

Court No. - 9

Case :- WRIT - A No. - 7116 of 2023

Petitioner :- Ram Pal

Respondent :- Cane Commissioner U.P. Lko. And 2 Others

Counsel for Petitioner :- Krishana Kumar Singh, Satish Singh

Counsel for Respondent :- C.S.C.

Hon'ble Rajan Roy, J.

Rejoinder affidavit filed by the petitioner is taken on record.

Heard.

The petitioner has filed this petition seeking the following reliefs:-

"(i) Issue a writ, order or direction in the nature of Certiorari to quash the order dated 23.06.2023 passed by opposite party no. 2 and charge sheet dated 01.08.2023 issued by the opposite party no. 3, as contained in Annexure - 2 to this writ petition.

(ii) Issue a writ, order or direction as this Hon'ble Court may deem fit to quash the inquiry against the petitioner initiated in pursuance of the order dated 23.06.2023."

The contention of the petitioner's Counsel firstly is that earlier the punishment order had been passed against the petitioner on 13.09.2012 against which petitioner's appeal was rejected by the Deputy Cane Commissioner, Lucknow Division on 01.01.2014. Being aggrieved, the said orders were challenged by the petitioner by means of Writ A No. 5703 of 2015. The said petition was allowed on 25.04.2023 in the following terms:-

"Heard learned counsel for the petitioner and learned Standing Counsel for the State.

By the present writ petition, petitioner has challenged the punishment order dated 13.09.2012 passed by respondent no.2 Deputy Cane Commissioner Parichetra, Lucknow and order dated 01.01.2014 whereby his appeal against the said order is also rejected.

The ground of challenge in this writ petition is that while passing the impugned order dated 13.09.2012 awarding punishment, the respondents have not afforded the petitioner an opportunity to cross-examine the witnesses and record their oral evidence against the charges levelled, which is in violation of Rule 7(vii) of The Uttar Pradesh Government Servant (Discipline And Appeal) Rules, 1999 (hereinafter referred to as "the Rules of 1999"). The appeal preferred against the said order is also rejected vide order dated 01.01.2014.

Learned counsel for the petitioner submits that the charge sheet dated 13.06.2012 itself is defective and is in violation of Rule 7(iii) of the Rules of 1999 as it does not contain the names of any witnesses and in fact, no oral evidence took place in the case.

A perusal of the inquiry report dated 28.07.2012 shows that on the charge, only reply of the delinquent officer/petitioner is considered and thereafter the findings on the same are given. There is no-consideration of any oral evidence or documentary evidence and the

manner in which the documentary evidence was proved, reflected in the inquiry report. On the basis of the said report, final order of punishment dated 13.09.2012, is passed.

Learned counsel for the petitioner submits that the entire inquiry is in violation of Rule 7 of Rules of 1999; inasmuch as there is no oral evidence submitted by the department to prove the documents against the petitioner and no opportunity to petitioner was given to cross-examine the same. The inquiry is concluded only on the basis of the reply submitted by the petitioner.

Learned Standing Counsel could not dispute the fact that the charge sheet, inquiry report as well as the punishment order are in violation of Rule 7 of Rules of 1999.

Hence, the impugned orders dated 13.09.2012 and 01.01.2014, cannot stand and are set aside.

Consequences to follow.

It shall, however, be open for the respondents, if they so desire, to proceed against the petitioner by holding a fresh inquiry by serving a fresh charge sheet along with documentary and oral evidence in accordance with law within a period of two months from today. In case inquiry proceedings are initiated against the petitioner within two months, the same shall be communicated to the petitioner and concluded expeditiously.

*With the aforesaid, present writ petition stands **allowed.**"*

The impugned punishment orders were quashed and liberty was granted to the opposite parties to proceed afresh by serving a fresh charge sheet along with documentary and oral evidence in accordance with law within a period of two months from the date of judgment. It was also held that in case inquiry proceedings are initiated against the petitioner within two months, the same shall be communicated to the petitioner and concluded expeditiously.

The Court specifically asked the petitioner's Counsel as to why a fresh charge sheet was required to be issued if no error was pointed out in the earlier charge sheet, he replied that this was the direction of the Court. Learned Counsel for the petitioner also submitted that in fact in the preliminary inquiry which was held in the year 2012, two other persons were found guilty, prima facie, of embezzlement but the charge sheet was issued initially in the year 2012 only against the petitioner and punishment order was also passed against the petitioner alone. The same error has been committed this time also and the charge sheet has been firstly not issued within the period of two months, as was required by this Court, secondly, when issued on 01.08.2023, it is only against the petitioner and not against the other persons. The Court asked the petitioner as to why this plea was not raised and got adjudicated in the earlier round of litigation, he submitted that he had raised this ground but was not considered by the Court.

In nutshell, the submission of the petitioner's Counsel is that in view of the Full Bench decision in the case of **Abhishek Prabhakar Awasthi Vs. The New India Assurance Company**

Ltd. & Others dated 04.12.2013 passed in writ petition bearing No. 7179 (S/S) of 2009, it was not open for the authority to have issued the charge sheet dated 01.08.2023 without seeking extension of time in view of the Full Bench decision referred herein above and secondly, the ground of discrimination in the sense that others who were found guilty in the preliminary inquiry in 2012 have not been charge sheeted. This Court has gone through the aforementioned Full Bench decision in *Abhishek Prabhakar Awasthi's* case.

Learned Standing Counsel, Shri Sandeep Chandra, says that on 23.06.2023 itself, the petitioner had been intimated about initiation of fresh inquiry against him and gist of the charges was also informed to him. In this regard he relies upon the order dated 23.06.2023 bearing letter no. 608-11 annexed as Annexure - CA1. In response, Counsel for the petitioner says that in fact charge sheet was issued on 01.08.2023 and a copy of it is annexed as Annexure - 2 to the petition. The Court has perused the said document also. On a perusal of the judgment dated 25.04.2023 passed by this Court in the earlier writ petition filed by the petitioner, the Court finds that there are two directions in the penultimate paragraph on the last page. The first direction is - *"to proceed against the petitioner by holding a fresh inquiry by serving a fresh charge sheet along with documentary and oral evidence in accordance with law within a period of two months from today"* i.e. from 25.04.2023. The second direction is - *"in case inquiry proceedings are initiated against the petitioner within two months, the same shall be communicated to the petitioner and concluded expeditiously."* The charge against the petitioner is of embezzlement of public money which is a serious charge.

When the Court peruses the order dated 23.06.2023, it finds that the proceedings were initiated against the petitioner after seeking requisite sanction from the Government under Article 351-A of CSR, as, the petitioner had already retired way back in 2019 itself. This fact about retirement of the petitioner which was placed by the petitioner on record in the earlier round of litigation, as claimed by his Counsel, yet, the Court in the presence of the petitioner directed for fresh inquiry, meaning thereby, it was not accepted. On further perusal of the order dated 23.06.2023, this Court also finds that not only the inquiry against the petitioner was initiated afresh but gist of the charges were also mentioned therein and thereafter, a detailed charge sheet has been issued on 01.08.2023. Even into taking into consideration the Full Bench decision in *Abhishek Prabhakar Awasthi's* case, this Court finds that in view of the fact of this case, as the period of two months referred in the earlier order was expiring on 26.06.2023 but prior to it, the inquiry

proceedings were initiated with gist of the charges informed to the petitioner vide order dated 23.06.2023 itself and thereafter, a detailed charge sheet has been issued on 01.08.2023, therefore, it would be hyper technical to quash the entire proceedings on the ground of Full Bench decision. As per the said decision, an authority, if it has exceeded the time limit prescribed by the Court can seek an extension by moving an application in the same proceedings or this can be considered in the proceedings initiated subsequently by the employee himself, as in this writ petition. Taking into consideration the entire facts and events, as also, the gravity of the charges leveled against the petitioner, this Court is of the opinion that this is not a fit case for interference on the said ground.

As regards the other ground raised by the petitioner's Counsel about discrimination, since 2012, the other two persons about whom it is said that they were also involved have not been charged. Nevertheless, it is open for the petitioner to raise this plea of discrimination before the inquiry officer, as also, before the disciplinary authority at the appropriate stage which can be looked into appropriately, as per law, but this by itself, in the facts of this case, cannot be a ground for quashing the proceedings at this stage. It is without prejudice to the rights of the petitioner in this regard to raise the plea aforesaid before the concerned at the appropriate stage. Purely on facts, this Court declines to exercise its extraordinary jurisdiction in the matter, in favour of the petitioner. It is however made clear that the proceedings which in fact had been stayed by this Court on 22.09.2023 shall now be continued and concluded positively within six months from today, failing which, no further request for extension of time would be entertained, as, these proceedings were initiated way back in 2012, meaning thereby, if the proceedings are not concluded within six months from today, the petitioner shall be entitled to consequential benefits flowing from his retirement, if any remain to be paid. If the petitioner does not cooperate in spite of adequate opportunity, it shall be open for the inquiry officer or the disciplinary authority to proceed ex-parte, as per law.

The writ petition is accordingly **disposed of** in the aforesaid terms.

Order Date :- 4.12.2023

Lokesh Kumar