

Court No. - 34

Case :- WRIT - A No. - 14537 of 2023

Petitioner :- Dharmendra Kumar Dubey

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Atipriya Gautam, Madhaw Pandey, Sr. Advocate, Vinod Kumar Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar, J.

1. Heard Sri Vinod Kumar Mishra, learned counsel for the petitioner and learned Additional Chief Standing Counsel for the State.
2. The petitioner in this petition has challenged the order of minor punishment dated 14th April, 2023 passed by Superintendent of Police, Rae Bareilly, on the basis of enquiry report dated 19th January, 2023, submitted by the Inspector General of Police, Lucknow Range, Lucknow.
3. Initially while arguing the petition, it was submitted that the order was passed by the disciplinary authority without affording any opportunity of hearing to the petitioner and the requisite documents that were sought/applied for, were not served upon the petitioner, inasmuch as, the order passed by the Superintendent of Police dated 14th April, 2023 was bad for want of lawful authority.
4. Learned Standing Counsel for the above argument was directed to obtain instructions in the matter, which has already been obtained and have been placed on record.
5. As per the instructions, requisite documents were got served upon the petitioner on 12.04.2023 by one Constable Abhijeet Shukla and, therefore, it cannot be said that the documents were not supplied to the petitioner.
6. Learned counsel for the petitioner has though sought to counter the instructions

but what is more interesting to notice is that the impugned order has come to be passed on 14th April, 2023 without waiting for reply of the petitioner as the requisite documents, as per the own statement of the respondents, were supplied to the petitioner only on 12th April, 2023.

7. In view of the above, it can be safely concluded that no reasonable opportunity of hearing was accorded to the petitioner prior to passing the order dated 14th April, 2023 though in the nature of minor punishment.

8. It is next argued by learned counsel for the petitioner that the Enquiry Officer cannot be the recommending authority to pass order of punishment as it lies within the domain of the disciplinary authority. For this purpose, he has relied upon the recent decision of this Court in the case of ***Dharmendra Kumar Tiwari vs. State of U.P. and others passed in Writ-A No. 14422 of 2023 decided on 29.08.2023***, in which the Court while allowing the writ petition had relied upon the Division Bench judgment of this Court in the case of ***Mohammad Haneef Khan vs. State of U.P. in Service Single No. 314 of 2010 decided on 3rd April, 2017***, in which vide paragraphs 12 and 13, the Court had held thus:-

"12. Second, it is submitted that manifest illegality committed by Inquiry Officer in recommending punishment of dismissal in its inquiry report itself and that too by looking into past record of petitioner, which was not a charge. In this regard he referred to Appendix I read with Rule 14(1) of "U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991" (hereinafter referred to as the "Rules, 1991"). Aforesaid provision permits Inquiry Officer to make his recommendation regarding punishment. It reads as under:

"APPENDIX-I

PROCEDURE RELATING TO THE CONDUCT OF DEPARTMENTAL PROCEEDINGS AGAINST POLICE OFFICER

Upon institution of a formal enquiry such police officer against whom the enquiry has been instituted shall be informed in writing of the grounds on which it is proposed to take action and shall be afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be used in the form of a definite charge or charges as in Form I appended to these Rules which shall be communicated to the charged police officer and which shall be so clear and precise as to give sufficient indication to the charged police officer of the facts and circumstances against whom he shall be required, within a reasonable time, to put in, in a written statement of his defence and to state whether he desires to be heard in

person. If he so desires, or if the Inquiry Officer so directs an oral enquiry shall be held in respect of such of the allegation as are not admitted. At that enquiry such oral evidence will be recorded as the Inquiry Officer considers necessary. The charged police officer shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called as he may wish:

Provided that the Inquiry Officer may for sufficient reasons to be recorded in writing, refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and statement of the findings and the ground thereof. The Inquiry Officer may also separately from these proceedings make his own recommendation regarding the punishment to be imposed on the charged police officer."

13. This aspect has already considered in State of Uttranchal and others Vs. Kharak Singh, 2008(8) SCC 236 and Court has held, if in inquiry report, punishment is also recommended by Inquiry Officer, it is a grave illegality for the reason that appropriate punishment is the exclusive jurisdiction of punishing or disciplinary authority and Inquiry Officer's only job is to enquire, whether charge levelled against delinquent employee is proved or not."

9. Learned Standing Counsel at this stage submits that since the petitioner claims to have not been afforded any opportunity of hearing and the Court has also come to arrive at the same conclusion in view of the instructions placed before the Court, the matter can be remitted to the disciplinary authority to decide afresh without being influenced by the recommendation made by the enquiry officer.

10. From the instructions, it also transpires that the Superintendent of Police is very much competent authority to pass such order as impugned in the present writ petition in view of Rule-7 of the Uttar Pradesh Police Officers of the Subordinate Rank (punishment and appeal) Rules, 1991. Rule-7 of the Uttar Pradesh Police Officers of the Subordinate Rank (punishment and appeal) Rules, 1991 is reproduced hereunder:-

"7. Powers of punishment. (1) The Government or any officer of police department not below the rank of the Deputy Inspector General may award any of the punishments mentioned in Rule 4 on any Police Officer.

(2) The Superintendent of Police may award any of the punishments mentioned in sub-clause (iii) of Clause (a) and Clause (b) of sub-rule (1) of Rule 4 on Inspector and Sub-Inspectors.

(3) The Superintendent of Police may award any of the punishments mentioned in Rule 4 on such Police Officers as are below the rank of Sub-Inspectors.

(4) Subject to the provisions contained in these rules all Assistant Superintendents of Police and Deputy Superintendents of Police who have completed two years of

service as Assistant Superintendents of Police and Deputy Superintendents of Police as the case may be, may exercise powers of Superintendent of Police except the powers to impose major punishments under Rule 4.

(5) Notwithstanding anything contained in these rules Reserve Inspector, Inspector or Station Officer may award the punishments of drill and fatigue duty to any constable under his charge for a period not exceeding three days. but he shall inform the Superintendent of Police concerned of his order immediately and in any case within 24 hours of passing the order."

11. Thus in view of the above, it cannot be said that the Superintendent of Police is not a competent authority in the matter. However, on the question of want of reasonable opportunity of hearing resulting in non-compliance of principles of natural justice, the order impugned dated 14th April, 2023 is held unsustainable. So far as recommendation part of the enquiry report dated 19th January, 2023 is concerned, it also deserves to be quashed.

12. In view of the above, the writ petition succeeds and allowed in part. The recommendation made by the Inspector General of Police, as an enquiry officer, in his report dated 19th January, 2023 regarding imposition of minor penalty is hereby quashed. The order impugned dated 14th April, 2023 passed by the Superintendent of Police, Rae Bareilly is also quashed. The matter is remitted to the Superintendent of Police, Rae Bareilly to be decided afresh.

13. It is hereby further provided that the Superintendent of Police Rae Bareilly shall ensure that all the requisite documents, that were said to have been sent through Constable Abhijeet Shukla on 12th April, 2023, be served upon the petitioner within two weeks' from today. Thereafter, the petitioner shall be submitting his reply to the same before the disciplinary authority within next two weeks and the disciplinary authority shall be taking appropriate decision upon the same after affording full opportunity of hearing to the petitioner within next four weeks

14. Learned Additional Chief Standing shall communicate this order to the competent authority within three days.

Order Date :- 21.11.2023