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ALLAHABAD HIGH COURT (LUCKNOW BENCH)

DIVISION BENCH

STATE OF U.P. AND OTHERS — Appellant

Vs.

ARUN KUMAR YADAV — Respondent

(Before : D.Y. Chandrachud, C.J. and S.N. Shukla, J.)

CM Application No. 129183 of 2015 in Special Appeal Defective No. 579 of 2015

Decided on : 16-12-2015

- Penal Code, 1860 (IPC) - Section 309

A. Service Law — Disciplinary Proceedings — Breach of Principles of Natural Justice — Entitlement to Reinstatement/Fresh Opportunity — Sub Inspector (Civil Police) — Initial dismissal for gross negligence and lack of devotion to duty set aside due to breach of natural justice (no opportunity of hearing) — Subsequent removal from Police Training College also set aside for breach of natural justice (denial of cross-examination of witnesses) — When a disciplinary proceeding is vitiated by a breach of the principles of natural justice, the appropriate remedy is not outright reinstatement but to allow the disciplinary authority to continue the proceedings from the stage where the breach occurred, after rectifying the procedural flaw — This permits an employer to establish the misconduct through proper procedure, rather than permanently foreclosing the inquiry — Final order of learned Single Judge modified to allow appellants to conclude disciplinary proceedings in accordance with principles of natural justice within four months. (Paras 3, 5, 8, 9, 10, 11)

B. Service Law — Disciplinary Proceedings — Right to Cross-Examine Witnesses — Essential Component of Natural Justice — Trainee Sub Inspector

— Allegation of misconduct leading to removal from Police Training College — Department relied on witness statements — Respondent not afforded opportunity to cross-examine these witnesses — Charge of misconduct not admitted by respondent — Holding that absence of cross-examination rendered the procedure unfair and violative of natural justice, especially when the charge was not admitted and needed to be established through evidence. (Para 9)

C. Service Law — Disciplinary Proceedings — Misconduct — Distinction between "preliminary inquiry" and "disciplinary inquiry" — Trainee Sub Inspector recruited under "Dying in Harness Rules" — Initial dismissal order based on specific findings of gross negligence and lack of devotion to duty — Subsequent inquiry (after initial dismissal was set aside) leading to removal from Police Training College — Even if enquiry termed "preliminary," if it forms the basis for action against an employee recruited on a regular basis, disciplinary procedure must be followed, including affording opportunity to be heard and cross-examine witnesses — The charge of misconduct must be duly proved in the course of disciplinary proceedings. (Paras 7, 8, 9)

Counsel for Appearing Parties

B.R. Singh, for the Respondent

Final Result : Disposed Off

ORDER

1. The special appeal has arisen from a judgment and order of the learned Single Judge dated 6 October 2015. Finding that the disciplinary proceedings which were initiated against the respondent suffered from a breach of the principles of natural justice, the learned Single Judge directed the appellants to take back the respondent to the Police Training College to enable him to undergo and complete the training together with the next available batch of Sub Inspectors (Civil Police) in accordance with law.

The State is in appeal.

2. The respondent was appointed under the Uttar Pradesh Recruitment of Dependents of Government Servants (Dying in Harness) Rules, 1974 and was deputed for training as a trainee Sub Inspector from 1 August 2005 at the Police Training College, Moradabad. The allegation against the respondent is that on 17 July 2006 at about 4.10 p.m., the respondent climbed on the roof of Barrack No. 1 of the Police Training College Campus, but on the persuasion of other trainees he was brought down. On 18 July 2006, an examination in field craft was scheduled at 3.00 pm. It is alleged that the respondent, instead of

participating in the examination, left the team, climbed on to the roof of the Gymnasium and jumped down, sustaining serious injuries. The respondent was taken to hospital for treatment and a First Information Report in Case Crime No. 1648 of 2006 was registered under Section 309 of the Penal Code. A charge sheet was submitted on 27 September 2006 before the competent Court, after investigation.

3. In the meantime, by an order dated 19 August 2006, the respondent was dismissed from service on the ground that the incident which had taken place on 17-18 July 2006 indicated gross negligence and a lack of devotion to duty. The respondent filed a writ petition before this Court (Service Single No. 8168 of 2006). The writ petition was allowed on the ground that there was a breach of the principles of natural justice (relying upon a judgment delivered on 28 August 1991 in Writ Petition No. 5083 of 1983, *Devesh Mishra v. State of Uttar Pradesh*). However, liberty was granted to the appellants to pass a fresh order after pursuing departmental proceedings and allowing an opportunity of being heard to the respondent.

4. Following the order of the learned Single Judge, an enquiry was held in which reliance was placed on the statements of several witnesses and on 26 February 2013 a report was submitted. A notice to show cause was issued to the respondent on 27 July 2013 to explain why he should not be removed from the College, in exercise of the powers conferred by Para 23 of the Uttar Pradesh Police Training College Manual. The respondent submitted a reply to the show cause notice on 8 August 2013. After the approval of the Director General of Police (Trainee), an order was passed on 2 October 2013 removing the respondent from the Police Training College.

5. During the pendency of the writ petition, an interim order was passed by the learned Single Judge on 22 April 2015 directing the examination of the respondent by the State Medical Board in regard to his mental status. In the final judgment from which the special appeal has arisen, the learned Single Judge recorded that the report of the Medical Board had opined that the present mental status of the respondent was sound. The learned Single Judge set aside the order of removal on the ground of a breach of the principles of natural justice and directed that the respondent be taken back to the Training College and be allowed to complete his training with the next available batch of Sub Inspectors in the Civil Police.

6. The submission which has been urged on behalf of the State is that the enquiry which was held, was in the nature of a preliminary inquiry following which a notice to show cause was issued to the respondent. Upon considering the reply of the respondent, an order of removal was passed. Hence, it has been urged that there was no breach of the principles of natural justice.

7. The original order of 19 August 2006 is an order of dismissal from service. In fact, the order specifically records the incidents which took place on 17 and 18 July 2006. The order contains specific findings that the respondent was guilty of gross negligence and lack of

devotion to duty.

8. The respondent, admittedly, was recruited on a regular basis under the Dying in Harness Rules. His dismissal had to be preceded by proper procedure in accordance with the principles of natural justice. In fact, while allowing the first writ petition which was filed by the respondent, this Court by an order dated 13 December 2012, granted liberty to the State to proceed against the respondent pursuing disciplinary proceedings and after affording him an opportunity of being heard. Even assuming that the enquiry report upon which reliance was placed by the State was regarded as a preliminary enquiry, the fact does remain that the charge of misconduct had to be duly proved in the course of the disciplinary proceedings.

9. The charge against the respondent was a charge of misconduct. After the notice to show cause was issued to the respondent, admittedly there was no opportunity to cross examine the witnesses upon whose testimony reliance was placed by the department. The charge had to be established on the basis of evidence and in compliance with the principles of natural justice by affording an opportunity to the respondent, of cross-examining the witnesses. In the absence thereof, the procedure which was followed of merely calling upon the respondent to submit an explanation and thereafter passing the order of removal was evidently unfair. The charge, it must be noted, was not admitted by the respondent. Hence, on this aspect, the order of the learned Single Judge does not warrant interference.

10. However, we find merit in the alternate submission on behalf of the State that having found that there was a breach of the principles of natural justice, the learned Single Judge ought to have granted liberty to the appellants to conclude the enquiry from the stage from which the breach occurred. The law on the subject is well settled. If there is a breach of the principles of natural justice, the correct course of action is to permit the disciplinary authority to conclude the disciplinary proceedings from the stage from which the breach occurred. Since the matter relates to 2006, we are of the view that the ends of justice would be met if a time frame is laid down for the completion of disciplinary proceedings. We accordingly modify the ultimate order of the learned Single Judge and allow the special appeal in part, by granting liberty to the appellants to conclude the disciplinary proceedings in accordance with the principles of natural justice. The appellants would be at liberty to issue appropriate directions in the meantime in regard to the status of the respondent in the meantime. In the event that the respondent is suspended, the issue as regards the training will abide by the final result of the disciplinary proceedings.

11. The enquiry shall be concluded within a period of four months from the receipt of a certified copy of this order.

12. The special appeal accordingly stands disposed of. There shall be no order as to costs.

13. The delay of one month and nine days in filing the special appeal is condoned since sufficient cause has been shown in the affidavit filed in support of the delay condonation

application.

14. The application stands disposed of. There shall be no order as to costs.