

Court No. - 39

Case :- WRIT - A No. - 19650 of 2023

Petitioner :- State Of U.P. And 3 Others

Respondent :- Arun Kumar

Counsel for Petitioner :- C.S.C.,C.S.C.

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Shiv Shanker Prasad,J.

1. Heard Sri Ankit Gaur learned Standing Counsel for the State-petitioners and Sri Sachindra Kumar Mishra learned counsel for the respondent.

2. Present writ petition has been filed against the order of the U.P. Public Service Tribunal dated 18.7.2023 passed in Claim Petition No. 1337 of 2021 (Arun Kumar Vs. State of U.P. and Others). By that order, the learned Tribunal has set aside the penalty order dated 26.10.2020 as also the appeal order dated 18.1.2021. It has further issued direction to reinstate the respondent with all consequential effects.

3. Having heard learned counsel for parties and having perused the record, it is undoubted that the charges levelled against the respondent were serious. He was alleged to have demanded bribe of Rs. 1000-1500/- from one Daya Shankar S/o Tulsi Maurya to approve payment for construction of toilet under government scheme. In that regard, it was further alleged that an audio recording of the respondent making such demand of bribe had come on record, it having been filed by certain Gram Pradhans.

4. While such serious allegations were levelled against the respondent, neither the said Daya Shankar nor any Gram Pradhan (who may have made available the audio recording of the respondent) was examined as witness. With respect to the alleged

audio recording, neither the same was certified/proved in terms of Section 65-B of the Indian Evidence Act, 1872 nor any attempt was made to recognise the voice of the respondent through voice matching etc. No legal or scientific procedure appears to have been adopted at the enquiry either to establish the demand of bribe made by the respondent from Daya Shankar or any other person.

5. Three years have passed since the allegation was levelled. In face of complete failure on part of petitioners to prove the charge in accordance with law, we find, no useful purpose may ever be served in keeping such enquiry alive. In the first place, the burden to prove the charge remained on the petitioners. In absence of any evidence led, no benefit may ever be drawn on the observation made by the enquiry officer that he had discussed the matter with Daya Shankar and others. The departmental enquiry proceedings is not meant to be an *ex parte* proceeding. It must be based on the principle of natural justice whereunder due opportunity to not only present the case is to be given to the delinquent but also he is to be given the critical opportunity to cross examine the witness, who may testify against him.

6. In the state of enquiry in the present case, no such procedure appears to have been adopted inasmuch as on the own showing of the enquiry officer, he only discussed the matter with Daya Shankar and certain other unnamed persons, in an *ex parte* manner. Neither the details of that discussion have been noted nor otherwise such discussion may ever be treated to be an evidence, to prove the charge levelled against the respondent.

7. For the facts noted above, the ratio arising from **The State of Uttar Pradesh and Others Vs. Rajit Singh** (Civil Appeal Nos. 2049-2050 of 2022, decided on 22.3.2022) is distinguishable.

Where some evidence may exist, different considerations may arise and a remand order may be made. However, in the present case the very basis of the charge rested on the allegation levelled by one Daya Shankar and on the audio clip/recording of a telephonic conversation attributed to the private respondent. It was *sine qua non* that the persons from whom demand of bribe may have been made be adduced before the enquiry officer. While no such evidence appears to have been produced by the petitioners, the audio recording was not even certified under Section 65-B of the Indian Evidence Act, 1872 less so proven before the enquiry officer.

8. Three years have passed since then. We find no useful purpose may be served in remitting the matter to the disciplinary authority. In the first place, no evidence appears to exist against the respondent and second, no second opportunity is to be given to the employer to prove the charge. Unless special circumstances exist as may be borne out from the face of record, no such second opportunity may be granted only to benefit the employer to improve its case.

9. We find that the learned Tribunal has rightly interfered with the penalty awarded, for cogent considerations. Once evidence was lacking, the penalty order may not have been sustained.

10. Writ petition lacks merit and is **dismissed**.

11. No order as to costs.

Order Date :- 28.11.2023/Faraz

(Shiv Shanker Prasad, J.) (S. D. Singh, J.)