

Court No. - 22

Case :- WRIT - A No. - 6380 of 2002

Petitioner :- Taj Mohammad Khan

Respondent :- Managind Director State Farms Corp.Of India And Anros.

Counsel for Petitioner :- Abdul Mannan,Javed,Santosh Kumar
Tripathi,Smt. Bulbul Godiyal,Utsav Mishra

Counsel for Respondent :- B.B.Saxena,Dipak Seth,Raj Kumar

Hon'ble Manish Kumar,J.

1. Heard learned counsel for the petitioner and Shri Dipak Seth, learned Counsel for the respondent nos. 1, 2 and 4.

2. Present writ petition has been preferred with the following main prayers. Out of which, some prayers had been made at the time of filing of present writ petition whereas some have been incorporated by way of amendment which was permitted by this Court vide its order dated 07.11.2014. The amended prayer is in bold:-

"i) issue a writ, order or direction in the nature of certiorari to quash the order dated 14/15.09.1998 issued by the opposite party no. 2 contained in Annexure no. 3 and the order dated 20.06.1998 issued by the opposite party no. 2 contained in Annexure No. 4A so far it provide that period of absence on account of suspension will be treated as on leave due at the credit of the petitioner.

*ii) Issue a writ, order or direction in the nature of certiorari to quash the recordable warnings and adverse entries awarded to the petitioner in various annual confidential report **viz. namely for the years ending 31.03.1995; 31.03.1998; 31.03.1999; 31.03.2000 and 31.03.2001.***

iii) Issue a writ, order or direction in the nature of certiorari to quash the charge-sheet dated 4/5.06.2002 contained in Annexure no. 8.

*iii (a) **Issue a writ order or direction in the nature of certiorari quashing the punishment order dated 07/11.08.2009 passed by the respondent no. 2, a copy whereof is contained as Annexure no. SA-9 to the Supplementary Affidavit filed on behalf of petitioner.***

iv) Issue a writ, order or direction in the nature of mandamus directing the opposite parties to consider the petitioner for promotion on the post of P.A. to Director, Central State Farm,

iv (a) issue a writ, order or direction in the nature of mandamus commanding the respondent no. 1 to take decision on the representation dated 22.12.2006, a copy whereof is contained as Annexure No. SA-11 to the Supplementary affidavit filed on behalf of petitioner, preferred by the petitioner in respect of promotion on the next higher post, within such time frame which this Hon'ble Court deem, just and proper."

3. Learned counsel for the petitioner has submitted that petitioner was initially appointed as Junior Stenographer on 02.09.1987. Petitioner was suspended on several times for one reason or the other and the suspension orders were revoked also from time to time. The adverse entries, the censure etc were also awarded to the petitioner. It is also submitted that due to the impugned order dated 14/15.09.1998 by which the punishment of stoppage of one increment for one year without cumulative effect, petitioner had been deprived to be considered for promotion on the post of Personal Assistant to the Director, which was given to one Shri Ashok Kumar Singh on 06.01.2006.

4. It is further submitted that prior to passing of the impugned order dated 14/15.09.1998 by which one increment of the petitioner was stopped for one year, two inquiries were conducted after serving the charge-sheets upon the petitioner. The Inquiry Officers submitted their enquiry reports exonerating the petitioner from all the charges. The Disciplinary Authority without providing any opportunity of hearing to the petitioner differed with the finding of the enquiry officer and passed the order of punishment, which is not in consonance with the law settled by Hon'ble Supreme Court in the cases of ***Punjab National Bank and others Vs. Kund Behari Mishra reported in (1998) 7 SCC 84*** and ***Union of India and Others Vs. Mohd. Ramzan Khan reported in (1991) 1 SCC 588***.

5. It is next submitted by learned counsel for the petitioner that the second impugned order was passed on 20.06.1998 treating the suspension period of petitioner as leave due to his credit, which is bad in the eyes of law for the reasons that after the suspension, no enquiry was initiated by the authorities, so there was no occasion for passing of the impugned order dated 20.06.1998. The impugned order of censure entry dated 07/11.08.2009 passed by respondent no. 2 is also not tenable in law as it was passed just to harass the petitioner and deprived him of to be promoted on the next higher post.

6. It is further submitted that the petitioner had made a representation on 22.12.2006 for considering his candidature for promotion, on which no decision has been taken by the authorities till date and the same is still pending.

7. On the other hand, Shri Dipak Seth, learned counsel for the respondent nos. 1, 2 and 4 has submitted that the petitioner had already attained the age of superannuation on 30.06.2018 and received all the post retiral dues without any protest. It is further submitted that due to the retirement in the year 2018, all the prayers made in the present writ petition has now become redundant and the petition is liable to be dismissed as infructuous.

8. After hearing learned counsel for the parties and going through the record of the case, it is found that the punishment order dated 14/15.09.1998 for stoppage of one increment for a period of one year was passed by the disciplinary authority differing with the findings given in the enquiry report. In the enquiry, petitioner was exonerated from all the charges. It is a settled proposition of law though the disciplinary authority is not bound by the findings in the enquiry report, he may take his own decision but at the same time, it is also settled law that whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before he records his own finding on such charge, it must record its reasons for such disagreement and give to the delinquent officer an opportunity to represent before disciplinary authority.

9. In the present case, it is an admitted case that before passing of the order partly disagreeing with the enquiry report, the disciplinary authority has not provided any opportunity of hearing to the petitioner.

10. In view of the above, it is held that the impugned order dated 14/15.09.1998 is bad in the eyes of law and it is liable to be quashed.

11. As far as second impugned order dated 20.06.1998 is concerned by which the suspension period of petitioner was treated as leave due to his credit, this court finds that there is no illegality in the same as the petitioner made a representation and tendered his apology that such mistake would not be repeated by him and after considering the case of the petitioner on humanitarian ground, further enquiry was not initiated against the petitioner so no interference is required therefor.

12. As far as prayer no. 2 to quash the recordable warnings and adverse entries awarded to the petitioner in various annual

confidential reports, the petitioner had a remedy to file an department appeal/representation against these entries so writ petition cannot be entertainable/maintainable.

13. The third prayer regarding quashing of the charge-sheet has now become infructuous as after the enquiry, the punishment order has been awarded.

14. As far as prayer no. iii(a), which has been incorporated vide this court's order dated 07.11.2014, by which the petitioner has challenged the punishment order dated 07/11.08.2009, is not maintainable for the reason that the order of censure entry was passed by the disciplinary authority as one of the charges was found proved by the enquiry officer and the disciplinary authority passed the order agreeing with the charge, which was found proved against the petitioner.

15. As far as prayer no. iv(a) is concerned, with the consent of both the parties, the respondent no. 1-Managing Director, State Farms Corporation of India Limited, New Delhi is directed to decide the representation of the petitioner dated 22.12.2006 within a period of three months from the date of certified copy of this order is served.

16. In view of the findings & discussions held above, the writ petition is ***partly allowed*** in respect of impugned order dated 14/15.09.1998, which is hereby quashed with consequential benefits and also in respect of direction given to respondent no. 1 to decide the representation of the petitioner dated 22.12.2006. The petition is however dismissed for other prayers made in the writ petition.

Order Date :- 29.11.2023

Ashish