

Court No. - 20

Case :- WRIT - A No. - 6511 of 2023

Petitioner :- Kunwar Brahma Prakash Singh

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Home, Civil Sectt. Lko. And 3 Others

Counsel for Petitioner :- Anand Prakash Singh

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur,J.

1. Heard learned counsel for petitioner and learned State Counsel for opposite parties.
2. Supplementary counter affidavit and rejoinder thereto filed today are taken on record.
3. Petition has been filed challenging order dated 24th June, 2023 imposing minor penalty of censure against petitioner. Further direction has been sought to the opposite parties for consideration of petitioner's case for promotion on the post of Deputy Superintendent of police in accordance with government order dated 6th May, 2022.
4. It has been submitted that in course of performance of his duties, petitioner was issued a show cause notice dated 12th June, 2023 requiring petitioner to show cause as to why the minor penalty should not be imposed upon him with regard to an investigation conducted by petitioner in the year 2012. It is submitted that despite the order indicating grant of 15 days time to petitioner, the impugned order in fact has been passed prior to expiry of aforesaid time period placing reliance on an alleged reply by petitioner dated 21st June, 2023. It is submitted that perusal of the alleged reply dated 21st June, 2023 will indicate the fact that it was not a reply on merits of the case but the petitioner was only seeking a copy of the preliminary inquiry report which was indicated in the show cause notice itself. It is submitted that since there was no specific reply by petitioner on merits of case, the impugned order is vitiated on that very ground since it has considered the aforesaid letter to be a reply of the aforesaid show cause notice. It is further submitted that proceedings are not in accordance with Rule 14(2) of Uttar Pradesh Police Officer of the Subordinate ranks (Punishment and Appeal) Rules 1991 inasmuch as no proper opportunity of hearing has been provided to petitioner.
5. Learned State Counsel on the basis of supplementary counter affidavit however has refuted submissions advanced by learned

counsel for petitioner with submission that proper adherence to the Rules have been made prior to passing of impugned order and 15 days time granted to petitioner for submission of reply was in fact the outer limit and since petitioner had already submitted his reply prior to the aforesaid time, there was no occasion for the authorities to have awaited expiry of the aforesaid time period. It is submitted that impugned order clearly indicates consideration of reply by petitioner.

6. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, particularly the impugned order, it is evident that the same has been passed treating the letter dated 21st June, 2023 submitted by petitioner to be his reply. The order also indicates the fact that allegations levelled against petitioner have been found established in the preliminary inquiry report. The order also places reliance on the aforesaid preliminary inquiry report.

7. Upon consideration of letter dated 21st June, 2023 however, it is quite evident that the said letter submitted by petitioner was not in fact a reply on merits of the allegations levelled against him but on the contrary only sought a copy of the preliminary inquiry report since it was indicated in the show cause notice. A further time of 15 days was also sought by petitioner for submitting reply to the show cause notice. In the said letter, petitioner has also submitted that he was not permitted to participate in the preliminary inquiry.

8. Considering the aforesaid facts, it is quite evident that the authority concerned has incorrectly treated the letter dated 21st June, 2023 to be a reply to the show cause notice whereas in fact the aforesaid letter was only a document requiring supply of the preliminary inquiry report. It is also evident that petitioner had sought a further period of 15 days for submitting his detailed reply to the show cause notice. Evidently the impugned order has been passed erroneously considering the letter dated 21st June, 2023 to be reply on merits to the show cause notice.

9. It is also not the case of opposite parties that at any time subsequent to 12 July, 2023, a copy of the preliminary inquiry report was ever furnished to the petitioner although the impugned order has clearly relied upon the aforesaid inquiry report.

10. In view of aforesaid discussion, it is evident that impugned order has been passed on an erroneous assumption that the letter dated 21st June, 2023 was a reply on merits to the show cause notice. The order is also vitiated on account of the fact that

preliminary inquiry report which has been indicated and relied upon in the impugned order was never supplied to the petitioner.

11. Evidently a proper and reasonable opportunity of hearing has not been given to petitioner. Once a show cause notice has been given to the employee, it is the duty of the authority concerned to provide a reasonable opportunity to such an employee to submit his detailed reply on merits of the allegations levelled against him. It is also incumbent upon the authorities to provide all the relevant material on which allegations are to be placed. Such a procedure having not been followed while passing the impugned order clearly renders it vitiated.

12. In view of aforesaid, the impugned order dated 21st June, 2023 is quashed by issuance of writ in the nature of Certiorari granting liberty to opposite parties to pass fresh orders but only after providing a copy of the preliminary inquiry report to the petitioner and considering his reply. Petitioner's grievance regarding promotion shall be subject to final orders passed.

13. In view of aforesaid, the writ petition succeeds and is allowed. Parties to bear their own cost.

Order Date :- 18.10.2023

prabhat