

Neutral Citation No. - 2023:AHC:203484

Court No. - 10

Case :- WRIT - A No. - 4317 of 2008

Petitioner :- Prem Chandra Dixit

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Vinod Kumar Rai, Abhinav Gaur, Anoop Trivedi, Atipriya Gautam, Sourabh Pathak, Vandeep Nath, Vibhu Rai, Vijay Gautam, Vinod Kumar Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Kshitij Shailendra, J.

1. Heard Shri Pankaj Mishra, learned counsel for the petitioner, learned Standing Counsel for the State-respondents and perused the record.

2. Pursuant to various orders passed on previous occasions, original record has again been produced before this Court. The same has been perused by the Court. Infact, the records were summoned on the allegations of the petitioner contained in the writ petition that he was neither served with the copy of charge-sheet nor the copies of the statements of witnesses and that the entire departmental inquiry leading to his punishment was faulty and contrary to the provisions of law.

3. The petitioner was appointed as a Constable in Police Department on 15.02.1988. After more than 10 years of service, he moved a compliant before the Chief Secretary of the State Government, U.P. Lucknow that various Officials at different levels in the Police Department were committing violation of human rights and fundamental rights by involving themselves in fake encounters. It is pleaded that a complaint was moved against Shri V.K. Shekhar A.S.P. (Rural), Ummed Singh (Circle Officer, Hapur), Y.P. Ahalawat (Inspector Kotwali, Hapur), Sri Pramod Kumar Sharma (S.S.I.) and Bijendra Rawat (S.I.).

4. The case of the petitioner is that the officers, against whom, the allegations were levelled in the complaint themselves became Inquiry Officers in the matter and, later on, on the basis of recommendations made by them, departmental proceedings were initiated against the petitioner.

5. I have perused the entire record of writ petition, counter and rejoinder affidavits and compared the same with the original record.

6. The complaint submitted by the petitioner was taken up for consideration and a preliminary inquiry was set up. The S.P. (Rural)-Ghaziabad, during the course of such preliminary inquiry, recorded the statements of the accused persons. The conclusion drawn by S.P. (Rural) in the preliminary inquiry dated 28.10.2004 was that no substance was found in the petitioner's complaint, rather he was responsible for maligning the image of the entire Police Department, and, therefore, departmental proceedings were recommended against him.

7. Later on, departmental proceedings were initiated and the preliminary inquiry was completed by S.P. (Traffic) Ghaziabad who submitted his report dated 22.02.2005 recommending departmental proceedings against the petitioner in terms of U.P. Police Officers of Subordinate Ranks (Punishment And Appeal) Rules, 1991 (hereinafter referred to as 'the Rules, 1991'). Even in the said preliminary inquiry report, not only stand of the petitioner was examined but also he was subjected to question-answer sessions and even statements of those against whom the petitioner had raised allegations were recorded in the presence of petitioner. An opinion was formed on the basis of detailed proceedings that it was the petitioner who was trying to shield persons accused of heinous crimes and infact was pursuing their cause which is

contrary to the oath taken under the Flag of the Nation that he would ensure prosecution of the culprits of criminal cases.

8. Pursuant to the preliminary enquiry report dated 22.02.2005, detailed inquiry proceedings were set up against the petitioner and charge-sheet was prepared. Though the allegation of the petitioner is that the charge-sheet was never served upon the petitioner, original record reveals record of proceedings by preparation of order sheet by the Departmental Authorities. The record further reveals that notices were not only served upon the petitioner but also affixed at his residence and necessary reports were prepared regarding affixation in the presence of witnesses also.

9. The order sheet/note sheet prepared under Rule 14 of the Rules, 1991 by the Department reads as follows:-

" नोट शीट

14(1) के अन्तर्गत कान्स० 912 CP प्रेमचन्द्र दीक्षित के विरुद्ध विभागीय कार्यवाही PF- 8/05

12.5.05 पत्रावली प्राप्त। अध्ययन करके आरोप पत्र तैयार किया जाएगा।

14.5.05 : आरोप पत्र तैयार है। आरोप पत्र प्राप्त कराने के लिए दि० 20.5.05 नियत नोटिस भेजा गया।

20.5.05 विशेष वाहक के माध्यम से थाना सेक्टर-58 पर आरोपी प्रेमचन्द्र दीक्षित के तैनाती स्थान पर नोटिस भेजा गया। आरोपी उपस्थित नहीं हुआ। आरोप पत्र प्राप्त कराने के लिए दिनांक 27.5.05 नियत की गयी।

27.5.05 आरोपी कास० प्रेमचन्द्र दीक्षित उपस्थित नहीं हुआ जबकि नोटिस आरोपी के तैनाती थाना सेक्टर-58 GBN भेजा गया। आरोपी अनुपस्थित चल रहा है। दि० 15.6.05 नियत।

15.6.05 आरोपी प्रेमचन्द्र दीक्षित उपस्थित नहीं हुआ। दिनांक 8.8.05 नियत।

दि० 8.8.05 आरोपी प्रेमचन्द्र दीक्षित को नोटिस दिनांक 4.8.05 को बजातखास प्राप्त, किन्तु आरोप पत्र प्राप्त करने हेतु उपस्थित नहीं हुआ। दिनांक 13.8.05 नियत की गयी।

13.8.05 आरोपी उपस्थित नहीं हुआ। नोटिस किस्म दोयम तामील हुआ।

26.8.05 बार-बार बुलाये जाने पर भी आरोपी आरक्षी प्रेमचन्द्र दीक्षित आरोप पत्र प्राप्त करने के लिए उपस्थित नहीं हो रहा है। इस आशय की आख्या SSP को भेजी गयी।

31.8.05 आरोपी कास० प्रेमचन्द्र दीक्षित को जनपद GBN से GZB सम्बद्ध कराने हेतु आख्या प्रेषित की गयी। विशेष वाहक कास० 1074 अश्वनी कुमार थाना विजयनगर के माध्यम से आरोप पत्र की एक प्रति आरक्षी प्रेमचन्द्र दीक्षित को तामील कराने के लिए भेजी गयी।

01.9.05 कास० अश्वनी कुमार ने अपनी आख्या के माध्यम से अवगत कराया कि आरोप पत्र को SSP GBN के माध्यम से भिजवाया जाए। तथा बताया कि वह स्वयं पीठासीन अधिकारी के समक्ष दि० 1-9-05 को उपस्थित होकर तामील करेगा। आरोपी प्रेमचन्द्र दीक्षित उपस्थित हुआ। आरोप पत्र की एक प्रति दी गयी। उसने उसे ध्यानपूर्वक पढ़ा किन्तु उसने आरोप पत्र प्राप्त नहीं किया जबकि उसे काफी समझाया गया और तामील कराने का प्रयास किया। उसने आरोप पत्र प्राप्त नहीं किया। इसने प्रा०पत्र प्रस्तुत कर अवगत कराया कि पुलिस महानिरीक्षक मेरठ जाने मेरठ से प्रबल की पुनः जांच कराये जाने का अनुरोध किया है। जिस पर पुनः जांच के आदेश जारी होने बताये। किन्तु ऐसा कोई आदेश प्राप्त नहीं हुआ है।

दिनांक 17.9.05 आरोपी आरक्षी प्रेमचन्द्र दीक्षित द्वारा विशेष वाहक के माध्यम से भेजे गए आरोप पत्र को पढ़ लिया किन्तु तामील करने से मना कर दिया गया। इसके बाद आरोपी आरक्षी मेरे समक्ष भी दिनांक 1.9.05 को उपस्थित हुआ। आरोप पत्र उसे पढ़ाया गया और एक प्रति तामील करने के लिए कहा गया तो आरोपी ने आरोप पत्र औपचारिक रूप से प्राप्त करने से मना कर दिया और कहा कि सन्दर्भित प्रकरण में 1,6 महोदय द्वारा जांच के पुनः आदेश कर दिये हैं। ऐसा कोई आदेश आज तक भी प्राप्त नहीं हुआ है। अतः एक पक्षीय विभागीय कार्यवाही प्रारम्भ करने के आदेश पारित किये जाते हैं अभियोजन पक्ष के गवाहों के ब्यान हेतु दिनांक 24.9.05 नियत की जाती है।

24.9.05 आरोपी आरक्षी प्रेमचन्द्र दीक्षित को एक पक्षीय विभागीय कार्यवाही प्रारम्भ करने व दि० 24.9.05 को जिरह हेतु उपस्थित रहने के लिए आदेश की बजातखास तामील की गयी। आरोपी व अभियोजन पक्ष के गवाह उपस्थित नहीं हैं। अतः दिनांक 11.10.05 नियत की जाती है।

11.10.05 आरोपी व अभियोजन साक्षी उपस्थित नहीं हुए। अग्रिम तिथि 28.10.05 नियत की गयी।

28.10.05 आरोपी आरक्षी प्रेमचन्द्र दीक्षित उपस्थित नहीं हुआ। अभियोजन साक्षी श्री विजय कुमार गर्ग, अ०पु०अ० तथा श्री वी०के० शेखर SP देहात गा०बाद, श्री उम्मेद सिंह CO मोदीनगर उपस्थित हुए। अभियोजन साक्षियों के बयान अंकित किये गए। अग्रिम तिथि 9.1.05 नियत की गयी।

09.11.05 आरोपी आरक्षी प्रेमचन्द्र दीक्षित उपस्थित नहीं हुए। अभियोजन साक्षी निरीक्षक भी योगेन्द्र पाल सिंह अहलावत, निरीक्षक श्री संतोष कुमार यादव व उ०नि० श्री प्रमोद कुमार शर्मा उपस्थित हुए। अभियोजन साक्षीगण के बयान अंकित किए गए। बचाव पक्ष हेतु 15 दिन का समय देते हुए आरोपी को पत्र भेजा जाएगा।

15.11.05 आरोपी आरक्षी जो अपने बचाव हेतु गवाहों/साक्ष्यों को उपस्थित कराने के लिए 15 दिन का समय दिया गया।

1.12.05 अभी तक आरोपी ने अपने बचाव के गवाह प्रस्तुत नहीं किए। पुनः 12.12.05 तक का समय दिया गया।

12.12.05 आरोपी आरक्षी द्वारा अपने बचाव पक्ष के गवाह उपस्थित नहीं कराये। दिनांक 15.1.06 तक बचाव पक्ष के गवाह प्रस्तुत करने हेतु समय प्रदान किया गया।

15.1.06 आरोपी द्वारा बचाव पक्ष के कोई गवाह प्रस्तुत नहीं किया। 22.1.06 तक का समय दिया जाता है।

01.2.06 आरोपी आरक्षी प्रेमचन्द्र दीक्षित को बचाव के पर्याप्त अवसर प्रदान किए गए हैं। बार-बार नोटिस भेजने पर भी बचाव में गवाह/ साक्ष्य प्रस्तुत नहीं किये हैं। बचाव के कोई गवाह प्रस्तुत नहीं करना चाहता है, ऐसा प्रतीत होता है। नोटिस भी तामील करने से मना कर देता है। अब इस विभागीय कार्यवाही को लाम्बित रखने का औचित्य नहीं है। फाईडिंग तैयार कर प्रेषित है।

ह०अपठनीय
01.2.06”

10. A perusal of the aforesaid proceedings shows that time and again the charge-sheet was tried to be served upon the petitioner by different modes but the petitioner was deliberately avoiding receipt of the same. Ultimately, at one point of time, the Officer succeeded to serve upon him charge-sheet which was thoroughly read to him but he did not receive copy of the charge-sheet. The proceedings further reveal that after adopting various methods, the Department proceeded by recording a clear finding that the petitioner was avoiding participation in the inquiry, he did not appear before the Authorities nor got his statement recorded and entire object was to somehow delay the departmental proceedings.

11. The inquiry report dated 01.02.2006 also records the same facts though in a concise form, however, it is relevant to mention that when the Department proceeded for cross-examination of the witnesses by the petitioner, the petitioner absented himself and, therefore, no cross-examination could take place. Ultimately, the Inquiry Officer submitted the report. Later on, punishment order has been passed dismissing the petitioner from service. The order has been affirmed in appeal and revision.

12. The submission of Shri Mishra is that there is violation of Rule 14 of Rules, 1991. It is contended that as per Rule 5(1) of the Rules, 1991, inquiry has to be conducted as per Rule 14(1) of the Rules, 1991 in cases where major punishment may be awarded and there is Appendix-I referable to Rule 14(1) of the Rules, 1991, in which, apart from various things, it has been mentioned that the Inquiry Officer may separately for these proceedings make his own recommendation regarding punishment to be imposed on the charged Officer. It is contended that in the present case, no separate opinion was formed by

the concerned Officer, rather recommendation for punishment was contained in the inquiry report itself.

13. Shri I.P. Srivastava, learned Additional Chief Standing Counsel submits that once the matter began with raising allegations against the Police Officers by a Constable and various inquiries, both preliminary and final in nature were conducted and no substance was found in the complaint made by the petitioner against the Officers and when the matter proceeded against him, he avoided participation in the departmental proceedings and despite sufficient service of charge-sheet upon him, when he failed to respond to the charges and did not appear in the departmental proceedings, there was no other option left with the Department but to conclude the departmental proceedings and, therefore, the grounds raised are not available to the petitioner and he cannot argue that he was not provided any opportunity in the proceedings.

14. Having heard learned counsel for the parties, I find that petitioner moved complaint in 2004 and for a period of more than two years, the proceedings not only at the instance of the petitioner but also against him were thoroughly conducted by the Department. Every accused was examined during the course of proceedings, the documents were perused, the petitioner was provided sufficient opportunity to participate in the inquiry, he, in fact, also participated during the course of preliminary inquiries, gave answers to the questions raised to him, statements of witnesses were recorded in his presence but finally when the Department was proceeding against him, he adopted all such means by which the inquiry against him could be delayed or somehow not concluded. The record of proceedings noted hereinabove coupled with other documents on record clearly reflect that the Department has not committed violation of any rule before punishing the petitioner.

15. Insofar as the argument based upon Appendix-I is concerned, last line of the same cannot be read in isolation. Even if, the argument of Shri Mishra is accepted to the effect that the recommendation to punish the petitioner could not form part of the inquiry report, and if the said part of the inquiry report is ignored, ultimate decision taken against the petitioner is based upon critical analysis of entire proceedings and dismissal order cannot be set aside merely for the reason that in the last part, the Inquiry Officer had made recommendation for awarding major punishment. Things have to be seen in their entirety and not in piecemeal.

16. Even otherwise, I have perused the original record in order to find out as to whether there is any separate recommendation made by the Authorities for punishing the petitioner and I find that after the inquiry report was prepared on 01.02.2006, the petitioner was again called upon by the Authorities and following proceedings took place.

स्पष्टीकर का० 922CP प्रेमचन्द्र दीक्षित पुलिस लाइन बुलन्दशहर

सवाल	जबाब	रिमार्क
आपको दिनांक 08.2.06 हस्ब मन्जूर शुदा 14 दिन EL अवकाश पर वापसी दिनांक व समय बताकर रवाना किया गया था आपको बाद समाप्त अवकास दि० 22.2.06 को अपरान्ह में वापस आना था आप नहीं आये और अनुपस्थित हो गये जिसके सम्बन्ध में दिनांक 22.2.06 को रपट नं० 39 , 12.05 समय बजे पर गैर हाजिरी अंकित है। आप आज दिनांक 25.2.06 को रपट नं 28 समय 10.45 पर 3 दिन 10 घन्टे मिनट 45 अनुपस्थित रहकर वापस आये हो आपका यह कृत्य लापरवाही और अनुशासनहीनता का प्रतीक है।	श्रीमान जी, निवेदन है कि प्रार्थी अवकाश दि० 8.2.06 को गया था जिसकी वापसी नियमानुसार आज दि० 25.2.06 को होनी थी 3 दिन परमीशन बीच में पडती है नुकसान पहुंचाने की नियत से दि० 22.2.06 को गैरहाजिरी दर्ज कर दी है अतः शासनादेश का खुला उल्लंघन किया गया है जब कि शासनादेश में कर्म० को सुविधा दी गई है कि अवकाश के दौरान बीच में पडने वाले अवकाश का लाभ दिया जाय उ०प्र० शासनादेश सं० 2093/Z-B-10-11957 दि० 1.12.1958 द्वारा परिचलित है। लखनऊ दि० 10 अक्टूबर 1979	महोदय, आरक्षी जानबूझकर गै० हा०हुआ है इस आरक्षी ने अपने प्रा०पत्र में परमीशन की तिथियों का उल्लेख भी नहीं किया गया है और मंजूर भी नहीं किया गया है घोर लापरवाही अनुशासनहीनता का द्योतक है। अतः O.R में दण्डित करने की संस्तुति की जाती है। ह०अप० 27.2.06 कल्याण सिंह प्रतिसार निरीक्षक पुलिस लाईन, बुलन्दशहर

अतः आप उक्त सम्बन्ध में अपना स्पष्टीकरण प्रस्तुत करें। ह०अप० 25.2.06 प्रतिसार निरीक्षक पुलिस लाइन बुलन्दशहर	कार्मिक सं० 3.1.1979- कार्मिक-1 है। अतः श्रीमान जी से कर्तव्य निवेदन है कि जबाब पर सहानुभूति पूर्वक विचार करते हुए माफ करने की कृपा करें जिससे प्रार्थी को न्याय मिल सके तथा कानून में आस्था बनी रहे। C/ 922 प्रेमचन्द्र दीक्षित 25.2.06	
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17. In view of the above, separate recommendation is also there and, hence the argument of alleged violation of the requirements of Appendix-I also have no substance.

18. In the considered opinion of the Court, the petitioner, being a Constable in the Police Department, has utterly abused his position and not only tried his best to malign image of the entire Department but also directly interacted with the State Government which, otherwise, is also against the service discipline and, in fact, such direct communication with the State Government without taking into confidence the Department is strictly prohibited under the service law.

19. In view of the above, I do not find any good ground to interfere in the order of punishment.

20. The writ petition has no merit and is **dismissed**.

21. The original record retained earlier shall be immediately returned to the learned Standing Counsel for remittance to the concerned department/authority.

Order Date :- 19.10.2023

Jyotsana