had not exhausted the remedy of a departmental appeal against the order of dismissal. The High Court, however, has allowed the writ petition filed by the second respondent on the ground that looking to the fact that the second respondent was allowed to amend his suit to challenge the order of dismissal also, it was not proper on the part of the Tribunal to dismiss the suit on the ground that the alternative remedy of departmental appeal was not availed of by the second respondent.

3. Instead of remanding the matter to the Tribunal for decision on merit, the High Court, however, has relied upon observations made by the Tribunal and has come to the conclusion that the order of dismissal is illegal. It has set aside the order of dismissal. The observations on which the High Court has relied are to the effect that no enquiry at all was held in this case and no opportunity to inspect the record was given to the second respondent. The Tribunal has also observed that no copy of the Enquiry Report was sent along with the show-cause notice and hence there was no proper enquiry. These observations of the Tribunal have failed to take into account the fact that despite repeated

reminders spreading over a number of years, the second respondent failed to give any reply to the charge-sheet which was served upon him. It also failed to take into account the fact that although the second respondent was asked to inspect the record, he did not inspect the record. It was because of this failure on the part of the second respondent to reply to the charge-sheet or to appear before the Enquiry Officer that the charges were held proved by the Enquiry Officer on the basis of the material which was available before him. This cannot be considered as a negation of the principles of natural justice. The fact that the copy of the Enquiry Report was not given to the second respondent will not vitiate the proceedings, in view of the decision of this Court in *Managing Director, ECIL v. B. Karunakar* ((1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704).

4. The appeal is allowed and the order of the High Court is set aside. The order of dismissal is upheld. However, pursuant to an interim order dated 23-11-1989 which was passed by this Court in the present proceedings a limited stay of the impugned order was granted, confined to the payment of back wages. The appellants were directed to reinstate the second respondent on the post which he was holding and pay him the salary due to him thereafter. The interim order now comes to an end. Since we have upheld the order of dismissal, there is no question of granting any back wages.