

*** THE HON'BLE SRI JUSTICE CHALLA KONDANDARAM**

+ WRIT PETITION No.27621 OF 2009

%23.08.2016

S.V. Ranga Rao

.....Petitioner

AND

Khadi & Village Industries Commission, rep. by its Chief Executive Officer, Mumbai and 3 others.

.....Respondents.

! Counsel for the Petitioner: Sri Mehrchand Nori

^ Counsel for respondent Nos.1 to 4: Sri A. Madhava Rao,

Standing Counsel for Khadi

< Gist:

> Head Note:

? Cases referred:

[1] (1998)7 Supreme Court Cases 84

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.27621 OF 2009

ORDER:

The writ petition is filed questioning the proceedings dated 20/23.11.2009, issued by the 1st respondent-Commission confirming the order dated 06/06.08.2008, passed by the 2nd respondent-Director imposing the major penalty of 'reduction of pay to lowest of the pay scale for five years with cumulative effect without earning increments during the penalty period.

The facts are not in dispute. It is the case of the petitioner that while he was working as Supervisor Grade-III in the 3rd respondent's office, five charges have been framed against him and consequently the proceedings dated 19.01.2007 were issued suspending the petitioner from the duties under Regulation 10 of Khadi and Village Industries Commission (CCA) Regulations, 2003 (for short, 'the Regulations'). Thereafter, an Enquiry Officer was appointed and the Enquiry Officer had issued a show cause notice to the petitioner asking him to submit his written statement of defense within 15 days. The petitioner had submitted a detailed explanation and the same was not accepted by the Enquiry Officer and found that the petitioner was guilty of the charges 1 and 2 and exonerated the petitioner from the charges 3 to 5. Challenging the action of the 2nd respondent-Enquiry Officer, the petitioner filed an appeal before the 1st respondent-Commission seeking to set aside the proceedings of the 2nd respondent imposing the major punishment against the petitioner.

A counter-affidavit filed by the respondents 1 to 4 merely reiterating the various procedures followed in conducting the enquiry and the decisions taken while dealing with the merits of the matter. The specific allegation of not issuing any notice prior to imposition of punishment proposing to disagree with the findings of the enquiry officer is not denied and not adverted to in the counter-affidavit.

In the impugned proceedings, the disciplinary authority disagreed with the findings of the enquiry officer with respect to the findings recorded in relation to the charges 3 to 5 as well and came to a different conclusion altogether and confirmed the punishment proposed and when the petitioner preferred the appeal, the appellate authority by merely reiterating that the petitioner had not submitted any new facts/evidence/documentary/otherwise to disprove the decision of the disciplinary authority, dismissed the appeal.

Learned counsel appearing for the petitioner while taking this

Court to the various documents filed particularly charge sheet, explanation submitted, the enquiry report and the show cause notice issued prior to passing the impugned order submits that with a major penalty of reduction of pay to lowest of the pay scale for five years with cumulative effect without earning increments during the penalty period, has been imposed on the petitioner and in the said process, there is a clear violation of Regulation 11(2) of the Regulations, 2003. Learned counsel for the petitioner further submits that inspite of specific grounds being raised before the 1st respondent-appellate authority, the said authority failed to consider the fact of not issuing any notice proposing to disagree with the findings recorded by the enquiry officer.

In the facts of the present case, it is not necessary for this Court to burden the settled principles of law that strict compliance with the procedure notified in conducting of enquiry and imposition of punishment in the impugned disciplinary proceedings is mandatory and non-compliance of the same would render the order of the disciplinary authority illegal on account of violation of principles of natural justice. In **Punjab National Bank and others vs. Kunj Behari Misra** ^[1], the Hon'ble Supreme Court by reconciling the conflict of views expressed in two sets of cases had categorically held in para No.17, which reads as follows:

“The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority.”

In the present case, the Regulation itself mandates that an opportunity of hearing and a notice shall be issued to the delinquent and calling for explanation.

The Regulation 11(1) and (2) of the Regulations so far as the relevant reads as under:

11. Action on the inquiry report:-

“(1) The Disciplinary Authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the Inquiring Authority for further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of regulation 10, as far as may be.

(2) The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the Disciplinary Authority or where the Disciplinary authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of the Inquiring Authority on any article of charge to the employee who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority, within 15 days, irrespective of whether the report is favourable or not to the employee.”

Inasmuch as imposing of a major penalty in violation of the procedure prescribed has been made in the instant case, the impugned order imposing the penalty as confirmed by the disciplinary authority is liable to be set aside and accordingly the same is set aside remanding the matter back to the 2nd respondent-disciplinary authority to deal with the matter afresh. Further, inasmuch as there is non compliance of the Regulation 11(1)& (2) of the Regulations, it is left open to the 2nd respondent-disciplinary authority to pass orders with regard to the appropriate punishment that may be meted out in the case after considering the explanation submitted by the petitioner pursuant to the show cause notice issued on 02/03.04.2008.

Accordingly, the writ petition is allowed. No order as to costs.

Miscellaneous Petitions pending, if any, in this writ petition shall stand closed.

CHALLA KODANDA RAM,J

Date:23.08.2016.

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THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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[\[1\]](#) (1998)7 Supreme Court Cases 84