

RESERVED

Court No. - 33

Case :- WRIT - A No. - 19311 of 2015

Petitioner :- Anjani Kumar Singh

Respondent :- District Magistrate and another

Counsel for Petitioner :- J.P. Singh, Anay Kumar Srivastava, Satya Prakash Shukla, Shiv Poojan Yadav, Sunil Kumar Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble J.J. Munir,J.

This writ petition is directed against an order dated 28.02.2014 passed by the Sub-Divisional Officer, Robertsganj, Sonbhadra, punishing the petitioner, a Lekhpal, in exercise of his disciplinary jurisdiction with a censure entry and withholding of three increments (without cumulative effect). Also under challenge is the appellate order dated 19.11.2014 passed by the District Magistrate, Sonbhadra, dismissing the appeal and affirming the penalty awarded.

2. The petitioner was charge-sheeted by the Sub-Divisional Officer, Robertsganj, Sonbhadra *vide* charge-sheet dated 31.01.2013 in terms of the following charges (translated into English from Hindi) :

1. During the undersigned's winter inspection done on 27.12.2012 in Village Uchadih, Pargana Barhar, it was found on the spot during verification of *khatauni* that (you are) guilty of failing to carry out mutation regarding eight tenure holders, who were dead. The *khatauni* for the *Fasli* Year 1416-1421 would be read in evidence.

2. During the inspection of Village Uchadih, it is found that in the *Khatauni* during (*Fasli*) Year 1416-1421, order 063010/00690/Unchadih/1416-1421/10066/1-1 P.A. 11kha was corrected (by you) unauthorizedly, without the corrected computer printout being taken out, and that (you and the Revenue Inspector) are guilty of amending the erroneous order in the *khatauni* Village Unchadih, 1416-21 would be read in evidence.

3. During inspection of Village Unchadih, Pargana Barhar, it was found that a tenureholder Ram Naresh, son of Ram Lakhan was informed by Phenku, son of Gangu and other residents of the village to be absconding for the past ten years, but despite his abscondence, no report about it was made by the Lekhpal, and you are guilty of the said charge. The *khatauni* of Village Unchadih, for the *Fasli* Year 1416-1421 would be read in evidence.

4. During inspection, on the information of residents of Village Unchadih, Village Pargana, it was informed that you are guilty of not causing encroachments to be removed from all *chak* roads, *pucca* drains, the pavement along with canal, the pond, the dam and two groves in the *khata* of the dam, regarding which, you have failed to initiate proceedings to remove encroachment under Section 122B of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950.

3. The Sub-Divisional Officer, Robertsganj, Sonbhadra served a notice upon the petitioner dated 04.03.2013, calling upon him to submit a reply to the charge-sheet, failing which, it would be presumed that he had nothing to say in the matter and orders passed. The petitioner then made an application dated 11.03.2013 to the Sub-Divisional Officer, Robertsganj, asking for an authenticated copy of the evidence relating to the charges. The petitioner was, again, served with a notice dated 16.04.2013, granting him a week's further time to submit his reply, and in default, it would be presumed that he had nothing to say in the matter and *ex-parte* proceedings taken.

4. At this stage, the petitioner challenged the order of suspension dated 01.01.2013 by means of Writ - A No. 19460 of 2013 before this Court. This Court, by an order dated 10.04.2013, declined to interfere with the order of suspension, but directed that disciplinary proceedings be concluded in accordance with law, preferably within a period of three months from the date of production of a certified copy of the order. It was further directed that the petitioner's application for provision of copies of documents be also considered by the disciplinary authority. The petitioner

says that upon receipt of the said order, the Sub-Divisional Officer proceeded to pass an order dated 03.05.2013, reinstating the petitioner in service and awarding him punishment in terms that his salary for the period of suspension was denied. He was reduced to the basic pay attached to the post of a Lekhpal, besides stoppage of two increments with cumulative effect. Apart from it, the petitioner was also awarded a censure entry.

5. The petitioner then represented against the said punishment, which was awarded without giving him any opportunity, *vide* representation dated 10.10.2013 addressed to the Sub-Divisional Officer, Robertsganj. The representation carried a detailed explanation *vis-à-vis* each of the charges. On consideration of the said representation, the Sub-Divisional Officer reviewed his order and held that it appears that the petitioner was punished without his reply or the Inquiry Officer's report on the basis of records, and that this did not constitute strict compliance with this Court's order dated 10.04.2013 passed in the writ petition in Writ - A No. 19460 of 2013. It was observed that the petitioner's contention derives force from the fact that he was not provided with evidence, relied upon in the charge-sheet, in order to enable him to submit his reply. The Sub-Divisional Officer, therefore, proceeded to hold that the earlier order of punishment was passed in breach of the U.P. Government Servant (Discipline and Appeal) Rules, 1999¹. He, therefore, amended the order dated 03.05.2013 and directed that the Naib Tehsildar, Robertsganj be appointed the Inquiry Officer to inquire into the charges at the earliest, and submit a report. The inquiry proceedings against the petitioner would be deemed to be continuing, and the petitioner shall continue to work in terms of the order of reinstatement in service. It was also said that upon receipt of the inquiry report, final orders would be passed. In substance,

1 'the Rules' for short

the order awarding penalties passed on 03.05.2013 was revoked and the inquiry revived.

6. The Inquiry Officer submitted a report dated 31.12.2013, exonerating the petitioner of all the four charges. The Sub-Divisional Officer, upon considering the Inquiry Officer's report, disagreed with his finding on Charge Nos. 1, 2 and 3 exonerating the petitioner, and held the petitioner guilty. The Sub-Divisional Officer, however, agreed with the Inquiry Officer's report as regards his finding on Charge No. 4, exonerating the petitioner. He, therefore, proceeded to pass an order dated 28.02.2014, punishing the petitioner with a censure entry, declining salary for the period of suspension and directing stoppage of three increments without cumulative effect.

7. Aggrieved, the petitioner preferred an appeal to the Collector, Sonbhadra. The Collector, Sonbhadra heard the petitioner and held him guilty on all four charges, dismissing the appeal and upholding the order of penalty *vide* order dated 19.11.2014.

8. Aggrieved by both these orders, the petitioner has preferred this writ petition.

9. Heard Mr. Sunil Kumar Srivastava, learned Counsel for the petitioner and Mr. Dinesh Kumar Singh, learned Additional Chief Standing Counsel appearing on behalf of the State.

10. It is argued by Mr. Sunil Kumar Srivastava, learned Counsel for the petitioner that no opportunity of leading oral evidence has been provided to the petitioner during the inquiry, and further that the findings on Charges Nos. 1, 2 and 3 are contrary to evidence, recording disagreement with the Inquiry Officer, for no good reason assigned.

11. Mr. Dinesh Kumar Singh, learned Additional Chief Standing Counsel, on the other hand, has argued that it is a case of minor penalty,

where an employee can be punished after informing him of the substance of imputations and calling upon him to submit his explanation. No formal inquiry is required to be held in case of a minor penalty.

12. Upon hearing learned Counsel for parties, this Court finds that indeed, the petitioner has now been punished with a minor penalty i.e. censure entry and withholding three increments without cumulative effect. Both the penalties qualify as minor under Rule 3(i) and (ii) of the Rules. Rule 10 of the Rules reads :

10. Procedure for imposing minor penalties.-

(1) Where the Disciplinary Authority is satisfied that good and sufficient reasons exist for adopting such a course, it may, subject to the provisions of sub-rule (2) impose one or more of the minor penalties mentioned in Rule 3.

(2) The Government servant shall be informed of the substance of the imputations against him and called upon to submit his explanation within a reasonable time. The Disciplinary Authority shall, after considering the said explanation, if any, and the relevant records, pass such orders as he considers proper and where a penalty is imposed, reason thereof shall be given. The order shall be communicated to the concerned Government servant.

13. Considering the fact that the petitioner has been awarded a minor penalty, as defined under Rule 3 of the Rules, a far more summary procedure of giving the petitioner notice, carrying the substance of imputations against him, calling for his explanation, considering that explanation together with the relevant record, was all that was necessary. Here, the petitioner has had far greater opportunity of being before the Inquiry Officer, who has held an inquiry and submitted his report, favouring him on all the four counts. It is within the domain of the Disciplinary Authority under Rule 9 of the Rules to disagree with the findings of the Inquiry Officer on any charge and record his own findings thereon, for reasons given. This the disciplinary authority has done with

reference to record. No doubt certain objections have been raised by the learned Counsel for the petitioner, endeavouring to show that these findings are perverse. It is urged that there is no rule or guideline limiting the period of time during which an order of mutation should be carried out, notwithstanding that mutation is a matter which ought to be carried out promptly in the interest of the revenue. Learned Counsel for the petitioner has attempted to further show, on the other charges, that the Inquiry Officer was right in taking the view that none of the charges were proved.

14. This Court is of opinion that if we enter into a consideration of the submissions advanced by learned Counsel for the petitioner, tempted by his submission that the findings of the disciplinary authority and the appellate authority are perverse, we would, indeed, be re-appreciating evidence, which is beyond the domain of this Court in exercise of jurisdiction under Article 226 of the Constitution.

15. There is no demonstrable perversity noticed by this Court in the orders impugned. The Collector has held the petitioner guilty on the fourth charge also, but that has not led to any enhancement in the penalty awarded, and, therefore, the same is not of any consequence. It does not prejudice the petitioner so as to attract the provision of opportunity, under Rule 50 of the Rules.

16. In the circumstances, this Court does not find any good ground to interfere with the orders impugned.

17. In the result, this writ petition **fails** and shall stand **dismissed**.

18. Costs easy.

Order Date :- October 19, 2023

I. Batabyal

(J.J. Munir, J.)

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