

Court No. - 20

Case :- WRIT - A No. - 106 of 2014

Petitioner :- Puttan Singh

Respondent :- State Of U.P. Thru Its Secy.Deptt.Of Revenue Lucknow And Ors.

Counsel for Petitioner :- G.C. Verma

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur,J.

1. Heard Mr. G.C. Verma learned counsel for petitioner and learned State Counsel for opposite parties.

2. Petition has been filed challenging order dated 29th December, 2012 imposing major penalty of reversion to the basic pay and for recording censure entry against petitioner. Also under challenge is the order dated 16th March, 2010 whereby salary from initial date of dismissal from service till passing of reinstatement order has been denied. Petitioner has also sought a direction to opposite parties for payment of post retiral benefits along with interest with effect from 1st January, 2013 as also for arrears of salary with effect from 11th October, 1997 till 31st March, 2010 along with interest.

3. It has been submitted that vide reports dated 25th May, 1995 and 31st August, 1995, the Naib Tehsildar concerned reported petitioner's involvement with regard to some misconduct and financial irregularities. In pursuance of such report, petitioner was placed under suspension and a charge sheet dated 12th March, 1996 was issued to him. It is submitted that the charge sheet placed reliance on aforesaid reports dated 25th May, 1995 and 31st August, 1995 but were not supplied to petitioner. Thereafter inquiry report dated 17th January, 1997 was submitted whereafter a notice was issued to him to which he submitted a reply dated 15th May, 1997 to the effect that documents mentioned in the charge sheet in support of charges levelled against petitioner should be supplied to him and that inquiry should be conducted in accordance with law.

4. It is submitted that however by means of order dated 11th October, 1997 petitioner was dismissed from service. The said order was challenged in writ petition No. 978 (S/S) of 1998 which was allowed by means of

judgment and order dated 8th August, 2008 quashing the dismissal order with a further direction that petitioner was to be reinstated in service forthwith. However liberty was granted to the concerned authority to pass separate order with regard to payment of salary to petitioner for the period during which petitioner remained dismissed from service. This court also directed that allowing of the petition would not preclude the disciplinary authority from resuming the proceedings and continuing in accordance with law against petitioner from the stage of supply of inquiry report.

5. Learned counsel has submitted that a copy of the judgment was submitted before the opposite party No.3 by means of letter dated 29th August, 2008 with a reminder on 19th December, 2008 whereafter the Tehsildar concerned provided a copy of the inquiry report vide letter dated 8th April, 2009 but again without the documents and reports which was sought by petitioner. It is submitted that due to the aforesaid fact, petitioner submitted an application dated 25th April, 2009 stating that despite specific direction issued by this court, petitioner was not being reinstated in service and was incorrectly being treated as a dismissed employee. Salary for the period of dismissal was also prayed for.

6. In pursuance of aforesaid representation, impugned order dated 16th March, 2010 was passed denying salary to petitioner for the period of dismissal till reinstatement. In pursuance of the order dated 16th March, 2010, petitioner was permitted joining on 22nd March, 2010 whereafter notice was issued to petitioner on 6th September, 2012 requiring a reply from him to the inquiry report but since relevant documents had not been supplied to petitioner, he made an application dated 26th November, 2012 for providing the documents which were indicated in the charge sheet particularly reports dated 25th May, 1995 and 31st August, 1995.

7. Vide notice dated 21st December, 2012, petitioner was again required to submit his reply to the show cause notice but subsequently by means of letter dated 26th December, 2012, copies of the reports dated 25th May, 1995 and 31st August, 1995 were provided to petitioner. Vide letter dated 27th December, 2012, petitioner sought time to reply thereagainst. It is submitted that although petitioner had sought a week's time to submit a reply but the disciplinary authority compelled the petitioner to indicate time to be granted of only one day to submit a

reply. Learned counsel has adverted to the subsequent letter dated 28th December, 2012 submitted by petitioner to the authority concerned stating the aforesaid fact and again seeking time of one week for submitting a reply to the show cause notice.

8. Learned counsel has submitted that thereafter notice of superannuation from service was issued by the opposite parties on 14th December, 2012 whereafter petitioner has superannuated.

9. It has been submitted that the inquiry proceedings have not been held in accordance with principles of natural justice nor even on the basis of any admitted evidence against petitioner. It has been submitted that the inquiry report itself places reliance on the reports dated 25th May, 1995 and 31st August, 1995, copies of which were admittedly supplied to petitioner only on 26th December, 2012 and not prior thereto but impugned order has been passed within three days thereafter on 29th December, 2012 without affording adequate opportunity of hearing to petitioner to submit his reply. It is also submitted that the perusal of inquiry report itself will make it evident that charges levelled against petitioner have been found to be established only on the ground that petitioner failed to submit his reply to the charge sheet. It is submitted that even with regard to charge No.1, the same has been found to be established against petitioner placing reliance on letters dated 31st July, 1997 and 27th July, 1997 allegedly issued by the bank concerned but again without providing copies of the aforesaid documents to petitioner nor even establishing genuineness of the aforesaid letters by adducing any witnesses.

10. Learned counsel has also sought to assail the order dated 16th March, 2010 on the ground that salary with effect from the date of dismissal order dated 11th October, 1997 to the date of reinstatement has been denied without indicating any reasons which clearly indicates non application of mind by the authority concerned.

11. Learned State Counsel has refuted submissions advanced by learned counsel for petitioner with submission that after judgment rendered by this Court in earlier proceedings, admittedly copies of the documents indicated in the inquiry report was supplied to petitioner whereafter adequate time was also granted to him for submitting a reply to the same but since petitioner waived his right of such reply, opposite parties were compelled to

pass the impugned order on the basis of material on record. It has also been submitted that the impugned order has been passed on the basis of inquiry report, which was the direction of this Court in its judgment and order dated 8th August, 2008. It is also submitted that the court while passing the earlier judgment and order dated 8th August 2008 did not find any fault with the inquiry report.

12. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is quite evident that earlier inquiry proceedings were initiated against petitioner by issuance of charge sheet dated 12th March, 1996 which culminated in passing of the dismissal order dated 11th October, 1997, which in turn has been quashed by this court vide judgment and order dated 8th August, 2008 passed in writ petition No. 978 (S/S) of 1998. The said judgment has attained finality. The operative portion of the aforesaid judgment clearly indicates quashing of the dismissal order dated 11th October, 1997 and further direction that petitioner was to be reinstated in service forthwith. Liberty was granted to opposite parties to pass separate order with regard to payment of salary to petitioner during the period when he remained dismissed from service. Liberty was also granted to disciplinary authority to resume the proceedings and to continue them in accordance with law against petitioner from the stage of supply of inquiry report.

13. It is in these circumstances that inquiry proceedings were continued against petitioner from the stage of supply of inquiry report. It is also evident from the record that charge sheet clearly indicated the reports dated 25th May, 1995 and 31st August, 1995 as evidence to substantiate the charges levelled against petitioner. It is also not denied by opposite parties that such reports were provided to petitioner for the first time by means of order dated 26th December, 2012 and prior thereto, copies of such reports were never supplied to petitioner. It is also evident that impugned order imposing major penalty upon petitioner has thereafter been passed within a period of three days from the date of supply of such documents to petitioner although the petitioner had appeared before the authority concerned and had sought time for reply to the show cause notice.

14. The impugned order dated 29th December, 2012 makes it evident that it has been passed placing complete

reliance on the inquiry report dated 4th August, 1997.

15. A perusal of the inquiry report also makes it evident that while charges 2 and 3 have been found established against petitioner only on account petitioner not submitting a reply to the charge sheet but charge No.1 has been found established placing complete reliance on letters dated 31st July, 1997 and 27th July, 1997 issued by the bank concerned. It does not appear from the reading of the inquiry report that the aforesaid documents were ever supplied to petitioner at any time prior to submission of inquiry report. The aforesaid documents are also not mentioned as evidence in the charge sheet. Even in the counter affidavit, there is no plea by the opposite party that the aforesaid documents were supplied to petitioner at any stage.

16. It is trite that disciplinary inquiry proceedings are in the nature of quasi judicial proceedings in which the primary aspect required to be kept in mind is verify the truth of allegations levelled against delinquent employee and findings are required to be based on evidence placed on record and for which the delinquent employee is required to be granted a proper and reasonable opportunity of hearing.

17. The procedure required to be followed in disciplinary proceedings in order to maintain transparency and fairness have also been discussed by Hon'ble Supreme Court in various other judgments such as **Roop Singh Negi versus Punjab National bank and others** reported in MANU/SC/8456/2008:(2009) 1 SCC (L & S) 398 and **State of Uttar Pradesh and others versus Saroj Kumar Sinha** reported in (2010) 2 SCC 772. The relevant portion of **Roop Singh Negi** (supra) is as follows:

"Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the

accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence.

The relevant portion of **Saroj Kumar Sinha** (surpa) is as follows :

"27. A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge."

"28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents."

18. Upon applicability of aforesaid judgments in the present facts and circumstances of the case, it is evident from record that inquiry report is based completely on letters dated 31st July, 1997 and 27th July, 1997, copies of which admittedly were never provided to petitioner during the inquiry proceedings. Charges 2 and 3 have

been found to be established only on account of reply not being submitted by petitioner. The inquiry report does not indicate any other evidence being relied upon. In such circumstances when the sole evidence was not provided to petitioner at the time of inquiry proceedings, clearly vitiates the inquiry proceedings in its totality. The opposite parties had ample opportunity to correct this deficiency once liberty was granted to the disciplinary authority to resume proceedings against petitioner by this Court vide judgment and order dated 8th August, 2008 but the disciplinary authority has not made use of this liberty and has in fact based his punishment order only on the inquiry report. Evidently not only the inquiry but the punishment order therefore is vitiated for non adherence to principles of natural justice and the judgments rendered by Hon'ble Supreme Court on the point.

19. The aforesaid judgments are also a proposition on the law that the inquiry officer acting in quasi judicial capacity is also required to verify the veracity of the charges levelled against delinquent employee by adverting to material on record and finding it substantiated even if the delinquent employee has not filed any reply to the charge sheet. It is also his bounden duty to examine the genuineness of documents which have been relied upon by the department to substantiate charges levelled against employee and for which purpose the inquiry officer was required to have called the authors of the letters dated 31st July, 1997 and 27th July, 1997 as witnesses for the purposes of verification. Such a course of action having not been adhered to by the opposite parties renders the impugned orders vitiated.

20. Ordinarily in such circumstances when procedural defect is found in the inquiry proceedings, an order for fresh inquiry is generally passed but in the present case, it is a material fact that petitioner has superannuated 10 years ago from 31st December, 2012. Charges levelled against him pertained to the year 1995 and therefore in considered opinion of this Court, no useful purpose would be served in remitting the matter for inquiry afresh at this stage after 10 years of superannuation of petitioner which will only prolong his agony. It may also be difficult for petitioner or even the opposite parties to produce relevant documents for substantiating charges levelled against petitioner or his defence considering almost 28 years having passed from the year in which alleged misconduct is said to have occurred.

21. The Hon'ble Supreme Court in the case of **Allahabad Bank and others versus Krishna Narayan Tewari** reported in [2017 (2) SCC 308] has held that although there is no quarrel with the proposition that in case the inquiry is found to be deficient, procedurally or otherwise, the proper course is always to remand the matter but there may be situations where because of a long time lag or such other supervening circumstances where the court considers it unfair, harsh or unnecessary to direct a fresh inquiry. The aforesaid judgment of Hon'ble Supreme Court squarely applies to the present case.

22. With regard to grant of back wages, the learned counsel for the petitioner has relied upon the case of **Somesh Tiwari versus Union of India and others** reported in [2009 (2) Supreme Court Cases page 592] in which the Hon'ble Supreme Court relying upon the case of **Karnataka House Board versus C. Muddaiah** reported in [2007(7) SCC 689] has held that although with regard to back wages, the normal rule is no work no pay but in appropriate cases, court of law must take into account all the facts in their entirety and may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. It has been further held that it is not an absolute proposition of law that directions for payment of consequential benefits cannot be granted by a court of law. She has also relied upon the case of **Raj Kumar versus Director of Education and others** reported in [2016(6) SCC 541] in which the Hon'ble Supreme Court relying upon the judgment of **Deepali Gundu Surwase versus Kranti Junior Adhyapak Mahavidyalaya** reported in [2013 (10) SCC 324] has held that the very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position he would have been but for the illegal action of the employer. The injuries suffered by a person who is so illegally removed can not easily be measured in terms of money since the latter's source of income gets dried up due to which not only an employee but his entire family suffers grave adversities such as deprivation of nutritious food, opportunities of education and advancement in life. The Hon'ble Supreme Court has held that denial of back wages would amount to indirectly punishing the employee concerned and rewarding the employer for an illegal act of the employer.

23. Considering the issue of back-wages/salary, it is noticeable that this Court vide order dated 8th August,

2008 while allowing petitioner's earlier writ petition had also directed reinstatement of petitioner and for passing separate orders regarding payment of salary for the period during which he remained dismissed from service.

24. In such circumstances particularly when none of the charges levelled against petitioner have been found established by any evidence on material, the petitioner can not be kept deprived of his just dues.

25. Consequently the impugned orders dated 29th December, 2012 and 16th March, 2010 are hereby quashed by issuance of writ in the nature of Certiorari. A further writ in the nature of Mandamus is issued commanding the opposite parties to pay 50 % arrears of salary to petitioner as revised from time to time along with due emoluments with effect from 11th October, 1997 till 31st March, 2010 after adjusting salary already paid to petitioner, if any, for the said period. The opposite parties shall also ensure payment of post retrial benefits to petitioner along with arrears with effect from 1st March, 2013. Compliance thereof shall be ensured by the opposite parties within a period of three months from the date a certified copy of this order is produced before the concerned authority. In view of harassment being suffered by petitioner for no fault on his part, he shall also be entitled to interest at the rate of 7% per annum on the aforesaid amounts from the date when they are due till the date of actual payment. Interest on arrears of salary shall be only for the period 11th October, 1997 to 31st March, 2010.

26. Consequently the writ petition succeeds and is allowed. Parties to bear their own cost.

Order Date :- 6.11.2023
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