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ALLAHABAD HIGH COURT (LUCKNOW BENCH)

VIRENDRA KUMAR SAXENA (DEAD) BY HIS LRS. — Appellant

Vs.

**CHAIRMAN, U.P.COOPERATIVE INSTITUTIONAL SERVICE BOARD,
LUCKNOW AND OTHERS — Respondent**

(Before : Shri Narayan Shukla, J)

Writ Petition No.6650 (S/S) of 2006

Decided on : 12-03-2007

- **Uttar Pradesh Cooperative Federation Ltd. Employees Service Rules, 1980 - Rule 84**

A. Service Law Dismissal from Service Principles of Natural Justice Employee dismissed from service for alleged misconduct; petitioner (deceased) and his legal heirs challenged the dismissal order.

B. Service Law Inquiry Procedure Fair Hearing Inquiry Officer concluded inquiry based solely on charge sheet and reply, without oral hearing, fixing date/time/place of inquiry, or allowing cross-examination of witnesses.

C. Service Law Violation of Natural Justice The U.P. Cooperative Federation Ltd. Employees Service Rules, 1980 (Rule 84(1)) mandate adherence to principles of natural justice during inquiries. Failure to provide opportunities for cross-examination, fix hearing dates, or allow defence witness examination vitiates the inquiry.

D. Service Law Precedents on Natural Justice Relying on Kumaun Mandal Vikas Nigam Ltd v. Girja Shanker Pant, Lalta Prasad v. State of U.P., Ram Phool Sharma v. State of U.P., Om Pal Singh v. District Development Officer, Sri Kant Pandey v. Managing Director, Subodh Kumar Trivedi v. State of U.P.,

and Kuldeep Singh v. Commissioner of Police stressing the mandatory nature of oral inquiry, cross-examination, and furnishing of documents.

E. Service Law Post-Death Benefits and Compassionate Appointment Deceased employee's legal heirs impleaded; claim for all post-retiral benefits, salary from suspension till death; wife also seeks compassionate appointment and pension.

F. Service Law Outcome The court found a clear violation of natural justice, quashed the dismissal order, and directed payment of all post-retiral benefits, salary, and consideration for compassionate appointment within two months.

JUDGMENT

Shri Narayan Shukla, J.—During the pendency of the writ petition the petitioner died on 15th August, 2006 leaving behind him, his wife, three daughters and one son. Through the amendment application the legal heirs of the deceased petitioner have been impleaded as petitioner Nos.1/1, , 1/3, and 1/5 in the writ petition, vide order dated 18.8.2006.

2. Heard Mr. B.R. Singh, learned counsel for the petitioners and Mr. Raghvendra Singh, learned counsel for the respondents.

3. The learned counsel for the petitioners has assailed the order of dismissal from service dated 10.7.2007 passed by opposite party No.2 i.e. Managing Director, U.P. Cooperative Federation Ltd. Lucknow against the petitioner (deceased) with the prayer that a writ of mandamus be issued to the opposite parties to reinstate the services of the petitioner with consequential benefits including back wages.

4. Briefly the relevant facts of the case are that the petitioner (deceased) was appointed as Technical Assistant in U.P. Cooperative Federation Ltd. (herein after referred as Federation) in the year 1981 and after three years from the date of appointment he was confirmed in service. On 4.7.2005 he was suspended from service on three charges the first charge was regarding the misbehaviour with the other employees of the concerned office, the second charge was that he harassed a lady on telephone and the third was that he was negligent in duties which were assigned to him. He was served with chargesheet on 11.7.2005. He submitted the reply of the chargesheet denying all the charges levelled against him on 17.11.2005. Thereafter without calling the petitioner (deceased) for oral hearing as well as without fixing date, time and place of inquiry, the Inquiry Officer proceeded to conclude the inquiry on the basis of the chargesheet and reply submitted by the petitioner which is complete violation of principles of natural justice. On the charge of misconduct with late Mr. Saxena was also not proved nor was he called by the Inquiry Officer for crossexamination. The Inquiry Officer submitted the inquiry report on 7.12.2005 to the Managing Director of Federation on the basis of which the petitioner

(deceased) was given a show cause notice by the Managing Director of the federation vide order dated 5.1.2006 calling the explanation from him, why he may not be removed from service. He submitted reply to the show cause notice and specifically denied all the charges levelled against him. However, the Managing Director of Federation passed the order impugned and thereby he has been removed from service.

5. To govern the service condition of the employees of the Federation the Rules have been framed which are called as U.P. Cooperative Federation Ltd. Employees Service Rules, 1980. Rule 84 (1) of the said Rule provides that the enquiry shall be concluded after following the principles of natural justice and all the procedure of the enquiry as envisaged under Rule 84.

6. The deceased petitioner submits that in his matter Rule 84 of Rules, 1980 has not been followed and the requirement of principles of natural justice has been overlooked. He further submits that neither opportunity for cross-examination was given to him nor date, time and place for enquiry was fixed by the Inquiry Officer. Thus the order passed by the opposite party No.2 is not sustainable in the eye of law.

7. In support of his contention the learned counsel for the petitioner has placed reliance upon the case of Kumaun Mandal Vikas Nigam Ltd v. Girja Shanker Pant, (2001) 1 SCC page 182, relevant para 22 of which is reproduced as under:

The sixtyfive page report has been sent to the Managing Director of the Nigam against the petitioner recording therein that the charges against him stands proved what is the basis? Was the Inquiry Officer justified in coming to such a conclusion on the basis of the chargesheet only? The answer cannot possibly be in the affirmative; if the records have been considered, the immediate necessity would be to consider as to who is the person who has produced the same and the next issue could be as regards the nature of the records unfortunately there is not a whisper in the rather longish report in that regard. Where is the Presenting Officer? Where is the notice fixing the date of hearing? Where is the list of witnesses? What has happened to the defence witnesses? All these questions arise but unfortunately no answer is to be found in the rather longish report. But if one does not have it can it be termed to be in consonance with the concept of justice or the same tantamount to a total miscarriage of justice and we do lend our concurrence therewith. The whole issue has been dealt with in such a way that it cannot but be termed to be totally devoid of any justifiable reason and in this context a decision of the King's Bench Division in the case of Denby (William) and Sons Ltd. v. Minister of Health may be considered. Swift, J. while dealing with the administrative duties of the Minister has the following to state:

I do not think that it is right to say that the Minister of Health or any other Officer of the State who has to administer an Act of Parliament is a Judicial Officer. He is an Administrative Officer, carrying out the duties of an Administrative Officer, and administering the provisions of particular Acts of Parliament. From time to time, in the course of administrative duties, he has to perform acts which require him to interfere with

the rights and property of individuals, and in doing that the Courts have said that he must act fairly and reasonably; not capriciously, but in accordance with the ordinary dictates of justice. The performance of those duties entails the exercise of the Minister's discretion, and I think what was said by Lord Halsbury in *Sharp v. Wakefield* (AC at P.179) is important to consider with reference to the exercise of such discretion. He there said:

Discretion means when it is said that something is to be done within the discretion of the authorities that something is to be done according to the rules of reason and justice, not according to private opinion; *Rooke Case*; according to law, and not humour. It is to be, not arbitrary, vague and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his officer ought to confine himself.

8. The learned counsel for the deceased petitioner submits that in the present matter also the respondents have over looked all the legal propositions and proceeded for ex parte inquiry and concluded the same, accordingly, which is not sustainable in the eye of law.

9. Through amendment in the writ petition the subsequent facts have been brought on record that the petitioner died on 15th August, 2006 leaving behind him, his wife, three daughters and one son. Due to removal order which is under challenge, in the present writ petition, no dues have been given to the deceased family and they are suffering from starvation because there are no other source of livelihood.

10. The wife of the deceased petitioner, who has been impleaded as petitioner No.1/1 in the writ petition claims compassionate appointment with the prayer to issue a writ of mandamus commanding the opposite parties to appoint her under Dying in Harness Rules with consequential benefits. Three daughters of the deceased petitioner are aged about 23, 21 and 20 years respectively and they are marriageable. The son of the deceased petitioner is aged about 17 years. There is no other source of livelihood in the family of the deceased petitioner.

11. A counter affidavit has been filed on behalf of opposite party No.2, through which it has been submitted that the order of dismissal has been passed against the petitioner (deceased) after affording opportunity of hearing to him. On the basis of several complaints received against the petitioner (deceased) in respect of his misbehaviour he was placed under suspension and the chargesheet was served upon him. It has further been submitted that all the complaints verified their complaints before the Inquiry Officer before issuing the chargesheet and only after their verification the chargesheet was issued to him. The complaints were supplied to the deceased petitioner alongwith the chargesheet as evidence and he never made any request for examining any of the complaints or to produce any evidence in his defence, whereas in the chargesheet it was specifically mentioned that if the petitioner wants to produce any evidence or personal hearing, a request might be made for the same, but he never made such request and after submission of the inquiry report the reply of the chargesheet was supplied to the petitioner (deceased) and only thereafter the

disciplinary authority proceeded to pass considered order for removal from service.

12. In reply to the counter affidavit, a rejoinder affidavit has been filed on behalf of petitioners with the averments that the opposite parties did not furnish any document as to when the Inquiry Officer proceeded in the matter and when the petitioner was called for hearing. The complaints made against the petitioner (deceased) have never been tested and verified by the Inquiry Officer.

13. Accordingly, the petitioners have, almost, taken the same stand as has been taken in the writ petition in regard to violation of principles of natural justice.

14. In support of the contentions of the petitioners the learned counsel for the petitioners has cited the following cases:

15. *Lalta Prasad v. State of .P. and Others*, 1998(16) LCD 358, relevant para 11 of which is reproduced as under:

I have considered the arguments addressed by the learned counsel for the parties and have perused the aforesaid decisions. The law is now well settled on this aspect of the matter that a delinquent against whom charges have been levelled and the said charges are of such a nature which if proved can result into major penalty like reduction in rank, dismissal or removal etc., then affording of reasonable opportunity to the charged officer by furnishing copies of the documents or evidence on which reliance is to be placed for proving them and also a copy of the enquiry report is must and failure to furnish the same or to afford such an opportunity is in violation of the settled principles of natural justice. It has also been settled now that even if the charged officer does not submit a reply to the charge sheet or I does not demand copies of the evidence or opportunity to cross examine the witnesses it is incumbent upon the Enquiry Officer to hold the enquiry and give intimation to the charged officer in writing about the date, time and place of the enquiry so that he may participate in the proceedings and the evidence is recorded in his presence so that he gets an opportunity to cross examine the witnesses. In this case none of the enquiries have been held with intimation to the petitioner and no witness was ever examined in his presence. A copy of the enquiry report dated 20.9.1991 was also admittedly not provided to the petitioner. On these circumstances the respondents have clearly failed to observe the principles of natural justice and the procedural fairness in the matter of holding enquiries entailing Civil consequences. In my view the appointment of Scrutiny Officer and acting upon his recommendations by the District Magistrate is also without jurisdiction and therefore, whole of the departmental enquiry stands vitiated and the order of termination from service passed on the basis of such an enquiry and the recommendations of the Scrutiny Officer cannot be sustained in law.

16. *Ram Phool Sharma v. State of U.P. and Others*, 1997 (15) LCD 1213, relevant para 12 of which is reproduced as under:

It is an admitted fact that oral enquiry was not held. Enquiry Officer did not hold any sittings and no evidence was led before him to prove the charges levelled against the petitioner. Obviously, the question of any opportunity to cross-examine all the witnesses does not arise in such a situation. Since the punishment awarded to the petitioner is a major penalty, therefore, the compliance of Rule 55 of the aforesaid Rules was mandatory. The purpose of this rule is to give government servant an opportunity to exonerate himself from the charges and if the opportunity has to be reasonable one, then he should necessarily be allowed to show that the evidence against him is not worthy of credence or consideration and this can only be shown by him provided he is given a chance to cross-examine the witnesses called against him and to examine himself or any other witness in support of his defence. All this is implicit in the language of the rule. Principles of natural justice are built in such rules and the settled legal position is that whether the charged officer requests for oral enquiry or not, it is the obligation of the Enquiry Officer to provide such an opportunity failing which the whole of the enquiry stands vitiated. In the aforesaid facts and circumstances, where no such opportunity was provided, the extraneous material was used against the petitioner. Even the report of the preliminary enquiry was not furnished to the petitioner. List of witnesses was not provided to him and his conduct alone was enquired into while audit report indicated four persons. In these circumstances, there is no doubt that the departmental enquiry and the punishment based there upon suffers from serious legal infirmities and perversities and the same are liable to be quashed.

17. *Om Pal Singh v. District Development Officer, Ghaziabad and Others*, 2000(18) LCD 1239, relevant para 4 of which is reproduced as under:

The chargesheet was issued to the petitioner on 27.4.98 to which the petitioner submitted a reply on 29.4.98. Enquiry Officer was appointed on 1.5.98. The Enquiry Officer wrote a letter to the petitioner on 14.5.98 that in case petitioner wants to say anything in defence he may say so in writing so that enquiry proceedings be completed. The petitioner submitted his reply on 16.5.98 stating that he has already submitted his reply to the charge sheet and it may be treated as his reply. He has nothing more to say. Thereafter, the Enquiry Officer completed the enquiry proceedings without fixing any date for evidence or for examination of witnesses. He submitted his report on 21.5.98. The letter dated 14.5.98 by the Enquiry Officer and reply of the petitioner dated 16.5.98 did not absolve the Enquiry Officer from holding the enquiry proceedings, in accordance with the principles of natural justice. The record produced by standing counsel established that no date was fixed by the Enquiry Officer after letter dated 14.5.98 was replied by petitioner on 16.5.98. The charges against the petitioner were factual. They were denied by the petitioner. Therefore, it was incumbent for the enquiry officer to have examined witnesses in support of the charges and record finding that they were proved. It was obligatory to afford opportunity of hearing to petitioner to defend the charges. He was required to fix dates for holding enquiry proceedings. Even if the petitioner would not have appeared the charges could be held proved only after examination of witnesses and production of record to support the allegations. In absence of any date fixed by the Enquiry Officer or holding enquiry

proceedings, the entire enquiry proceedings were vitiated. They were carried out in violation of principles of natural justice. The disciplinary authority too after receiving the report of the Enquiry Officer neither gave a copy of the enquiry report to the petitioner nor issued any show cause to the petitioner and passed the order of dismissal on 29.5.98. The entire enquiry proceedings and the dismissal order passed by the respondents on the basis of such an enquiry report cannot be upheld.

18. Sri Kant Pandey v. Managing Director, U.P. State Food and Essential Commodities Corporation and another, (1994) 3 UPLBEC 1522, relevant para 3:

I have heard learned counsel for the petitioner and Shri Abid Ali, learned counsel for the opposite parties and have also gone through the record including the record of disciplinary proceedings placed before the Court by Shri Abid Ali. Learned counsel for the petitioner is right in his submission that this order cannot be sustained for more than one reason. In the first place, it appears from the chargesheet and the order passed that the report dated 13.7.1992 of Shri Habib Khan has been referred to and relied upon. It is not disputed and is obvious from the record that Shri Habib Khan has not been examined to prove this report nor any opportunity has been given to the petitioner to cross-examine Shri Habib Khan in regard to this report. It is settled law that a report or document cannot be deemed to be proved even in administrative proceedings, unless the maker of that report is examined and the concerned employee is given an opportunity to cross-examine the witness after that report. Even though in administrative proceedings the Evidence Act or Rules of evidence as such do not apply but principles of natural justice are equally applicable. Accordingly, it was necessary for the concerned authority to examine Shri Habib Khan and provide an opportunity to the petitioner to cross-examine him. His failure to do so vitiates the enquiry.

19. Subodh Kumar Trivedi v. State of U.P. and Others, 2001 (19) LCD 168, relevant paras 65, 68 and 72 of which are reproduced as under:

65. Thus it is apparent that the Enquiry Officer without giving any opportunity to the petitioner and without fixing the date and place for adducing the evidence to the petitioner and without permitting him to cross-examine the witnesses namely Chhotey Lal and the Manager of the institution, whose statement was relied upon and also without affording any opportunity of even inspection of documents submitted his enquiry report on the strength of the reply submitted by the petitioner within three days from the date of the receipt of such reply. The records which were available in the office appear to have been seen by the Enquiry Officer himself and without giving any reasonable opportunity to the petitioner to make his defence on these records submitted his enquiry report despite the fact that he himself was of the view that the petitioner was not allowed to inspect the records.

68. Reliance has also been placed upon the case of Yash Pal Verma v. M/s. Hindustan Machines Tools Limited, reported in 1994 (12) LCD 594 wherein it has been held that all the relevant documents which were relied upon in support of the charges were not furnished which prejudiced the defence, as such the disciplinary proceedings held against

the petitioner were vitiated and the impugned orders are illegal and liable to be quashed.

72. Likewise in the case of *Om Pal Singh v. District Development Officer, Ghaziabad and Others*, reported in (2000) 2 UPLBEC 1591, where the High Court held that dismissal order passed after holding departmental enquiry wherein after service of charge sheet and submission of reply no date was fixed for evidence or for examination of witnesses which clearly shows that the principles of natural justice were violated. Thus the entire enquiry proceedings and the order of dismissal were bad and liable to be quashed including the order of dismissal.

20. *Kuldeep Singh v. Commissioner of Police and Others*, (1999) 2 Supreme Court Cases 10, relevant para 32 of which is reproduced as under:

Apart from the above, Rule 16(3) has to be considered in the light of the provisions contained in Article 311 (2) of the Constitution to find out whether it purports to provide reasonable opportunity of hearing to the delinquent. Reasonable opportunity contemplated by Article 311 (2) means hearing in accordance with the principles of natural justice under which one of the basis requirements is that all the witnesses in the departmental enquiry shall be examined in the presence of the delinquent who shall be given an opportunity to cross-examine them. Where a statement previously made by a witness, either during the course of preliminary enquiry or investigation, is proposed to be brought on record in the departmental proceedings, the law as laid down by this Court is that a copy of that statement should first be supplied to the delinquent who should thereafter be given an opportunity to cross-examine that witness.

21. There are specific pleadings of the petitioner that neither he was allowed to cross-examine the complainants nor date, time and place was fixed, but the same has not been replied. The reply submitted through the counter affidavit is vague and the same is not able to meet out the requirement of principles of natural justice.

22. In view of the aforesaid facts and circumstances of the case as well as in light of the decisions referred hereinabove, I find that it is clear case of violation of principles of natural justice and accordingly, the order impugned is not sustainable in the eye of law and the same is hereby quashed. Since the petitioner employee is not alive, a writ of mandamus is issued to the respondents to pay all the post retiral benefits including the salary from the date of his suspension till his death alongwith consequential benefits accrued time to time and accordingly the petitioner's wife shall also be entitled for the pension as admissible in the department. It is further provided that respondents shall also proceed to consider to provide the employment on compassionate ground to the wife of the deceased petitioner. The exercise for payment of salary alongwith consequential benefits and post retiral benefits as well as the consideration for compassionate appointment shall be completed within a period of two months from the date of production of a certified copy of this order.

23. In view of the aforesaid observations/directions, the writ petition is allowed.

(Petition allowed)