

Court No. - 10

Case :- WRIT - A No. - 42584 of 2008

Petitioner :- Gyasi Lal

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Vijay Gautam, Arvind Srivastava
Iii, Bhanu Pratap Pal, Shyam Narain, Sudhanshu Narain

Counsel for Respondent :- C.S.C.

Hon'ble Kshitij Shailendra, J.

1. Heard Sri Arvind Srivastava- III, learned Standing Counsel for the State-respondents and perused the record.

2. By first order impugned, the petitioner was dismissed from his services, whereas by the second and the third orders impugned, the appeal and revision preferred by him have been dismissed.

3. The case of the petitioner is that he was charge-sheeted with a single charge to the effect that on 17.9.2006, the petitioner, in drunken state, misplaced or handed-over his Rifle No. 6 and certain cartridges issued from the Department to some gang and thereby caused loss to the government money, as a result whereof, departmental proceedings were conducted against the petitioner and, ultimately, the order of punishment has been passed, which has been confirmed in appeal and revision.

4. The submission of learned counsel for the petitioner is that the orders impugned suffer from various infirmities and illegalities, specifically to the following effect:-

(a) The Inquiry Officer made a recommendation in the inquiry report itself to dismiss the petitioner from services which is in violation of Rule-4 to the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 read with Appendix-1 attached thereto.

(b) The charge levelled against the petitioner was not proved during the course of the inquiry as no medical examination of the petitioner establishing his intoxicated condition was done.

(c) The reply of the petitioner was not at all considered in its true perspective, particularly the fact that he was found present at a

different place and not at the place which was initially alleged by the Department.

(d) Since, the only charge was in two parts, there being no finding in respect of one part of the charge regarding drunken state of the petitioner, the remaining part of the charge would also stand disproved, but the petitioner has been punished.

(e) The punishment awarded is disproportionate to the alleged guilt of the petitioner, if any.

(f) The Punishing Authority has not applied its independent mind to the facts and circumstances of the case and the record of proceedings and has simply relied upon the report submitted by the Inquiry Officer without making any discussion.

5. In support of his submissions, learned counsel for the petitioner has placed reliance upon certain authorities and he submits that the Apex Court in the case of ***State of Uttranchal & Ors. Vs. Kharak Singh, 2008 AIR (SCW) 7507, Civil Appeal No. 4531 of 2007, decided on 13.8.2008***, has held that it is for the punishing/disciplinary authority to impose appropriate punishment and enquiry officer has no role in awarding punishment.

6. The Apex Court in the case of ***Union of India Vs. H.C. Goel, 1964(9) FLR 161, Civil Appeal No. 645 of 1962, decided on 30.8.1963***, has held that unless the statutory rule or the specific order under which an officer is appointed to hold an enquiry so requires, the enquiry officer need not make any recommendations as to the punishment which may be imposed on the delinquent officer in case the charges framed against him are held proved at the enquiry; if, however, the enquiry officer makes any recommendations, the said recommendations like his findings on the merits are intended merely to supply appropriate material for the consideration of the Government. Neither the findings, nor the recommendations are binding on the Government, vide ***A. N. D'Silva v. Union of India, AIR 1962 Supreme Court 1130***.

7. The Apex Court in the case of ***Narinder Mohan Arya Vs. United India Insurance Co. Ltd & Ors, 2006(2) CLR 298, Civil Appeal No. 7645 of 2004, decided on 5.4.2006***, has held that the writ court will bear in mind the distinction between some evidence or no evidence but the question which was required to be posed and necessary should have been as to whether some evidence adduced would lead to the conclusion as regard the guilt of the delinquent officer or not. The evidence adduced on behalf of the

management must have nexus with the charges. The Enquiry Officer cannot base his findings on mere hypothesis. Mere ipse dixit on his part cannot be a substitute of evidence.

8. The Apex Court in the case of ***Roop Singh Negi Vs. Punjab National Bank & Ors., 2009(1) CLR 160, Civil Appeal No. 7431 of 2008, decided on 19.12.2008***, has held that indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding.

9. Learned Standing Counsel, on the other hand, submits that the charge being serious in nature, no illegality has been committed by the Authorities while awarding the punishment or dismissing the departmental appeal and revision. He further submits that very detailed inquiry was conducted and the petitioner himself chose not to cross-examine the witnesses, as stands reflected from page 80 of the paper-book of the writ petition. He has also referred to paragraph-23 of the counter affidavit and submits that the petitioner being a member of 'Disciplined Armed Force' it was his obligation to discharge his duty honestly, but he deliberately misplaced his Rifle and the same was given to some members of 'Dacoity Gang' and his conduct would be classified as serious misconduct.

10. Having heard learned counsel for the parties, I find that insofar as, the submission of learned counsel for the petitioner is that the Inquiry Officer cannot make recommendation for awarding punishment in his inquiry report, the Apex Court in the case of ***State of Uttranchal Vs. Kharak Singh (supra)*** as well as ***Union of India Vs. H.C. Goel (supra)*** has clearly laid down that such a course is not open only to the Inquiry Officer. Apart from this, Appendix-1 of the Rules, 1991 clearly provides that the Inquiry Officer may also, **separately from these proceedings**, make his own recommendation regarding the punishment to be imposed on a charged Police Officer. Meaning thereby, though, the Inquiry Officer is competent to make a recommendation under the rules applicable in the State of U.P., such recommendation can be made **separately** but cannot form part of the inquiry report itself.

11. With regard to partial proof of charge, the ratio laid down by

the Apex Court in the case of *Narinder Mohan Arya (supra)* particularly in para-13 thereof would read in favour of the petitioner as the Apex Court has clearly held that the Writ Court will bear in mind the distinction some evidence or no evidence and the question required to be gone into would be as to whether some evidence adduced would lead to the conclusion as record the guilt of the delinquent officer or not. The Apex Court further held that the evidence adduced must have nexus with the charges and the Inquiry Officer cannot base his findings on mere hypothesis.

12. In the present case, the Court finds that there is nothing on record to establish that the petitioner was found in drunken state on the date of alleged misplacement or loss of the Rifle. Specific grounds taken by the petitioner in the memo of appeal and the revision that he was not medically examined, have not been dealt with by any of the authorities. Looking to the fact that there being no medical evidence against the petitioner, the punishment would not commensurate with the charge. Despite specific pleadings contained in relation to Appendix-1 of the rules, there is no reply in the counter affidavit as to how the Inquiry Officer could make a recommendation for dismissing the petitioner from service and it appears from the first order impugned that without making any independent analysis of the facts and circumstances of the case, mere recommendation made by the Inquiry Officer has been accepted by the Disciplinary Authority and the petitioner has been dismissed from service.

13. In view of the facts of the case, as pleaded and responded, coupled with the report of Inquiry Officer, the orders impugned and the ratio laid down by the Apex Court in the aforesaid authorities, none of the orders impugned can sustain in the eyes of law.

14. Accordingly, the writ petition stands **allowed**.

15. The orders impugned dated 25.4.2018, 19.5.2008 & 10.7.2008 are, hereby, **set aside**.

16. The matter is remitted to the Disciplinary Authority to pass a fresh order in accordance with law, particularly in the light of the ratio laid down in the aforesaid authorities, after providing full opportunity to the petitioner **on or before 31.3.2024**, provided a certified copy of this order is produced before the Disciplinary Authority in the month of **December, 2023**.

17. The consequences in relation to the petitioner's services shall

follow the decision of the Disciplinary Authority.

Order Date :- 30.11.2023

CS/-