Court No. - 34

Case :- WRIT - A No. - 17349 of 2023

Petitioner :- Jitendra Kumar
Respondent :- The State Of U.P. And 3 Others
Counsel for Petitioner :- Atipriya Gautam,Anura Singh,Sr. Advocate,Vinod Kumar Mishra
Counsel for Respondent :- CSC

Hon'ble Ajit Kumar,J.

1.Heard learned counsel for the petitioner and learned Standing Counsel.

2. By means of this petition filed under Article 226 of the Constitution, petitioner has assailed the order dated 22.09.2023, whereby, the petitioner who has been working as confirmed Head Constable in U.P. Police, has come to be dismissed from service on the ground of serious misconduct but that too without holding any disciplinary inquiry as contemplated under relevant service rules namely U.P. Police Officers of Subordinate Rank (Discipline and Appeal) Rules, 1991 taking recourse to clause - B of sub Rule (2) of Rule 8 which empowers the authority not to hold inquiry in certain cases of dismissal from service where it has come to conclude that it was not reasonably practicable to hold such an inquiry.

3. Learned counsel for the petitioner submits that the petitioner having been *prima facie* held to be guilty of serious misconduct and no such circumstance having been explained as to why the proper disciplinary inquiry cannot be held in the matter, the order impugned cannot be sustained in law. He has relied upon a judgment of Supreme Court in the case of ***Reena Rani v. State of Haryana & Others, (2012) 10 SCC 215***, wherein, the Court appreciated the arguments of Additional Advocate General in the said case that no specific reasons have been assigned as to why it was not reasonably practicable for respondents to hold an inquiry. Paragraph no. 7 of the judgment runs as under:

"*7. In the order of dismissal, the Superintendent of Police has not disclosed any reason as to why it was not*

reasonably practicable to hold regular departmental enquiry. The learned Additional Advocate General fairly stated that the order of dismissal does not contain the reasons as to why it was not reasonably practicable to hold regular departmental enquiry against the appellant. He also admitted that no other record has been made available to him which would have revealed that the Superintendent of Police had recorded reasons for forming an opinion that it was not reasonably practicable to hold regular departmental enquiry for proving the particular charge(s) against the appellant."

4. The argument advanced by learned Standing Counsel is that since the power has been exercised under Rule 8 (4)(a) of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991)hereinafter referred to as 'the Rules of 1991') to award major penalty of dismissal on account of petitioner being held guilty for escape of a culprit from police custody, therefore, the provisions as contained under Rule 8(2)(b) of the Rules of 1991 will not be attracted and the discussion of facts in the order of dismissal will suffice the need of Rule 8(2)(b). Rule 8(2)(b) and Rule 8(4)(a) of 'the Rules of 1991' is quoted hereinbelow:

"*8(2)(b) Where the authority empowered to dismiss or remove a person or to be reduce him in ranks is satisfied that for some reasons to be recorded by that authority in writing, it is not reasonably practicable to hold such enquiry:*

8(4)(a) The punishment for intentionally or negligently allowing persons in police custody or judicial custody to escape shall be dismissal unless the punishing authority for reasons to be recorded in writing awards a lessor punishment."

5. In my considered view, the argument advanced by learned Standing Counsel is highly misplaced. The reasons that are required to be assigned under Rule 8(4)(a) is only for the purposes of awarding minor penalty. In the event prescribed major penalty is to be awarded by the punishing authority, it is equally required to record reason as to why it is not reasonably practicable to hold a regular enquiry as contemplated under Rule 8(2) of 'the Rules of 1991'. This part of the mandatory requirement under Rule 8 (2)(b) has not been complied with and the order impugned is clearly

unsustainable.

6. At this stage, learned Standing Counsel submits that this order may be set aside and the matter may be left open for the respondent disciplinary authorities to proceed in accordance with relevant rule 14 of 1991 Rules, which provides for dismissal and removal of an employee from service by following the prescribed procedure.

7. In the circumstances therefore, the enquiry is required to be held in the light of the judgment passed in Reena Rani (Supra).

8. In view of the above, the order impugned herein dated 22.09.2023 is hereby quashed.

9. Writ petition thus stands ***allowed***.

10. Authorities are directed to proceed in accordance with Rule 14(1) of Rules, 1991, if so advised and if so desire.

Order Date :- 13.10.2023
Deepika

Digitally signed by :-
DEEPIKA SINGH
High Court of Judicature at Allahabad