

Appointing Authority, G.B.P. SPL. I. & Another

v.

R.K. Singh

(Supreme Court Of India)

Y.K. SABHARWAL and D.M. DHARMADHIKARI, JJ.,

C. A. No. 1288 of 2002 | 26-08-2004

1. The respondent, a Research Assistant in the appellant institute, was removed from service by order dated 22-11-1999. The order of removal having been quashed by the High Court and consequential orders in favour of the respondent having been passed, the institute is in appeal on grant of leave.

2. The order of removal has been quashed on the ground of denial of opportunity to the respondent to appear and participate in the disciplinary enquiry thus violating the principles of natural justice. The High Court, referring to paras 31 and 32 of the counter affidavit filed by the institute, in opposition to the writ petition, has come to the conclusion that the respondent employee should have been intimated about the date, time and place of enquiry and the name of the enquiry officer and the evidence should have been recorded in his presence and he should also have been given opportunity to adduce his evidence despite the fact that the petitioner (respondent herein) never replied to the charge sheet. The judgment proceeds on the basis that the respondent was never informed about the name of the enquiry officer or about the holding of the enquiry. That is also the stand of the respondent before this Court in the counter affidavit filed, wherein it has been, inter alia, alleged that no information about Shri Prahlad Narain having been appointed as enquiry officer was sent to him. It has further been alleged by the respondent that the enquiry officer never informed him of the order in pursuance of which he had been so appointed nor had he informed him of any date of enquiry. Further, the plea taken in the counter affidavit is that enquiry report was not supplied to the respondent and he was not afforded any opportunity to rebut the finding given in the enquiry report.

3. We have heard Mr S. Muralidhar, learned counsel for the appellant and have perused the record. We had no assistance from the respondent since none appeared for him either yesterday or today.

4. A perusal of the record shows that the High Court fell into apparent error in coming to the conclusion that the respondent was not intimated about the enquiry or the enquiry officer or about the date of the enquiry. The record shows that various opportunities were granted to the respondent. The respondent appeared before the Enquiry Officer Shri Prahlad Narain, a retired District Judge on various dates. Dealing with the request of the respondent to grant further time to file reply up to 2-7-1999, considering that earlier on 5-6-1999 last opportunity had been granted to file the same on or before 16-6-1999, the enquiry officer on 21-6-1999 granted further time to the respondent to file it by 25-6-1999, stating in the order that on failure to file reply suitable orders for further progress in the enquiry may be passed. The order dated 21-6-1999 reads as under:

"On 4-6-1999, I have granted time to the charges as prayed by him. If any further time was desired despite the orders that the enquiry would not be delayed unreasonably and that time till 16-6-1999 was being given as a last opportunity, the chargee should have applied to me direct and not written letters to anybody else. Let the chargee be asked to apply to me (through the Registrar of course) for further time if desired and throughout this enquiry bear in mind:

(i) that his applications must be to the point and brief,

(ii) no matter irrelevant to the scope of this enquiry be introduced in any matter,

(iii) if documents, other than the ones already supplied, are applied for, relevancy of each must be briefly stated. Without real relevancy the documents shall be refused and it may be thought that this is a device merely to prolong or delay the enquiry.

Let the applicant do the needful as above by 25-6-1999 or else suitable orders for further progress in the enquiry may be passed. The letter enclosed and addressed to the Registrar be returned to the latter."

The aforesaid order has been received by the respondent under his signatures dated 21-6-1999, acknowledging the receipt. From the record it appears that the respondent neither filed any reply on or before 25-6-1999 nor appeared before the enquiry officer after having received the aforesaid order. Further, it appears that the enquiry officer waited till 12-7-1999 and thereafter proceeded to record evidence in the absence of the respondent and submitted his report dated 25-9-1999.

5. The enquiry report was sent to the respondent along with show cause notice dated 4-10-1999 requiring him to show cause latest by 25-10-1999 why the punishment of removal from service be not awarded. The show cause notice along with the report was received by the respondent under his signatures of the even date i.e. 4-10-1999. The record produced by the appellant further shows that the respondent sought, by his letter dated 23-10-1999, addressed to the Registrar of the institute, further 25 days' time to reply to the show cause notice. The reply dated 6-11-1999 to the show cause notice was submitted by the respondent and thereafter the order of removal dated 22-11-1999 was passed. The said order shows that the record including the reply of the respondent was considered. In the light of these documents, the stand in the counter affidavit that the enquiry report was not supplied to the respondent and he was not afforded any opportunity to rebut the finding given in the enquiry report is not only entirely misconceived but clearly amounts to perjury as well. We would leave the matter by making only these observations since we had no opportunity to seek the respondent's explanation in absence of any representation on his behalf.

6. In the counter affidavit that had been filed by the appellant in the High Court, full details had been given as to the grant of the time to the respondent, as to the letter of the respondent, as to the orders that had been passed by the enquiry officer and above all the intimation given to the respondent by the enquiry officer in the pleas taken in para 13 of the counter affidavit.

7. From the aforesaid narration it is evident that the High Court committed an error apparent on the record by coming to the conclusion that the respondent had not been intimated about the enquiry officer having been appointed or about the enquiry proceedings. It is clear that he had himself appeared before the enquiry officer from time to time and stopped appearing after the order was passed on 21-6-1999. We may only note that an undated and unsigned reply seems to have been filed by the respondent somewhere in July 1999, reading whereof makes no sense. Be that as it may, it cannot be held that there was any denial of fair opportunity to the respondent which is the only ground which weighed with the High Court.

8. For the aforesaid reasons, we set aside the impugned judgment of the High Court and allow the appeal. Resultantly, the writ petition filed by the respondent in the High Court stands dismissed.