

Court No. - 7

Case :- WRIT - A No. - 7489 of 2023

Petitioner :- Ishaq Ali

Respondent :- State Of U.P. Thru. Addl. Chief Secy. U.P. Public Works Deptt. Lko. And Another

Counsel for Petitioner :- Rakesh Kumar Singh

Counsel for Respondent :- C.S.C., Shishir Jain

Hon'ble Abdul Moin, J.

1. Heard learned counsel for the petitioner, learned Standing Counsel for the respondent no. 1 and Shri Shishir Jain, learned counsel for the respondents no. 2 and 3.

2. The instant writ petition has been filed challenging the punishment order dated 16.02.2022 and the appellate order dated 08.09.2023, copies of which are annexures 1 and 2 to the petition.

3. Learned counsel for the petitioner, at the very outset confines his prayer to raising a challenge to the appellate order dated 08.09.2023.

4. The contention of learned counsel for the petitioner is that against the order of punishment dated 16.02.2022 he had preferred an appeal to the appellate authority who is the Chairman of the U.P. Rajkiya Nirman Nigam Limited i.e. respondent no. 3.

5. However, a perusal of the appellate order dated 08.09.2023, a copy of which is annexure 2 to the petition, would indicate that the said order had not been passed by the competent authority with application of his independent mind rather the order has been passed on the basis of recommendations of the committee as clearly emerges from a perusal of the order impugned.

6. The argument is that once the power to pass order on the appeal is vested with the respondent no. 3 i.e. Chairman of the

Corporation consequently it is the Chairman who is to apply his mind and pass an order and he cannot be swayed and persuaded by the recommendations of the committee as has been done by the respondent no. 3 while passing the order impugned.

7. On the other hand, Shri Shishir Jain, learned counsel for the respondent Corporation submits that the Chairman has decided the appeal with application of his own mind and thus there is no infirmity in the order impugned.

8. Having heard learned counsel for the petitioner and having perused the record what emerges is that the aggrieved against the punishment order dated 16.02.2022 the petitioner had preferred an appeal. The appellate authority though has decided the appeal vide the order dated 08.09.2023 yet perusal of the same would indicate that he has placed reliance on a report of the committee and has thereafter concluded that keeping in view recommendations of the committee the appeal is being rejected.

9. It is settled position of law is that once an authority is vested with a power he is to exercise the authority on the basis of his own mind and not at the dictates of a third party.

10. Perusal of the order impugned would indicate that though it is the respondent no. 3 who himself is passing the order yet the order has been passed on the basis of the recommendations of the committee. Thus, once the recommendation of the committee have been considered by the competent authority while passing the order impugned it cannot be said that there has been application of mind on the part of the respondent no. 3 himself rather he has been swayed by the recommendations of the committee.

11. Keeping in view the aforesaid, the writ petition is **allowed**.
The order impugned dated 08.09.2023, a copy of which is annexure 2 to the writ petition, is set aside.

12. The matter is remitted to the respondent no. 3 to pass a fresh order in accordance with law and the relevant rules within a period of six weeks from the date of receipt of a certified copy of this order.

Order Date :- 11.10.2023

J.K. Dinkar