

Court No. - 34

Case :- WRIT - A No. - 18208 of 2023

Petitioner :- Shubhangi Kulkarni

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

Counsel for Petitioner :- Sunil Kumar Srivastava, Sr. Advocate

Counsel for Respondent :- CSC

Hon'ble Ajit Kumar, J.

1. Heard Sri Ashok Khare, learned Senior Advocate assisted by Sri Sunil Kumar Srivastava, learned counsel for the petitioner and learned Standing Counsel for the State.

2. Petitioner is aggrieved by the order dated 09.10.2023 by which a major penalty in the nature of reversion to a lower post has been imposed without considering the reply submitted by him on 27.09.2022 to the show cause notice dated 22.04.2022 that had accompanied the enquiry report.

3. Sri Khare, learned Senior Advocate has drawn the attention of the Court towards the finding part of the order impugned which is contained in paragraph nos.3 and 4 and submits that although a reference has been made to the reply submitted by the petitioner in the preceding paragraph no.2 but there is no deliberation and discussions upon the pleadings raised by the petitioner in the reply dated 27.09.2022 and hence no consideration has been accorded to that.

4. Learned Standing Counsel on the contrary submits that the petitioner did appear on the last date 17.04.2023 but did not submit any fresh reply and simply requested that a sympathetic consideration may be accorded to him in the matter. It is further submitted that when the petitioner has nothing to say, whether he was put to notice or not and given appropriate personal opportunity of hearing or not, such order cannot be faulted with.

5. Having heard learned counsel for the parties and having perused the record, I find two points to be emerging out: **firstly** that the show cause notice dated 22.04.2022 does not refer to any proposed punishment in the nature of reversion which has ultimately been inflicted upon him. Still further when the petitioner had submitted a detailed reply dated 27.09.2023 raising all possible pleas in her defense countering the findings of the enquiry officer in his report approved in the show cause notice, the same ought to have been deliberated and discussed, but the order impugned is absolutely silent and it is so worth noticing in paragraph nos.3 and 4 of the order,

which are reproduced hereunder:

"3- जाँच अधिकारी की जाँच आख्या, अपचारी अधिकारी के अभ्यावेदन, व्यक्तिगत सुनवाई तथा अन्य संगत अभिलेखों पर सम्यक् विचारोपरान्त अपचारी अधिकारी (श्रीमती कुलकर्णी) के विरुद्ध प्रचलित विभागीय जाँच/कार्यवाही में लगाये गये कुल 18 आरोपों में से आरोप संख्या-03,04,06,08,09,10,11,14,15 व 16 पूर्ण सिद्ध, आरोप संख्या-02,05,07,12,13 व 17 आंशिक रूप से सिद्ध पाये गये हैं। आरोपों के सिद्ध पाये जाने के दृष्टिगत श्रीमती शुभांगी कुलकर्णी के विरुद्ध प्रचलित विभागीय जाँच/कार्यवाही में दण्ड विनिश्चय किया गया।

4- श्रीमती शुभांगी कुलकर्णी के विरुद्ध विनिश्चित किये गये दण्ड " निम्नतर पद पर स्थापित किया जाना" के प्रस्ताव पर शासन के पत्र संख्या-1/347697/2023, दिनांक 12 जुलाई, 2023 द्वारा उत्तर प्रदेश लोक सेवा, प्रयागराज की सहमति मांगी गयी। उत्तर प्रदेश लोक सेवा आयोग के पत्र संख्या- 1/5/ए.डी.सी./एस-4/2023-24, दिनांक 27 सितम्बर, 2023 द्वारा श्रीमती शुभांगी कुलकर्णी के विरुद्ध विनिश्चित दण्ड पर अपनी सहमति प्रदान की गयी है।"

6. Upon a pointed query being made, learned Standing Counsel for the State could not demonstrate any recital from paragraph nos.3 and 4 as noticed above that the consideration was accorded to the representation/reply of the petitioner made on 27.09.2022.

7. In the circumstances therefore, the action taken by the authority in imposing major penalty of reversion cannot be countenanced being *de hors* the procedure prescribed for under Rule 9 (4) of the U.P. Government Servant (Discipline and Appeal) Rules, 1999.

8. At this stage learned Standing Counsel submits that the matter may be directed to be disposed of afresh considering the reply submitted by the petitioner in the past.

9. Accordingly order dated 09.10.2023 is hereby quashed with a liberty to the respondent to pass order afresh within a reasonable time but this time order shall be well informed one.

10. Writ petition is **allowed**. Consequences to follow.

Order Date :- 30.10.2023

Deepika