

Court No. - 5

Case :- WRIT - A No. - 7405 of 2009

Petitioner :- Satish Chandra S/O Late Manohar Lal

Respondent :- State Of U.P. Thru Prin. Secy. Revenue And Ors.

Counsel for Petitioner :- Pramendra Kumar Singh

Counsel for Respondent :- C.S.C.

Hon'ble Irshad Ali,J.

1. Heard Shri Pramendra Kumar Singh, learned counsel for the petitioner and Shri R.S. Tomar, learned Standing counsel for the State respondents.

2. By means of present writ petition, petitioner has challenged for quashing of the impugned order dated 18.05.1998 passed by opposite party no.3 contained as annexure no.3 and orders dated 29.01.2009 and 30.03.1999 passed by opposite party no.2 contained as annexure nos.1 & 2 respectively to the writ petition with further prayer to issue directions in the nature of mandamus commanding the opposite parties to grant the same pay scale as admissible to the post.

3. Factual matrix of the case is that the petitioner is a Collection Amin in District Barabanki in the Revenue Department. On 19.08.1997, Naib Tehsildar issued a show cause notice to submit reply on the same date. Petitioner submitted his reply on the same date and denied all the allegations of show cause notice. On 11.09.1997, chargesheet was issued on the recommendation of the Tehsildar, Nawabganj. No new documents were supplied and petitioner specifically asked for documents for the documents relied upon vide letter dated 29.09.1997. He replied to the chargesheet on 15.12.1997 and denied all the charges levelled against the petitioner. Reply to the chargesheet, the petitioner was completely kept in dark by the Inquiry Officer and no date, time and place has been fixed nor opportunity of hearing has been given nor any inquiry has been conducted in the matter nor any opportunity of cross-examination has been given and without considering the reply of the petitioner and also the Inquiry Officer considered the extraneous material which are not charged in the chargesheet. An ex-parte report dated 13.01.1998 submitted the Disciplinary Authority. This statement of fact has been made in the paragraph 10 and 11 of the writ petition.

4. Tehsildar, Nawabganj who has been recommended for

initiation of disciplinary proceedings has been appointed Inquiry Officer although as per settled principle of law, no one can be judge of his own case. This statement of fact has been made in paragraph 11 of the writ petition. Reply to the paragraphs 10 and 11 of the writ petition has been given in paragraphs 10 and 11 of the counter affidavit and there is no denial to the facts narrated in paragraphs 10 and 11 of the writ petition. Thereafter, on 02.04.1998, show cause notice was issued to the petitioner. Petitioner submitted a reply to the show cause notice on 07.04.1998. Disciplinary authority without considering the reply of the petitioner by passing non-speaking and un-reasoned order dated 18.05.1998, awarded the punishment of reversal on initial pay scale and an adverse entry has been recorded in his service book. Petitioner filed appeal before opposite party no.2 through registered post on 23.06.1998. After the reminders, when the appeal has not been decided while the writ petition in which this hon'ble Court has directed the opposite party no.2 to decide the appeal within a period of three months and if decided the order may be communicated to the petitioner.

5. On 29.01.2009, Commissioner, Faizabad sent an order dated 30.03.1999 by which the appeal of the petitioner has been decided which was received on 05.02.2009. The appellate authority has also not considered single concern made to the appeal and only on the report of the District Magistrate, he has rejected the appeal of the petitioner by passing non-speaking and un-reasoned order.

6. Submission of learned counsel for the petitioner is that the impugned order dated 18.05.1998 has been passed against the petitioner without holding any inquiry by fixing date, time and place and without permitting to cross-examine the witnesses relied upon and without affording opportunity of hearing to the petitioner. His next submission is that the Tehsildar on whose instance proceedings were initiated against the petitioner was made an Inquiry Officer and it is said principle of law that a man cannot be judge in his own case. This statement of fact has been made in paragraphs 10 and 11 of the writ petition. Reply to the same has been given in paragraphs 10 and 11 of the counter affidavit where no denial has been made. He further submits that the appellate authority has also not considered the aforesaid aspects of principles of natural justice while passing the impugned order and has passed un-reasoned and non-speaking order. His next submission is that the report of the Inquiry Officer was considered and on the said basis, penalty was imposed upon the petitioner without verifying the correctness and genuineness of the inquiry report. In this regard, counsel for petitioner places reliance in case of **Roop Singh Negi Vs. Punjab National Bank and Others (2009) 2**

SCC 570 paragraphs 14, 15 & 23.

7. On the other hand, Shri R.S. Tomar, learned counsel for respondents submits that the impugned orders do not suffer from infirmity or illegality and are just and valid order. The petitioner has been provided fullest opportunity during the course of inquiry and principles of natural justice was followed while conducting inquiry in the matter.

8. I have considered the submissions advanced by learned counsel for the parties and on perusal of material on record it is evident that the Inquiry Officer without fixing date, time and place has proceeded to make inquiry in the matter and no notice nor opportunity of hearing was given to the petitioner. Therefore, the inquiry report which was made basis in passing the impugned order is ex-parte inquiry report and in violation of principles of natural justice. This statement of fact has been made in paragraphs 10 and 11 of the writ petition which has been replied in paragraphs 10 and 11 of the counter affidavit and there is no denial to the facts narrated in the above mentioned paragraphs. It is also to be noted that the Tehsildar who directed to initiate disciplinary proceedings against the petitioner became Inquiry Officer in the matter. It is settled law that a person cannot be judge in his own case. It has further been considered that the departmental inquiry in the manner which required to be proved mere production of documents is not contained of. Contents of documentary evidence has to be proved by examining the process. Admission and confession proof of the petitioner who has confessed in regard to any material ,same evidence ought to have been brought on record that the petitioner was involved in stealing the evidence. The reliance placed by counsel for petitioner on the judgment in the case of **Roop Singh Negi Vs. Punjab National Bank and Others (2009) 2 SCC 570 paragraphs 14, 15 & 23** is herein quoted below:-

"14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled 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.

15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported

confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.

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23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof"

9. In view of the facts and circumstances stated above, the arguments advanced on behalf of petitioner has some substance and justify to quash the impugned orders and the submission advanced by learned Standing Counsel has no basis to support all the impugned orders . In view of the reasons recorded above, the writ petition succeeds and is **allowed**. The impugned orders dated 18.05.1998, 29.01.2009 and 30.03.1999 are hereby **quashed**.

10. As the petitioner on attaining the age of superannuation has attained age of retirement on 30.06.2022, therefore, he is not entitled for grant of appointment on the post from where he was reverted but he is entitled for the payment of salary as admissible to his post.

Order Date :- 2.11.2023
-Amit K-