

Court No. - 10

Case :- WRIT - A No. - 54725 of 2005

Petitioner :- Chandrika Yadav

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Vimal Chandra Mishra, Amit Kumar Singh, Vijay Gautam, Vijay Pratap, Vinod Kumar Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Kshitij Shailendra, J.

1. Heard Shri Vinod Kumar Mishra, learned counsel for the petitioner and learned Standing Counsel for the State-respondents.
2. The petitioner was appointed as Constable in Civil Police in the year 1994 and is aggrieved by the order dismissing him from the services and also by subsequent orders, whereby the Departmental Appeal and Revision have been dismissed.
3. The submission advanced on behalf of the petitioner is that the charge against the petitioner was that he remained unauthorisingly absent for a continuous period of 45 days after he had absented himself with one rifle and 50 cartridges. It is contended that though, during the course of enquiry, it has been admitted by the witnesses and the concerned officer himself that the rifle and cartridges were deposited on 18.12.2003, with regard to absence, the medical evidence has been discarded by observing that the petitioner got himself treated as an out-patient and he could have informed the Department after taking medicines, but he did not inform the Department, which shows his negligence and indisciplined act.
4. Further submission is that the Enquiry Officer has recommended

award of major penalty against the petitioner in the enquiry report itself with a recital that the order shall be effective after approval to be granted by the Senior Superintendent of Police.

5. Learned counsel for the petitioner has placed reliance upon the following decisions:

(i) ***Mohd. Haneef Khan Vs. State of U.P. through Principal Secretary Home*** in Service Bench No.314 of 2010, decided on 03.04.2017;

(ii) ***Krishna Kumar Mishra Vs. State of U.P. and others*** in Writ-A No.39792 of 2012, decided on 08.02.2019;

(iii) ***Ram Milan Dubey Vs. State of U.P. through the Principal Secretary*** in Service Single No.2681 of 2010, decided on 13.09.2013;

(iv) ***Ravindra Singh Vs. the State of U.P. and 2 others*** in Writ-A No.3417 of 2022, decided on 26.04.2022;

(v) ***Dhirendra Kumar Tiwari Vs. State of U.P. and 3 others*** in Writ-A No.14422 of 2023, decided on 29.08.2023'; and

(vi) ***Gyanendra Bahadur Singh Kushwaha Vs. State of U.P. and 4 others*** in Writ-A No.57393 of 2013, decided on 07.10.2015."

6. In all the aforesaid cases, almost similar situation had arisen before this Court at least with respect to the contents of enquiry report, where the Enquiry Officer had either punished the concerned petitioner or made recommendation of dismissal from service making the said recommendation a part of the enquiry report. This Court, after examining mandate of Rule 14 of U.P. Police Officers of Subordinate Rank (Punishment and Appeal)

Rules, 1991, denounced such an act of the Enquiry Officer in both the circumstances and quashed the punishment order remanding the matter to the authorities with certain directions.

7. Learned Standing Counsel submits that once the petitioner remained absent from duties for a continuous period of 45 days and had gone with rifle and cartridges and also did not inform the Department, there was no option for the Authorities except to award a penalty of dismissal from service and, therefore, no illegality has been committed in the orders impugned, particularly when the entire procedure of enquiry has been followed and the petitioner was granted even opportunity to cross-examine the witnesses.

8. Having heard the learned counsel for the parties, I find that the impugned order is in the teeth of law laid down by this Court in the aforesaid decisions as well as contrary to Rule 14 of Uttar Pradesh Police Officers of Subordinate Rank (Punishment and Appeal) Rules, 1991.

9. In view of above position of law settled to the aforesaid, the orders impugned **cannot sustain**.

10. The writ petition succeeds and is, accordingly, **allowed**.

11. The order impugned dated 13.10.2004 passed by Senior Superintendent of police, Kanpur Nagar, order dated 04.02.2005 passed by Deputy Inspector General of Police, Kanpur Region Kanpur and order dated 26.04.2005 passed by Inspector General of Police, Kanpur Zone Kanpur are hereby **quashed**.

12. The matter stands remitted to the Disciplinary Authority for afresh examination of cause, in the light of the observations made

above, within a period of **two months**, from the date of presentation of a certified copy of this order. The question of grant of back-wages or other service benefits would abide by the fresh orders to be passed by the Authority concerned, as directed above.

Order Date :- 26.10.2023

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